


# The Scope of Piercing the Corporate Veil in a Limited Liability Company in Georgia: A Comparative Analysis of German and Georgian Law


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**Abstract:** Under the Association Agreement, Georgia undertook the obligation to harmonize its legislation with EU legal standards. This commitment is reflected in the Law of Georgia “On Entrepreneurs,” adopted in 2022. The new law offers regulation on corporate veil piercing, but, due to its novelty, Georgian judicial practice and doctrinal interpretations are still very scarce for establishing a legal standard. The article examines the legal framework of piercing the corporate veil in Georgian law through a comparative analysis with German law. Although the corporate veil traditionally protects shareholders from personal liability, both the Georgian and German legal systems recognize exceptions in which this protection may be disregarded. Georgian law establishes two cumulative preconditions for piercing the corporate veil: abuse of the legal form and the company’s inability to satisfy creditors. The Supreme Court of Georgia has identified indicators of such abuse, including the “alter ego” doctrine, commingling of assets, and undercapitalization. At the same time, the article examines the relationship between tort and corporate liability, addressing the potential competition of legal remedies available to creditors when imposing personal liability on shareholders. The research aims to contribute to the development of Georgian judicial practice by analyzing the doctrine of piercing the corporate veil and its role in strengthening creditor protection and corporate accountability.

**Keywords:** veil pierce, shareholder, personal liability, abuse, legal form, assets

## 1. Introduction

Traditional corporate law is based on the concept of a corporation’s separate legal personality, under which the company is distinct from its shareholders and possesses its own

structure, rights, and obligations.<sup>1</sup> Shareholders of a limited liability company are generally not liable for the company's debts, and only the company's assets are available to creditors.<sup>2</sup> However, this principle is neither absolute nor unconditional. In certain circumstances, the strict separation between shareholders' assets and the company's assets is not justified.<sup>3</sup> This exceptional case is addressed by the so-called doctrine of piercing the corporate veil recognized in corporate law, pursuant to which shareholders may be held personally liable to creditors under certain conditions.<sup>4</sup> Piercing the corporate veil may occur where shareholders misuse the corporate form, evade legal obligations, or otherwise engage in conduct that undermines the purpose of limited liability,<sup>5</sup> either at the stage of the company's formation or during its subsequent operation.<sup>6</sup>

This research aims to identify the preconditions for piercing the corporate veil under Georgian law through comparative analysis with German law, determine the scope of shareholders' personal liability and examine the available legal remedies and mechanisms for exercising creditors' rights.

This research is significant and relevant because of the paucity of research on the personal liability of limited liability company shareholders under the corporate veil doctrine in Georgian legal literature and practice. This issue becomes particularly important because Article 26 of the law of Georgia "On Entrepreneurs," which regulates piercing the corporate veil, does not provide a specific list of situations or criteria in which such liability arises, referring only to the abuse of the legal form of the company.<sup>7</sup> In the absence of such statutory guidance, legal scholarship and judicial practice play a crucial role in clarifying the scope and application of the doctrine. Due to the limited literature and practice, Georgian courts rely on foreign legal approaches to ground decisions on piercing the corporate veil. At the same time, a partner's personal liability may arise under both tort law and the Law of Georgia "On Entrepreneurs," creating a competition between different legal mechanisms. Accordingly, this research analyzes the approaches of Georgian law and judicial practice through comparative analysis with German law, aiming to contribute to the proper development of Georgian judicial practice. This is especially important nowadays, because the Law "On Entrepreneurs," which entered into

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<sup>1</sup> Karen Vandekerckhove, *Piercing the Corporate Veil: A Transnational Approach* (Alphen aan den Rijn: Kluwer Law International, 2007), 3–4.

<sup>2</sup> Gerard Wirth et al., *Corporate Law in Germany*, 4th ed. (München: C.H. Beck, 2024), 23.

<sup>3</sup> Klaus J. Müller, *The GmbH: A Guide to the German Limited Liability Company*, 3rd ed. (München: C.H. Beck, 2016), 93.

<sup>4</sup> Decision of the Supreme Court of Georgia of 21 February 2025 No. 36-474–2024.

<sup>5</sup> Giorgi Ustiashvili, "Corporate Veil Piercing – In the Doctrine of Georgian, German, and U.S. Law," in *Sergo Jorbenadze 90*, ed. Sergo Jorbenadze (Tbilisi: Sulkhan-Saba Orbeliani University, 2019), 141.

<sup>6</sup> Jean-Marie Nelissen Grade and Matthias Wauters, "Reforming Legal Capital: Harmonisation or Fragmentation of Creditor Protection?" in *The European Company Law Action Plan Revisited: Reassessment of the 2003 Priorities of the European Commission*, eds. Koen Geens and Klaus J. Hopt (Leuven: Leuven University Press, 2010), 47.

<sup>7</sup> Law of Georgia "On Entrepreneurs," Article 26(2).

force on January 1, 2022,<sup>8</sup> is based on the guiding directions of the European Union under the Association Agreement.<sup>9</sup>

This article consists of six parts, of which the first section provides the introduction to the research. The second section identifies the legal basis for piercing the corporate veil. The third section examines the abuse of the company's legal form. In contrast, the fourth section outlines the preconditions for the company's inability to satisfy creditors, which constitutes a prerequisite for piercing the corporate veil. Therewith, the fifth section addresses the potential competition of creditor legal remedies when imposing personal liability on shareholders. The final section contains the conclusion.

## 2. Legal Basis for Piercing the Corporate Veil

As mentioned above, the legal basis for imposing personal liability on a shareholder is provided in the Law of Georgia "On Entrepreneurs." Along with the evolution of the latter, the article regulating piercing the corporate veil was amended. Within the existing regulatory framework, the legislation allows for piercing the corporate veil if shareholders abuse the legal form of limited liability and if the company cannot satisfy the creditors' claims, as it is evident that Georgian legislation fails to define abuse of legal form. However, unlike the previous statutory regime,<sup>10</sup> it imposes a second precondition: the company must satisfy its creditors before imposing personal liability on the shareholder. Moreover, before assessing the element of abuse of legal form, the court must establish the company's insolvency.<sup>11</sup> It should not be overlooked that, according to the opinion expressed in the literature, in order to determine personal liability of a shareholder, the result of abuse of legal form should be such a deterioration of the financial condition of the company that it cannot satisfy the creditor's claim.<sup>12</sup>

In contrast to Georgian law, the concept of piercing the corporate veil has no statutory basis in German law. According to the legal doctrine, the term may refer to situations in which shareholders incur personal liability for the company's debts towards its creditors.<sup>13</sup> According to judicial practice, the following circumstances were regarded as possible exceptions to the limited liability concept: commingling of assets, the use of the company as a mere facade (for example, to commit fraud or other wrong), undercapitalization,<sup>14</sup> and confusion of business activities. These are the most common cases

<sup>8</sup> New law of Georgia "On Entrepreneurs" was enacted on January 1, 2022; prior to that, the law of Georgia "On Entrepreneurs," enacted on October 28, 1994, was in force.

<sup>9</sup> 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 (OJ L 261, 30 August 2014), 4–743.

<sup>10</sup> Law of Georgia No. 240.000.000.05.001.000.087 of 28 October 1994 on Entrepreneurs, Article 3(6).

<sup>11</sup> Irakli Burduli et al., *Corporate Law* (Tbilisi: World of Lawyers, 2022), 391.

<sup>12</sup> Giorgi Giguashvili and Giorgi Jugheli, *Commentary on the Law of Georgia on Entrepreneurs* (Tbilisi: Investor Council Secretariat, 2022), 62.

<sup>13</sup> Mariusz Frasz, "The Doctrine of Veil-Piercing Liability in Poland and Selected Countries: A Comparative Law Study," *Journal of Civil Law Studies* 14, no. 1 (2022): 110.

<sup>14</sup> Christian Jungmann and Daniele Santoro, *German GmbH Law: Das deutsche GmbH-Recht*, 2nd ed. (München: C.H. Beck, 2020), 34.

of piercing the corporate veil.<sup>15</sup> The concept of using the analogy to pierce the corporate veil doctrine was established in the case law of the Federal Court of Justice (*Bundesgerichtshof*) from 2001 to 2009. German courts established that shareholders are liable for damages and losses caused by an infringement that endangers the company's survival by draining indispensable financial resources.<sup>16</sup> A situation arises when a shareholder withdraws from the company, leaving the assets necessary to fulfill the company's obligations to third parties. This conduct not only places the company at risk of insolvency but may also directly lead to its insolvency.<sup>17</sup>

It is noteworthy that German courts are cautious and rarely use the principle of piercing the corporate veil, only in cases where other legal mechanisms fail to ensure justice. This underscores that the principle of limited liability is of key importance in German law and serves the main purpose of a legal entity's existence: protecting its shareholders from the risks of its activities.<sup>18</sup> However, it is worth noting that judicial practice in this regard is not uniform and changes over time.<sup>19</sup>

According to scholarly opinion, applying the doctrine of piercing the corporate veil requires distinguishing between contractual and tort creditors. In the case of contractual creditors, the personal liability of shareholders is not justified, since, when entering into a contractual relationship, the latter can verify the company's financial condition. Tort creditors lack such an opportunity; they cannot choose the debtor, and therefore need more protection.<sup>20</sup>

Based on an examination of available Georgian Judicial practice prior to 2015, two Supreme Court decisions dated May 6, 2015, appear to constitute the first explicit application of the doctrine of piercing the corporate veil. In both decisions, the court identifies indicators that may constitute an abuse of the legal form of the company, namely that the company represents an alter ego of the shareholder, disregard for corporate formalities, and improper capitalization.<sup>21</sup> It should be noted that in Georgian judicial practice, the aforementioned decisions are cited in disputes concerning piercing the corporate veil,<sup>22</sup> and the Supreme Court has not established the shareholder's liability. After the entry into force of the new law, Georgian courts still approach the application of the doctrine of piercing the corporate veil with caution. However, although they have not imposed liability on shareholders, in their assessments, they continue to refer to the same circumstances when determining piercing liability. These include the intentional misrepresentation of creditors; the use of the company as the shareholder's "alter ego"; the commingling

<sup>15</sup> Ustiashvili, "Corporate Veil Piercing," 156.

<sup>16</sup> Jungmann and Santoro, *German GmbH Law*, 34.

<sup>17</sup> Carsten Fløghoff, "Germany," in *European Corporate Law*, eds. Karel Van Hulle and Harald Gesell (Baden-Baden: Nomos, 2006), 159.

<sup>18</sup> Jungmann and Santoro, *German GmbH Law*, 33.

<sup>19</sup> Müller, *The GmbH*, 93.

<sup>20</sup> Burduli et al., *Corporate Law*, 394–95.

<sup>21</sup> Decision of the Supreme Court of Georgia of 6 May 2015 No. სბ-1307–1245–2014; Decision of the Supreme Court of Georgia of 6 May 2015 No. სბ-1158–1104–2014.

<sup>22</sup> Decision of the Supreme Court of Georgia of 21 February 2025 No. სბ-474–2024; Decision of the Supreme Court of Georgia of 25 April 2024 No. სბ-579–2021; Decision of the Supreme Court of Georgia of 13 December 2024 No. სბ-1251–2024.

of assets; the disregard of corporate formalities; manifestly inadequate capitalization; and, most importantly, the existence of a direct causal link between the damage and such abuse.<sup>23</sup> It should not be overlooked that the Tbilisi City Court established the piercing of the corporate veil, citing the aforementioned criteria as justification and indicating that the abuse of legal form resulted in the company's insolvency. The court highlighted that the shareholder had deprived the company of assets, thereby preventing it from satisfying its creditors.<sup>24</sup> This demonstrates that Georgian judicial practice maintains the same approach in defining abuse of the legal form of the company, and that the development of judicial practice has not yielded any distinguishing criteria.

### 3. Abuse of Legal Form

As mentioned, in both Georgian and German law, the use of a company as a facade or alter ego creates a precondition for the abuse of the legal form. German courts consider a company to be used as a facade when it does not perform the function of an independent legal entity and is used solely to pursue the personal interests of its shareholders.<sup>25</sup> It is noteworthy that, as mentioned above, under the alter ego (similar to the facade) doctrine and the interpretation of the Law of Georgia "On Entrepreneurs," the Supreme Court of Georgia established piercing the corporate veil and held the company's shareholder liable for tax obligations. In contrast, the company was unable to fulfill the aforementioned financial obligation towards the creditor, the LEPL Revenue Service of Georgia. Regarding personal liability, the court explained that the above-mentioned doctrine applies in cases of fraud, misrepresentation, and wrongful conduct on the part of a shareholder, when the company is an "instrument" in the hands of the shareholders, an "alter ego" of the shareholder, or a "fiction." In both cases, the court considered tax evasion attempts as a precondition for piercing the corporate veil. It indicated that abuse of the limited liability form by a shareholder occurs when the shareholder is directly involved in the company's management and engages in activities aimed at tax avoidance, that is, when the shareholder uses the company as a vehicle for generating undeclared income.<sup>26</sup>

One should take into consideration that, in terms of confirming the basis for piercing the corporate veil, the disregard of corporate formalities is particularly important. This prerequisite is present when shareholders' meetings are not properly convened and held, when the separation of management and representative powers between shareholders and directors is unclear, when shareholders' and the company's property are confused, and when accounting documentation is not properly maintained. The Supreme Court of Georgia recognized these circumstances in the above-mentioned precedent, in which

<sup>23</sup> Decision of the Supreme Court of Georgia of 19 June 2024, Case No. 3b-710-2023; Decision of the Supreme Court of Georgia of 29 February 2024 No. 3b-229-2023; Decision of the Supreme Court of Georgia of 13 July 2022 No. 3b-532-2021; Decision of the Supreme Court of Georgia of 25 November 2022, Case No. 3b-1118-2022.

<sup>24</sup> Decision of Tbilisi City Court of 19 April 2024 No. 2/28903-23.

<sup>25</sup> Jungmann and Santoro, *German GmbH Law*, 33.

<sup>26</sup> Decision of the Supreme Court of Georgia of 6 May 2015 No. 3b-1307-1245-2014; Decision of the Supreme Court of Georgia of 6 May 2015 No. 3b-1158-1104-2014.

the shareholder was held liable for tax evasion. In that case, the court considered the creation of tax-evasion schemes and the abuse of the limited liability form of the company as a precondition for piercing the corporate veil. The lack of compliance with corporate formalities was manifested in the discrepancy between the documentation confirming the sale of goods.<sup>27</sup>

A good example of breach of corporate formalities is the use of the same addresses, names, and directors by parent and subsidiary companies.<sup>28</sup> According to the German Federal Court, the issue of piercing the corporate veil arises when a shareholder's activities are confused with those of the company; that is, two separate spheres are intertwined.<sup>29</sup> The Federal Supreme Court of Germany in the *Autokran* case indicated that a shareholder may become liable to creditors if their personal assets are commingled with the company's assets in a way that makes it impossible to distinguish between them, thereby making it difficult or impossible to identify the assets against which the company's creditors can seek enforcement.<sup>30</sup> As a general rule, when corporate formalities are observed, authorized capital is paid up (if any), and the company is not formed with the intention of misleading creditors, shareholders are protected from personal liability.<sup>31</sup> The failure to maintain corporate formalities is particularly evident in parent-subsidiary relationships, where the entities may operate under the same address and name and have common management. Such manipulation by the parent company may lead creditors to believe that they are entering into a contractual relationship with the parent company itself, when in fact, the contractual relationship exists with the subsidiary, which is insolvent.<sup>32</sup>

It should be noted that German courts impose personal liability on a shareholder to creditors under the principle of piercing the corporate veil, when the assets of the company and the shareholder are closely intertwined due to non-transparent bookkeeping or other measures.<sup>33</sup> Given that a company and its shareholders are considered separate legal entities, this independence is primarily reflected in the separation of their respective assets. However, a failure to maintain this boundary may mislead creditors and potentially create the precondition for piercing the corporate veil.<sup>34</sup> The German Federal Court emphasizes that piercing the corporate veil is only permissible in extreme cases – when the company is in complete disorganization and obligations cannot be recovered through standard legal means.<sup>35</sup>

<sup>27</sup> Ibid.

<sup>28</sup> Burduli et al., *Corporate Law*, 400.

<sup>29</sup> Ibid., 182.

<sup>30</sup> Andrea Vicari, *European Company Law* (Berlin: De Gruyter, 2021), 307.

<sup>31</sup> Geetika Kaura, "Piercing the Corporate Veil: A Necessary Puncture in the Fabric of the Corporate," *Jus Corpus Law Journal* 3, no. 1 (2022): 665.

<sup>32</sup> Burduli et al., *Corporate Law*, 400.

<sup>33</sup> Joachim Rosengarten, Frank Burmeister, and Martin Klein, *The German Limited Liability Company*, 9th ed. (München: C.H. Beck, 2020), 48.

<sup>34</sup> Burduli et al., *Corporate Law*, 397.

<sup>35</sup> Hans S. Birkmose, Mette Neville, and Karsten Engsig Sørensen, *Abuse of Companies* (Alphen aan den Rijn: Kluwer Law International, 2019), 167.

It is worth noting that, when considering the preconditions for piercing the corporate veil, inadequate capitalization is often treated as a circumstance confirming the prerequisite for piercing the corporate veil. Undercapitalization arises when shareholders fail to invest adequately in the business.<sup>36</sup> Furthermore, in the case of improper capitalization, if the company is established in accordance with the law, and the shareholders of the company have done nothing to prevent creditors from seizing and capital maintenance rules are preserved, the shareholder cannot be held liable for the improper financing of the company.<sup>37</sup> The German Federal Court in the *Trihotel* case led to significant changes in German practice, namely, established that a lack of capital alone is not sufficient for personal liability; rather, the fact of the intentional, conscious infliction of damage must be proven.<sup>38</sup> It is essential to distinguish between *bona fide* risk and abuse of the limitation of liability. Unlike in Georgia, German legislation requires the existence of legal capital, which is why insufficient capitalization manifests in two forms: a nominal deficit, when legal capital is not maintained, and a material deficit, when the company's financial resources are disproportionate to its activities.<sup>39</sup> Although German law requires the existence of legal capital, the German Federal Court emphasized that such undercapitalization alone could not give rise to shareholder liability. The court highlighted that shareholders are responsible for providing legal capital, but not for providing financial means for meeting all obligations. Shareholders are obliged only to avoid depriving the company of its assets in any manner incompatible with the rules of capital maintenance.<sup>40</sup> Capital maintenance is a core principle of German company law. This means the obligation to maintain a minimum level of legal capital for joint-stock companies and limited liability companies. Legal capital may be used only to satisfy the company's obligations towards creditors and may not be distributed to shareholders.<sup>41</sup> Additionally, under the principle of capital maintenance, not only are payments to shareholders prohibited, but also payments to third parties in a close relationship with a shareholder. Payments to companies controlled by a shareholder are likewise prohibited. An exemption is the arm's-length principle, under which the company receives, in return, an asset of equal or greater value.<sup>42</sup> Accordingly, undercapitalization, which means not providing financial resources proportional to the company's business activities, must be distinguished from the principle of capital maintenance, which prohibits the distribution of legal capital to shareholders. In Georgia, no minimum legal capital is required for a limited liability company, although companies may freely determine their share capital.<sup>43</sup> This confirms

<sup>36</sup> Burduli et al., *Corporate Law*, 398.

<sup>37</sup> Cheng Han Tan, Jianguy Wang, and Christian Hofmann, "Piercing the Corporate Veil: Historical, Theoretical & Comparative Perspectives," *Berkeley Business Law Journal* 16, no. 1 (2019): 179.

<sup>38</sup> Müller, *The GmbH*, 94.

<sup>39</sup> Iulia Cristina Stroe, "Piercing the Corporate Veil in International Commercial Arbitration: A Brief Overview," *Romanian Arbitration Journal / Revista Romana de Arbitraj* 66, no. 1 (2024): 30.

<sup>40</sup> Tan, Wang, and Hofmann, "Piercing the Corporate Veil," 179.

<sup>41</sup> Anne Sanders, "Binding Capital to Free Purpose: Steward Ownership in Germany," *European Company and Financial Law Review* 19, no. 4, (2022): 645, <https://doi.org/10.1515/ecfr-2022-0020>.

<sup>42</sup> Andreas Schröder-Frerkes and Anja Göhring, *The Limited Liability Company under German Law (GmbH)* (Woking: German Law Publishers, 2020), 162.

<sup>43</sup> Law of Georgia "On Entrepreneurs," Article 134(1).

that inadequate capitalization alone cannot serve as an independent ground for piercing the corporate veil. It is also important to note that personal liability is imposed only on the shareholder responsible for the misuse of the legal form. Other shareholders are not held liable merely by virtue of holding shares in the company. In such cases, piercing the corporate veil applies specifically to one or several shareholders individually.<sup>44</sup>

Based on the above, it seems that Georgian judicial practice regarding piercing the corporate veil is less variable than German judicial practice. However, it is appropriate that both the alter ego theory and the lack of corporate formalities be recognized as manifestations of the abuse of legal form. Given that Georgian law “On Entrepreneurs” does not require legal capital for a limited liability company, nor does it establish in the legal literature an obligation to maintain continuous financing of the company, it is reasonable that only gross undercapitalization is not considered a precondition for piercing the corporate veil. Rather, it can serve as supplementary evidence of abuse of the company’s legal form, along with other criteria. Importantly, for the establishment of the first element of piercing the corporate veil – the abuse of legal form – it is necessary that such abuse cause a deterioration of the company’s financial situation, rendering it impossible to satisfy the creditors.

#### 4. Inability of the Company to Satisfy the Creditor’s Claim as a Precondition

As examined above, the Law of Georgia “On Entrepreneurs” imposes personal liability on a shareholder of a limited liability company if, in addition to the shareholder’s abuse of the legal form, the company is unable to satisfy its creditors.<sup>45</sup> Since the aforementioned provision of the law is formulated in such a way as to suggest an “and” connection between the above two circumstances, it is clear that they constitute cumulative preconditions for imposing liability. Moreover, the court should first assess the company’s ability to satisfy its creditors, since the issue of piercing the corporate veil arises only when the company is unable to fully or partially satisfy its creditors.<sup>46</sup> Prior to the entry into force of the Law of Georgia “On Entrepreneurs” in 2022, the existing case law interpreted shareholders’ liability to creditors as subsidiary liability for the company’s obligations. The Supreme Court of Georgia held that shareholders are liable for the company’s debts only where they abuse the limited-liability legal form. In other words, if, as a result of such abuse, the creditor is unable to obtain satisfaction directly from the company, the partners may be held personally liable. Thus, according to the instructions of the Supreme Court of Georgia, before examining the prerequisites for personal liability, the insolvency of the debtor must be established. Despite this clarification, the Supreme Court decisions fail to specify the circumstances upon which the determination of debtor insolvency was based.<sup>47</sup> Accordingly, it is reasonable to clarify what constitutes a company’s insolvency. The Law

<sup>44</sup> Tan, Wang, and Hofmann, “Piercing the Corporate Veil,” 180.

<sup>45</sup> Law of Georgia “On Entrepreneurs,” Article 26(2).

<sup>46</sup> Giguashvili and Jugheli, *Commentary on the Law of Georgia on Entrepreneurs*, 62.

<sup>47</sup> Decision of the Supreme Court of Georgia of 6 May 2015 No. სბ-1307–1245–2014; Decision of the Supreme Court of Georgia of 6 May 2015 No. სბ-1158–1104–2014.

on Rehabilitation and Collective Satisfaction of Creditors considers a debtor insolvent if it is unable to cover its due obligations.<sup>48</sup> Thus, in order to determine whether a debtor is insolvent, the debtor's ability to pay its due liabilities must be taken into account, after which the debtor is obliged to disprove the fact of insolvency by proving that its total assets exceed its liabilities.<sup>49</sup> It should not be overlooked that the Law of Georgia "On Entrepreneurs" does not refer to the "insolvent debtor," but rather refers to the inability of the company to satisfy its creditors, which is not equivalent to the insolvency of the company. It is reasonable to assume that the insolvency of the company includes the inability of the company to satisfy its creditors, although the latter may be associated with fewer requirements, for example, registration in the debtor's list of the company for a certain period of time without interruption,<sup>50</sup> or the unsuccessful implementation of enforcement proceedings against the company by creditors.<sup>51</sup> It is also worth noting that the burden of proof of the element of abuse of limited liability lies with the creditor. However, when proving the circumstances of the company's failure to satisfy the creditor, the plaintiff is only obliged to create a preliminary presumption, after which the burden of proof is reversed. The defendant must demonstrate that the company can satisfy the creditors' claims, and there is no need to impose personal liability on the shareholder.<sup>52</sup>

Based on the foregoing analysis, it should be noted, in summary, that the grounds for imposing piercing liability under Article 26(2) of the law of Georgia "On Entrepreneurs" regarding the company's inability to satisfy creditors may not necessarily encompass the company's insolvency solely. The latter shall include fewer requirements, such as prolonged registration in the debtor's registry, unsuccessful enforcement proceedings, and other circumstances.

## 5. Competition of Remedies

The relationship between piercing the corporate veil and tort liability is very relevant. Recent Georgian judicial practice, rather than the provisions in the Law of Georgia "On Entrepreneurs," applies tort law to impose personal liability on a shareholder.<sup>53</sup> In one case, the founders of a company were found guilty of misappropriating funds from credit union depositors. In the decision, the court noted that one of the founders formally managed the company and that it was at his instigation that the director misappropriated the depositors' funds by granting a loan to a shareholder. The latter did not repay the debt and used it for personal purposes, which is why the company could no longer meet its financial obligations to creditors.<sup>54</sup> As noted above, German courts avoid applying the doctrine of piercing the corporate veil, since shareholders' liability is limited to the company, not

<sup>48</sup> Law of Georgia "On Rehabilitation and the Collective Satisfaction of Creditors' Claims," Article 7 (1).

<sup>49</sup> Ketevan Meskhishvili et al., *Grounds for Insolvency Proceedings under the Law of Georgia on Rehabilitation and the Collective Satisfaction of Creditors' Claims* (Tbilisi: GIZ, 2021), 29.

<sup>50</sup> Burduli et al., *Corporate Law*, 391.

<sup>51</sup> Tan, Wang, and Hofmann, "Piercing the Corporate Veil" 177.

<sup>52</sup> Giguashvili and Jugheli, *Commentary on the Law of Georgia on Entrepreneurs*, 62.

<sup>53</sup> Burduli et al., *Corporate Law*, 401–2.

<sup>54</sup> Decision of the Supreme Court of Georgia of 24 December 2020 No. 36-203-2020.

to the creditor. In cases of property misappropriation, German courts rely on piercing the corporate veil, whereas in other cases, they primarily base shareholders' liability on tort law.<sup>55</sup> In addition, according to recent German court practice, the so-called "annihilating interference" by a shareholder constitutes a tortious liability. Such liability arises when a shareholder improperly and against the company's interests uses the company's assets, and this action leads to the company's insolvency or a threat of insolvency.<sup>56</sup> German courts impose liability on shareholders in tort when the shareholder destroys the company's economic basis. This is the case when a shareholder intentionally and knowingly puts the company's economic condition at risk.<sup>57</sup> The shareholder removes the assets from the company in a way that prevents the company from covering its debts. It is worth mentioning that such liability arises only if the company becomes insolvent.<sup>58</sup>

As has already been examined, under German court practice, a shareholder in a limited liability company may be held liable in tort if the shareholder is indifferent to the fact that the company may not be able to meet creditors' claims. In addition, compensation for damages is awarded when a shareholder of an unviable closed corporation continues to conduct business operations through the corporation, despite being aware of the corporation's inability to meet its obligations.<sup>59</sup> This approach was established in 2007 by the German Federal Supreme Court in the *Trihotel* case, which essentially held that shareholder misconduct that led to a company's insolvency should be treated as damage caused not to creditors, but to the company itself. If a shareholder manipulates the company's assets, he violates the obligation he owes to the company, not to the company's creditors.<sup>60</sup>

According to Georgian law, the distinction between piercing the corporate veil and tort liability is important because each remedy has different preconditions. The preconditions for tort liability, as indicated in the Civil Code of Georgia, are: wrongful act, damage, causal connection between the wrongful act and the damage, and fault of the person who caused the damage. A person will be liable for damages if all four prerequisites are present.<sup>61</sup> The preconditions for piercing the corporate veil are the existence of an abuse of legal form and the company's inability to satisfy its creditors.<sup>62</sup> Although the legal basis for the claim does not change the outcome for the creditor, piercing the corporate veil is more difficult to prove.<sup>63</sup> It is noteworthy that, in the above-mentioned Supreme Court decision, the Revenue Service based its claim on a tort enshrined in the Georgia Civil Code. However, the court indicated that the more specific law of "piercing the corporate

<sup>55</sup> Tan, Wang, and Hofmann, "Piercing the Corporate Veil," 183.

<sup>56</sup> *Ibid.*, 177.

<sup>57</sup> Wirth et al., *Corporate Law in Germany*, 25.

<sup>58</sup> *Ibid.*, 24.

<sup>59</sup> Vandekerckhove, *Piercing the Corporate Veil*, 62.

<sup>60</sup> Stroe, "Piercing the Corporate Veil in International Commercial Arbitration," 31.

<sup>61</sup> Decision of the Supreme Court of Georgia of 20 June 2018 No. 3b-769-737-2016; Decision of the Supreme Court of Georgia of 4 October 2016 No. 3b-176-163-2015; Decision of the Supreme Court of Georgia of 11 April 2019 No. 3b-1426-2018.

<sup>62</sup> Law of Georgia "On Entrepreneurs," Article 26(2).

<sup>63</sup> Burduli et al., *Corporate Law*, 401-2.

veil” should have been applied.<sup>64</sup> It is noteworthy that, in such cases, there is competition between the grounds for the claim between special and general law, which are in an exclusive relationship with each other, and one of the grounds for the claim should be used preferentially due to its special nature.<sup>65</sup> At the same time, according to the Law of Georgia “On Normative Acts,” in the event of a conflict between normative acts having equal force, priority shall be given to the normative act adopted later.<sup>66</sup> The same law defines a law of Georgia as a normative act.<sup>67</sup> Both the Civil Code of Georgia and the Georgian law “On Entrepreneurs” constitute laws of Georgia. However, since the Civil Code of Georgia was enacted in 1997,<sup>68</sup> and the law “On Entrepreneurs” entered into force in 2022,<sup>69</sup> the latter-adopted law “On Entrepreneurs” should be given priority.

Given that piercing the corporate veil established by the Law of Georgia “On Entrepreneurs,” as previously discussed, is associated with a higher burden of proof, judicial approach regarding bypassing the Law of Georgia “On Entrepreneurs” and more easily imposing liability on the shareholder based on tort, would jeopardize the fundamental essence of a limited liability company – principle of limitation of liability.

## 6. Conclusion

Based on the research conducted, it is evident that the issue of a shareholder’s personal liability arising from piercing the corporate veil encompasses multiple legal aspects. This study reveals that, according to the law of Georgia “On Entrepreneurs,” to impose personal liability on a shareholder, it is necessary to prove that the shareholder used the company as an instrument, acting as the company’s “alter ego,” thereby disregarding the company’s separate legal personality. Consequently, in the absence of corporate formalities, the commingling of company and shareholder assets, which leads to the misdirection of creditors, is a specific circumstance that constitutes grounds for holding shareholders personally liable to creditors. As for undercapitalization, it is advisable that this circumstance, similar to the approach of German law, be considered a ground for piercing the corporate veil only in combination with other indicators of abuse of the legal form of limited liability. This approach should be reasonable, as shareholders of a limited liability company under Georgian law are not obliged to contribute the minimum legal capital. The shareholders shall be held liable only if they violate the rules of capital maintenance and unlawfully remove the assets from the company to prevent it from satisfying creditors. It is evident that to establish the first element of veil piercing – abuse of the legal form – it is essential to demonstrate that such abuse led to a deterioration of the company’s financial condition, making it impossible for the company to satisfy its creditors.

<sup>64</sup> Decision of the Supreme Court of Georgia of 6 May 2015 No. 3b-1307–1245–2014.

<sup>65</sup> Sophie Chachava, “Competition of Claims and Grounds for Claims in Private Law” (PhD diss., Ivane Javakhishvili Tbilisi State University, 2011), 28.

<sup>66</sup> Organic Law of Georgia “On Normative Acts,” Article 7(8).

<sup>67</sup> *Ibid.*, Article 7(2)(c).

<sup>68</sup> *Ibid.*

<sup>69</sup> Law of Georgia “On Entrepreneurs.”

It is worth mentioning that under the law of Georgia “On Entrepreneurs,” in addition to proving abuse of the legal form by the shareholder, it is also necessary to prove the company’s inability to satisfy the creditor’s claim to pierce the corporate veil. To establish a company’s inability to satisfy the creditors’ claim, it is reasonable to consider the following circumstances: initiating insolvency proceedings against the company. However, it should be emphasized that failure to satisfy the creditors does not necessarily mean formal insolvency; this can be demonstrated through less demanding conditions, such as prolonged registration in the debtor’s registry, unsuccessful enforcement proceedings, or other circumstances. When proving the company’s inability to satisfy creditors, the claimant (creditor) should overcome the initial burden of proof. After this, the burden shifts to the defendant (shareholder) to prove that the company is, in fact, able to satisfy the creditors.

Additionally, as this research revealed, the provision regarding piercing the corporate veil under the Georgia “On Entrepreneurs” law competes with the general tort under the Civil Code of Georgia. In such cases, it is advisable to give precedence to the special and later adopted law “On Entrepreneurs.” Another interpretation would jeopardize the fundamental essence of a limited liability company – the principle of limitation of liability.

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