Reflections on the Reform of Company Law in Georgia and the New Law on Entrepreneurs

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Abstract

After gaining independence in 1991, Georgia adopted the Continental European legal system. The fact that classical Georgian law bears traces of Roman-Byzantine law significantly influenced this adaptation. However, in terms of company law regulations, it is seen that Georgia has a deep interaction with the Anglo-Saxon legal system. Indeed, Georgia is shaping its company law regulations to attract foreign direct investors to the country. Therefore, the country has undergone a deregulation process in the field of company law. In this process, Georgian company law has been deeply influenced by the Anglo-Saxon legal system, particularly the US law. However, this process entered a different phase with the signing of the Association Agreement between the European Union and the Georgia in 2016. With this agreement, Georgia undertook to harmonize its domestic law with the EU acquis communautaire. Within the scope of this commitment, a code called "Georgian Code on Entrepreneurs", which contains provisions in the fields of companies' law and business enterprise law, was adopted in 2021, and the said Code entered into force in 2022. With this new Code, Georgia's deregulation period seems to have ended. However, it should be noted that the new Code contains many remarkable provisions. In this study, important developments in Georgian company law after gaining Georgian independence and the current situation of the company law will be analyzed. In addition, the Georgian Code on Entrepreneurs will be subjected to a short and descriptive review.

Keywords: *Georgia, Georgian legal system, Georgian private law, Georgian commercial law, Georgian company law.*

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1. Introduction

Although the political and economic relations between Türkiye and Georgia are very advanced, it would not be an erroneous statement to say that the interaction between the laws and jurists of the two countries is at the opposite level. However, after

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1991, when Georgia declared its independence from the USSR, especially German and US lawyers played a key role in shaping modern Georgian law with the effect of the funds they provided from their countries. It is undeniable that the studies in the field of company law in Türkiye focus dominantly on German law, and very few studies are related to the company law of the United States of America and ignore the company laws of other countries by Turkish legal scholars. However, it is indisputable, that the borders between the two neighboring countries have been abolished, passport-free travel is possible, many Georgian citizens are employed in Türkiye, many Turkish entrepreneurs have made investments in Georgia, and Batumi has become a Turkish settlement, so to speak. Likewise, Türkiye also has many public investments in Georgia. Feature of this study is that it is the first study on Georgian private law and company law, by a Turkish author. So that, this study aims to contribute to the elimination of the lack of legal interaction and to be useful for the entrepreneurs who invest or will invest in Georgia and those who want to have information and research on this country's legal system.

Nevertheless, some features of Georgian company law, independent of the aforementioned lack of legal interaction, deserved to examine it separately. In fact, the country's ranking in the DoingBusiness Index, a foreign investment index maintained by the World Bank, has improved every year, and according to this index, as of 2020, Georgia ranked seventh in the world in terms of legal facilities offered to foreign investors. Türkiye ranks 33rd in the same index[2] . Undoubtedly, the Georgian legislator and practitioner's adoption of the "one stop shop" approach has played a major role in this[3]. Establishing a company in the country requires only a one-step procedure[4]. In this respect, the current legal developments in the country, which is seen as a center of attraction for foreign investors[5], should be handled carefully, especially in terms of commercial law. As a matter of fact, it is stated that the existence of a simplified corporate law and tax system in the country plays an encouraging role for foreign investors, and that these are among the reasons that make it advantageous in terms of attracting foreign investment to the country[6]. The simplification in the establishment, registration and administration of limited liability companies and the abolition of the minimum capital requirement in the establishment process cannot be denied in reaching

[2] The World Bank, *Doing Business 2020 Comparing Business Regulation in 190 Economies* (International Bank for Reconstruction and Development/The World Bank, 2020). The World Bank ceased publishing this index as of 2020.

[3]Natia Surmanidze, "Legislative Challenges of Georgian Entrepreneurship and Business Competitiveness," *Institutions and Economies* 14, no. 3 (2022): 2.

[4] The World Bank, *Economy Profile in Georgia- Doing Business 2020 Indicators* (International Bank for Reconstruction and Development / The World Bank, 2020).

[5] Despite being a neighboring country, as of 2023, Türkiye ranked only third after the United Kingdom and the Netherlands in terms of foreign direct investments in Georgia. However, it should also be noted that Türkiye's FDI fluctuates significantly on a yearly basis and in some years Türkiye ranks first. As a matter of fact, as of the first half of 2024, Türkiye ranked first in direct investments in the country; see "Foreign Direct Investments," Geostat- National Statistics Office of Georgia 2024, accessed 5 November 2024 .<https://www.geostat.ge/en/modules/categories/191/foreign-direct-investments>.

[6] Hüseyin Tutar, Evren Demir, Muhammet Demir and Orhan Gazi İnce, *İş Dünyası İçin Gürcistan Rehberi* (SERKA-T.C. Serhat Kalkınma Ajansı, 2013), 57.

this conclusion[7].

It is especially worth mentioning that, there were some important developments in the field of company law in Georgia in 2021 and a new company law entered into force under the name of "Georgian Code on Entrepreneurs". This code is considered the reflection of the partnership agreement between Georgia and the European Union in the field of company law. However, Georgian company law also has many vital features that are unique to Georgia. The basic philosophy of these features can be summarized as the introduction of very liberal provisions in order to attract foreign investors to the country. Although the new code contains provisions that contradict this basic philosophy at some points, it is generally considered to be compatible with this philosophy in generally.

In this study, due to the nature of the research, firstly, basic information will be given about the Georgian legal system and its private law to the extent that it is relevant to our main subject, then the Georgian company law and the aforementioned code will be subjected to a brief descriptive examination.

2. Georgian legal system in outline

Georgia adopted its first constitution in 1921. Although quite liberal in character, this constitution was in force for only 4 days[8], was abrogated with the occupation of the country by the Red Army and the country was governed by various Soviet Constitutions, the last of which was dated 1978, until the dissolution of the USSR and the subsequent adoption of a new Constitution. After the collapse of the Soviet Union, the 1995 Constitution was adopted, which is still in force[9]. This constitution[10] has been amended on various dates, most recently in 2017 and 2018.

Regulations on the organization of the judiciary in Georgia are set out in the Law of 4.12.2009 on General Courts is regulated in detail. The judiciary is organized into as first instance courts (in 24 cities), two courts of appeal (in Tbilisi and Kutaisi), and the Supreme Court, which was established in 2005 as an appellate body[11]. According to Article 61/2 of the Georgian Constitution, the Supreme Court is composed of at least 28 judges which are elected by the Georgian parliament for life until they reach the natural age limit. To become a judge in Georgia, one must have completed law school, be over 30 years of age and have at least 5 years of experience[12]. The highest

[7] George Abuselitze and Giorgi Katamadze, "The importance of legal forms of business subject for formation of business environment in Georgia," *Kwartalnik Nauk O Przedsiębiorstwwie* 4 (2018): 85.

[8] Mehmet Güneş, "100'ncü Yılında 1921 Yılı Anayasaları: Gürcistan, Polonya ve Türkiye Örneği," in *1921 Anayasası'nın Kabul Edilişinin 100. Yılı Ulusal Sempozyumu*, *ed.* Ömer Anayurt and Yusuf Tekin, (TBMM, 2022) 252-255.

[9] Christopher P.M. Waters, *Counsel in the Causaus Professionalization and Law in Georgia* (Springer, 2004), 55 ed seq.

[10] Mariam Jikia, "Legal and Political Aspects of Constitutional Changes in Georgia," *Anayasa Hukuku Dergisi* 4, no. 8 (2015): 24 ed seq.

[11] https://www.supremecourt.ge/, Accessed November 5, 2024. See also Nursal Erdem, "Gürcistan Adalet ve Adli Yardımlaşma Sistemi," *International Law Bulletin* 13 (2018): 33-35.

[12] Ketevan Kukava, Maya Talakhadze and Nino Nozadze, *The Supreme Court of Georgia Analysis of Institutional and Legal Framework* (United States Agency for International Development- USAID, 2020),

judicial authority is the Constitutional Court, which was established in 1996 but moved to Batumi with the 2002 reforms[13].

The members of the Constitutional Court, which has a total of nine members, are appointed by the legislature (three members), the executive branch (three members), the Supreme Court (3 members)[14]. Similar to the Council of Judges and Prosecutors and its functions in Türkiye, there is the Supreme Council of Justice, which is chaired by the president of the Supreme Court (ex officio) and has a total of fifteen members, eight of whom are elected by local court judges, two by the president and three by the legislature[15].

3. Codification of private law in Georgia

Georgia has basically adopted the Continental European legal system. However, after the separation from the USSR, the country underwent a rapid, yet inconsistent, codification process in order to comply with the norms of the World Trade Organization and the European Union in the field of private law[16]. Indeed, in many of the regulations introduced, the legal rules of continental European countries were utilized in order to harmonize with the rules of the European Union (especially in the civil code making process); however, due to the funds provided by the United States Agency for International Development (USAID), many necessary acts such as competition act, consumer act, energy market were prepared with the influence of Anglo-American law. These laws have led to criticism that these rules have caused confusion and unrest within the Continental European legal system[17]. Another criticism is that many of the codifications in the field of private law have been copied verbatim from foreign countries[18].

The private law system is based on the Georgian Civil Code of June 26, 1997[19]. In the early nineties following the collapse of the USSR, Georgia found the second of the two alternatives - to join the working group established by the Commonwealth of Independent States to develop a model code on civil law, or to cooperate with the Germans - preferable and chose European law, thereby sharing the cultural and legal climate of the West with its people[20]. However, it should be noted here that this choice

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[13] See <https://www.constcourt.ge/en>, accessed November 5, 2024; Erdem, "Gürcistan Adalet ve Adli Yardımlaşma Sistemi," 33-35.

[14] See <https://www.constcourt.ge/en/court/about-the-court>, accessed 10 Sep 2024; Erdem, "Gürcistan Adalet ve Adli Yardımlaşma Sistemi," 33-35

[15] Sophio Verdzeuli, *The Judicial System in Georgia Report* (Coalition for an Independent and Transparent Judiciary, 2012), 5

[16] Waters, *Counsel in the Causaus Professionalization and Law in Georgia,* 62-64.

[17] Waters, *Counsel in the Causaus Professionalization and Law in Georgia,* 62-64.

[18] Waters, *Counsel in the Causaus Professionalization and Law in Georgia,* 63.

[19] Civil Code of Georgia No. 786. Civil Code of Georgia, Accessed November 5, 2024, <https://matsne.gov.ge/en/document/view/31702?impose=parallelEn&fullscreen=1&publication=131>.

[20] In the 1990s, after the collapse of the USSR, Georgia, in its quest for legalization, was faced with a choice between sticking to the old rules or sharing the European path of development in terms of the codification of Georgian private law. Obviously, this situation formed the basis for the reforms in the field

was not accidental, and that the fact that the old Georgian law before the USSR was significantly influenced by the Byzantine-Roman legal system was also the reason for this choice[21]. It is even stated that this influence is also seen in modern Georgian legal terminology, with some concepts originating from Roman-Byzantine law[22]. However, it is also stated that the same similarity is also the case in terms of Turkish, Arabic and Persian legal terminology; therefore, mere terminological similarity is not enough to adopt Roman law and Continental European law, and at the same time, the nature of Georgian law is also identified with Continental Europe[23].

In 1991, the government commission for the development of the Civil Code was formed under the leadership of Professor Sergo Zorbenadze, with academics such as Lado Chanturia, Zurab Akhvlediani, Roman Shengelia, Besarion Zoidze[24]. The law drafting commission worked with its full staff for about three years and even despite the civil war between 1992 and 1994, the commission did not stop its work. In 1993, intensive consultations with German lawyers began under the leadership of Professor Rolf Knipper from the University of Bremen[25]. As a result, the bill submitted by the President of Georgia to the parliament was unanimously adopted on June 26, 1997 as the first civil code in the history of independent Georgia under the name of the Georgian Civil Code[26]. Although the Georgian Civil Code is heavily influenced by the German Civil Code (BGB), it should be noted that it is also influenced by the French, Dutch and Swiss civil codes[27].

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of Georgian private law. In this context, it is necessary to briefly discuss the steps taken for the adoption of the Georgian Civil Code of 1997 and to analyze and evaluate the innovations, what was the impact of the adoption process and European law on Georgian private law, what were the reflections of the Common law and Continental European law. This is because these discussions are identical to the discussions and criticisms that took place in Turkiye due to the adoption of the Turkish Civil Code from Switzerland. Georgian jurists approach the issue from the perspective of Europeanization of law and consider the adoption of European law in the field of civil law as a clear expression of the will of the state and the people to become a member of the European family[20] . Accordingly, the acceptance of Georgia as a part of the Continental European legal culture means the formation of a new legal culture in Georgia. The Europeanization of Georgian law is also a cultural-historical process and requires close cooperation with European universities and legal scholars. It is noted that Georgian law is now a member of the Continental European family of law, but also takes into account the trends of the Common law (e.g., the increasing emphasis on jurisprudence and casuistic thinking). See Mikheil Bichia, "Some Features of The Development of Georgian Private Law From The 90s to The Present Day," *International Journal of "Law and World"* 8, no. 4 (December 2022), accessed November 5, 2024, <https://lawandworld.ge/index.php/law/article/view/335>.

[21] Giorgi Amiranashvili, "Some Characteristics of Formal Requirements for a Legal Transaction in American Law," *Ivane Javakhishvili Tbilisi State University Journal of Law- სამართლოთის ჟურნალი* 2 (2016): 56; Giorgi Rusiashvili, "Place of Georgian Civil Law in European Legal Family," *Ivane Javakhishvili Tbilisi State University Journal of Law-სამართლის ჟურნალი* I (2015): 97-98.

[22] Rusiashvili, "Place of Georgian Civil Law in European Legal Family," 100.

[23] Rusiashvili, "Place of Georgian Civil Law in European Legal Family," 100.

[24] Bichia, "Some Features of The Development of Georgian Private Law From The 90s to The Present Day,".

[25] Rusiashvili "Place of Georgian Civil Law in European Legal Family," 105.

[26] Bichia, "Some Features of The Development of Georgian Private Law From The 90s to The Present Day,".

[27] Waters, *Counsel in the Causaus Professionalization and Law in Georgia,* 63.

Likewise, the Civil Code is considered to be the general part of private law and has become the basis for other rules of private law, which are issued in order to regulate certain relations. Indeed, Georgian judicial practice has adopted the principle that the Civil Code is a general code of private law. As a matter of fact, the Supreme Court of Georgia in a case specifically stated that the Civil Code of Georgia is the general part of private law and ruled that the scope of application of the provisions of the civil code is not limited to the scope of the civil code, but also covers other branches of private law; it stated that this point, which is valid for the introductory part of the civil code, is valid in other cases only in cases where there is a gap in other laws (for example, the application of the civil code to labor relations in case of a gap in labor laws)[28]. It should be noted that this practice largely coincides with the application of Article 5 of the Turkish Civil Code No. 4721, which states that "The general provisions of this Code and the Code of Obligations shall, to the extent appropriate, apply to all private law relations."

Georgian Civil Code consists of 1520 articles. It is seen that the general part of the law is separated from the other books of civil law and, as explained above, the provisions of the general part of civil law are applicable to all private law relations unless otherwise specified by a particular norm. In this respect, it is clear that the law is based on the Pandekt system. Since obligation relations are included in the third book of the law, there is no separate law of obligations in the country. In fact, since articles 316 to 1016 are entirely devoted to obligation relations, it can also be said that this section constitutes the core of the civil code. It is also seen that insurance law is also regulated among the obligation relations.

4. An overview of the regulations concerning commercial law in Georgia

Apart from the provisions on the law of obligations expressed in articles 316-1016 of the 1997 Georgian Civil Code[29], the legislation on commercial law in Georgia has a significant share. The first of these regulations is the Code of Georgia on the Protection of Consumer Rights no. 1455 dated 29.03.2022[30]. It should be noted that Chapter VI of the code titled "Unfair Commercial Practices" is regulated in the consumer law, unlike the provisions of Art. 54-63 of TCC No. 6102 on unfair competition in Turkish law. The Georgian Law No. 1455 also divides unfair commercial practices into three categories: unfair commercial practices committed by an act, negligent unfair commercial practices and offensive unfair commercial practices. Another feature of Code No. 1455 is that it establishes an institution called the Georgian National Competition Agency, which is equipped with certain important powers in the field of consumer rights protection (Art. 28-37).

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[28] Bichia, “Some Features of The Development of Georgian Private Law From The 90s to The Present Day,”.

[29] Among these provisions, it should be noted that Art. 930-940 relate to ordinary partnerships without legal personality.

[30] Law No. 1455 of Georgia on the Protection of Consumer Rights, accessed November 5, 2024, <https://matsne.gov.ge/en/document/view/5420598?impose=translateEn&publication=0>.

Other regulations in Georgian law that are important in terms of commercial law are as follows:

- 24.12.1998 dated of Securities Markets Code,
- 08.10.2020 dated on Determination of International Company Status and Approval of the List of Permitted Activities and Certain Expenses Code[31] ,
- 13.07.2020 dated Code on Anti-Dumping Measures on Trade,
- 08.06.2016 dated Code on Accounting, Financial Reporting and Financial Auditing,
- 25.05.2012 dated Code on Payment Systems and Payment Services,
- 08.05.2012 dated Code on Competition,
- 28.12.2011 dated Code on the Protection of Personal Data,
- 04.05.2010 dated Code on Designs,
- 23.02.1996 dated Code on Commercial Banking Activities,
- 22.06.1999 dated Code on Copyrights and Related Rights.

Apart from these, the 5.2.1999 dated Code on Trademarks, 18.2.1998 dated Code on Advertising, 24.6.2005 dated Code on Licenses and Permits should also be mentioned.

5. 1994 repealed Law on entrepreneurs: a case of financial deregulation

In Georgia, which became independent after the dissolution of the Soviet Union, the first legal regulation in the field of corporate law was the Georgian Code on Entrepreneurs (GCE) dated October 28, 1994. The abrogated 1994 GCE was prepared with the support of German lawyers and in its initial form, it was a law with strict regulations, especially with regard to the establishment of a company, giving utmost importance to the concept of minimum capital in terms of asset protection[32]. This code, consisting of 71 articles in total (many of which were subsequently repealed), has been subject to extensive amendments over the years. Due to the limited number of articles in the law, there was a significant regulatory vacuum in the field of company law, resulting in a liberalization of company law and a very liberal investment climate. Particularly since 2003, the abrogated GCE has completely moved away from the continental European influence and has taken on a character dominated by US corporate law. With the 2008 Amendments it is observed that the abrogated GCE, adopted an Anglo-Saxon system[33]. 2008 Amendments eliminated the mandatory minimum capital

[31] The peculiarity of this law is that companies with international company status have the right to carry out limited activities specified in the law.

[32] Davit Maisuradze, Irakli Shakiashvili and Irina Iamanidze, "Challenges and Development of Investment Protection Mechanisms in Georgian Corporate Law: Is There a Middle Ground?," *The Lawyer Quarterly* 9, no. 4 (2019): 368.

[33] It is accepted that the concept of minimum capital has a close relationship with the competition between countries in terms of company law regulations, and it is stated that the reason that pushed Germany to reform its limited liability company law was that the country was exposed to the influx of limited liability companies established in the United Kingdom due to flexible regulations on minimum capital; see Etem Kara and Şaban Kayıhan, "AB Şirketler Hukuku Açısından Türk Hukukunda Asgari Sermaye," *Banka ve Ticaret Hukuku Dergisi* XXXII, no. 2 (2016): 80-84.

requirements for both public and private companies[34] and which can be characterized as quite liberal. Indeed, these amendments changed the law almost permanently, eliminating many formal requirements, including the minimum capital requirement, simplifying the procedures and making company formation very simple and affordable[35]. Thus, while in 2004, establishing a company in Georgia required a 9-step process, the amendments reduced it to 2 steps and finally to a single step, which leading to the country's rapid rise in the DoingBusiness index[36].

However, with the partnership agreement signed with the European Union on 1.7.2016, within the scope of the obligation to harmonize the legislation of Georgia with the European Union acquis, a new law in line with the EU legislation was started to be prepared instead of the abolished GCE of 1994[37]. These developments naturally led to the loss of the weight of Anglo-Saxon influence.

6. Reform of corporate law in Georgia and the New Georgian Code on Entrepreneurs of 2021

6.1. General information to the New Georgian Code on Entrepreneurs of 2021

The New Georgian Code on entrepreneurs was adopted on August 2, 2021 by the Georgian parliament and published in the official gazette on August 4, 2021 and entered into force on January 1, 2022 (Art. 255/1). The GCE consists of 255 articles in

[34] Ana Tokhadze, "Transforming Georgia's Regulations on Shareholders' Right to Interim Dividend Confronting the European Company Law," *TalTech Journal of Legal Studies* 10, no. 2 (2020): 59.

[35] Maisuradze, Shakiashvili and Iamanidze, "Challenges and Development of Investment Protection Mechanisms in Georgian Corporate Law: Is There a Middle Ground?," 369.

[36] Maisuradze, Shakiashvili and Iamanidze, "Challenges and Development of Investment Protection Mechanisms in Georgian Corporate Law: Is There a Middle Ground?," 370-371. It should not be considered that these amendments to the Georgian corporate law at that time were the product of a country-specific preference. It should be noted that during the period in question, there were serious debates on the necessity of the minimum capital requirement for limited liability companies, especially in Continental European countries, and there was a widespread belief that this situation deprived Continental European countries (especially Germany) of the opportunity to compete against the limited liability company regulations of Anglo-Saxon countries such as the United Kingdom. For this reason, there were significant reforms in the field of limited liability companies in various European countries. While some countries (France, Portugal, Spain, the Netherlands) acted with a monist approach and reduced the minimum capital amount for all limited liability companies and allowed limited liability companies to be established even with 1 Euro, Germany reformed its limited liability company law in 2008 (MoMig), and with this reform, it separated traditional limited liability companies from entrepreneurial (mini) limited liability companies and allowed entrepreneurial (mini) limited liability companies to be established with 1 Euro. However, although the preamble of the TCC No. 6102 is aware of these developments (see Art. 60 of the preamble), no regulation has been made regarding the minimum capital. For detailed explanations on the subject, see Mustafa Yasan, "Türk Hukukunda Limited Şirketler İçin Asgari Sermaye Kuralının Gerekliliği ve Yerindeliği (1 TL Sermayeli Limited Şirketlerin Tercih Edilebilirliği) Sorunu," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 73, no. 2 (2024): 1538-1540. For the regulations on this subject in comparative law, see the same author 1547-1555.

[37] Maisuradze, Shakiashvili and Iamanidze, "Challenges and Development of Investment Protection Mechanisms in Georgian Corporate Law: Is There a Middle Ground?," 369.

total. The GCE is divided into two main sections: the general part and the special part[38]. The systematics of the law is as follows.

Table 1: *Systematics of the Georgian Code on Entrepreneurs 2021*

GCE SECTION I- GENERAL PART			GCE SECTION II--SPECIAL PART		
Chapter I	Art. 1-3	Introductory provisions	Chapter XI	Art. 94-111	General Partnership
Chapter II	Art. 4-18	Establishment of an enterprise	Chapter XII	Art. 112-122	Limited Partnership
Chapter III	Art. 19-20	SinGCE-member company	Chapter XIII	Art. 123-149	Limited Liability Company
Chapter IV	Art. 21-27	Contribution	Chapter XIV	Art. 150-225	Joint Stock Company
Chapter V	Art. 28-34	Subscribed Capital, Shares, Dividends and Debt Securities of a Company	Chapter XV	Art. 226-253	Cooperative
Chapter VI	Art. 35-55	Bodies of the company	Chapter XVI	Art. 254-255	Final provisions
Chapter VII	Art. 56-58	Accounting, reporting, auditing			
Chapter VIII	Art. 59-77	Merger, change of type, division of the Company			
Chapter IX	Art. 78-91	Liquidation, disability in the organization			
Chapter X	Art. 92-93	Limitation Periods			

When the Code on Entrepreneurs is analyzed in general, it can be said that it has a content quite different from the TCC of number 6102, a casuistic method is not adopted, and it is a very simple law in terms of content. In the general part of the Law, general provisions on the concept of entrepreneur, trade registry, trade name, commercial books and companies regulated under the law are included. It is observed that the code does not establish detailed provisions on the types of companies; instead, it tries to reveal the nature and basic philosophy of each type of company. Undoubtedly, this may provide great convenience to the interlocutors in terms of the implementation of the law. In addition, the realization of detailed issues related to company types through secondary regulations may also provide significant convenience in terms of adapting the law to innovations. Nevertheless, it should be kept in mind that the laws prepared in this manner have the potential to cause a legal gap in many cases, and may lead to practices contrary to the spirit of the law.

[38] English text of Law No. 875 on Entrepreneurs of Georgia, accessed November 5, 2024, <https://matsne.gov.ge/en/document/view/5230186?impose=parallelEn&fullscreen=1&publication=6>.

6.2. Some noteworthy provisions of the New Georgian Code on Entrepreneurs

Examining of the 2021 Code on Entrepreneurs of Georgia in detail is beyond the scope of this study, and such a study should be exclusively addressed in a monographic work. In the following, with a descriptive approach and taking the systematic structure of the law as a basis, information will be provided on some provisions of the Code on Entrepreneurs that I find noteworthy.

- Definition of the Concept of Entrepreneur and the Regulation of the Status of Professional and Artistic Activities with Special Provisions: Article 2/1 of the GCE defines an entrepreneur as "a natural or legal person who has an enterprise." The same article states that an entrepreneur can be a natural person or a company and that all companies regulated under the GCE have legal personality. The types of companies regulated under the GCE are general partnerships (Collective company), limited partnerships (comandit company), cooperatives, joint stock companies and limited liability companies. According to the second paragraph of the same article, an enterprise is defined as an organized system for carrying out commercial activities, which is defined as a lawful, independent organizational activity to make profit. Under Article 3 of the GCE, professional and artistic activities are excluded from the scope of commercial activities.

- Adoption of the Principle of Imperative Provisions: Article 1, paragraph 2 of the GCE stipulates that the articles of association of companies subject to the Code may deviate from the provisions of the Code, unless the content and purpose of a provision of the Code indicates that the provision is mandatory. Thus, we see that the principle of mandatory provisions is regulated by the GCE. The repealed Code on Entrepreneurs of 1994 was an example of deregulation. The abrogated GCE did not regulate many issues and thus attached great importance to freedom of will. The new GCE dated 2021, which entered into force with the European Union process, is more detailed than the old one. Can the new Code's adoption of the principle of mandatory provisions and the fact that it is more detailed than the old one be characterized as a U-turn from extreme liberal policies? In my opinion, although the new GCE is more detailed than the old GCE, the fact that it is not prepared in a casuistic manner and does not regulate many issues can be interpreted as the principle of mandatory provisions in the new Code has a very limited function. Nevertheless, we may well say that the deregulation approach of the abrogated 1994 Code has come to an end.

- Company Establishment Stages: According to the GCE the existence of a company agreement (articles of association) is necessary. In the absence of a company agreement, the Ministry of Justice prepares the standard types of agreements according to company types. For the establishment of a limited liability company, it is sufficient to subscribe for shares, as in the abrogated 1994 Law (Art. 585 TCC No. 6102). Joint stock companies, on the other hand, may be established with a minimum capital of GEL 100,000[39] (Art. 156 of the GCE). In addition, the completion of the establishment

[39] The currency of Georgia, Lari (₾).

procedures and the legal personality of the company are also subject to registration (Art. 8 of the GCE).

- Adopting an Alternative Model in the Board of Directors Structure by Establishing Provisions Regarding the Audit Board as an Organ: Article 35 of the GCE states that the general assembly, supervisory board and the board of directors are organs of the company. In this respect, it differs from the TCC No. 6102 and recognizes the audit committee as an organ. However, the supervisory board is not a mandatory body, and may be established in cases specified in the law or by making a provision in the company agreement. According to the GCE, the members of the supervisory board are obliged to control "the activities of the company's management body" and "managers' good faith", and "are authorized to represent the company in relations with the management body and managers in cases stipulated by law" (GCE Art. 47).

These provisions of the GCE are included in the general part of the law. However, the aforementioned law has made some additional provisions regarding joint stock companies. Indeed, in Article 182, the law subjects the organs of a joint stock company to different principles depending on whether a monist system or a dualist system is adopted in the organization of the board of directors. According to the aforementioned regulation, if a joint stock company adopts the monist system (one-tier board of directors), it will have two organs, namely the general assembly and the board of directors, and if it adopts the dualist system (two-tier board of directors), it will have three organs, namely the supervisory board, the general assembly and the board of directors. A provision may be included in the articles of association as to which of these systems is to be adopted, and a change from one preference to another may be made by the vote of the shareholders representing three-fourths of the capital (GCE Art. 182/2). Articles 209-220 of the GCE contain detailed provisions on the supervisory board.

Another important feature of the GCE is that it allows the establishment of an audit committee in limited liability companies (Article 125 of the GCE).

- Provisions Regarding the Company's Relationship with the Members of the Board of Directors and Audit Board: Article 45 of the GCE stipulates that the members of the company's supervisory and management bodies are obliged to conclude a special service contract with the company, which is not subject to the provisions of the Labor Act, following their appointment to this position. This service contract is concluded between the member of the supervisory board or the person chairing the general assembly on behalf of the company and the persons concerned. The minimum provisions to be included in a special service contract between the members of the board of directors and, if applicable, the members of the supervisory board, beyond an employment contract within the meaning of the Georgian Labor Act, which is subject to specific provisions, are also specified in the same article.

- Evaluation of Liability in the Context of Directors' Duty of Care and Business Judgment Rule: It is seen that the GCE regulates the duty of care of managers

inspired by the US law[40]. Article 50 of the GCE is titled "Duty of care"[41]. Article 51 of the GCE, entitled "Duty of care in special cases", provides that the director of a company at risk of insolvency shall not be deemed to have delayed the insolvency filing negligently if he or she duly fulfills his or her duty of care by filing for insolvency no later than three weeks from the date on which the balance sheet becomes insolvent.

Another provision in this regard is Article 52 titled "Freedom to take business decisions"[42]. Thus, it is seemed that the business judgment rule, which is an institution originating from US law, is explicitly regulated in Georgian positive law[43].

According to Article 55 of the GCE, if an obligation of the company is not fulfilled as a result of an act or omission of the managers, these persons shall be jointly and severally liable to the company. In addition, the service contract between the manager and the company shall not contain any clauses that would exempt the manager from liability for damages incurred by the company as a result of the manager's willful failure to fulfill his/her duties.

Article 221 of the GCE should also be mentioned here. Pursuant to this provision, the general assembly, the supervisory board and, in joint stock companies, the governing body of the company, provided that they remain within their jurisdiction, are granted the right to demand compensation for damages in the event that the members of the said bodies have caused damage to the joint stock company; it is also stated that

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[40] On directors' duty of care and business judgment rule in US, German and Swiss law, see Sevgi Bozkurt Yaşar, *Anonim Şirketlerde İş adamı Kararı İlkesinin (Business Judgment Rule) Uygulanması* (Beta, 2015), 10-31. Business judgment rule is commonly used by Turkish jurists as "iş adamı kararı- decision of business man", a translation that is also found in the preamble of Art. 369 of TCC No. 6102. However, it should be noted that this translation is open to criticism.

[41] According to this Article, the director of the company must conduct the affairs of the company legitimately and with the care that a bona fide director should exercise; in particular, he must exercise the care that a reasonable and ordinary third party under the same circumstances would have exercised in the concrete case and must act in the belief that his conduct is in the best interests of the economic interests of the company. The director who fails to fulfill the duty of good faith shall be liable to the company for any damages that may arise. The articles of association of the company may not include any provision stipulating that the director shall not be liable for willful breach of the duty of good faith or limiting this liability, nor may a decision be taken in this regard. The right to claim compensation for any damage caused to the company by a director is vested in the managing body, another director, the supervisory board or, in the cases and according to the procedure provided by law, in each shareholder, or the person who is entitled to claim compensation for the damage suffered by the company may also be determined by the company agreement. A director will be exempted from liability if he or she executes a decision of the general meeting, did not contribute to the decision of the general meeting by providing false information, or knew that the decision would cause damage and notified the general meeting before the decision was taken or executed. In addition, if the value of a transaction exceeds 50% of the book value of the company's assets (unless a lower percentage is specified in the articles of association), the transaction must be approved by the general assembly.

[42] According to this provision, "If the director can reasonably believe that he has made a business decision based on adequate and reliable information, in the interests of the company, independently and without conflict of interest or influence of another person (unless such decision constitutes a violation of the law or the company agreement), there shall be no breach of the duty of care and the director shall not be obliged to indemnify the company for any damage incurred as a result of the business decision".

[43] However, the TCC No. 6102 did not include this institution in the text of the law, and only stated in the preamble of Art. 369 of the TCC that the cautious manager may take businessman's decisions and that this is a criterion for the cautious manager.

the general assembly may authorize a specially authorized person for a period of 6 months to exercise this right.

- Including Provisions Regarding Shares with No Par Value: It is also observed that the GCE provides provisions regarding shares without nominal value[44]. Indeed, Article 28 of the general part of the GCE; again, Article 134/2 of the GCE on limited liability companies, and Article 155 on joint stock companies states that these companies may issue shares without nominal value.

- Provisions Encouraging and Facilitating the Bringing Capital to the Company in Limited Liability Companies: First of all, it should be noted that some regulations of Georgian Code of Entrepreneurs on limited liability companies constitute a contradiction to the obligation to comply with the EU directives[45] as stipulated in the partnership deed with the European Union[46]. In other words, the Georgian legislator's regulations on limited liability companies do not comply with the EU directives with some exceptions[47].

The Law of 2021 on Entrepreneurs is one of the important innovations introduced by the Law on Entrepreneurs, as it provides for provisions facilitating to bring the capital of limited liability companies. Shares with no par value were one of them. The other is the possibility for limited liability companies to issue authorized shares and other types and classes of shares[48]. In this way, the capital structure of the limited liability company became more flexible and the limited liability company became closer to the joint stock company[49]. As a result, the company's ability to obtain financing is facilitated through participation in the company's capital[50]. Accordingly, the GCE allows for the division of capital shares in limited liability companies into subscribed shares, issued shares and authorized shares[51].

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[44] Under Turkish law, shares devoid of par value are exceptionally provided for investment trusts with variable capital pursuant to Articles 50 and 51 of the Capital Markets Law No. 6362. In this regard, please also refer to Articles 61-64 of the general justification of the TCC No. 6102.

[45] Although Annex XXVIII to the deed of association between Georgia and the European Union (Annex XXVIII) refers to the types of companies specified in Directive 77/91/EEC, this Directive is not in force and most of the provisions of this Directive have been transposed into Directive EU/2017/1132. This latest Directive regulates not only joint stock companies but also limited liability companies.

[46] Irakli Burduli, "Modern Georgian corporate law in the mirror of European law. General review of the reform," *Journal of Human Security and Global Law* 2 (2023): 105.

[47] Burduli, "Modern Georgian corporate law in the mirror of European law. General review of the reform," 105.

[48] Giorgi Tsaguria, "21 Notable Changes of Georgian Corporate Law from 1 Jan 2022,", accessed November 5, 2024, <https://forbes.ge/en/metsarmetha-shesakheb-kanoni-dzalashia-21-mnishvnelovani-tsvlileba/>.

[49] Tsaguria, "21 Notable Changes of Georgian Corporate Law from 1 Jan 2022."

[50] Tsaguria, "21 Notable Changes of Georgian Corporate Law from 1 Jan 2022."

[51] Pursuant to Article 136/1 of the GCE, if shares in a limited liability company are issued by the limited liability company to other persons in return for a consideration, the shares are considered subscribed shares, whether or not the limited liability company has received the consideration. Therefore, the share is subscribed regardless of whether the payment has been made or not. The subscribed share is different from the subscribed capital, whose main function is to form the initial capital of the company. Under Georgian law, specific subscribed capital is only available for joint stock companies (minimum capital requirement). In the case of issued shares, the shares are registered in the register upon the issuance of the issue decision by the authorized body and no rights and obligations arise on these shares until they are subscribed (Article

- Introducing Provisions on the Liability of the Controlling Shareholder for Abuse of Power in Joint Stock and Limited Liability Companies: Article 176 of the GCE contains a critical provision titled "Indemnification obligation of the shareholder who abuses its dominant power". Accordingly, a controlling shareholder is a shareholder or a group of shareholders acting in concert with a shareholder who has a decisive influence over the results of the votes cast in the general assembly. In the event that the controlling shareholder abuses this power arising from his/her dominance to the detriment of the joint stock company, he/she is obliged to indemnify the damage incurred by the company due to this behavior. In addition, the controlling shareholder is also obliged to indemnify the damage caused to a shareholder, except for the damage caused to any shareholder as a result of the damage caused to the joint stock company (including damages such as the decrease in the value of the shares for this reason). Besides that, persons who intentionally use their powers to the detriment of the joint stock company or who influence the members of the board of directors of the joint stock company to carry out activities against the company and members of the board of directors who fail to fulfill their obligations are held jointly and severally liable for the damages incurred by the company together with these persons. Finally, it is foreseen that the creditors who have suffered damages due to such behavior shall be compensated for the damages they have incurred. It should be noted immediately that this provision of Article 176 of the GCE is also applicable to limited liability companies by reference to Article 148 of the GCE regarding limited liability companies.

- Restrictions on Dividend Distribution: Article 181 of the GCE provides for exceptions to this rule immediately after stating that a joint stock company may decide to distribute profits in the form of interim or year-end dividends as provided by law, provided that the interim or annual financial results are taken into consideration. Accordingly, dividends may not be distributed if the net assets stated in the last financial statement of the joint stock company to which dividends are to be distributed, whether before or after the distribution of dividends, are lower than the amount of capital subscribed to the company, as well as the reserves determined by law or the articles of association and not distributed to the shareholders. Secondly, dividends may not be distributed if the dividend amount exceeds the net profit stated in the last financial statement of the joint stock company as well as free reserves and the amounts set aside as reserves per the law and the articles of association. Finally, dividends shall not be distributed if the company is bankrupt or faces the risk of bankruptcy on the date of or due to the dividend distribution.

Under Art. 145/6 of the GCE on profit distribution in limited liability companies, if there is a high probability that the limited liability company will not be able to fulfill its obligations due in the following calendar year within the framework of the ordinary course of business or the planned course of business, no profit may be

136/2 of the GCE). The shares that may be issued and subscribed in the future in line with the decision taken by the shareholders shall be authorized shares (Art. 136/3 TEC). The information regarding the authorized share (amount, class, ratio corresponding to the capital, nominal value, if any, etc.) must be specified in the articles of association.

distributed to the shareholders of the limited liability company.

7. Conclusion

With the independence of Georgia, it has been observed that it has attracted a great deal of interest from German and US legal scholars. Lawyers from these countries have played an essential role in shaping Georgian law and making it what it is today, thanks to the funds provided by their countries. Although Türkiye borders Georgia and has many direct public and private sector investments in this country, it is quite meaningful that the legal interaction between the two countries is almost non-existent.

After gaining its independence, Georgia has come under the influence of the Continental European legal climate in the field of private law. To this end, the Georgian Civil Code of 1997 and the repealed Code on Entrepreneurs of 1994 are two important pillars of the Georgian codification movement. The influence of German law is evident in the Georgian Civil Code. The same applies to the first version of the abrogated Law on Entrepreneurs of 1994.

There has been a competition between German and US law in Georgia for many years. Therefore, although the country adopted the Continental European legal system and enacted many laws inspired by Germany, it is seen that US law has also shaped Georgian law, especially in the fields of commercial law, consumer law and foreign investments. As a matter of fact, although the repealed Law on Entrepreneurs of 1994 was influenced by German law in its initial form, it came under the influence of US corporate law with the amendments made since 2003, and this influence reached its peak in 2008. These amendments to the repealed 1994 Law on Entrepreneurs bore fruit in a short period of time and the country's investment index showed a rapid rise.

However, with the signing of the Association Deed between Georgia and the European Union on 1.7.2016, work was initiated to introduce new regulations in the field of company law in accordance with the EU acquis. At the end of this process, the new Code No. 875 on Entrepreneurs was adopted on August 2, 2021 and entered into force on 1.1.2022. Thus, Georgia has again come under the influence of Continental European law in the field of corporate law. Nevertheless, it is observed that limited liability companies have been brought closer to joint stock companies on the one hand, and on the other hand, liberal provisions regarding this type of company have continued to exist, as the regulations regarding limited liability companies are within the scope of the exception in the partnership deed.

The new Code on Entrepreneurs specifically stipulates that professional and artistic activities are excluded from the scope of commercial activities. The obligation to conclude a service contract with specific conditions between the company and the members of the board of directors (or the members of the supervisory board, if there is a supervisory board), the more detailed and explicit regulation of the directors' duty of care and the principle of business judgment, and the provisions regarding non-nominal share certificates, The provisions stipulating the liability of the shareholder who abuses his/her dominant position, facilitating the flow of capital to the company by establishing special provisions on the issuance of share certificates in limited liability companies,

allowing a preference between the monist system and the dualist system in the management of joint stock companies, and subjecting the distribution of dividends to certain limitations are, in my opinion, noteworthy provisions.

The 2021 Code on Entrepreneurs adopts the principle of mandatory provisions as in Turkish law. However, unlike the TCC No. 6102, which is still in force in Turkiye, the application area of this principle is quite limited since the law is not drafted with a casuistic method. Thus, it is seen that the new Law of Georgia on Entrepreneurs dated 2021 attaches particular importance to freedom of contract.

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