

INTERNATIONAL RESEARCHERS

PROPERTY IN GEORGIA

Tsira Patariaia

Volume No.2 Issue No.1 March 2013

www.iresearcher.org

ISSN 227-7471

THE INTERNATIONAL RESEARCH JOURNAL "INTERNATIONAL RESEARCHERS"

www.iresearcher.org

© 2013 (individual papers), the author(s)

© 2013 (selection and editorial matter)

This publication is subject to that author (s) is (are) responsible for Plagiarism, the accuracy of citations, quotations, diagrams, tables and maps.

All rights reserved. Apart from fair dealing for the purposes of study, research, criticism or review as permitted under the applicable copyright legislation, no part of this work may be reproduced by any process without written permission from the publisher. For permissions and other inquiries, please contact

editor@iresearcher.org

INTERNATIONAL RESEARCHERS is peer-reviewed, supported by rigorous processes of criterion-referenced article ranking and qualitative commentary, ensuring that only intellectual work of the greatest substance and highest significance is published.

PROPERTY IN GEORGIA

Tsira Patariaia

Iliia State University/National Agency of Public Registry

(GEORGIA)

tsira@napr.gov.ge

ABSTRACT

Area of study of this Article is private property right and property registration system in Georgia. These issues are of interest, as Georgia, a former soviet country, actually, had no experience of land administration. In the period of soviet rule, in Georgia, similar to all socialistic countries, entire land was in the absolute property of the state.

Article provides deals with formation of the privatization and property registration institutes and provides discussion of the following issues: how the country acquired new practice; how successful were the reforms implemented in this respect; to what extent the reforms provided protection of real property ownership right in the country and how the situation was reflected in the ratings of international research organizations (Doing Business Report, International Property Rights Index, The Global Competitiveness Report etc.).

Keywords: privatization; property registration; real estate market; property rights; international reports

1. INTRODUCTION

Georgia was a Soviet Republic in 1921-1991. Consequently, there was no private ownership of real estate and the experience of its administration.

According to the Constitution of Soviet Socialist Republics the private ownership on land was abolished and the entire land was officially declared the state property. (Constitution, 1918) Civil circulation of land plots was prohibited. Terms, such as: "private property", as well as purchase and sale of land, land price, land market, transfer of land by inheritance, etc. became alien.

Collapse of the Soviet Union was followed by liquidation of the socialist economic system. Similar to the other post-soviet countries Georgia commenced fostering of free market economy principles and this contributed to formation of the new property system – private property.

Transfer of land to private ownership- "privatization" was considered to be the key condition for recovery from economic crisis.

2. PRIVATIZATION REFORM REVIEW

A number of works, researches and recommendations of international organizations and experts were dedicated to the issue of privatization. Though, it can be said, that the large-scale reform of privatization in Georgia started spontaneously, without any methodological and material base, in the conditions of lack of mandatory transparency and legal guarantees.

No stocktaking of lands to be transferred to private ownership was performed. The state did not have the registry of administered state property (as far as the entire property was owned by the state), the cadastres of Soviet period lacked essential data. In fact, we can say that at the beginning of the privatization reform, the state did not have reliable information with regard to the real estate it owned.

Experts' evaluation, certainly, there were some shortcomings and numerous significant errors; (Pavliashvili, 2009)

Initially, upon the abolishment of collective farms, certain families have taken possession of lands owned by the collective farms without permission. The seizures had a spontaneous and mass character.

Against the background of political instability (civil war), it was not surprising that the "mass privatization" was accompanied by violations and shortcomings. There were occasions of: wrong identification of the categories of households and incorrect distribution of lands to them; seizure of lands; transfer of the lands in question to the use beyond the defined norms; breaking of large economic units into small plots, transfer of specialized agricultural lands for other purposes; allocation of land from the state land fund in violation of rules and distribution to private individuals; delay of transfer of deeds of land to the households and complication of legal status. Due to non-performance of land inventory, the sizes of land plots transferred to the land-owners were not defined. As a result, it was impossible to determine the correct tax on land. (Due to these and other shortcomings, the potential opportunities of private ownership on the land were not realized, which seriously hindered economic development).

One more problem was the fact that in Georgia, like in other post-communist countries, the mass privatization yielded the fundamental demand of economy-violation of the principle of supply. Due to the fact that the demand exceeded the supply, the real estate significantly devalued.

However, in spite of everything, we can clearly conclude that privatization has resulted in a number of positive socio - economic consequences: various forms of ownership originated, the apartments of blocks of flats, houses, factories, building complexes, land, large real estate facilities were involved in the civil circulation... The market of real estate was developed and the real estate-related transactions became more and more widespread.

Simultaneously with privatization reform, for the purpose of "state regulation of the real estate relations and use of the land fund" new state institution – State Department of Land Management of Georgia was established. (President of Georgia, 1999)

Functions performed by the Department of Land Management, were quite different: land reform, land utilization and regulation of the disputes related to real property, execution of the state control over land resources, their use and protection – Land Management Department was in charge of registration of real property all over the territory of Georgia and maintenance of the cadastre.

Together with the variety of functions, supposedly, the department inherited lack of flexibility and conflict of interests within the structure thus hindering implementation of the reform.

Department of Land Management has completed 5 years of its existence by transformation of the Department of Land Management into a structure performing property registration/carrier of cadastre function by the recommendations of experts of sectoral projects¹ of the international organizations actively involved into the land reform.

Thus the National Agency of Public Registry was founded, as the basis for accumulation of data related to real estate and establishment of a common legal order across the whole country. According to Imperative requirement of Georgian legislation, In country, title over the real property emerges in result of registration with the Public Registry only.² (Law of Georgia On State Registry ,2004)

3. REVIEW OF PROPERTY REGISTRATION REFORMS

In contrast to long history of registration practice of Western Europe, the public registry has taken a reform course of simplification of procedures and technologies.

Upon foundation of the organization, the issues of reforms of existing protracted, bureaucratic and corrupt registration procedures was on the agenda.

A number of changes have been implemented (NAPR, 2005-2012):

¹ The reform process was carried out by active cooperation with international organizations, their financial support and taking into account their recommendations: United States Agency for International Development (USAID), United Nations Development Programme, UNDP); Swedish International Development Cooperation Agency (Sida); ; World Bank (WB); Kreditanstalt für Wiederaufbau German [Development Bank](http://www.kfw.de) (KfW); the German Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit, GTZ).. Information about the projects implemented by donor organizations is **retrieved from <http://www.napr.gov.ge>**

² On the basis of Land Management Department, under the Ministry of Justice, with the status of legal entity of public law.

As a result of **institutional reform**, the management of the agency became centralized, self-financing and independent of the local authorities; the bureaus of technical inventory have been abolished and the information bank of the available data and the archive were transferred to the agency; the agency was assigned to administer the Lien Registry instead of the Chamber of Notaries of Georgia...

Legislative reform simplified the procedures of registration of property rights; the optimum terms and cost were defined...

As a result of the **administrative reform** optimization of the personnel of the cadastre, reconstruction of registration offices and equipment with appropriate facilities and inventory were carried out. The functions of the front operators, based on the memorandum of authorization, were assigned to private companies (banks, brokers...), Services can be rendered now on the basis of the principles: a "one stop shop", "from home", "close to your home"; simplification of service was properly reflected in the attitude of the public towards the registration service.³

Within the limits of the **technological reform**, a number of softwares were created. Customers / staff can render/receive registration services remotely, without leaving home. Cadastre is administered according to modern GIS⁴ standards, which resulted in reduced overlap, double registrations and other risks. Digitizing of paper archives was finished and so forth...

If earlier it was necessary to prepare a separate document for each requested information, for example, who is the owner of the property or a statement about the lien (whether the property is under lien or any other restriction), etc., and the citizen had to request each document separately, pay a separate fee and wait, all this information is combined in one document-extract from public registry and there is no more need to spend additional money and time.

In addition, initially the extract from the public registry had to bear the seal of the Public Registry and the signature of an authorized person. This made it impossible to receive documents online, without leaving home or city. Against the background of the discussions, the issue was finally resolved and the extracts are issued without any seals and stamps and have equal legal effect.

Due to successful reforms, according to World Bank's Doing Business rating, both, for doing business index in general, as well as the reforms with respect of property registration, Georgia was named as a top reformer country. For the last 2 years, with respect of property registration, Georgia maintains 1st place. (World Bank, 2005-2012)

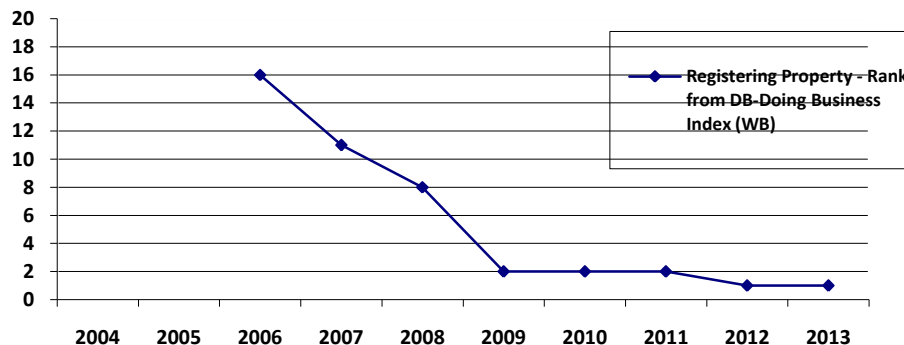


Fig. 1. World Bank's Doing Business report - Georgia, rank

Currently Registry provides up to 200 types of services to the public. (In case of need, it offers expedited services to users), and has 68 territorial offices (among them 11 Public Service Halls).

With improved services Openness of the databases of Public Registry and transparency of the transactions is a step forward on the way of development of Real Estate Market and combating corruption. This is proved by the Registration Transaction Statistics.

³ Public polls (performed by us in 2007-2010) clearly showed high degree of general satisfaction of the consumers. >90%

⁴ Geographic Information Systems

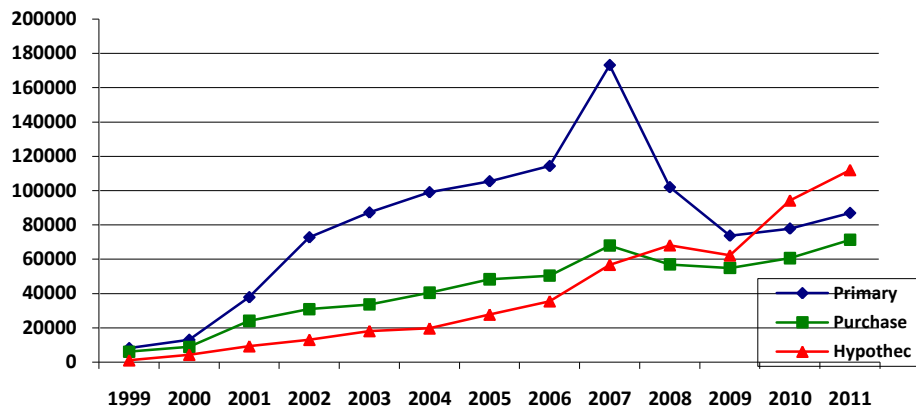


Fig. 2. Real Estate Market Transactions, Georgia (Statistics NAPR, 2012)

During the Russian-Georgian war of 2008 the market activity was significantly decreased, although there is a gradual growth rate now. (No earlier data available.) Also, there was a general increase of prices during last 10 years, the average housing prices in capital Tbilisi now are nearly 4-5 times increased. (IPM-Georgia, 2012)

4. PUBLIC-PRIVATE PARTNERSHIP IN THE REAL ESTATE MARKET

Public Registry could be regarded as a good example of successful public-private partnership (PPP) contributing to development of the real property market.

For proper operation of the system of property registration, the agency established closed cooperation with subjects acting at the real estate market (Notaries, Solicitors, Land Surveyors, Licensed Conveyancers, Estate Agents/Realtors, Property Valuers, Mortgage Brokers, Town Planners, construction companies, insurance companies, design agencies, and others), proposed memorandum of mutual cooperation to them, by which they became the partner organizations of the agency and the authorized users of the electronic registration programs. Collaboration has become profitable for both sides. On the one hand, the authorized users offer the citizens services of the public registry and thereby attract many clients;⁵ on the other hand, by the decentralization of the services of the agency and by way of delegation of certain rights to partner organizations, the citizens' needs are satisfied better (for example, resolution of the issue of queues).

The issue of lack of the appropriate law still remains an urgent problem at the property market, which would regulate the relations of the parties acting here. Activation of the market (which is seen from the Fig.2) creates the risk of increase of the number of fraud. "Governmental authorities need to be watchful, as every boom creates opportunities for questionable behavior" (Rukhadze, Moerschen.2008). Unfortunately, there is no statistical data of real estate-related frauds / swindles.

Also, there are no statistics as to: how many intermediaries are employed in this field. Since with the objective of avoiding state taxes many agents prefer to exist in the form of unregistered businesses. They act at the market as individuals, without proper legal status and tax liabilities. Also, there are no official statistics as to how many properties were sold with the help of an intermediary, and how many directly from the seller to the buyer. And letting the market take its course may inflict significant damage to the budget of the country.

In 2011, the National Agency of Public Registry has taken the initiative to promote the development of the real estate market so as to provide the residents only with credible and verified information and about registered real estate for sale / rent or mortgaging. Thus the webportal "Property Exchange" was created which unlike similar online or printed resources of any other private sector dealt with acquired and disseminated information of registered property: with indication of the official owners, location on the map and status of the property rights (whether under lien, or mortgaged).

⁵ The increasing number of persons interested in authorization and the results of the survey prove, that electronic services enabled them to increase the efficiency of activities.

For future it was planned to add to the data about property, the information about all persons registered at the address, utility debts and analytics on how many apartments there are for sale in the building / street / area with indication of average price...

Initially, the project was widely followed by a negative response from the side of real estate agents. They perceived the government's attempt as monopolization of the market. The survey showed that 78 % of the brokers thought that their activities and profits were at risk. This problem was solved by proper information campaign.

Since 2007 the agency offers to the persons interested in the market a paid electronic information product, which is based on the database of the registry. (Cadastral code, registration date and number, exact address, property type, area, price registered in the purchase agreement...). Mainly commercial banks, audit and valuation companies, construction and development companies, real estate agencies and users of other categories use this product.

At the same time, the Public Register works at REMAF (Real Estate Market Analysis and Forecasting System Program): fills the official data of the public registry by a telephone survey of new owners of the property. The telephone interview defines such specified characteristics related to the real estate, as: the repair status, materials used in construction, number of balconies, whether it has heating - air conditioning, land with fruit trees and communications ... and other issues that affect the market value of the property. The public registry started working at REMAF in 2011. The authors suggest that the filled data will be useful for the activities of the valuers. (V. Magnaradze, personal communication, September 17, 2012).

However, the circumstance that due to tax policy of the country there is a trend that the parties register amounts that are less than actual in the legal documents of the real estate, creates difficulties at the market. This complicates determination of the cost of the square meter of property to the experts, and therefore, increases the risk of bank loans and interest rates. To this end, the Agency has started work on the project of mass valuation in 2012. The project aims at electronic appraisal of the real estate, by means of unified software, with the maximum precision, uniform methodology and standards.

With the objective of qualified service of the real estate market, in 2008 the public registry initiated training and certification of the personnel for establishing modern standards of real estate measurement/survey. By the support of the public registry, today, non-governmental organization –Association of land and real estate professionals conducts trainings and organization of certification exams. In case of successfully passing the exams a certificate of surveyor or appraiser of international standards will be issued.

Under lease agreements the public registry transferred special equipment –rovers to the real estate certified surveyors-these high-tech devices ensure prompt and exact measurement of real estate. Along with the equipment, the surveyors were trained on their use.

By the estimates of the experts (Meskishvili A., Koguashvili P. personal communications, January,24,2013) one of the main problems is the fact that there is no practice of drawing up and processing of the unified balance of land (registration and control of land) in Georgia (which was carried out annually by the Department of Land Management). And nowadays it is not known to the country how the categories of land have been changing in the country, what amount of agricultural land is used for urban development, roads and other purposes.

Working out of the land code can be considered to be the supporting legal priority of land market. A comprehensive land code may systemize all aspects of land code and comprise under a uniform legal umbrella.

The issue of lack of official statistics and data deprive the general picture of the market described by us of the empiric basis. But by generalization of the interviews conducted with Georgian experts we can conclude that for better development of Georgian real estate market, from the point of view of increasing the number of transactions, as well as achieving security and transparency and consequently receiving more economic profits, it is necessary for the state agency (in this case, the public registry) to improve cooperation with the subjects acting in the market and legal regulation of the relations.

5. PROPERTY RIGHTS

After privatization, real estate market development and property registration reforms, Georgia faces new challenges. Therefore, it is possible to put new questions at a different level: How protected is the right of property in the country? What guarantees there are for the private property in the country to be protected and unbreakable from interference and encroachment of the state or the individuals?

Only originating of the property right, of course, does not mean protection of the property rights. In Georgian reality registration is a necessary precondition for originating of the property right, though insufficient for its protection. Apart from the increase of risk of real estate-related frauds at the market (which is the event accompanying activation of the market), cases of property rights infringement by the state have been registered, which is in the center of attention of a number of human rights organizations.⁶ Relying on Facts⁷, we provided classification of key trends of violations:

Unlawful constructions and demolitions: State bodies willfully, negligently destroy private property without any legal basis and compensation-destroy restaurants, booths, retail centers, garages...or without consent of the owner, build public facilities at a private area.

Forced disposals / "sale" / "Abandoning": The representatives of law enforcement officials threaten/arrest owners and force to sign a simulation agreement of granting the property to the state. Or force to sell property for little price. Or force to register abandoning of the "property" (mainly in the resort areas of the country, where land is especially expensive).

Violations of Property Rights in Criminal Procedures: Cases, when an investigative body took the originals of the official documents, therefore, the owners could not register property. So, they did not manage to use, sell their property or receive income and so forth. Also, cases of unjust seizure of property were registered.

Unlawful evictions: Cases, when law enforcement agencies either quickly conducted illegal eviction, or, on the contrary, dragged eviction for a long time for the detriment of the interests of the lawful owners.

Violation of the contractual obligations: Cases, when the state violated rental agreements without any legal basis ahead of term, despite the fact that the lessee conscientiously fulfilled its obligations.

Non-recognition of ownership: Cases, when commissions of property recognition do not provide citizens with information about conduct of the meeting, its time and place. Or during the discussion of the issue, do not give an opportunity to speak. Or drag without any basis the terms of discussion. Or unreasonably refuse to recognize the property, or consider void previously recognized private property and evict it without any compensation or justification from the owner.

Many facts of violation of property rights remained unpublicized, as the owners (or, the former owners) were afraid to declare about violation of their rights, and for the majority of the declared affairs, where gross violation of the law was clear, None of right defenders' recommendations on the cases of obvious and grave violation of the law were followed by relevant response – neither perpetrators have been punished, nor the rights of the owners been restored. (Public Defender of Georgia, 2004-2011)

6. INTERNATIONAL ASSESSMENT

The international research organizations did not leave unattended these aspects of property rights violations.

IEF: Score of Georgia for one of the sub-components of **Index of Economic Freedom**– security of property right is not too high – 40 (of 100). (Heritage Foundation, 1996-2013)

⁶ Georgian Young Lawyers' Association, Transparency International –Georgia, the Human Rights Centre (HRIDC), the Public Defender of Georgia

⁷ from 2004 up to present. In most cases the private property was legalized and registered with the Public Registry.

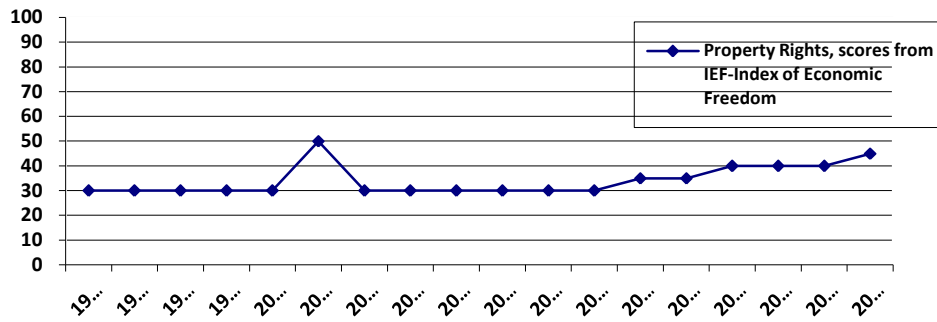


Fig. 3. Index of Economic Freedom -Georgia, scores

IPRI:International Property Rights Index- in the component of **Physical Property Rights** Georgia’s rating is 6.1 of 10⁸. In the report for the year 2012, according to the overall evaluation of protection of property rights, Georgia is at 107th place among 130 countries. (Property Rights Alliance,2010-2012)

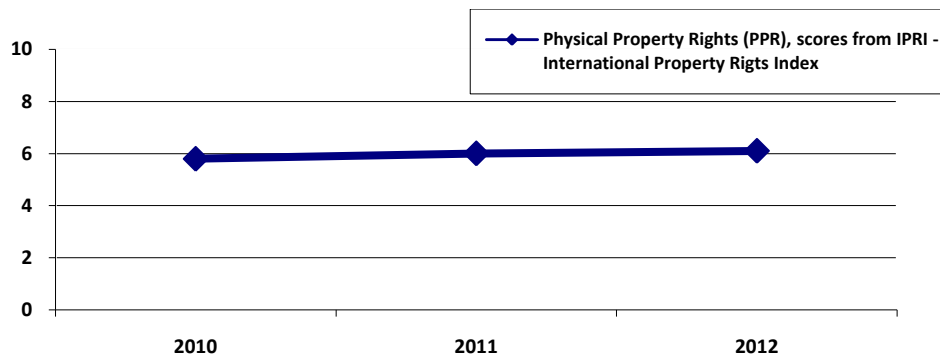


Fig. 4. International Property Rights Index -Georgia, scores

GCI: in the **Global Competitiveness index**, according to the parameter of protection of property right, at 7-point scale (with 7 the highest score) Georgia’s score is lower than average (3.1 points) while by rank, it is among the last twenty countries with 131st place of 144 countries. (World Economic Forum,2005-2012)

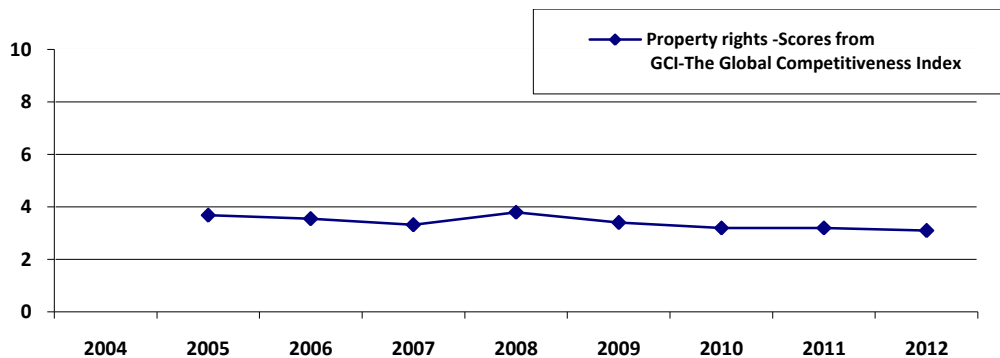


Fig. 5. The Global Competitiveness Index -Georgia,scores

EFW: Economic Freedom of the World

⁸ It should be noted that this index relies only upon the WB studies of doing business and the score is significantly overestimated on the account of the parameter of registration simplicity.

In the component of the legal environment and property rights protection, Georgia has 5.7 points of 10. Though, "Regulatory restrictions on the sale of real property" are quite well ordered (9.9 points). (Fraser Institute,2012)

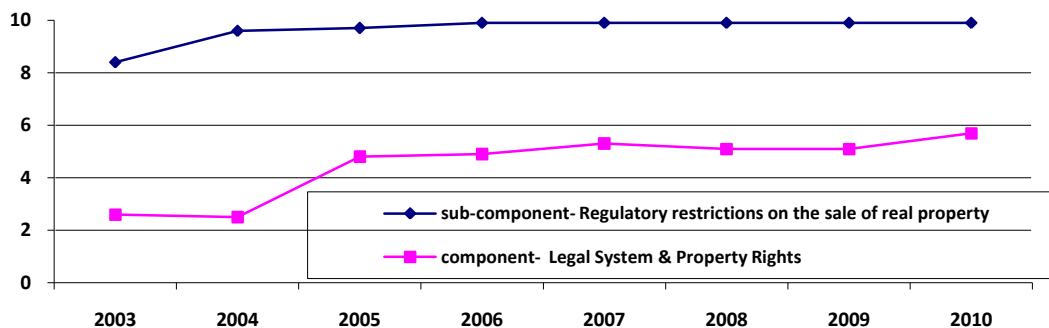


Fig. 6. EFW -Economic Freedom of the World –Georgia,scores

International ratings analysis revealed one interesting feature: in Georgia registration of the real estate is the most easy in the world (the legal system is very beneficial for ownership registration, World Bank, Doing Business)

And the right of ownership on it, at the same time, the most weakly protected (last 20 - IPRI). Positive results with respect of simplification of property registration are not sufficient to affect international views about economic freedom (IEF, EFW) and competitiveness (GCI) of the country to the positively.

7. SUMMARIES

The post-Soviet experience of Georgia, reforms carried out in the sphere of real estate, meant introduction of private property institute (so-called privatization) and resolution of the issue of registration/recording of the legal side of the private property right.

However, the reform process cannot be considered completed until the real estate market requires more state support and more solid legal guarantees are created in the sphere of property right protection.

It can be said that the success and worldwide recognized registration reforms and the growing number of transactions does not express a complete picture in relation with the condition of the private property in Georgia. Accordingly, the answer to simple questions: "Is the registration of ownership of property the guarantee of its protection?" or "how performed reforms contributed to the economic development of the country?" still remain open, unanswered questions.

REFERENCES:

Constitution of the Soviet Union (1918) Article 3a.

Fraser Institute, (2003-2010) *Economic Freedom of the World report*, retrieved from <http://www.freetheworld.com>

Government of Georgia, (January 1992) *Resolution #48*

[The Wall Street Journal, The Heritage Foundation \(1996-2013\) Index of Economic Freedom report](http://www.heritage.org), retrieved from <http://www.heritage.org>

IPM Georgia, Jones Lang LaSalle, (2012) *Georgia Real Estate Market Overview*, p.15.

Law of Georgia On State Registry (.June 1, 2004) Article 12.1 ;

National Agency of Public Registry (2005-2012) *Annual Report*, retrieved from [http:// www.napr.gov.ge](http://www.napr.gov.ge)

Pavliashvili S. (2009) *Phenomenon of privatization and its problems in Georgia*. Georgian Technical University.

Property Rights Alliance, (2010-2012), *International Property Rights Report*, retrieved from <http://www.internationalpropertyrightsindex.org>

Public Defender of Georgia (2004-2011), *The Situation of Human Rights and Freedoms in Georgia*, annual parliamentary reports, retrieved from <http://www.ombudsman.ge>

Rukhadze V., Moerschen T. (2008) *Analysis of Tbilisi's Real Estate Boom*, retrieved from <http://www.nbg.gov.ge> (National Bank of Georgia)

Statistics from National Agency of Public Registry (1999-2012) retrieved from <http://napr.gov.ge/?m=214>

The President of Georgia (June 17,1999) *Decree N3720 on "Charter of the State Land Management Department of Georgia"*

Transparency International Georgia, Georgian Young Lawyers' Association, Georgian Regional Media Association, Association Green Alternative (2012) *Stripped Property Rights in Georgia*

World Bank (2005-2012) *Doing Business Report*, retrieved from <http://www.doingbusiness.org>

World Economic Forum. (2005-2012) *The Global Competitiveness Report*, retrieved from gcr.weforum.org