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The emergence of the family divorce is directly related disruption of a large family institution. On the basis of the society's evolution, the process of large families' dissolution was becoming intensive in Georgia as well, as evidenced by the fact that by the end of XIX century and beginning of XX century the number of the large of families significantly reduced in all regions of Georgia.

According to Sh. L. Montesquieu, "The family is a certain form of property"¹, i.e. it is considered a family-owned movable and immovable property, as usually, the first signs of private property were emerged in family itself. The increasing process of large family disintegration and gradual replacement by individual families was followed mainly by division – distribution of common family property, which like all countries of the civilized world, substantially changed the structure of the family in Georgia as well.

Hereby should also be noted that the property rights of large families on movable and immovable property, such as land, house, mill, cattle and other type property, was of a family-group nature, being considered the main differentiating sign between a large and small family. Therefore, "In conditions of such ownership purchase and sale of a land was possible only with the joint agreement of all adult family members"².

This time I would like to draw your attention to the rules of the land disposal in the large family division. This process, in turn, was related to a number of socio-economic reasons, as after division of a large family, the property was formed as independent, detached form of ownership in each of them. The legal norms, related to family divorce and property distribution

¹ Sh. L. Montesquieu, *Mind of laws*, Tbilisi 1994, p. 495.

² T. Achugba, *The families and family life in Adjara*, Tbilisi 1990, p. 53.

and property distribution were regulated by relevant rules of customary law. “Family divorce, as well as resolution of other topical issues of family and community life, was mainly based on the traditional folk law”³.

Like many countries, the land in Georgia, the country with small territory, has always been the object of special attention out of all property objects. By the ownership the land was divided into: the state, community, family, and church-owned lands in respect of which the land was subjected to a variety of legal regulations.

The most important type of a large family real estate was agricultural lands. The lands of the aforementioned category in the mountainous regions of Georgia were mainly located in the rural area, while some of them in the form of small plots were scattered in the outskirts of the settlement areas, on the slopes of nearby mountains and the forest line⁴.

In numerous acts that reached the present day three main types of the family division of the property are noted: household, cattle, estates. For example, in a 1731-year-old document there is mentioned division of the estate between the brothers Mamulashvili, when the family community-owned facilities, cattle and inheritance lands was divided in equal shares of brotherhood.

In the old days, when a large family was divided in Georgia, family-owned objects of all kinds were subjected to division; division of movable things was solved relatively easily. Great attention was given to dividing persons' rights on a family real estate, especially on the land, division of which was done in compliance with much more complex regulations.

This difficulty was determined by the prevailing view of society: the ancestral land should be distributed among sons, because it must not appear in ownership of the other family. By the customary law, all brothers, living in a large family, were equal and got an equal share of the father's inheritance. Movable property was subjected to division as well as all endowment and buildings-facilities. The land was equally distributed among all the participants, it was not allowed that only one co-owner took arable lands, the other hay lands, the third one cattle, etc.

In most cases, co-ownership of the land plots among the owners was determined by the actual non-division of the land. If the size of the land was small, and the number of owners large, then in result of dividing there were created small plots of land unfit for cultivation, which were losing all the economic purpose and value. Therefore, in this case a co-owners of the same family preferred collective ownership to division of the land⁵.

³ Ibidem, p. 99.

⁴ Ibidem, p. 52.

⁵ *Свод материалов по изучению экономического быта государственных крестьян Закавказского края*, Тифлис 1887, vol. 1, p. 168–169.

“Sometimes, when a land division was not possible, they found a way out in inter-comparison⁶ of the lands, in this case, the following circumstances were taken into account:

1. The land is location-near or afar, land quality and its yield;
2. The fact that a land of already small area was difficult to be subjected to partitioning,
3. Also, that “By obtaining of any of its sharers enrichment of the newly established family was expected”⁷.

In this case, sharers were leaving it shared and such plots remained an ancestral property and separate families and communities possessed and used them on the basis of mutual agreement. Fruit garden, paddocks, summer pastures, forests, and sometimes, even hay or arable lands⁸.

Rural house without a land was rare. The house and family was integrally related with the land. Only a person owning a land could create a separate independent family. By the customary law, a man was considered to be the founder of the house, so the male heir had the advantage of a land plot inheritance.

It should be also highlighted that the inheritance was equally distributed among the male successors. Although the resolution was applied only to nobles, it is hard to admit that in the life of the peasants, who were the founders and protectors of these customs, the elder brothers and younger brothers’ rights were not established and the elder brothers had no advantages over younger ones⁹; and it seems that the associated advantages and limitations do not exist. The principle of equal division is not followed, when the inheritance is passed to the second range heirs or grandchildren. Grandfather’s inheritance is divided among grandchildren, not *per caput* but by sequence¹⁰, but by the late grandfather’s sons. For example, if the deceased peasant had two grandchildren from one son, and three grandchildren from the second son, the inheritance is divided not into five, but two parts, so that each grandchild of the one son gets a quarter of the entire inheritance, while each grandchild of the other son gets only sixth part of it. As for the side-line relative, we will not be able to answer how many or by what sequence they get share.

According to the ethnographic materials, the families, which in dealing the family property distribution did not need the interference of other persons and considered shameful others’ assistance in distribution of property,

⁶ T. Achugba, op. cit., p. 102–103.

⁷ Ibidem, p. 110.

⁸ Ibidem.

⁹ See the edition of “Юридическое Обозрение”.

¹⁰ As for the division of the inheritance by generations, the materials do not contain direct instructions. Our conclusion is based on the examination of Mr. Nosovich, where he describes sequence of the family land / profit use – *The materials*, vol. II, part 2, p. 274.

deserved respect. However, there were some cases when a land division was the “apple of discord” between certain communities and public entities¹¹. In this case, they say ironically that “His matters are so bad that he needs someone to make a deal”, and invited mediators, “Who had to be very prudent, in particular, in division of the family estate, arable and hay land, as the lands differed from each other in quality and close or distant location as well. In addition, the land of already small area was hard ?? to be subjected to partitioning. Sometimes, when the land division was not possible, people found a way out of in the land “inter-comparison”¹², in which the plot and position and its yield were considered.

In property distribution the earned land (So was called “The land earned with sweat”) and the inherited or the ancestral lands were distinguished separately. In division of the earned lands their shares received not only the successor sons, but the older cousins, who with their labor also contributed to the increase of the property¹³. Thus, the rights of disposal of the earned property was applied to all the participants of the family community, as they represented a new legal category of the family community.

A similar rule was in force in other nations and peoples of the Caucasus. In one word, “By the customary law, only men were considered to be direct successors. The family-owned arable land and hay land, remaining without a successor, were given to the community ownership. Other real estate (garden, mill, agricultural buildings) and movable assets were given into ownership of close relatives”¹⁴.

According to the customs, a woman could inherit only the movable property from her father. The woman’s property rights on immovable property, especially land, were limited even in her husband’s family. The exception was the widow, who may be a successor of not only sons and grandchildren, but also of side-relatives and possess a land with ownership rights; if the widow stayed at home and refused re-marriage, then she had the right to use lands permanently, and if the widow married, she was losing all connection with her husband’s family and rights to land. Thus, the deceased man’s widow, temporarily or permanently used the land, she had no other rights to the land.

However, in the XIX century, there have been some exceptions. For example, according to one of the Russian researchers (Nosovich), “A daughter was given an equal share of her father’s land after marriage”¹⁵. In one of the regions of West Georgia, namely, in Ozurgeti province, since the XIX

¹¹ *Свод материалов...*, p. 93.

¹² Т. Achugba, *op. cit.*, p. 102–103.

¹³ Р.Л. Харадзе, *Грузинская семейная община*, Тбилиси 1960, vol. 1, p. 54–55.

¹⁴ R. Topchishvili, *Ethnography of the peoples of the Caucasus*, Tbilisi 2007, p. 345–346.

¹⁵ *Свод материалов...*, p. 839.

century the sisters are not only heirs with their brothers, but even had the advantage, as compared with the relatives of the lateral line. If the daughter was the sole heir, she received the land as the heir in the form of dowry, but in the case of marriage the land ownership was transferred to her husband. This was confirmed by Mr. Nosovich: division of the father's property among daughters was also done on the basis of equity / equal share. According to the custom, all the daughters were equal.

* * *

Thus, based on a review of historical and ethnographic materials and Georgian feudal law we tried to show the main aspects of the land legal regulation in family divorce. It can be concluded that:

1. The large family was a land owner. According to ethnographic data, the family ownership on real estate was determined by the principle of blood, and it belonged to the men of a family. Head of the family, without which even minor details could not be resolved, in plain as well as the highland regions, could not manage family lands individually. He was obliged to agree all issues related to the land with adult men in the family.

2. In the eastern region of Georgia (Kakheti), the family lands (The garden, vineyard, vegetable garden), was equally divided among brothers, also and cousins ??and nephews – the family members.

3. Unlike a large family, in an individual family, where lived only the husband, wife and their children, since the head of the family was the individual owner, the man-head of the family took decisions on family-owned land individually.

4. Like the existing legal norms of civilized countries (I mean the Roman, Greek law) Georgian customary law clearly established the legal regime of the land in the family division, sharer subjects to the common land and their shares, which clearly indicates the developed level of the Georgian legal thinking.

Later, when the written memorials of law were created, the legislator took decision in accordance with the actual situation, but also took into consideration the ancient rules of the customary law.

Summary

The land as the object of family division in an ancient Georgian law

Key words: land, object, family, family division, property, ownership.

In the present article there is discussed objects of family division in ancient georgian law. In Georgia land has always been the object of special attention. By the ownership the land was divided into: the state, community, family, and church-owned lands. The most important type of a large family real estate was agricultural lands. Rural house without a land was rare. The house and family was integrally related with the land. Only a person owning a land could create a separate independent family. By the customary law, a man was considered to be the founder of the house, so the male heir had the advantage of a land plot inheritance.