Irakli Burduli

Reception as a Milestone for Creation of Legal System (the Example of Corporate Law of Post-Soviet Georgia)*

The author reviews the transformation of Corporate Law on the example of post-Soviet Georgia. The reception which shapes the legal system, in transformative society comprises a considerably lengthy period. Frequent and unsystematic amendments of legislation in the post-communist community cause instability and nihilism, which is the main hindering factor for the corporate economy. The author examines the stages of Transition Law development, the conception of voluntary and compulsory reception, a transformation of law as a cultural phenomenon, the role of Comparative Law, and the impact of EU supranational Corporate Law on the formation of contemporary Georgian Law. The author presents the gaps of the current Corporate Law, also the dilemma between the models of regulation and deregulation, and he outlines the inevitable necessity of modernization of the field.

Irakli Burduli

Professor of law
Tbilisi State University

ORCID – 0000-0002-1547-4001

Key words:
Georgia, creation of legal system, corporate law

https://doi.org/10.36128/priw.vi36.284

1. Introduction

In the beginning of the 90s of the last century after the geopolitical dissolution of the Soviet Union several independent countries developed, which were connected[1] by economic-legal, sociocultural and mental closeness. Complete termination of the connection, along with

1 Of course, considering differences.

* This paper is based on the article published in 2018 in the anniversary collection of famous German law scientist Hans Prütting from 2018: Irakli Burduli, „Nekrorezeption in Transformationsgesellschaften", [in:] Dogmatik im Dienst von Gerechtigkeit, Rechtssicherheit und Rechtsentwicklung, Festschrift für Hans Prütting zum 70, ed. Moritz Brinkmann et al., (Köln: Carl Heymanns, 2018), 3-15.

the rejection of transformation process, has put onto agenda issue of the necessity of creating modern capitalist-democratic state institutions, where the organizational economic development was in the epicenter. Without the latter, it was unimaginable to create common material wealth as a result of free--market relations, competitive trade, and attraction of corporate capital. And this was one of the crucial elements for the sustainable development of the modern state. Socio-economic relations of the transit country[2] should have been ensured by the unified complex of legal norms, which, preferably, is attained by development well thought and coherent legal system in the Continental-European family[3]. Therefore, almost all these new countries were covered by the wave of reforms, which had to create in these countries corporate law based on the capitalistic economy.

The newly formed Georgian State, after becoming independent again, faced legal reform several times. In the early 90s the civil society and corporate economy platform: the private law legislation was adopted, from which the legal matters of civil law and special private law on entrepreneurs must be distinguished, which should have given stimulus for the development of capitalistic relations in the country. Because of the bureaucracy functioning nonprofessionally and incorrectly and because of total corruption, notwithstanding nomothetic law and modern European law (with formal understanding), the purpose – to create in the country a liberal-democratic state regime based on legal state and concept of democratic civil society – became less reachable. The ruling power that came into government in 2004 started

2 About the essence in legal and economic context see for example: Stozan Stalev, ,,Transformation des Rechts- und Wirtschaftsordnung in Bulgarien – Probleme und Perspektiven" *Zeitschrift für Europäisches Privatrecht*, (1996): 444-447; Christoph Schalast, ,,Rechtsberatung und Rechtsstaat in Transformationsstaaten" *Zeitschrift für Wirtschaft und Recht in Osteuropa*, (2005): 321 and ff.; This term is established in relation to countries of former Soviet Union and Eastern Europe having transitional economy (László Dobó, Lambert Kuijpers, ,,Countries with Economies in Transition", [in:] *Protecting the Ozone Layer*. ed. Philippe G. Le Prestre, John D. Reid, Thomas E. Morehouse (New York: Springer, 1998), however was properly developed in law as well.

3 All countries formed based on dissolution of the Soviet Union represent part of Continental-European legal family. The soviet (civil) law itself (See for example: Sergi Japaridze, *Trade Law* (Tbilisi: Publishing House Kordzadze, 2019), 63 et. seq. (In Georgian). Despite its numerous faults and institutes incompatible with pure private law, it belonged to European Law system, which, may be said, simplified notion and perception of the modern law after dissolution of the Soviet Union, especially in lawyers of old generation.

to implement big reforms, which were based on the regulation of the existing legislation, and that was justified with the establishment of liberal economy and facilitating its development. Generally, demolishing bureaucratic barriers and abolishing regulation of private law relations with legislative norms has certain economic effect and supports stimulation of the development of civil relations, establishing absolute freedom of contract for market participants. However, it should be also taken into account how in the condition of the non-existence of legislative regulation the absolute autonomy of parties will work in the society, which does not have experience and tradition in neither private-capitalist relations nor in a market economy. All these is based on a deep political-legal, socio-economic and cultural-mental grounds. Without analyzing them one from another and without their close interconnection, it would have been impossible to develop a common legal system in the country even through various „progressive" reforms. The newest history of the modern Georgian state is a clear example of how for almost 30 years it has been in circumstances of constant and permanent reforms. From a legal perspective, these reforms, or more correctly „pseudo-reforms" will be called necro reception[4], which, unfortunately, does not result in the development of a unified legal system and concept. The state may not refuse the development of a legal system, as far as this system itself must become an element of creation and development of market-economical and free civil society. It is particularly important in countries of a transitional economy, whereby under the virtue of close interconnection of organized (social) systems it is possible to have successful systematized economy. There is no social system, without their isolation from each other and neglecting their connection. Therefore, legal reforms, and in general the entire process of reception of law must be the result of common vision, well-thought action.

The current article critically performs reception of the corporate law on the example of post-Soviet Georgia and describes political-legal, economical, and sociocultural issues characteristic thereto.

2. Georgia as post-Soviet European Country

After the dissolution of the Soviet Union, the whole post-Soviet area faced the necessity to transform the economical-corporate system. Georgia was not an exception. Projected-group economy required total transformation for the country to be competitive in the capitalistic world. All this, the liberal-constitutional „democratic legal state having transformational aim"[5]

4 Burduli, „Nekrorezeption in Transformationsgesellschaften", 3-15.

5 Chris Mögelin, *Die Transformation von Unrechtsstaaten in demokratische Rechtsstaaten. Rechtlicher und politischer Wandel in Mittel- und Osteuropa am Beispiel Russlands* (Berlin: Duncker & Humbolt, 2003), 95.

notwithstanding declared purpose of developing structure[6], which must have been an obligatory precondition for the development of modern corporate relations, was demonstrated as a very difficult task. The current economical-political situation existing in the post-Soviet area arises doubt that all these cannot be done isolated[7]. Dirigisme economy was built upon a specific platform, which was based on political, socio-cultural, and economic reality. After the dissolution of the Union existing markets, trade roads, economic relations were demolished[8]. It may be said that the Country appeared to be alienated, on the one hand before the new states emerged after the dissolution of the Soviet Union, and on the other hand before the rest of the civilized world. In the mentioned situation the corporate-legal legislation had to perform the function of a regulator of new economic relations. Hence, it became necessary to create a new legal system.

In post-Soviet countries development of corporate law would have been unimaginable without considering consistent, national particularities of

6 Herman Schwartz, *Establishing constitutional justice in the post-communistic Europe*, trans. Ketevan Aleksidze (Tbilisi: Sezan, 2003), 35 (In Georgian).

7 For comparison, and at the same time justification of this thesis, the practice of elaboration of model laws for post-Soviet countries will be useful, which is based on West-European principles and standards and basically envisages adaptation in (national) laws of post-Soviet countries. Rolf Knieper, Lado Chanturia, Hans-Joachim Schramm, *Das Privatrecht im Kaukasus und Zentralasien. Bestandsaufnahme und Entwicklung,* (Berlin: BWV, 2010), 3.

8 For example: Lado Tchanturia, *Corporate Governance and Responsibilities of Managers in the Corporate Law,* (Tbilisi: Law, 2006), 46 et. seq. (In Georgian); Irakli Burduli, *Basics of Corporate Law*, Vol. I (Tbilisi: Meridiani, 2010), 391 et seq. (In Georgian). That is why it was necessary to implement consistent law reforms in post-Soviet countries, and that would give to these countries, already having experience of living together for years and being dependent on each other economically, possibility to proper development. Not even am attribute of preserving statehood has created base for implementation of modern economic reforms and creation of west-European economy. Despite „shock therapy" these reforms, with certain result, was not enough for economic development. Therefore, preserving and developing economic connections existing before in old times, must have been guaranty for economic advancement, which needed enforcement with relevant legal framework terms. Analysis of implementation of „Balcerowicz plan", economic reforms see: Vladimer Papava, *Economy of Georgia. Reforms and pseudo reforms* (Tbilisi: Intellect, 2015) 42 et seq. (In Georgian).

economic-legal constructions and its collateral social-political, cultural phenomena. The best example of that is the mass privatization process after the dissolution of the Union, which played significant role in the establishment of the corporate economy of post-communist countries and the advancement of macroeconomy, which ended with failure[9].

Traditionally, Georgia belongs to the continental-European law family[10]. This tendency was characteristic not only to Georgia but also to entire central and Eastern Europe[11], which experiences the influence of Roman-German law[12]. This political-legal historical ground caused the fact that the then government took direction towards the reception of the European law. Because of close cooperation between the Georgian political elite of that time and the German high political officials, the accent was put on reception of the German law. But this was not based only on political or personal grounds[13], but also on a juridical and legal-cultural phenomenon: the legal thinking style of (Soviet) Georgian lawyers was close to the German one. Knowledge of the German law, active involvement, and participation of various German

9 See for example: Lado Tchanturia, *Corporate Governance and Responsibilities of Managers in the Corporate Law* (Tbilisi: Law, 2006), 46 et seq. (In Georgian); Burduli, *Basics of Corporate Law*, Vol. I (Tbilisi: Meridiani, 2010), 391 et seq. (In Georgian). Ignoring Joint Stock Company, as classical legal organizational form, played significant role in the privatization process, as the latter was preferably created not for concentrating capital, accumulating material resources and gathering assets from investments, but on the account of simply distributing assets in the ownership of state enterprises on their employees and putting them in hand of private owner of state assets. The Joint Stock Company in the western industrial states, as concept of legal form of economic activity based on different concept. Lado Chanturia, ,,Chancen und Schatten des Self-Enforcing-Modells im postsowjetischen Aktienrecht" *Zeitschrift für Wirtschaft und Recht in Osteuropa*, no. 4 (2009): 97-103, 97.

10 For example: Besarion Zoidze, *Reception of European Private Law in Georgia* (Tbilisi: Teaching Center for Publishing, 2005), 5 et. seq. (In Georgian).

11 Before establishment of socialism.

12 Gianmaria Ajani, ,,By Chance and Prestige: Legal Transplants in Russia and Eastern Europe" *American Journal of Comparative Law*, No. 1 (1995): 93-117, 94.

13 Eduard Shevardnadze, *Thoughts on Past and Future, Memoirs* (Tbilisi: Palitra L, 2006), 315, 317 (In Georgian).

organizations in the lawmaking process of Georgia[14], implementation of projects facilitating legislative initiatives, determined the fact that the country, which obtained independence, took German Law as basis for its law[15]. This also touched Georgian Corporate Law, which took the function of internal regulation of business entities.

3. Facets of the development of post-Soviet Corporate Law

3.1. Development before signing the Association Agreement

The basis of modern Corporate Law in Georgia had been creating from the second half of the 90s of the previous century[16] and was developed after the logical synthesis of German Company Law and Trade Law[17]. Georgian law was equaled to German written nomothetic law, which was evident in different aspects: typological division of legal forms, their legal nature, organizational-structural arrangement of forms of enterprises, issues of their formation, preconditions, formal and material-essential control in the process of founding, imperative norms related to issues of preservation of corporate

14 For example, GIZ activity after declaration of Independence of Georgia. More consolidated information about legal activity of the organization in CIS (Commonwealth of Independent States) countries: Rolf Knieper, *Rechtsreformen entlang der Seidenstrasse. Aufsätze und Vorträge während der beobachtenden Teilnahme an einem gewaltigen Transformationsprozess* (Berlin: BWV, 2006). Indicted from the talk of Chanturia held in Berlin on March 14, 2009 on the German-Japan symposium named: „Die Rolle des Rechts und juristischen Zusammenarbeit bei der Schaffung einer Zivilgesellschaft": Lado Chanturia, „Voraussetzungen einer erfolgreichen juristischen Zusammenarbeit aus der Sicht der Transformationsgesellschaften", [in:] *Rechtstransfer und internationale rechtliche Zusammenarbeit, Deutsche und Japanische Erfahrungen bei der Kooperation mit Osteuropa und Zentralasien,* ed. Herbert Küpper, Wolfgang Brenn (Wien: Peter Lang, 2010) 1, Fn. 2.

15 On the approximation to the European Law see: Lado Chanturia, „Das neue Zivilgesetzbuch Georgiens: Verhältnis zum deutschen Bürgerlichen Gesetzbuch", [in]: *Aufbruch nach Europa – 75 Jahre nach Max-Plank Institut für Privatrecht,* ed. Jürgen Basedow et al. (Tübingen: Mohr Siebeck, 2001), 893-904, 894-895; Lado Chanturia, „Die Europäisierung des Georgischen Rechts – Blosser Wunsch oder grosse Herausforderung?" *Zeitschrift für ausländisches und internationales Privatrecht*, I 74 (2010): 154-179, 155 and ff.

16 Lado Chanturia, „Law on Entrepreneurs and formation of the Corporate law", [in:] *Anniversary Collection of Sergo Jorbenadze* (Tbilisi: Law, 1996): 32-50, 32 et seq. (in Georgian).

17 Zoidze, *Reception of European Private Law in Georgia*, 185.

capital, issues of corporate governance, statutory autonomy, etc.[18]. From the systemic point of view, the German corporate law differs from the USA Law, which sets not only systemic but also the functional differences between them[19]. The issue of functional confusion became important for our country in terms of conferring German law to the system of European Law, legislative shortcomings, typological confusion of legal forms of business entities, more correctly, limit of the marginal differentiation became precondition of systemic demolishing of national law, which has put Georgia before a big reform of law[20]. It may be said that the development of Georgian corporate law comprises three main periods. From 1995, that is from the enactment of the Law on Entrepreneurs up to 2008; from 2008 to 2015; and from 2015 up to present. Initially, it was formulated as nomothetic law. There was a respective place given to the regime of dispositive regulation. This was mostly related to friendly societies (Partnerships). In the Law of Business Corporations imperative norms were prevailing, which aimed at different aspects of regulation. This mostly was related to Joint Stock Companies and registered Cooperative. The field of statutory freedom was left for Limited Liability Companies, however, regulating legislative norms were present here in large numbers as well. After establishing a complete liberal approach in the Georgian economy (from 2004), the regime of total liberalism and complete deregulation enters into private law, which was portrayed as simply repealing legislative norms. This is how the „regulation" with complete deregulation is established, which overall gives rise to many problems: due to the undeveloped judicial practice and lack of norm definitions, the nonexistence of cautelary jurisprudence, low level of education of lawyers knowing the field, development of corporate law and economic sphere is hindered and creates many regulatory deadlocks, in the context of regulating internal corporate relations, as well as solving dispute by the Court.

18 For more details see: Irakli Burduli, „Das georgische Gesellschaftsrecht: Quo Vadis?! Eine kurze Darstellung der Reformen und des Refrombedarfs im georgischen Unternehmensrecht", [in:] *Rechtsvergleichung und Privatrecht im deutsch-georgischen Diskurs,* ed. Tiziana J. Chiusi, Irakli Burduli, Vol. 14 (Saarbrücken: Jurisprudentia Saraviensis, Alma Mater, 2019), 1-25.

19 Lali Lazarashvili, „Law of Georgia on »Entrepreneurs« and problems of modern legislative regulation of the Georgian corporate law", [in:] *Besarion Zoidze Anniversary Collection*, ed. Lado Chanturia, Irakli Burduli (Tbilisi: TSU Publishing House, 2014), 521-537, 523 et. seq. (In Georgian).

20 Lado Chanturia, „Main directions of the reform of law »on Entrepreneurs«" [in:] *Historical profiles of legal and political thinking*, Vol. III (Tbilisi: Meridiani, 2015), 650-666, 650-652 (In Georgian).

3.2. Development after signing the Association Agreement

For elimination of this, the reform starts from 2015, the new edition of Law „on Entrepreneurs" is elaborated, which represents a major source of corporate law in Georgia. The reform covered several years and involved a lot of participants from different communities. The wide-range discussion on this draft law, consideration of remarks made by different sectors during all these years, scientific deliberations must at last ensure that the population and economic entity build trust in this novelty and do not take it antagonistically. Moreover, taking into account the fact that post-Soviet society, as a rule, does not accept any regulations introduced by the State, which (mostly within the corporate law) is justified by the so-called Self-enforcing model[21]. After signing the Association Agreement, Georgia took a political-legal obligation to approximate European (corporate) law. This was mostly expressed in the fact that the reform is directed to implement those necessary European Union Directives, which have binding force for Georgian law based in the Association Agreement. Although post-Soviet Georgia itself took the direction towards normative regulation and returning to the nomothetic legal matter, this partially was deriving from the Association Agreement. The normative (re)regulatory model is characteristic of the European Corporate Law, which could not be avoided by Georgia. However, for the economic growth of the transitional countries, in terms of attracting investors and protecting rights of (minority) shareholders, creation of guarantees similar to European will positively affect the overall business environment. This is the foundation to the expectation that after enactment of the law, internal organizational, as well as external corporate relations will be more clear and predictable, the formation of business will be more serious, and unveiling and publication of companies' data in the Registrar will simplify the access to information for internal and external investors, which overall will make the process of capital investment in the corporation more attractive. In terms of the reform, special stress is put on the legal construction of the Joint Stock Company, which must ensure the formation of structure of investors in the corporations portfolio, along with the development of the capital market, and simplifing access to corporate financing from capital market, as an alternative to bank loan[22], which in total, will create synergetic economic effect and will highly benefit

21 On the preference of normative model see: Chanturia, „Main directions of the reform of law »on Entrepreneurs«", 655-656. Criticism of Self-enforcing Modells see in: Chanturia, „Chancen und Schatten des Self-Enforcing-Modells im postsowjetischen Aktienrecht", 97-103.

22 Irakli Burduli, Giorgi Makharoblishvili, Demetre Egnatashvili, Giorgi Ebanoidze, *Capital Market's capacity to function: existing reality and necessity of reform* (Tbilisi: Lawyers' World, 2017) 13 et. seq. (In Georgian).

the development of the post-Soviet economy. For removing the marginal border of differentiation between business entities and for giving practical purpose to division of organization forms, the reform group had put an accent on „statutory rigidity"[23], which is characteristic to German law (on legislative level)[24]. However, the didactic function of legislative norms will manage to play the role of Guideline in terms of filling in various internal organizational gaps, which definitely will be beneficial for corporate environment in Georgia. Issues of regulating capitalization in business corporations should not be left out of attention, and it will be mentioned briefly hereinbelow. The legislative initiative is already presented to the Parliament, and it may be adopted during the spring session. The main principles and core postulates integrated in the draft law are not expected to change. In this way the long-lasting process of reception of the economic law into the post-Soviet Georgian will get back to its natural riverbed.

4. Pseudo reforms in the post-Soviet law and its negative result
4.1. Necessity of stability of the legal system established as a result of reception

In the whole post-Soviet area, the legislation was more-or-less elaborated as a result of the reception of law from the foreign country[25], all the more, in terms of creation of legal state after dissolution of socialistic regime and market economy, where the total law reform should have been

23 So called „Satzungsstrenge". Johann Kindl, *Gesellschaftsrecht*, 2nd ed., (Baden-Baden: Nomos, 2019), §30 Rn. 3.

24 Jens Koch, [in:] Uwe Hüffer, Jens Koch*, AktG Kommentar,* 15th ed. (München: C. H. Beck, 2021), §23 Rn. 45. In the Law of Austria, even though the literal description of the law is not similar to German one, but wide statutory autonomy of shareholders is restricted by rigidity of the statute for publicly held corporation based on the judicial practice, as for the non-public Joint Stock Company (close corporation) the restriction of statutory freedom is used in the context of protection of creditors, public interests, relations being in contradiction with the essence of JSC, against morality or depriving interests of shareholders. Marie-Agnes Arlt in: *AktG Kommentar*, ed. Wulf Goette, Mathias Habersack, Susanne Kalss, 5th ed. (München: C. H. Beck, 2019), §23 Rn. 232.

25 For example: Rolf Knieper, „Das neue Turkmenische Zivilgesetzbuch im Überblick" *Zeitschrift für Wirtschaft und Recht in Osteuropa,* No. 2 (2002): 53 ff; Khalifabobo Khamidov, „Die Rechtsreform in der Republick Tadschikistan", [in:] *Wege zu neuem Recht*, ed. Mark Boguslavski, Rolf Knieper (Berlin: Arno Spitz, 1998), 86-88, 86 and f.

implemented[26]. During reception diverse factors which followed this process must be taken into consideration. However, there are no doubts that while developing any legal system, the country mostly keeps going by legal institutions brought in from other legal regimes throughout its history, legal ideas and particular norms[27]. Reception may have advantages and disadvantages, especially since it can be related to voluntary[28] or „compulsory" implementation[29]. Success of the reception depends on the level of development of the law to be receipted, as far as it is related to the transposition of modern experienced legal institutes. If this process takes into account national particularities, with great probability it will be successful[30].

---

26 For example: Knieper, Chanturia, Schramm, *Das Privatrecht im Kaukasus und Zentralasien. Bestandsaufnahme und Entwicklung,* 1 and ff.

27 With further indications: Eugenia Kurzynsky-Singer, ,,Wirkungsweise der legal transplants bei den Reformen des Zivilrechts", [in:] *Transformation durch Rezeption?*, ed. Eugenia Kurzynsky-Singer (Tübingen: Mohr Siebeck, 2014), 4.

28 Here the Knieper's position must be agreed, that the reception may be a step of *cooperation, legal assistance or irrational step from* different international organizations. Rolf Knieper, ,,Rechtsimperializmus?", [in:] *Rechtsreformen entlang der Seidenstrasse* (Berlin: BWV, 2006), 62. Indicated: Kurzynsky-Singer, ,,Wirkungsweise der legal transplants bei den Reformen des Zivilrechts", 4.

29 For the „subjective" example of this, the British colonial politics in India is shown, which implied burial of national industrial production, closing English market for Indian production on the legislative level, and total opening of Indian Market for British Goods. Jawaharlal Nehru, *The Discovery of India, Jawaharlal Nehru Memorial Fund* (Oxford: Oxfrod University Press, 1982). See Russian Translation of the book: Dzhavakharlal Neru, *Otkrytie Indii* (Moskva: Politizdat, 1989), 22-26. It must be taken into account that the economic „expansion" is resulted by compulsory support of legal mechanisms, which means introduction of foreign legal constructions into the national legal system. Such „neocolonialism" may exist also in the modern history. Lasha Bregvadze, „Legal culture between globalism and localism: for functional definition of legal transfers" *Herald of the T. Tsereteli State and Law Institute*, No. 1 (2006): 5-37, 26 (In Georgian).

30 Transposing foreign norm into the national legislation without existing customs and traditions, cultural phenomenon will not work, as far as it may appear inadmissible and unclear for the society. Such example is named by *Jorbenadze* while transposing such Swiss family law institute during the reception of the Turkish civil law, which stipulates: „spouse

The stability of the legislation elaborated during the reception is very crucial[31]. Legislative stability facilitates the stability of legal system, which has function of its forecasting and prediction in the society. There is no legal stability without the stability of the legal system developed through reception. When we talk about the reception of corporate law, we must take into account the long-lasting process[32], which includes numerous components. Legal drafting on the one hand, but the process of application and implementation of law on the other one. Here, the dogmatic-legal grounds,

does not have right to divorce, if he/she agreed to violate spousal fidelity, or forgave spousal betrayal. In Turkey it was taken out as a phenomenon inadmissible for Turkish morality and legal perception (that is for cultural ideology. Addition I.B.)". Sandro Jorbenadze, „Main problems of future Civil Code of the Republic of Georgia", [in:] *Law reform in Georgia,* ed. Sandro Jorbenadze, Rolf Knieper, Lato Chanturia (Tbilisi: 1994), 139-154, 142 (In Georgia). In this regard, it is important that the particularities characteristic to people are considered. Mikheil Kekelia, *Crimes against human life, health, honor and dignity in the ancient Georgian law* (Tbilisi: Meridiani, 2015), 3 (In Georgian). With this inspiration *Dernburg* poses rhetorical question on what shall pave the way for elaboration of legislation. He answers it himself: „… on each step we must remember, that we are standing on the historical ground, that the case related to spiritual work of many generations". Cited according to *Kekelia*. Ibidem. 5. However, Corporate law is characterized with the specifics that it has global character, which leads to unification of business activity and acting with common standard and principles. Therefore, there may be smaller room for historical-cultural national phenomenon (comparing to Georgian criminal law, the historical tradition of which existed in Georgia), especially for the country having such weak economy and not having tradition in this field, such as Georgia. The corporate-legal system of financially strong country makes it possible to reflect national cultural (and even more, religious) mentality on the legislative level. As such example we may bring the specific structure of corporate governance in some Islamic states, which implies integration of cultural-religious postulates into companies, See for example: Matthias Casper, ,,Sharia Boards and Corporate Governance", [in:] *Festschrift für Klaus J. Hopt, zum 70*, ed. Stefan Grundmann, Brigitte Haar, Hanno Merkt & et al. (Berlin: De Gruyter, 2010), 446-477.

31 In this case the reception is referred with broad meaning. It includes process of law transformation and legal transplantation. Compare: Knieper, *Rechtsreformen entlang der Seidenstrasse*, 17.

32 Compare. Bregvadze, „Legal culture between globalism and localism: for functional definition of legal transfers", 5-37, 25-26 (In Georgian).

particularities of application of norms existing in the reception country are implied, which must have been conducted in parallel with the translation of existing law literature on German-European legal reasoning style, interpretation of norm, commentaries, studies, and leading educational programs. In consolidated form all these are developed as follows: legislation, its practical implementation, institutional architecture, spreading propaganda of law subject to reception[33]. This process started in this manner, however, after the „rose revolution"[34] the course was taken in a different direction. Institutional memory must be considered during reception since the unified legal system is based on historic memory[35]. When such a memory is erased or disrupted, the legal order does not develop properly. Hence, reception is a historical process, the success of which depends on its institutional memory existing in the country.

4.2. International Cooperation – a positive precondition of the reform

During the transformation of the law, international cooperation with countries with the developed legal system is important, especially with the country, which happens to be exporter of the material for reception. It is noted correctly that the history of more than 25 years the dissolution of the Soviet Union proves the necessity of the legal cooperation in case of law reception[36]. Reception is based on the experience of other countries, the development of practice, the definition of legal norm, studying legal comparative landscape, adjustment to national legal reality, etc.[37]. The reception exceeds the legal drafting process and covers a wider spectrum of activities. Here not only creation of norm, but also its implementation, the application is implied. For adjusting norms to the relations in the post-Soviet law, it is necessary to

33 Such sequence of the process is suggested in *Knieper*. Rolf Knieper, *Juristische Zusammenarbeit: Universalität und Kontext* (Wiesbaden: Universumverlag, 2004).

34 See for example: Charles H. Fairbanks, „Georgia's Rose Revolution" *Journal of Democracy*, No. 2 (2004): 110-24; Giorgi Kandelaki, „Georgia's Rose Revolution. A Participant's Perspective" *US Institute of Peace*, July 1 (2006). www.jstor.org/stable/resrep12267. [accessed: 15.03.2021].

35 In this context compare: Chanturia, „Main directions of the reform of law »on Entrepreneurs«, 650-666, 651 et. seq.

36 Chanturia, „Voraussetzungen einer erfolgreichen juristischen Zusammenarbeit aus der Sicht der Transformationsgesellschaften", 1.

37 Numerous international projects, monographies and conferences were devoted to reforms in the post-Soviet law. For example: Knieper, Chanturia, Schramm, *Das Privatrecht im Kaukasus und Zentralasien. Bestandsaufnahme und Entwicklung,* 2014.

share international experience of its interpretation, which requires studying the dogmatic legal grounds of the country from which the reception is done. Therefore, without theory and practice existing in that country, this process will be unimaginable. That is why, in the transformative society, it is important to provide the thematic assistance, as such country as ours is not ready to independently align its legal order to the internationally recognized standards and principles[38]. It is welcome when in the process of reform international cooperation takes place and is based on particular projects or development strategies[39]. Opinion of Sommermann must be agreed, that „often it is related to initiation, conceptualization and practical support of idea about precise reform"[40]. This helps the transformative countries to develop systemic vision of law with the assistance of foreign experts[41]. Corporate law must also create part of the common legal system.

4.3. Reception as cultural phenomenon and role of the comparative law

The process of reception needs a culture, which makes the transposition of the norm of another country into the national legislation a cultural phenomenon[42]. This results in integration of national socio-economic, cultural particularities into the process of transformation of any rule of conduct into legislative norm. Reception of law cannot reach the aim if the national

38 Chanturia, „Voraussetzungen einer erfolgreichen juristischen Zusammenarbeit aus der Sicht der Transformationsgesellschaften", 1.

39 Philipp Dann, *Entwicklungsverwaltungsrecht* (Tübingen: Mohr Siebeck, 2012), 27 and ff. Cited in: Karl-Peter Sommermann, „Deutsch-georgische wissenschaftliche Zusammenarbeit – Ein Erfahrungsbericht am Beispiel der Einrichtung eines Master-Studiengangs »public administration« an der Staatlichen Universität Tiflis", [in:] *Grenzüberschreitende Entwicklungszusammenarbeit*, ed. Laure Ognois (Speyer: Speyerer Arbeitsheft, 2013), 8. From the early 90's of the previous century the Georgian legislative system was created based on numerous supporting legal projects conducted in the framework of international cooperation.

40 Sommermann, *Deutsch-georgische wissenschaftliche Zusammenarbeit*, 8.

41 Chanturia talks about common systemic vision, when considers the „disruption of common system of law" as main „culprit". Lado Chanturia, „Statutory autonomy in the Corporate Law", [in:] *Profiles of history of legal and political thinking,* ed. Gocha Feradze, Vol. I (Tbilisi: Meridiani, 2010), 651 (In Georgian).

42 That is why without taking into account legal culture, this process will be always fruitless. Regarding the legal culture, as phenomenon, for example: Bregvadze, „Legal culture between globalism and localism: for functional definition of legal transfers", 5-37, 5 et. seq. (In Georgian).

characteristics are not considered in the process[43]. It differs from so called transplants[44]. The latter implies (direct) transposition of any foreign norm into the national legal order[45]. It is interpreted as „repeal or amendment; transfer or relocation; transporting into other country". It created ground for the possibility of merger. For the purpose of law, transfer is the thing that occurs in the crossroads of jurisdictions, when the norm exists in other jurisdiction, it is unfamiliar for the law of imported country and it (the norm) enters into national law from other country[46]. It may be useful[47] or useless for the national legal reality. Tendency of conducting reform systemically in the transformative society will be given preference with regard to spontaneous

43 Knieper, Chanturia, Schramm, *Das Privatrecht im Kaukasus und Zentralasien. Bestandsaufnahme und Entwicklung*, 30.

44 Regarding this phenomenon for example: Knieper, Chanturia, Schramm, *Das Privatrecht im Kaukasus und Zentralasien. Bestandsaufnahme und Entwicklung*, 30.

45 Regarding the notion of transfer, its socio-legal-cultural phenomenon: Bregvadze, „Legal culture between globalism and localism: for functional definition of legal transfers", 5-37, 23 and ff. (In Georgian).

46 Pierre Legrand, „The Impossibility of Legal Transplants" *MJECL*, Vol. 4, (1997): 111-142, 111.

47 As an example, we can bring amendment made to German Corporate Law, which is related to paragraph 93, „transplanting" American institute of business judgement rule. Regarding the institute see American Judicial practice with commentaries: William T. Allen, Reinier Kraakman, Guhan Subramanian*, Commentaries and Cases on the Law of Business Organization*, 3th ed., (Wolters Kluwer, Aspen Publishers, 2009), 250-255 (Kamin vs. American Express Co. 54 A.D.2d 654 (N.Y. 1976)). In the German law with indication on different sources: Barbara Dauner-Lieb, [in:] *AktG Kommentar*, ed. Martin Henssler, Lutz Strohn, 5th ed., (München: C. H. Beck 2021), §93 Rn. 17 and ff; Regarding this reform itself: Holger Fleischer, „Legal Transplants im deutschen Aktienrecht" *Neue Zeitschrift für Gesellschaftsrecht*, 24 (2004): 1130 ff; In light of other country see (Modified norms of Fiduciary duty of Director in the Japanese Law) Also: Curtis J. Milhaupt, Hideki Kanda, „Re-examining Legal Transplants: The Director's Fiduciary Duty in Japanese Corporate Law" *American Journal of Comparative Law*, No. 4, (2003): 887-901. Regarding transplantation of western legal models into the post-Soviet (Eastern-European) law, for example: Ajani, „By Chance and Prestige: Legal Transplants in Russia and Eastern Europe", 93-117.

transposition of certain norms[48]. This is based on the thesis that we must imagine law as cognitive phenomenon, in which certain norms are not isolated from each other, but represent part of whole system, and it is necessary that local applier of the law correctly understands and accepts it for having legal force.[49] Moreover, the role of comparative law in the process of understanding and interpreting the law developed based on the reception is huge. Receipted norm exists independently in the national legislation. The norm is „living organism" and is subject to evolution, which implies its functional-essential development. In order to make it functional in the existing country, its proper legal implementation is needed, where the role of comparative law is priceless[50]. Legal drafting is portrayed as „subsidiary method for interpretation" of the norm[51]. Thus, as mentioned by Heberle, it is also a phenomenon of comparison of cultures[52]. It is also a result of the fact that, according to comparative law thesis, comparative law does not help us in studying of national law, but rather it studies interrelation of law and society[53], which definitely makes it a sociocultural phenomenon[54]. It is particularly important

48 All this is interestingly expressed on the example of administrative law in transformative countries, for example see: Gerd Winter, Koba Kalichava, „Rechtstransfer und Eigendynamik in Transformationsländer: Das Beispiel der verwaltungsrechtsentwicklung in Georgien" *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, No. 2 (2019): 275-322.

49 For example: Katharina Pistor, „The Standartization of Law and its Effect on Developing Economies" *American Journal of Comparative Law*, Vol. 50 (2002): 97. Indicated: Kurzynsky-Singer, „Wirkungsweise der legal transplants bei den Reformen des Zivilrechts", 5.

50 Compare: Konrad Zweigert, Hein Kötz, *Einführung in die Rechtsvergleichung*, 3rd ed. (Tübingen: Mohr Siebeck, 1996), 1 and ff.

51 Rabel Ernst, „Interationale Zusammenarbeit im Privatrecht" *Zeitschrift für ausländisches und internationales Privatrecht*, No. 4 (1953): 602. Peter Häberle, „Theorieelemente eines allgemeinen juristischen Rezeptionsmodells" *Juristen Zeitung*, No. 21 (1992): 1036.

52 Häberle, „Theorieelemente eines allgemeinen juristischen Rezeptionsmodells", 1036; Peter Häberle, *Europäische Rechtskultur* (Baden-Baden: Nomos Verlagsgesellschaft, 1994), 16 and ff.

53 William Ewald, „Comparative Jurisprudence (II)" *American Journal of Comparative Law*, No. 4 (1995): 489-510, 496-497.

54 That is why integrating comparative law with the format of comparative law culture into the real legal processes aims at comparing living law of different „socio-cultural" systems, which is not satisfied only by comparing state structures, official legal systems or legislations, and comprises

for transformative corporate law, as far as it requires comparative law to properly develop in present times. However, the thesis, according to which the comparative law is to be considered as an independent subsidiary method for interpreting norm, is doubtful. Most of all, it must be considered as source of perception of the law, which could play huge role for the judge in terms of facilitating the process of proper interpretation and application of the norm.

5. Reception and the European Law

5.1. Total impact of politics on the reception process and establishment of legal nihilism

Georgian „tolerant" law was living on the law of various countries[55]. However, its natural orbit[56] was the European Law[57]. After restoration of independence along with the initiation of reception the question of alignment to the European Law arose[58]. The Corporate law envisaged approaches of the European Corporate Law[59]. For illustration *Chanturia* brings several examples[60], however this approach was lasting in following years as well, until European Law was fully ignored by the government of those times (2004-2012). The Georgian law was unimaginable without the European Law. Bazedov also talks about the necessity of approximating Georgian private law to the European Law, who underlines not only the necessity of the reception of German law, but also of the unified European Law[61]. However, the German

---

also institutional, spontaneous, non-state, unofficial or alternative legal orders. Bregvadze, „Legal culture between globalism and localism: for functional definition of legal transfers", 5-37, 8 (In Georgian).

55 See: Zoidze, *Reception of European Private Law in Georgia*, 39, 57-92.

56 Here the modern legal system is implied (developed from 18-19 centuries). However, because of the geopolitical or other factors the Georgian law had a strong impact of Eastern law. Hence, history of Georgian Law was highly depending on, for example, Persian law. See: Nugzar Surguladze, „Persian Sources of the history of Georgian law (»Dastur Al-Muluq«, »Tazqirat Al-Muluq«)" *Herald of the T. Tsereteli State and Law Institute*, No. 1 (2006): 38-48 (In Georgian).

57 Jorbenadze, „Main problems of future Civil Code of the Republic of Georgia", 142 (In Georgian).

58 Ibidem, 139 and ff.

59 Chanturia, „Die Europäisierung des Georgischen Rechts – Blosser Wunsch oder grosse Herausforderung?", 155 and f.

60 Ibidem, Fn. 5.

61 Jürgen Basedow, ,,Georgien und die Europäisierung des Privatrechts", [in:] *Transformation durch Rezeption?*, ed. Eugenia Kurzynsky-Singer (Tübingen: Mohr Siebeck 2014), 462-463.

corporate law itself, considering national particularities[62], harmonized the European corporate law to the full extent, which would simplify the transposition of the European law for Georgia.

In this process the political side is also important, as far as with disclosure of unequivocal will of Georgian people by the Government and by signing the Association Agreement, as it was mentioned above, the obligation of approximating national law to the European Law was taken (especially in economy). This will cause interest of European investor towards economy of Georgia. In the transformative society it is necessary to created stability of political system. In this way, the sustainable and persistent development of established legal system will take place. This needs a political culture. With the „good" law the rapid progress in not attainable. Khubua mentions that attitude towards reformist possibilities has radically changed and we face legal nihilism. In the hierarchy of values of the society there was a devaluation of law, that was mostly result of low legal perception of political elite and low legal culture[63]. Politics has overridden law.

5.2. Political-social concern

It is necessary to inform target-groups of the society during reform, to avoid alienation of especially professional society therefrom. Advertising of innovative initiatives must be done, for making essence and positive side of the reform perceivable for wider circle. This will facilitate implementation of the norm in real life, which will simplify application of law. It is crucial to

62 For example, participation of workers-servants in German corporations. Regarding this institute: Eberhard Vetter, [in:] *Hdb börsennotierte AG,* ed. Reinhard Marsch-Barner, Frank A. Schäfer, 2. ed, (Köln: Dr. Otto Schmidt, 2009), §24 Rn. 1 ff.; Thomas Raiser, Rüdiger Veil, *Recht der Kapitalgesellschaft* (München: Vahlen, 2010), 158 and ff.; Regarding necessity of reforming this institute in the German reality: Heinz-Joachim Neubürger, „Die deutsche Mitbestimmung aus der Sicht eines international operierenden Unternehmens. Reformbedarf unter Corporate Governance Gesichtspunkten?", [in:] *Hdb. Corporate Governance*, ed. Peter Hommelhoff, Klaus J. Hopt, Axel v. Werder, 1st ed (Köln: Dr. Otto Schmidt, 2003), 180 ff; Chanturia, *Corporate governance and responsibility of managers in the Corporate law*, 131 et. seq. (In Georgian). In the context of comparing to situation of Georgia: Irakli Burduli, *Basics of Corporate Law,* Vol. II (Tbilisi: Meridiani, 2013), 465-477 (In Georgian).

63 Gia Khubua, „Institutional balance of power", [in:] *The Constitution of Georgia after 20 years* (Tbilisi: Open Society Georgia Foundation, 2016): 115 (In Georgian).

prepare society and „spread law in the population"[64]. Society prepared for novelty will be more loyal to the reform, rather than alienated therefrom. This will initiate the process of understanding law[65], that will become prerequisite for respect of the law and its real application. Novelties introduced from the 90s of the previous century, especially in the corporate law, required exactly widescale and aggressive propaganda. We may imagine this as one of the negative sides of the privatization process. Despite the fact that ruling party in 2004-2012 – National Movement – knew technologies of PR campaign quite well, it was not used in the process of law reform, which was very negative. It is advisable that such mistake is not repeated anymore and the complete information of the reform is provided. This will facilitate development of academic process in the pursuit of implementing reform, which will create

64 That is why Knieper talks about the necessity of introducing law to wider mass in the transformative society, about „spreading it in the population", because „by the objective understanding, the law will have possibility of practical application only in case it will be perceived as unity of rights and obligations" (i.e. law with subjective understanding). That is why it is crucial that not only specialist of the field know ways of implementing and using rights, but also ordinary people. Knieper, *Juristische Zusammenarbeit: Universalität und Kontext*, 100. Here obviously the content is exaggerated, because having general knowledge on any legal novelty or amendment is implied, not knowing it thoroughly by any person.

65 This must be in direct connection with the phenomenon of legal consciousness, which differs from legal culture. Legal consciousness „is concentrated on separate individuals. Legal consciousness implies »popular perception« of the law in everyday life". Bregvadze, „Legal culture between globalism and localism: for functional definition of legal transfers", 5-37, 19 (In Georgian). Hence, in the process of reception the proper mechanism of perception of law must be integrated, in order to reach the purpose of the norm. For this, the cognition of law is needed, which derives by different factors. Besarion Zoidze, *Attempt of getting to know practical existence of the law. Mostly in light of human rights*, (Tbilisi: Publishing House of Tbilisi State University, 2013), 332-33 (In Georgian). The legal order existing in the country must also revolve around particular individual (in its positive essence). If this particular individual perceives and familiarizes himself/herself with the law, then it will apply in the society freely and without problems. It is difficult to argue with the thesis of Zoidze: „One = All. All as a value exists for one. All is the form of existence of one". Zoidze, *Attempt of getting to know practical existence of the law. Mostly in light of human rights,* 30, 70 et. seq. (In Georgian).

a well-reasoned basis regarding any amendment. Moreover, this process will help propaganda of the reform in the country, will create base for legal preparation for those working or willing to work in the field. Hence, the thesis – „the fear of implementing new must not become hindering factor for the progress"[66] – must be in direct relation with the informative impertinence of the society. Only in this way it is possible to develop high culture of understating law in the society, that in any country, in general, is a precondition for the respect of the law. From 2015, staring the reform of corporate law in Georgia, the Ministry of Justice has an attempt to make this process similar to the abovementioned. A lot was done in this direction, however, unfortunately, the political process in post-Soviet Georgia and radical steps taken by any power to come/remain in the government pays less attention to these issues. Despite the attempt of current government to interest the wide circle of society in the content of the mentioned reform and essential amendments to be made in economy, the most attention of the population is directed to political processes which, in terms of outcome, has a negative impact on the development of the sphere and amplifies nihilistic attitude towards any activity. This is aggravated with the socio-economic-mental condition caused by pandemic. Overall, all this causes uninterested attitude towards the reception process itself.

5.3. Issues of law politics: dilemma of regulation and deregulation

As it was mentioned, from 2015 in the post-communist Georgia, the tendency of „turning back" to the European legal system. In this regard legal-political side is important, which is related to the issue of correlation among regulation, deregulation and re-regulation[67]. The liberal approach has established full statutory autonomy, that was expressed in repeal and deregulation of legislative norms[68]. This created difficulty for application of the law. The

66 Lado Chanturia, „Law on Entrepreneurs and origin of Corporate Law in Georgia", 32-50, 37 (In Georgian).

67 See Chanturia Main directions of the reform of law »on Entrepreneurs«, 650-666, 654 et. seq. As it was mentioned, we must agree with the position of Chanturia on supporting prevalence the normative, regulatory (balance) model, which is expressed by the author as a necessary prerequisite of reform in the transformative society, in case of lack of development of corporate law.

68 In the economy of transformative country establishing „Washington consensus" principles has positives side as well, as it envisages privatization of state entities and bringing private owners (investors) to economic orbit; Liberalization of trade, financial market, international payment and capital turnover, „regulation of productive entrepreneurship" considering protection of private property, etc. John Williamson, „What

regime of deregulation has its economic effect, however, economic concern of the issue, cannot be considered without its relation with legal reality. In case of deregulation, the developed judicial practice, high level of education of lawyers and advanced cautelary jurisprudence must exist in the country. Frequent non-systemic change of the legislation created numerous legal deadlocks. This caused nihilism, a sense of mistrust in the investor[69]. For neutralizing this the mechanism in the post-Soviet country is establishment of normative regime, however it must be considered that regulation of any socio-economic field must not be overloaded with „multiplicity of laws"[70]. „Numerosity of laws (norms) is not the best solution for regulating life. Until the legislator elaborated law, he/she must find out whether the legislative regulation is necessary or not. Maybe other types of social norms regulate the subject of interest in a better way?!"[71] Zoidze concludes that where the customary, traditional norms act well, overloading with legislative norms may be even excessive[72]. However, the specificity of corporate relations must be also considered, its novelty for the post-communist reality. Customs that does not exist in this field[73] nor best practice, cannot be used as regulatory mechanism. Hence, we must agree to the thesis of Chanturia, that in this case the legislator must take the burden of „educating", find out what are the norm-provisions for regulating corporate relations[74]. Deriving from this, the approach of the state must lean towards creating regulatory regime, which means in general interference

Washington Means by Policy Reform", [in:] *Latin American Adjustment How Much Has Happened?*, ed. John Williamson, (Washington: Institute for International Economics, 1990), cited in: Knieper, *Rechtsreformen entlang der Seidenstrasse*, 19. All this may serve for establishment of strong economic platform of the country, give stimulus to economic processes in the country.

69 Regulated legal regime may not stand on the opposite side of liberal law. „In parallel with regulation liberalization may be implemented as well". Nino Jibuti, „Interview with professor Pastrich" *Review of Private Law*, No. 1 (2015): 138-142, 139 (In Georgian).

70 Zoidze, *Reception of European Private Law in Georgia*, 19-20.

71 Ibidem. 19.

72 Ibidem. 19.

73 Specifics of modern entrepreneurial-corporate relations are considered, while such norms, of course, existed in Georgian trade law also before. For the review see: Irakli Burduli, *Development of Corporate (Trade) law in Georgian and Germany* (Tbilisi: Tobalis, 2007), 51 et. seq. (In Georgian).

74 For example: Corporate governance (control of enterprise), which in modern understanding is totally strange for old trade law. See: Corporate

of the state into market structure or is depicted in correction of market results. The traditional motive for that is the implementation of economic-political aims based on public interest[75].

Unconditional justification of motive for regulating law with the purpose of economic growth would have been a mistake. When the motive is bowelled because of the reasonableness of deregulation, this creates doubt in the post-Soviet country that only restricted part of the society benefits from liberalization of economy[76]. In this regard, as the example of „confusion" of systems and understanding wrong content we may name the protection of capital, and, in general, issues of capitalization in the European (supranational) and USA law. Thus, in these two systems different concepts of protection of capital operate, however, in terms of solvency of the corporation, implementation of activity of the society and preservation of material substance for achieving purpose and results of protection of assets of third party these two systems are quite strict. But there are diverse ways and means of reaching the goal selected within these two systems. Both of them have supporters and opponents independently[77], but overall both systems express the paradigm of material sustainability of the corporation properly and on purpose. The main institute, which is remarkable in this regard, is an *intangibilite du capital*, that on the one hand is recognized and operates as supranational binding regime for EU member states, and on the other hand, is recognized and established on national level with regard to the legal form of the limited liability company (for example Germany, Austria). The concept of minimal mandatory statutory capital was subject to never ending discussion[78], however it's repealing, especially after so called Brexit[79], shall not be on the agenda on the European level anymore. Statutory capital is the institute developed as a result of European tradition and is related to the principle of „caution, foresight" and category of „respectful trader". Legal person which enters into private law

Governance and Responsibilities of Managers in the Corporate Law, 485.

75 Let us say that regulation of capital market, which ensures its functioning and protection of interests on legislative level.

76 Evgeny A. Sukhanov, „Problemy Korporativnykh Otnosheny v Proekte Novoy Redaktsii Grazhdanskogo Kodeksa Rossiyskoy Federatsiy", [in:] *Grazhdanskoe Pravo i Korporativnie Otnasheniya* (Moskva: Almati, 2013), 51-64.

77 Difference in opinions is discussed: Giorgi Jugheli, *Protecting capital in the Joint Stock company* (Tbilisi: Siesta, 2010), 121 et seq. (In Georgian).

78 See for example: *Burduli, Basics of Corporate law, Volume* I, 142, et. seq.

79 Because Great Britain was the major initiator of termination of this institute.

relations with assets affiliated thereto, is falling under special norms of publicity and protection of civil turnover of the European law. Legal person in terms of solvency is concerned with the increased risk of caution and foresight for third parties, which cannot be neutralized in the civil turnover. Therefore, the law must provide it with mandatory legal material sustainability, in order to ensure that this important social creature will reach its goals and tasks in a manner that interests of third party are not damaged. Any way to minimize this risk. That is why, according to the European concept of protection of the capital the abovementioned paradigms are taken, which protects corporation from its creditor, and creditor from unjustified solvency risk of the society.

In the American law, despite the fact that in the end of 19th century and beginning of the previous century in most states the system of statutory capital was still remaining, after some time it was left in past[80], as far as the concept of protecting the capital developed in other direction. As a ground for inspiration the following concept was taken in the US law[81]: the main task of the capital of the corporation in US law is not absolute orientation on query of creditor, but rather dichotomy[82] of dividing internal assets of the society among partners, which has a function of hindering, obstructing insolvency. As for the protection of queries of third parties, creditors of a corporation – this, as a rule, mostly happens on contractual basis, that is by considering means of safeguarding query of creditor in the contract stipulated therewith, by which the guarantee of satisfying his/her query is created. However, in this case we must agree with the position of Sukhanov that in practice it is managed by such strong creditors as banks, financial-credit institutions, strong big corporations, and relatively weak creditor – consumer in this regard mostly is not protected[83]. Shortly, despite the difference between concepts in birth legal orders the result – to protect solvency of the society and ensure protection of interests of third parties – is completely reachable, which may not be said on the Georgian law „after reception" based on liberal fundaments. That is why there was mentioned above the „exhaustion" of the motive, more correctly of the norm from the content. Transposing norm from foreign legal order blindly is related to many difficulties, however, considering the legal nature of the transplant, it may still be functional and viable. And when the basis for implementation of reform and amendment of legislation is just incorrect perception and understanding of institute, the reform will never reach its goal,

80 Briefly on „Financial Constitution", or financial structure in USA: Hartwin Bungert, *Gesellschaftsrecht in den USA,* 3rd ed. (München: Rehm, 2003), 35 and ff.

81 Compare: Evgeny A. Sukhanov, *Sravnitel'noe korporativnoe pravo* (Moskva: Izd. Statut, 2015), 152 et. seq.

82 So called distribution.

83 Sukhanov, *Sravnitel'noe korporativnoe prawo*, 162.

which is prerequisite of improper legal system. Georgian law faced the described occasion as a result of „grand" reform of 14 March 2008: One system (European-German) was substituted with allegedly American without analyzing anything and without studying similar institutes in the American law, as well as without studying particularities existing in the exported country. As a result, it turned out that with regard to this particular institute there is a need for new amendment, not mentioning the necessity to implement statutory capital and European concept of protecting this capital into national legislation, considering also the agenda of the Association Agreement.

Moreover, it must be noted that in the American law, along with all abovementioned, the doctrine of pervasive responsibility is more developed comparing to European[84]. This decreases risks of satisfying personal debts of creditor, when in Georgia (since 2008) before 2015 courts did not even recognize personal and subsidiary responsibility of the partner of corporation before third parties[85]. The existing judicial practice was developed in nearest past[86], which must be welcomed.

In a word, economic system does not exist without the legal one[87]. The law shall not take non-systemic form. It is necessary to created golden

84 Piercing the corporate veil. Regarding this issue with indication to judicial practice and discussion, for example: Allen, Kraakman, Subramanian, *Commentaries and Cases on the Law of Business Organization*, 151-161.

85 Despite introduction of this institute to Georgian legal reality on academic level (Irakli Burduli, „Statutory Capital and its functions", [in:] *Theoretical and practical issues of modern corporate law,* ed. Gia Liluashvili, (Tbilisi: Meridiani, 2009) 235 et seq. (In Georgian). Regarding this institute in Georgian see also Nona Zubitashvili, *Responsibility of partner for obligations of the corporation during insolvency of the society* – exception from the principle of restriction of responsibility, Dissertation (Tbilisi: Publishing house of the Tbilisi state university, 2016) (In Georgian). It stayed unused in judicial practice. However, legal condition existing with regard to Ltd. „Center point" should have been exhausted with the civil lawsuit of pervasive responsibility (even along with the criminal processing).

86 In this regard we must outline two decision of the Supreme Court of Georgia from 2915, which developed judicial practice: #as-1158-1104-2014; #as-1307-1245-2014.

87 Development as united phenomenon is unimaginable without various social fields. Therefore, developed country need developed law, which will not be distant from the whole process. Amartya Sen, *What is the Role of Legal and Judicial Reform in the Development Process, Rede auf der Global Conference on Legal and Traditional Reform* (Washington DC:

middle between regime to be regulated and re-regulated, which represents complex, but primary goal of the state.

It is important to develop statutory capital as well. It gives partners internal corporate freedom, however, we must agree with Chanturia's opinion that „without legislative orientation and framework-conditions it will be difficult to develop autonomy of comprehensive capital"[88]. The aim of imperative norms is protection of interests and security of participants of legal relations[89]. During establishment of each imperative norm, the attention must be paid to the purpose which is targeted by the legislator with its adoption. This must be the starting point of the reform, when it aims at implementing such corporate principles, the amendment of which is inadmissible by the freedom of entire statutory capital.

Establishment of legislative norms (to be regulated) is necessary also for implementation of rights and obligations of partners. Regulation of calling for partners' meeting and conducting it, division of competences (especially in the joint stock company), issues of annulment and voidability of the decision made at the meeting became critical for post-Soviet Georgian law, as non-existence of legislative and contractual norms regulating internal corporate relations creates internal corporate deadlocks. Their unsettled state obstructs velocity of investments and, in general, effective management of the company. That is why the current daft law „on Entrepreneurs" has purpose of detailed regulation of these issues as well, which is considered positively in terms of evaluation of predictable economic outcomes of the draft law (RIA – Regulatory Impact Assessment)[90].

6. Instead of Conclusion

For applying the law after reception in the „recipient" country the comparative law still remains to be an important component. The comparative law cannot be considered as independent method of interpretation for the Georgian executor of the law, however, in the process of application of the law it will carry out function of source of studying law and norm, which obviously will be prerequisite of proper law application. Moreover, it must be mentioned that the latter impacts the appropriate flow of the reception process

2000), 8, cited in: *Knieper,* Rechtsreformen entlang der Seidenstrasse, 20.

88 Chanturia, „Statutory autonomy in the Corporate Law", 562 (In Georgian).

89 Ibidem.

90 See Explanatory note on the draft law of the law "on Entrepreneurs". https://matsne.gov.ge/ka/document/view/4962987?fbclid=IwAR3HYFK5dWlF6vpxHx3ZWNIx_FqMzC3nBWAKTBNKTFYIIgshLNeMm4agqA&publication=0. [accessed:12.03.2021].

greatly, as it may serve as a milestone inspiring formation of legal thinking, developed legal education, development of cautelary and judicial practice. In terms of purposeful flow of this process and reaching positive outcome, it is also important to receive international cooperation and form common system of national law by the participation of foreign experts, with joint efforts. However, international cooperation must not become a „process going down from above", when the reception process becomes similar to imposed paradigm by ignoring political-socio-cultural phenomena. International cooperation must an attempt of bringing local requirement and wishes in compatibility with European standards and principles, which makes post-Soviet corporate law, on the one hand complete member of the European law family and, on the other hand, preserves (establishes) national originality and particularity. In this regard, obviously it is necessary to cooperate on all levels of legal institutions: starting from universities, ending with the judicial system. It is also important to create literature in the field in Georgian language, which will be based on legal dogmatics established and developed in the country of reception to which reception is targeted. Otherwise, it may become difficult to perceive, understand and apply the receipted norm/law. Refusing the legal system established as a result of reception of the European law for reaching short-term economic effect, overall, endangers development, as legal norms transplanted into national legislation are not carrying effective content. Thus, it must be welcomed that in the present Georgia the accent is still put on the reception of the European (written) law, which will give to the country organized, unified and well thought legal system. And this is a prerequisite for development of corporate economy.

Bibliography

Ajani Gianmaria, „By Chance and Prestige: Legal Transplants in Russia and Eastern Europe" *American Journal of Comparative Law*, No. 1 (1995): 93-117.

Allen William T., Kraakman Reinier, Subramanian Guhan, *Commentaries and Cases on the Law of Business Organization,* 3rd ed. Wolters Kluwer, Aspen Publishers, 2009.

Arlt Marie-Agnes, [in:] *AktG Kommentar*, ed. *Wulf Goette*, *Mathias Habersack*, *Susanne Kalss,* 5th ed.. München: C. H. Beck, 2019.

Basedow Jürgen, „Georgien und die Europäisierung des Privatrechts", [in:] *Transformation durch Rezeption?*, ed. Eugenia Kurzynsky-Singer. Tübingen: Mohr Siebeck 2014.

Bregvadze Lasha, „Legal culture between globalism and localism: for functional definition of legal transfers" *Herald of the T. Tsereteli State and Law Institute*, No. 1 (2006): 5-37.

Bungert Hartwin, *Gesellschaftsrecht in den USA*, 3rd ed. München: Rehm, 2003.

Burduli Irakli, ,,Nekrorezeption in Transformationsgesellschaften", [in:] *Dogmatik im Dienst von Gerechtigkeit, Rechtssicherheit und Rechtsentwicklung, Festschrift für Hans Prütting zum 70*, ed. Moritz Brinkmann, Barbara Völzmann-Stickelbrock, Daniel Oliver Effer-Uhe, Sabine Wesser, Stephan Weth. 3-15. Köln: Carl Heymanns, 2018).

Burduli Irakli, „Das georgische Gesellschaftsrecht: Quo Vadis?! Eine kurze Darstellung der Reformen und des Refrombedarfs im georgischen Unternehmensrecht", [in:] *Rechtsvergleichung und Privatrecht im deutsch--georgischen Diskurs*, Vol. 14, ed. Tiziana J. Chiusi, Irakli Burduli. 1-25. Saarbrücken: Jurisprudentia Saraviensis, Alma Mater, 2019.

Burduli Irakli, „Statutory Capital and its functions", [in:] *Theoretical and practical issues of modern corporate law,* ed. Gia Liluashvili. 208-262. Tbilisi: Meridiani, 2009.

Burduli Irakli, *Basics of Corporate Law,* Vol. I. Tbilisi: Meridiani, 2010.

Burduli Irakli, *Basics of Corporate Law,* Vol. II. Tbilisi: Meridiani, 2013.

Burduli Irakli, *Development of Corporate (Trade) law in Georgian and Germany*. Tbilisi: Tobalis, 2007.

Burduli Irakli, Giorgi Makharoblishvili, Demetre Egnatashvili, Giorgi Ebanoidze, *Capital Market's capacity to function: existing reality and necessity of reform.* Tbilisi: Lawyers' World, 2017.

Casper Matthias, ,,Sharia Boards and Corporate Governance", [in:] *Festschrift für Klaus J. Hopt, zum 70*, ed. Stefan Grundmann, Brigitte Haar, Hanno Merkt & et al. 446-477. Berlin: De Gruyter, August 2010.

Chanturia Lado, „Chancen und Schatten des Self-Enforcing-Modells im postsowjetischen Aktienrecht" *Zeitschrift für Wirtschaft und Recht in Osteuropa*, No. 4 (2009): 97-103.

Chanturia Lado, „Das neue Zivilgesetzbuch Georgiens: Verhältnis zum deutschen Bürgerlichen Gesetzbuch", [in]: *Aufbruch nach Europa – 75 Jahre nach Max-Plank Institut für Privatrecht*, ed. Jürgen Basedow, Ulrich Drobnig, Reinhard Ellger, Klaus J. Hopt Hein Kötz, Rainer Kulms, Ernst-Joachim Mestmäcker. Tübingen: Mohr Siebeck, 2001.

Chanturia Lado, „Die Europäisierung des Georgischen Rechts – Blosser Wunsch oder grosse Herausforderung?" *Zeitschrift für ausländisches und internationales Privatrecht*, I 74 (2010): 154-181.

Chanturia Lado, „Law on Entrepreneurs and formation of the Corporate law", [in:] *Anniversary Collection of Sergo* Jorbenadze. Tbilisi: Law, 1996.

Chanturia Lado, „Main directions of the reform of law on »Entrepreneurs«", [in:] *Historical profiles of legal and political thinking*, Vol. III. Tbilisi: Meridiani, 2015.

Chanturia Lado, „Statutory autonomy in the Corporate Law", [in:] *Profiles of history of legal and political thinking,* ed. Gocha Feradze, Vol. I. Tbilisi: Meridiani, 2010.

Chanturia Lado, „Voraussetzungen einer erfolgreichen juristischen Zusammenarbeit aus der Sicht der Transformationsgesellschaften", [in:] *Rechtstransfer und internationale rechtliche Zusammenarbeit, Deutsche und Japanische Erfahrungen bei der Kooperation mit Osteuropa und Zentralasien,* ed. Herbert *Küpper*, Wolfgang *Brenn*. Wien: Peter Lang, 2010.

Chanturia Lado, *Corporate Governance and Responsibilities of Managers in the Corporate Law*. Tbilisi: Law, 2006.

Charles H. Fairbanks, „Georgia's Rose Revolution" *Journal of Democracy*, No. 2 (2004): 110-124.

Dauner-Lieb Barbara, *[in:] AktG Kommentar*, ed. Martin *Henssler*, Lutz *Strohn,* 5. ed. München: C. H. Beck 2021.

Dobó László, Kuijpers Lambert, „Countries with Economies in Transition", [in:] *Protecting the Ozone Layer*, ed. Philippe G. Le Prestre, John D. Reid, Thomas E. Morehouse. New York: Springer, 1998.

Ewald William, „Comparative Jurisprudence (II)" *American Journal of Comparative Law*, No. 4 (1995): 489-510.

Fleischer Holger, „Legal Transplants im deutschen Aktienrecht" *Neue Zeitschrift fu̇r Gesellschaftsrecht*, 24 (2004): 1129-1137.

Häberle Peter, „Theorieelemente eines allgemeinen juristischen Rezeptionsmodells" *Juristen Zeitung*, No. 21, (1992): 1033-1043.

Häberle Peter*, Europäische Rechtskultur*. Baden-Baden: Nomos Verlagsgesellschaft, 1994.

Japaridze Sergi, *Trade Law*. Tbilisi: Publishing House Kordzadze, 2019.

Jibuti Nino, „Interview with professor Pastrich" *Review of Private Law*, No. 1 (2015): 138-142.

Jorbenadze Sandro, „Main problems of future Civil Code of the Republic of Georgia", [in:] *Law reform in Georgia,* ed. Sandro Jorbenadze, Sandro Jorbenadze, Rolf Knieper, Lato Chanturia. Tbilisi: 1994.

Jugheli Giorgi, *Protecting capital in the Joint Stock company*. Tbilisi: Siesta, 2010.

Kandelaki Giorgi, „Georgia's Rose Revolution. A Participant's Perspective" *US Institute of Peace,* July (2006), 1-12. www.jstor.org/stable/resrep12267.

Kekelia Mikheil, *Crimes against human life, health, honor and dignity in the ancient Georgian law*. Tbilisi: Meridiani, 2015.

Khamidov Khalifabobo, „Die Rechtsreform in der Republick Tadschikistan", [in:] *Wege zu neuem Recht*, ed. Mark Boguslavski, Rolf Knieper. Berlin: Arno Spitz, 1998.

Khubua Gia, „Institutional balance of power", [in:] *The Constitution of Georgia after 20* years. 103-117. Tbilisi: Open Society Georgia Foundation, 2016.

Kindl Johann, *Gesellschaftsrecht,* 2. ed. Baden-Baden: Nomos, 2019.

Knieper Rolf, „Das neue Turkmenische Zivilgesetzbuch im Überblick" *Zeitschrift für Wirtschaft und Recht in Osteuropa*, No. 2 (2002): 53-55.

Knieper Rolf, *Juristische Zusammenarbeit: Universalität und Kontext*. Wiesbaden: Universumverlag, 2004.

Knieper Rolf, Lado *Chanturia*, Hans-Joachim *Schramm*, *Das Privatrecht im Kaukasus und Zentralasien. Bestandsaufnahme und* Entwicklung. Berlin: BWV, 2010.

Knieper Rolf, *Rechtsreformen entlang der Seidenstrasse. Aufsätze und Vorträge während der beobachtenden Teilnahme an einem gewaltigen* Transformationsprozess. Berlin: BWV, 2006.

Koch Jens, [in:] Uwe Hüffer, Jens Koch*, AktG Kommentar,* 15th ed. München: C. H. Beck, 2021.

Kurzynsky-Singer Eugenia, „Wirkungsweise der legal transplants bei den Reformen des Zivilrechts", [in:] *Transformation durch Rezeption?*, ed. Eugenia Kurzynsky-Singer. Tübingen: Mohr Siebeck, 2014.

Lazarashvili Lali, „Law of Georgia on »Entrepreneurs« and problems of modern legislative regulation of the Georgian corporate law", [in:] *Besarion Zoidze Anniversary* Collection, ed. Lado Chanturia, Irakli Burduli. 521-537, Tbilisi: TSU Publishing House, 2014.

Legrand Pierre, „The Impossibility of Legal Transplants" *MJECL*, Vol. 4 (1997): 111-142.

Mattei Ugo, „Efficiency in Legal Transplants: An Essay in Comparative Law and Economics" *IRLE*, Vol. 14 (1994): 3-19.

Milhaupt Curtis J., Hideki Kanda, „Re-examining Legal Transplants: The Director's Fiduciary Duty in Japanese Corporate Law" *American Journal of Comparative Law*, No. 4 (2003): 887-901.

Mögelin Chris, *Die Transformation von Unrechtsstaaten in demokratische Rechtsstaaten. Rechtlicher und politischer Wandel in Mittel- und Osteuropa am Beispiel Russlands.* Berlin: Duncker & Humbolt, 2003.

Nehru Jawaharlal, *The Discovery of India, Jawaharlal Nehru Memorial Fund.* Oxford: Oxford University Press, 1982.

Neru Dzhavakharlal, *Otkrytie Indii*. Moskva: Politizdat, 1989.

Neubürger Heinz-Joachim, „Die deutsche Mitbestimmung aus der Sicht eines international operierenden Unternehmens. Reformbedarf unter Corporate Governance Gesichtspunkten?", [in:] *Hdb Corporate Governance*, ed. Peter *Hommelhoff*, Klaus J. *Hopt*, Axel *v. Werder*, 1st ed. Köln: Verlag Dr. Otto Schmidt, 2003.

Nugzar Surguladze, „Persian Sources of the history of Georgian law (»Dastur Al-Muluq«, »Tazqirat Al-Muluq«)" *Herald of the T. Tsereteli State and Law Institute*, No. 1 (2006): 38-48.

Papava Vladimer, *Economy of Georgia, Reforms and pseudo reforms*. Tbilisi: Intellect, 2015.

Rabel Ernst, „Interationale Zusammenarbeit im Privatrecht" *Zeitschrift für ausländisches und internationales Privatrecht*, No. 4 (1953): 602-607. https://www.jstor.org/stable/27873230?seq=1.

Raiser Thomas, Rüdiger Veil, *Recht der* Kapitalgesellschaft. München: Verlag Vahlen, 2010.

Schalast Christoph, „Rechtsberatung und Rechtsstaat in Transformationsstaaten" *Zeitschrift für Wirtschaft und Recht in Osteuropa*, (2005): 321-325.

Schwartz Herman, *Establishing constitutional justice in the post-communistic Europe*, trans. Ketevan Aleksidze. Tbilisi; Sezani, 2003.

Shevardnadze Eduard, *Thoughts on Past and Future, Memoirs*. Tbilisi: Palitra L, 2006.

Sommermann Karl-Peter, „Deutsch-georgische wissenschaftliche Zusammenarbeit – Ein Erfahrungsbericht am Beispiel der Einrichtung eines Master-Studiengangs "public administration" an der Staatlichen Universität Tiflis", [in:] *Grenzüberschreitende Entwicklungszusammenarbeit*, ed. Laure Ognois. Speyer: Speyerer Arbeitsheft, 2013.

Stalev Stozan, „Transformation des Rechts- und Wirtschaftsordnung in Bulgarien – Probleme und Perspektiven" *Zeitschrift für Europäisches Privatrecht*, (1996): 444-451.

Sukhanov Evgeny A., „Problemy Korporativnykh Otnosheny v Proekte Novoy Redaktsii Grazhdanskogo Kodeksa Rossiyskoy Federatsiy", [in:] *Grazhdanskoe Pravo i Korporativnie Otnasheniya* (Moskva: Almati, 2013).

Sukhanov Evgeny A., *Sravnitel'noe korporativnoe pravo*. Moskva: Izd. Statut, 2015.

Vetter Eberhard, [in:] *Hdb börsennotierte, AG*, ed. Reinhard Marsch-Barner, *Frank* A. *Schäfer*, 2. ed.. Köln: Verlag Dr. O. Schmidt, 2009.

Winter Gerd, Kalichava Koba, „Rechtstransfer und Eigendynamik in Transformationsländer: Das Beispiel der verwaltungsrechtsentwicklung in Georgien" *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, No. 2 (2019): 273-324. https://www.zaoerv.de/79_2019/79_2019_2_a_273_324.pdf.

Zoidze Besarion, *Attempt of getting to know practical existence of the law. Mostly in light of human rights*. Tbilisi: Publishing House of Tbilisi State University, 2013.

Zoidze Besarion, *Reception of European Private Law in Georgia*. Tbilisi: Teaching Center for Publishing, 2005.

Zubitashvili Nona, *Responsibility of partner for obligations of the corporation during insolvency of the society* – exception from the principle of restriction of responsibility, Dissertation. Tbilisi: Publishing House of the Tbilisi State University, 2016.

Zweigert Konrad, Hein Kötz, *Einführung in die Rechtsvergleichung,* 3rd ed. Tübingen: Mohr Siebeck, 1996.