



FORECLOSURE AUCTIONS: LEGAL CONSEQUENCES AND THE CONTINUITY OF RIGHTS IN COMPARATIVE PERSPECTIVE

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ABSTRACT

This article examines the legal consequences of foreclosure auctions, focusing on the continuity and extinguishment of real (in rem) and obligational (in personam) rights encumbering immovable property.

The study identifies ambiguities in Georgian enforcement legislation that have resulted in inconsistent enforcement and registration practices. The most problematic issue concerns obligational rights registered after the creation of a mortgage. In practice, similar cases have produced divergent outcomes: some rights are extinguished following a foreclosure auction, while others continue to encumber the property. This inconsistency undermines legal certainty and affects the interests of creditors, debtors, purchasers, and rights holders.

The research is based on an analysis of Georgian legislation, enforcement practice, legal doctrine, and comparative legal materials, including selected European jurisdictions. It also examines the current Law of Georgia on Enforcement Proceedings and the proposed Enforcement Code.

The article argues that legislative reform is needed to establish clear rules on the continuity of rights following foreclosure auctions. Comparative analysis shows that the legal consequences of foreclosure should depend not only on whether a right is real or obligational, but also on its priority and legal regime. In the Georgian context, rights registered after the mortgage should, as a general rule, be extinguished where enforcement is pursued by a secured creditor, while prior rights should remain in force. Where enforcement is pursued by an unsecured creditor, all registered rights should remain unaffected. This approach would strengthen legal certainty, promote consistency in enforcement practice, and better balance the interests of the parties involved.

INTRODUCTION

The legal consequences of foreclosure auctions constitute one of the most complex and debated issues in modern enforcement and property law. Whenever immovable property is sold through a foreclosure auction conducted within mortgage enforcement proceedings, a fundamental legal question arises: what becomes of the rights encumbering the property after ownership is transferred to the successful bidder? The answer to this question extends beyond a purely procedural matter of enforcement law. It directly affects the balance between creditor protection, property rights, transactional security, and the legitimate expectations of third parties whose rights are attached to the property.

The issue is particularly significant in legal systems where mortgage-secured lending serves as a principal mechanism for financing and credit security. The effectiveness of the mortgage institution depends not only on the creditor's ability to realize its security interest through enforcement proceedings but also on the existence of clear and predictable rules governing the legal consequences of foreclosure sales. Recent European scholarship further demonstrates that mortgage enforcement re-

quires a careful balance between the effective exercise of the mortgagee's enforcement rights and the protection of the debtor's interests, including access to effective legal remedies.¹ Legal certainty in this context is essential for all participants involved in enforcement proceedings. Purchasers acquiring property through foreclosure auctions must be able to determine which encumbrances will survive the transfer of ownership, while rights holders require clarity as to whether their legally established interests will continue or be extinguished following foreclosure.

Within the Georgian legal system, this issue remains particularly problematic. Although foreclosure auctions are frequently used to satisfy mortgage claims, the legal consequences of such sales for rights registered against the property remain insufficiently regulated. In particular, the treatment of obligational rights established after the registration of a mortgage has generated considerable controversy in both enforcement and registration practice. Comparable factual situations have produced inconsis-

1 Bouzora, N. L., Visser, I. (2026). Exploring Proportionality in Mortgage Enforcement Proceedings in The Netherlands: Diverse Perspectives on Balancing Debtor Protection and Legal Remedies. *European Property Law Journal*, 15(1), 4. <https://doi.org/10.1515/eplj-2025-2013>.

tent legal outcomes: in some cases, such rights have been extinguished following foreclosure, whereas in others they have remained effective and continued to encumber the property after its transfer to a new owner.

The persistence of these contradictory approaches reveals structural deficiencies within the existing legislative framework. The applicable legal provisions do not provide a sufficiently clear basis for determining the relationship between mortgage priority and subsequently registered rights, thereby permitting divergent interpretations by enforcement authorities and registration bodies. As a result, legal certainty is undermined, enforcement outcomes become less predictable, and the interests of creditors, debtors, purchasers, and third-party rights holders are placed at risk.

Despite the practical importance of this issue, Georgian legal scholarship has not yet developed a comprehensive doctrinal framework capable of resolving the competing interests arising in foreclosure proceedings. Moreover, the problem extends beyond the Georgian context, reflecting a broader challenge faced by many legal systems: how to reconcile the priority of secured creditors with the protection of rights acquired by third parties. The issue therefore forms part of a wider comparative and theoretical discussion concerning the legal effects of foreclosure on competing proprietary and obligational interests.

Against this background, the central research question of this article is how Georgian enforcement law should regulate the continuity or extinguishment of real and obligational rights following a foreclosure auction, particularly where such rights were registered after the mortgage of the enforcing creditor. In addressing this question, the study examines the legal criteria that should determine the survival or extinguishment of such rights and seeks to identify an appropriate balance between the priority of the secured creditor and the legitimate interests of purchasers and third-party rights holders.

For the purposes of comparative analysis,

the article examines the legal frameworks of Germany and France. The selection of these jurisdictions is based on their relevance to the central research problem and on the existence of developed statutory frameworks governing mortgage enforcement, the priority of competing rights, and the legal consequences of compulsory sales of immovable property. German law provides a particularly relevant comparative perspective because the legal consequences of foreclosure are closely connected with the ranking and priority of rights and with the determination of which rights survive or are extinguished as a result of the forced sale.

French law offers a valuable comparative perspective on the interaction between mortgage enforcement, the protection of rights attached to immovable property, and the specific rules governing compulsory enforcement against such property. The selection of Germany and France therefore enables the study to examine different regulatory approaches within continental European legal systems and to assess how competing interests of secured creditors, purchasers, and third-party rights holders are balanced in the context of foreclosure.

The comparative analysis is not intended to transpose foreign rules directly into Georgian law. Rather, it seeks to identify legal principles and regulatory approaches that may assist in addressing the deficiencies identified in Georgian legislation and contribute to the development of a clearer, more coherent, and predictable framework governing the continuity or extinguishment of rights following foreclosure auctions.

The article argues that legislative reform is necessary to establish a clear and predictable legal regime governing the continuity of rights following foreclosure auctions. It proposes a differentiated approach based on the nature of the enforcement claim and the priority of the mortgage right. According to this approach, where enforcement is conducted for the benefit of a secured creditor, rights registered after the mortgage should, in principle, be extinguished, whereas rights predating the mortgage should

remain unaffected. Conversely, where enforcement is carried out for the benefit of an unsecured creditor, all existing rights should remain in force. Such reform would strengthen legal certainty, enhance consistency in enforcement and registration practice, and contribute both to the doctrinal development of Georgian enforcement law and to broader comparative discussions concerning the relationship between mortgage enforcement, property rights, and the protection of third-party interests.

METHODOLOGY

This research is primarily based on a doctrinal legal approach, supplemented by comparative and qualitative research methods. The doctrinal component of the study involves a systematic analysis of Georgian legislation, legal doctrine, judicial practice, enforcement practice, and relevant aspects of banking practice concerning the legal consequences of foreclosure auctions and the treatment of rights encumbering immovable property. This approach enables the identification of legislative ambiguities, interpretative inconsistencies, and regulatory gaps within the existing legal framework.

The comparative legal method constitutes a central element of the research design. The study examines the currently applicable Law of Georgia on Enforcement Proceedings and the proposed Enforcement Code of Georgia in order to assess whether the proposed legislative framework addresses the deficiencies identified in existing law and practice. The comparative analysis further examines the legal frameworks of Germany and France, selected on the basis of their relevance to the central research problem, particularly the regulation of mortgage enforcement, the priority of competing rights, and the legal consequences of compulsory sales of immovable property. The comparison is functional and problem-oriented: rather than providing an exhaustive account of either foreign legal system, it focuses on the legal mech-

anisms relevant to determining the survival or extinguishment of rights following foreclosure and assesses their potential relevance to the development of Georgian enforcement law.

In addition, the research employs case analysis and comparative evaluation of individual cases. Judicial decisions, enforcement practices, and registration outcomes are examined to identify inconsistencies in the treatment of rights registered before and after the establishment of a mortgage. Particular attention is given to comparable cases in which similar factual circumstances have resulted in different registration outcomes following foreclosure. The analysis of practical cases makes it possible to assess the effectiveness and consistency of existing legal norms and their application in practice.

The study also incorporates qualitative research methods through eleven semi-structured individual interviews conducted over one month (in April 2026) with professionals possessing practical experience relevant to enforcement proceedings. The respondents included enforcement officers of the LEPL National Bureau of Enforcement, private enforcement officers, representatives of the LEPL National Agency of Public Registry and the banking sector. Each interview was conducted on the basis of a pre-designed semi-structured interview guide adapted to the respondent's professional experience and the specific aspects of the research problem relevant to their field. The interviews provided practical insights into the application of the existing legal framework and were aimed at identifying inconsistencies, practical difficulties, and regulatory gaps concerning the legal consequences of foreclosure auctions, particularly the continuity or extinguishment of rights encumbering immovable property. In accordance with research ethics and the principle of confidentiality, the identities of the respondents are not disclosed in the article.

The combination of doctrinal, comparative, case-based, and qualitative methods enables a multidimensional examination of the central research question. This methodological frame-

work makes it possible to identify deficiencies in the existing regulatory regime, assess their practical consequences, evaluate relevant comparative approaches, and develop normative recommendations aimed at establishing a coherent and predictable legal framework governing the continuity or extinguishment of rights following foreclosure auctions.

FINDINGS AND DISCUSSION

1. FORECLOSURE AUCTION AS THE FINAL STAGE OF MORTGAGE ENFORCEMENT

The foreclosure auction of immovable property constitutes the final and most significant stage of mortgage enforcement proceedings aimed at satisfying a secured creditor's claim through the realization of mortgaged assets. A foreclosure auction, as a form of enforcement, first appeared in Georgian legislation in 1999 with the adoption of the "Law of Georgia on Enforcement Proceedings". This term replaced the term "public trading" used in the Civil Procedure Code. Currently, the rules for foreclosure auctions are regulated by the "Law of Georgia on Enforcement Proceedings" and the Order No. 21 of the Minister of Justice of Georgia of January 31, 2011, "On the Approval of the Form, Rule, and Procedures for Conducting a foreclosure auction".

A foreclosure auction is conducted by the National Bureau of Enforcement or another person based on a contract concluded with it, in accordance with the rules established by the "Law of Georgia on Enforcement Proceedings". Since February 2011, the National Bureau of Enforcement of Georgia has operated through an electronic auction system. Foreclosure auctions are conducted and published on the website www.eauction.ge, which enables interested persons to search for and acquire property offered for sale from any location in the world.²

As a rule, the foreclosure auction must be held within one month from the date of seizure of the property.³ Any person may participate in the auction, and it is also important that the identity of the website user and the property acquirer is confidential.

The initiation of a foreclosure auction is preceded by a series of enforcement measures designed to protect both the creditor's interests and the procedural rights of the debtor. Where a mortgage-secured obligation is not voluntarily fulfilled, the mortgagee is entitled to demand the sale of the mortgaged property unless otherwise provided by the mortgage agreement.⁴ Enforcement proceedings commence upon the submission of an enforcement application and an enforceable title⁵ to the National Bureau of Enforcement or a private enforcement officer. Contemporary scholarship also demonstrates that the procedural framework governing mortgage enforcement may itself constitute an important safeguard for the debtor. In some legal systems, residential mortgage enforcement is subject to prior judicial control, reflecting the broader importance of procedural protection in the realization of mortgage security.⁶

"The enforcement officer is obliged to commence enforcement proceedings if the following conditions are met: (1) the statutory time limit for submitting the enforcement document for execution has not expired; (2) the enforcement document complies with the requirements outlined in Article 21 of the Law of Georgia on Enforcement Proceedings, meaning that it has been prepared in accordance with all legal requirements;⁷ and (3) the enforcement fee

Project for the Improvement of the Enforcement System (BESTT), 276-277.

3 Law of Georgia on Enforcement Proceedings, Article 69, Paragraph 1.

4 Civil Code of Georgia, Article 301, Paragraph 1.

5 Law of Georgia on Enforcement Proceedings, Article 25, Paragraph 1.

6 Whitehouse, L., Crampin, C. (2023). Missing in Action? Mortgage Enforcement under Section 126 of the Consumer Credit Act 1974. *Legal Studies*, 43(3), 543. <https://doi.org/10.1017/lst.2023.14>.

7 For the mandatory elements of an enforcement title, see Article 21 of the Law of Georgia on Enforcement

2 Witdehaag, J. (Ed.). (2013). Overview of the Georgian Enforcement System: The Georgian Enforcement System in National and International Context. Twinning

has been paid. It should also be noted that, in certain categories of cases, the payment of the enforcement fee is not required”.⁸ Following the initiation of proceedings, no later than 5 days after the start of the enforcement proceedings, the enforcement officer sends the debtor a proposal for voluntary compliance with the decision, which outlines the legal consequences of initiating enforcement proceedings and the measures to be taken.⁹ If the debtor fails to satisfy the obligation within the statutory period, the enforcement officer proceeds with the preparation of the property for foreclosure sale.

Before the auction, the property is subject to expert valuation, and the enforcement officer conducts a comprehensive examination of the legal status of the asset. This examination includes the identification of all registered encumbrances, restrictions, and rights attached to the property. The Order of the Minister of Justice “On the Approval of the Form, Rule, and Procedures for Conducting a Foreclosure Auction” directly establishes the requirement that holders of continuing rights and holders of real rights registered in the public registry after the enforcing creditor’s claim must be notified in advance about the scheduling of the auction.¹⁰ The public auction will only be held after the aforementioned persons have been informed in accordance with Articles 71-77 of the Civil Procedure Code of Georgia. If the notification cannot be delivered to the addressee, public publication is mandatory. The notification is considered delivered to the addressee on the 7th day after public publication.¹¹

The requirement to disclose rights attached to the property reflects the broader principle of

transparency in enforcement proceedings. An examination of the practice of the National Bureau of Enforcement demonstrates that auction notices generally contain information regarding all registered rights, including both real and obligational rights. Such disclosure is essential, as prospective purchasers must be provided with sufficient information to assess the legal and economic risks associated with the acquisition of the property. Empirical research on the German housing market further illustrates the economic significance of foreclosure sales. Just et al. found that residential properties sold through foreclosure were subject to an average discount of approximately 19 per cent compared with otherwise comparable residential properties sold outside foreclosure.¹²

Nevertheless, a significant practical and legal problem remains unresolved. According to recent enforcement practice, auction notices typically identify the rights registered against the property but do not specify which of those rights will survive foreclosure and which will be extinguished upon transfer of ownership.¹³ However, under current practice, the decision on continuing rights falls within the competence of the registering body.¹⁴ Consequently, potential purchasers are often required to independently assess the legal consequences of acquiring the property, despite the complexity and uncertainty of the applicable legal framework.

This practice raises an important institutional question concerning the allocation of authority between enforcement bodies and registration authorities. More specifically, it remains unclear whether the determination of continuing rights should fall within the competence of the enforcement officer conducting the auction

Proceedings.

8 Qurdadze, Sh., Qurdadze, G., Khunashvili, N., Chkonia, Z. (2018). Comments on the Law of Georgia On Enforcement Proceedings, Part 1. Dani Publishing LLC, 254.

9 Law of Georgia on Enforcement Proceedings, Article 25, Paragraph 7.

10 Order No. 21 of the Minister of Justice of Georgia of January 31, 2011, On the Approval of the Form, Rule, and Procedures for Conducting a Foreclosure Auction, Article 1, Paragraph 5.

11 Civil Procedure Code of Georgia, Article 78.

12 Just, T., Heinrich, M., Maurin, M. A., Schreck, T. (2020). Foreclosure Discounts for German Housing Markets. *International Journal of Housing Markets and Analysis*, 13(2), 143. <https://doi.org/10.1108/IJHMA-12-2018-0106>.

13 Interview with an enforcement officer of the LEPL National Bureau of Enforcement [Interview Date: 10.04.2026].

14 Interview with a representative of the LEPL National Agency of Public Registry [Interview Date: 15.04.2026].

or the registration authority responsible for recording the transfer of ownership. Existing legislation does not provide an explicit answer. In practice, however, the determination of continuity is generally deferred to the registration stage and is treated as a matter within the competence of the registering authority.

Such an approach is difficult to reconcile with the principles of legal certainty and transparency that underpin enforcement proceedings. From the perspective of both the successful bidder and the holders of registered rights, the legal consequences of the auction should be ascertainable before the sale takes place rather than after ownership has already been transferred. Accordingly, legislative intervention appears necessary. The law should expressly identify the authority responsible for determining the continuity of rights and require that information concerning surviving encumbrances be disclosed in auction notices. In particular, Order No. 21 of the Minister of Justice of Georgia should be amended to impose a clear obligation to specify, in advance, which rights will remain attached to the property following foreclosure.

The resolution of this issue at the pre-auction stage would significantly enhance legal certainty, improve the transparency of enforcement proceedings, and better protect the interests of creditors, debtors, purchasers, and third-party rights holders. Moreover, it would reduce the risk of subsequent disputes concerning the legal status of rights encumbering immovable property following a foreclosure sale and contribute to the development of a more coherent and predictable framework for mortgage enforcement in Georgia.

2. LEGAL CONSEQUENCES OF FORECLOSURE AUCTIONS: CONTINUITY AND EXTINGUISHMENT OF RIGHTS

The transfer of ownership resulting from a foreclosure auction fundamentally alters

the legal status of the immovable property and the rights attached to it. Upon the transfer of ownership, the former owner is divested of ownership rights, while the successful bidder assumes the legal position of the previous owner with respect to the possession and use of the property.¹⁵ The new owner of the property sold during enforcement proceedings takes the place of the former owner and becomes a participant in the legal relationship related to the possession and/or use of this property at the moment of transfer of ownership.¹⁶ However, the legal consequences of foreclosure extend beyond the transfer of ownership itself and raise a more complex question concerning the fate of rights encumbering the property.

Real rights are defined by the *numerus clausus* principle, which means that the range of real rights is exhaustively determined by law;¹⁷ there are only as many real rights as are recognized by law. This is in contrast to obligatory rights, which are not exhaustively listed in the law. Real rights include: ownership, construction right (*superficies*), servitude, usufruct, pledge, and mortgage. A characteristic of a real right is its quality of adherence (follow-on effect) and transferability.¹⁸ Rights that do not have priority over the mortgage are cancelled after the sale of the mortgaged property at a foreclosure auction.¹⁹

Georgian legislation differentiates the legal consequences of foreclosure auctions according to the nature of the right encumbering the property, the time of its registration, and the status of the enforcing creditor. Consequently,

15 Law of Georgia on Enforcement Proceedings, Article 75, Paragraph 6.

16 Ibid., Paragraph 5.

17 Zoidze, B. (2003). *Georgian Law of Property*. Second revised and complete edition, Metsniereba Publishing, 5.

18 Ibid., 7.

19 Totladze, L., Rusiashvili, G., Chechelashvili, Z., Shotadze, T. (2018). *Commentary on the Civil Code, Book II: Property Law (Articles 147-315)*, Chanturia, L. (Ed.), Tbilisi: Jurists' World, 587. <https://openlibrary.ge/bitstream/123456789/9494/1/%e1%83%99%e1%83%9d%e1%83%9b%e1%83%94%e1%83%9c%e1%83%a2%e1%83%90%e1%83%a0%e1%83%98%202.pdf>.

the continuity or extinguishment of rights following a foreclosure sale depends not only on the classification of the right as real or obligational but also on the legal basis of the enforcement proceedings.

2.1. Enforcement conducted by an unsecured creditor

Where enforcement is carried out by a creditor whose claim is not secured by a mortgage or pledge, the transfer of ownership through a foreclosure auction does not affect rights registered against the property. Both real and obligational rights remain in force and continue to encumber the property after its transfer to the successful bidder.²⁰ This approach is consistent with the principle that an unsecured creditor cannot acquire, through enforcement, a stronger legal position than that possessed by the debtor.

The analysis of enforcement and registration practice confirms the consistent application of this rule. In all cases examined during the course of this research, registered rights remained unaffected by the transfer of ownership and were transferred together with the immovable property to the acquirer. Accordingly, this aspect of the legislative framework appears sufficiently clear and does not reveal any significant practical or doctrinal difficulties.

2.2. Enforcement conducted by a mortgagee

A different legal regime applies where enforcement is conducted for the benefit of a mortgagee or pledgee. In such cases, the transfer of ownership generally results in the extinguishment of real rights registered after the mortgage of the enforcing creditor, with the exception of tax liens and tax mortgages where specifically protected by law. Rights registered

before the mortgage remain unaffected.²¹ Contemporary property-law scholarship further demonstrates that mortgage priority may operate against competing interests subsequently granted to third parties, although the basis and scope of such priority depend on the applicable property-law framework.²²

The principal difficulty arises with respect to obligational rights registered after the creation of the mortgage. While the Law of Georgia on Enforcement Proceedings expressly regulates the fate of certain real rights, it does not provide a clear and comprehensive framework governing the continuity of subsequently registered obligational rights. This legislative silence has resulted in significant inconsistencies in registration practice.

An examination of enforcement and registration practice over the past decade demonstrates that comparable cases have produced divergent outcomes. In some instances, registration authorities have cancelled obligational rights registered after the mortgage, whereas in others such rights have remained in force and continued to encumber the property following foreclosure. This inconsistency persists despite the absence of any substantial changes in the relevant legislative framework. The problem is particularly evident in relation to leases registered against immovable property, which formed the primary focus of the empirical component of this research.

An interesting perspective on this issue is offered by the common-law approach. Under this approach, a mortgage is generally not bound by a lease granted by the mortgagor after the creation of the mortgage without the mortgagee's consent, reflecting the principle of mortgage priority. Consequently, in the event of foreclosure, such a subsequently created lease may be terminated. This approach is based on the view that a mortgagor should not be able to

20 Law of Georgia on Enforcement Proceedings, Article 75, Paragraph 4.

21 Ibid.

22 Nair, A. (2022). Property, Priority and Apportionment: The Case of the Acquisition Creditor. *The Cambridge Law Journal*, 81(1), 139. <https://doi.org/10.1017/S0008197321001070>.

impair the effectiveness of a pre-existing mortgage by subsequently creating rights that interfere with the mortgagee's security.²³

A similar priority-based approach can also be found in contemporary continental European scholarship. In the context of mortgage enforcement, rights created over the property after the constitution of the mortgage may become non-opposable to the purchaser following foreclosure, while subsequent encumbrances may be cancelled as a consequence of enforcement.²⁴ In particular, where a lease is created after the mortgage, the enforcement of the prior mortgage may result in the lease ceasing *ipso iure*. More broadly, this approach treats both personal and real rights created after the mortgage as subject to the enforcement power arising from the pre-existing mortgage.²⁵

2.3. Enforcement conducted by financial institutions

The legal consequences of foreclosure are further modified where enforcement is conducted by certain categories of financial institutions. Under Georgian law, special rules apply where the enforcing mortgagee is a commercial bank, microbank, microfinance organisation, insurance undertaking, securitisation special purpose entity, or another financial institution recognised by the relevant legislation. In such circumstances, the transfer of ownership may also result in the extinguishment of tax liens or tax mortgages registered after the mortgage of the enforcing creditor.

Rights registered before the mortgage remain unaffected.²⁶

However, the analysis of cases obtained from the National Bureau of Enforcement and the National Agency of Public Registry demonstrates that the treatment of obligational rights remains inconsistent even within this special regime. In practice, rights registered after the mortgage are sometimes transferred together with the property and sometimes extinguished following foreclosure. Significantly, this divergence cannot be explained by any identifiable factual or legal distinction between the cases. Rather, it appears to stem from differing interpretations adopted by registration authorities in the absence of an explicit legislative rule governing the continuity of obligational rights.

The uncertainty is further reinforced by the interaction between enforcement legislation and the Law of Georgia on Public Registry. Article 11(4) of the Law of Georgia on Public Registry provides that registered data concerning certain rights, including lease and rent, are transferred unchanged to the new owner unless Georgian legislation provides otherwise.²⁷ The Law of Georgia on Enforcement Proceedings may constitute such a legislative exception. Nevertheless, because enforcement legislation does not expressly regulate the legal consequences of foreclosure for obligational rights registered after a mortgage, the precise scope of this exception remains unclear.

A related doctrinal issue concerns the relationship between Article 75 of the Law of Georgia on Enforcement Proceedings and Article 572 of the Civil Code of Georgia. Pursuant to Article 572, where a lessor transfers ownership of leased property to a third party, the acquirer assumes the position of the lessor and succeeds to the rights and obligations arising from the lease relationship. Some commentators have suggested that this provision supports the

23 Abdulrahman, S. T., Juwah, A. (2024). The Legal Threshold of Rights and Liabilities of the Mortgagor, Mortgagee, and Lessee of a Mortgage Property in Relation to the Validity of a Lease. *International Journal of Law and Society*, 7(4), 146. <https://doi.org/10.11648/j.ijls.20240704.11>.

24 Del Olmo García, P. (2022). Ejecución de la hipoteca y arrendamiento para uso distinto del de vivienda: una explicación real. (Mortgage Enforcement and Lease for Non-Residential Use: A Property-Law Explanation). *Anuario de Derecho Civil*, 75(4), 1692. <https://doi.org/10.53054/adc.v75i4.9797>.

25 Ibid., 1706.

26 Law of Georgia on Enforcement Proceedings, Article 75, Paragraph 4.

27 The Law of Georgia on Public Registry. (2008). Article 11, Paragraph 4. Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/20560?publication=36>.

continuity of lease rights following foreclosure.

Such an interpretation is unpersuasive. Article 572 regulates cases of voluntary alienation by the owner of the leased property, whereas foreclosure auctions constitute a special form of compulsory transfer governed by the rules of enforcement law. Accordingly, the legal consequences of a foreclosure sale cannot be determined solely by reference to the general provisions of lease law. Rather, they must be assessed within the framework of mortgage priority and the specific objectives of enforcement proceedings. Consequently, Article 572 of the Civil Code should not be regarded as contradicting the Law of Georgia on Enforcement Proceedings, which operates as a *lex specialis* governing the effects of foreclosure on rights encumbering immovable property.

3. THE DRAFT ENFORCEMENT CODE AND THE NEED FOR LEGISLATIVE CLARIFICATION

The development of the draft Enforcement Code represents an important attempt to systematise and modernise Georgian enforcement law. Following several years of preparatory work, the Ministry of Justice of Georgia initiated the draft Law of Georgia on the Enforcement Code as the first unified legislative act in the field of enforcement. The draft Code was submitted to the Parliament of Georgia on 22 February 2021 and was adopted at the first reading. Although preparations for the second reading were subsequently undertaken, the adoption of the Code has, for the time being, been postponed indefinitely.

For the present research, Article 188 of the draft Enforcement Code is of particular significance, as it regulates the legal consequences of the transfer of ownership over immovable property acquired through a foreclosure auction. The proposed provision seeks to determine which rights registered against immovable property remain in force and which rights are extinguished following the foreclosure sale.

Compared with the currently applicable Law of Georgia on Enforcement Proceedings, the draft Enforcement Code modifies the legal consequences of enforcement conducted for the benefit of an unsecured creditor. In particular, it provides that where enforcement is carried out by a creditor whose claim is not secured, real rights registered in the Public Registry remain unchanged despite the transfer of ownership resulting from enforcement. However, by referring only to real rights, the draft provision creates a new ambiguity concerning the fate of registered obligational rights. If adopted in this form, the provision may disrupt the existing uniform practice under which all registered rights, both real and obligational, remain in force where enforcement is conducted by an unsecured creditor.

For this reason, the approach reflected in Article 75(4) of the current Law of Georgia on Enforcement Proceedings should be preserved in substance. The draft Enforcement Code should expressly provide that, in cases of enforcement by an unsecured creditor, all registered rights continue to encumber the property following the foreclosure sale. Such a formulation would be consistent with the legal position of unsecured creditors, who lack priority over registered rights and therefore should not be able to extinguish them through enforcement.²⁸

At the same time, the draft Enforcement Code does not resolve the most problematic issue identified in current practice: the fate of obligational rights registered after the creation of a mortgage where foreclosure is conducted for the benefit of a secured creditor. The draft largely reproduces the existing legislative uncertainty by failing to clarify whether such rights are extinguished or continue to bind the new owner. As a result, the proposed reform risks preserving the very inconsistency that has generated divergent enforcement and registration practices.

Accordingly, Article 188(3) of the draft Enforcement Code should be reformulated as fol-

28 Draft Law of Georgia on the Enforcement Code, Article 188, Paragraph 1.

lows: Where enforcement is carried out by a creditor whose claim is secured by a mortgage, the transfer of ownership shall result in the extinguishment of all real and obligational rights, except for tax liens and tax mortgages where protected by law, that were registered against the property after the mortgage of the enforcing creditor.

Such an amendment would eliminate the existing ambiguity and establish a uniform rule for the treatment of rights registered after the mortgage. It would also align foreclosure consequences with the logic of mortgage priority. A person who acquires an obligational right after the registration of a mortgage is able to verify the existence of the mortgage through the Public Registry and is therefore aware, or should be aware, of the risk that the right may be extinguished if the mortgaged property is sold through foreclosure. This approach serves the legitimate interests of the secured creditor, the debtor, and the acquirer, while also ensuring that third-party rights holders can assess the legal risk at the moment of entering into the relevant legal relationship.

Comparative legal experience supports the need for such clarification. In a comparative perspective, and particularly under German law, the legal consequences of a foreclosure sale are determined not solely by the time at which competing rights were created or registered, but by their priority in relation to the enforcing creditor, the applicable auction conditions, and the specific statutory regime governing the right concerned. This priority-based approach reflects the fundamental function of mortgage security: rights ranking behind the enforcing security should not be permitted to undermine the value or effectiveness of the secured creditor's priority. Accordingly, even certain real rights may be extinguished following foreclosure where they do not enjoy priority over the enforcing security, whereas higher-ranking rights may remain effective and continue to encumber the property. Contemporary comparative scholarship likewise demonstrates that mortgage enforcement cannot be

understood solely as a procedural mechanism for the realization of secured property. Although the primary purpose of mortgage enforcement is to enable the creditor to recover the outstanding secured claim, the enforcement process also involves a range of competing private and public interests.²⁹ Comparative research on European mortgage enforcement systems shows that national enforcement frameworks reflect different approaches to balancing the effectiveness of mortgage security with the protection of other legally relevant interests. This broader comparative perspective is particularly relevant to the present analysis, since the legal consequences of foreclosure for competing rights depend on the interaction between the priority of the secured claim, the applicable enforcement regime, and the protection afforded to third-party interests.³⁰

The German example is particularly illustrative. Although usufruct is traditionally classified as a real right, German law recognises important limitations on its transferability. Section 1059 of the German Civil Code provides that usufruct is not transferable. This demonstrates that the classification of a right as real does not automatically guarantee its survival following enforcement; rather, the decisive factor is the specific legal regime governing the right and its priority in relation to the mortgage.³¹ Although German law differs from Georgian law in its classification of certain rights, the example illustrates that the survival of rights following foreclosure is determined by priority and statutory policy considerations rather than by classification alone.

29 See also Dixon, M. (2021). *Modern Land Law*. Oxford: Routledge, 414. <https://doi.org/10.4324/9781003039808>.

30 Visser, I., Bredeveld, J., Hasnaoui, Y. (2022). Different Models of Forbearance and Mortgage Enforcement Proceedings: Comparing Default Resolution Approaches in Europe. *European Journal of Comparative Law and Governance*, 9(2), 158. <https://doi.org/10.1163/22134514-BJA10032>.

31 German Civil Code. (1896). Section 1059. Federal Ministry of Justice. https://www.gesetze-im-internet.de/englisch_bgb/.

More specifically, under German law, a foreclosure sale does not automatically extinguish all rights attached to the property. Their fate is determined primarily by the ranking of the competing rights and by the statutory auction conditions established under the Act on Enforced Auction and Receivership (ZVG). Section 44 of the ZVG protects rights ranking ahead of the claim on the basis of which enforcement is pursued by requiring them to be taken into account in the lowest bid.³² Under Section 52(1), such a right continues to encumber the property if it is designated to remain effective and is not to be satisfied by payment; otherwise, it is extinguished.³³ Section 91(1) further confirms that rights which are not to remain effective under the auction conditions are extinguished upon the award of the property.³⁴ Accordingly, German law protects higher-ranking rights, which may either remain attached to the property or be satisfied from the auction proceeds, whereas rights that are not to remain effective are extinguished, subject to statutory exceptions.³⁵

Lease and tenancy relationships are subject to a special statutory regime. Under Section 57 of the ZVG, the relevant provisions of the German Civil Code concerning the continuation of lease relationships apply correspondingly to foreclosure sales, with the result that the purchaser generally succeeds to the rights and obligations arising from an existing lease.³⁶ However, Section 57a of the ZVG grants the purchaser a special statutory right to terminate the rental or lease relationship within the statutory

notice period, provided that this right is exercised at the first legally permissible opportunity.³⁷ German case law further confirms that legal changes resulting from the foreclosure award are formally implemented in the land register based on a request from the enforcement court. In a 2021 decision, the Higher Regional Court of Munich held that such a request constitutes the exclusive basis for registering legal changes resulting from the award. This illustrates the institutional connection between the substantive legal effects of foreclosure and their subsequent implementation in the land register.³⁸

French law likewise illustrates the complexity of determining the legal consequences of rights encumbering immovable property following a transfer of ownership. Article 1743 of the French Civil Code protects certain lease rights against subsequent acquirers by providing that, where leased property is sold, the purchaser may not evict a lessee whose lease enjoys the required legal status.³⁹ In the specific context of foreclosure, however, Article L321-4 of the French Civil Enforcement Procedures Code provides that leases granted by the debtor after the act of seizure are not enforceable against either the enforcing creditor or the purchaser, irrespective of their duration.⁴⁰ At the same time, Article 2454 of the French Civil Code reflects the mortgagee's right of pursuit (*droit de suite*), providing that the mortgage follows the immovable property into the hands of a third-party acquirer and that, if unpaid, the mortgagee may pursue its judicial sale.⁴¹ However, in the specific context of foreclosure, Article 2461 of the French Civil Code provides that the

32 Act on Enforced Auction and Receivership (ZVG), Sections 44, Federal Ministry of Justice, Official English Translation. https://www.gesetze-im-internet.de/englisch_zvg/englisch_zvg.html.

33 Ibid., Sections 52(1);

34 Ibid., Sections 91(1);

35 Depré, P. (Ed.). (2024). ZVG: Kommentar [ZVG: Commentary] (3rd ed.), §52 Bestehenbleibende Rechte (Rights Remaining Effective), 655-664. Cologne: RWS-Verlag. <https://doi.org/10.15375/9783814559032-061>.

36 Act on Enforced Auction and Receivership (ZVG), Sections 57, Federal Ministry of Justice, Official English Translation. https://www.gesetze-im-internet.de/englisch_zvg/englisch_zvg.html.

37 Ibid., Sections 57a;

38 Higher Regional Court of Munich (Oberlandesgericht München), Decision of 4 November 2021, 34 Wx 273/21. Zwangsversteigerung: Eintragungsfähigkeit von Änderungen auf Grund eines Zuschlags (Enforced Auction: Registrability of Legal Changes Resulting from the Award), *Monatsschrift für Deutsches Recht*, 76(3) (2022), 194-195. <https://doi.org/10.9785/mdtr-2022-760361>.

39 French Civil Code, Article 1743.

40 French Civil Enforcement Procedures Code, Article L321-4.

41 French Civil Code, Article 2454.

immovable property is purged by operation of law of the mortgagee's right of pursuit.⁴² Article L322-14 of the French Civil Enforcement Procedures Code further provides that, once the purchase price has been paid or deposited and the costs of the sale have been paid, the property is automatically purged of all published security interests attributable to the debtor, with effect from the publication of the title of sale.⁴³ Taken together, these provisions demonstrate that the continuity of rights following foreclosure cannot be determined solely by their classification as real or obligational rights. Rather, the legal consequences depend on the specific statutory regime governing the right concerned, including the rules on the purge of security interests and the opposability of other rights following foreclosure. Furthermore, foreclosure proceedings in France are regulated by the French Civil Enforcement Procedures Code, which establishes specific rules governing the seizure and judicial sale of immovable property. This specialised enforcement framework demonstrates that the legal consequences of foreclosure are governed not only by general rules of property and obligations, but also by specific enforcement rules concerning the purge of security interests, the distribution of sale proceeds, and the opposability of competing rights.⁴⁴ Recent English-language comparative scholarship on French mortgage law similarly highlights the importance of registration-based priority among mortgage creditors and the broader objective of ensuring an efficient system of mortgage security and financing.⁴⁵

Considering the foregoing comparative analysis, the draft Enforcement Code should establish a clear and differentiated framework for

the legal consequences of foreclosure. The German and French approaches, although based on different legal mechanisms, both demonstrate the importance of clearly determining which rights continue to encumber the property and which cease to have effect following foreclosure. Where enforcement is conducted by an unsecured creditor, all registered real and obligational rights should remain in force. By contrast, where foreclosure is pursued based on a mortgage-secured claim, rights registered after the enforcing creditor's mortgage should, as a general rule, cease to encumber the property, subject to expressly defined statutory exceptions. Such a model would reflect the principle of priority, strengthen legal certainty, and promote consistency in enforcement and registration practice.

CONCLUSION AND RECOMMENDATIONS

This research has demonstrated that the legal consequences of foreclosure auctions for rights encumbering immovable property remain one of the most problematic and insufficiently regulated aspects of Georgian enforcement law. Although the existing legislative framework establishes certain rules concerning the continuity and extinguishment of rights following the transfer of ownership, it fails to provide a coherent and comprehensive solution regarding the treatment of obligational rights registered after the creation of a mortgage. As a result, enforcement and registration practice has developed inconsistently, with comparable cases producing divergent legal outcomes. Such inconsistency undermines legal certainty, weakens predictability in enforcement proceedings, and adversely affects the interests of secured creditors, debtors, purchasers, and third-party rights holders.

The research confirms that the principal deficiency of the current legal regime lies not in the regulation of real rights, but in the absence of clear legislative guidance concerning obli-

42 Ibid., Article 2461.

43 French Civil Enforcement Procedures Code, Article L322-14.

44 For a more detailed analysis of foreclosure proceedings in France, see French Civil Enforcement Procedures Code, Articles L311-1, L311-8, L321-1, L321-6, L322-1, L322-14.

45 Zeng, R. (2021). A Comparative Study of the Reusable Mortgage Systems in French Civil Code and Chinese Civil Code. *Journal of Politics and Law*, 14(4), 145-146. <https://doi.org/10.5539/jpl.v14n4p143>.

gational rights registered after the mortgage. The analysis of legislation, enforcement practice, registration practice, and empirical data obtained through interviews with practitioners reveals that the existing ambiguity has enabled differing interpretations by registration authorities, resulting in the absence of a uniform approach to the continuity of such rights following foreclosure sales.

The study further demonstrates that the determination of continuing rights should not be deferred to the property registration stage. The legal consequences of a foreclosure auction must be transparent and ascertainable before the sale takes place. Potential purchasers, creditors, debtors, and rights holders should be able to determine in advance which rights will continue to encumber the property and which rights will be extinguished upon the transfer of ownership. Accordingly, Georgian legislation should expressly identify the authority responsible for determining the continuity of rights and require that such information be disclosed in the foreclosure auction notice.

The comparative analysis demonstrates that the legal consequences of foreclosure cannot be determined solely by the formal classification of a competing right as real or obligational, nor exclusively by the date of its registration. The German legal framework places particular emphasis on the ranking and priority of competing rights, the statutory auction conditions, and the specific legal regime applicable to the right concerned, while French law similarly applies differentiated rules concerning the opposability of leases, the mortgagee's right of pursuit, and the statutory purge of security interests following foreclosure. Although the legal mechanisms employed in Germany and France differ, both systems illustrate the importance of expressly determining, in advance and by law, which rights survive a foreclosure sale and which cease to encumber the property. These comparative findings support the development of a clear and differentiated Georgian framework based on mortgage priority, the status of the enforcing creditor, and the legal nature and

ranking of competing rights.

In light of these findings, the existing legislative framework requires targeted reform. First, enforcement legislation should expressly regulate the legal consequences of foreclosure for obligational rights registered after the creation of a mortgage. Second, the law should require the foreclosure auction notice to specify: (a) which rights will remain attached to the property following the transfer of ownership, (b) which rights will be extinguished, and (c) where relevant, the value of the continuing rights. Such information should be disclosed before the auction rather than determined subsequently during the registration process.

Furthermore, Article 75 of the Law of Georgia on Enforcement Proceedings, or, following its adoption, Article 188 of the Enforcement Code, should be amended to establish a clear and differentiated model governing the continuity of rights. Where foreclosure is conducted for the benefit of a secured creditor, all real and obligational rights registered after the mortgage should, as a general rule, be extinguished, while rights registered before the mortgage should remain unaffected. Conversely, where enforcement is carried out for the benefit of an unsecured creditor, all rights encumbering the property should remain in force.

The implementation of these reforms would eliminate the existing legislative ambiguity, ensure consistency in enforcement and registration practice, strengthen legal certainty, and provide a more balanced protection of the legitimate interests of creditors, debtors, purchasers, and rights holders. More broadly, such reform would contribute to the development of a coherent and predictable framework for mortgage enforcement in Georgia and enhance the effectiveness of the mortgage as a security instrument within the legal system.

Beyond the Georgian context, the findings of this study contribute to the broader comparative legal and academic discussion on the legal consequences of foreclosure and the relationship between mortgage priority and the protection of competing rights. The differenti-

ated legislative model proposed in this article, under which the continuity or extinguishment of rights is determined by the secured or unsecured nature of the enforcing claim and the priority of the relevant right, may also provide a useful analytical framework for other legal systems facing similar uncertainties concerning the treatment of rights following foreclosure sales. In this respect, the study demonstrates that legal certainty in foreclosure proceedings requires not merely the classification of com-

peting rights as real or obligational, but a coherent assessment of their priority, the legal position of the enforcing creditor, and the legitimate interests of purchasers and third-party rights holders. Accordingly, the findings may contribute to the broader comparative debate on how enforcement systems can reconcile the effectiveness of mortgage security with the protection of competing rights and the requirements of legal certainty.

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