CASE LAW REVIEW

Revindication (Restoration) of a Property from Illegal Possession

SOPHIO CHACHAVA*

Under its Decision No 3k/624-02 of 9 September 2002 the Grand Chamber of Tbilisi Supreme Court annulled the Decision of the Chamber for Civil, Entrepreneurial and Bankruptcy Matters of Tbilisi Regional Court, dated 13 February 2002 and made a new Decision on the revindication of the thing from illegal possession. Below is the full text of the Decision of the Grand Chamber and comments on the court opinion displayed in this Decision.

1. Descriptive Part

On 13 August 2001 Teimuraz Kandelaki filed a claim with Tbilisi Isani-Samgori District Court against the joint-stock company IntellectBank and demanded the revindication of a thing, owned by him – a motor vehicle – from the illegal possession of the defendant. The plaintiff gave the following grounds for his claim: he negotiated the sale of the motor vehicle with G.Popiashvili and handed it over to the latter together with the registration certificate under the condition that following payment of the full cost of the motor vehicle, Popiashvili (the buyer) would have been registered as the owner of the car. The next day, using the registration certification of the motor vehicle, G.Popiashvili made a forged General Power of Attorney, that allegedly T.Kandelaki transferred to him the right of disposal of the motor vehicle Mercedes-Benz, owned by T.Kandelaki, the same day pledged the mentioned motor vehicle with IntellectBank as the collateral of a bank loan in amount of USD 8000 and fled away.

According to the plaintiff's explanation he found his car at a car market on 10 March 2001, put on sale by IntellectBank. The plaintiff demanded the revindication from the ownership of IntellectBank of the motor vehicle on the grounds of Article 172 of the Civil Code, which, in his opinion it was in illegal possession of. He had not handed over the motor vehicle to Popiashvili for the latter to pledge it with the bank; neither had he issued the power of attorney for the purpose of pledging the motor vehicle.

The defendant did not admit the claim and explained that he was the bona fide possessor and he legally possessed the disputed motor vehicle. As per the accretion of the defendant, G.Popiashvili lodged the motor vehicle on the grounds of the notarized power of attorney and the bank did not know and could not have known, that the power of attorney was forged.

* Lawyer of the GTZ regional project – Support of Judicial and Legal Reforms in South Caucasian Countries, Lecturer of Tbilisi State University Master's Programme in European Law.

Under the Decision of 24 September 2001 of Tbilisi Isani-Samgori District Court the claim was met: the motor vehicle Mercedes-Benz, registration plates MGM 595, was seized from illegal possession of the joint-stock company "IntellectBank" and was returned to its legal owner T. Kandelaki. The district court based its Decision on Articles 172 I and 186 of the Civil Code.

The representative of the IntellectBank appealed against the above Decision. The appellant demanded the annulment of the Decision delivered with respect to the case and rejection of the plaintiff's demand on the following basis: Tbilisi Isani-Samgori District Court did not apply the law it should have applied, namely, Article 159 of the Civil Code under which the IntellectBank was to be considered as a lawful possessor.

Under the Decision of 13 February 2002 of the Chamber for Civil, Entrepreneurial and Bankruptcy Matters of Tbilisi Circuit Court the appeal of the Intellectbank was met; the Decision of Tbilisi Isani-Samgori District Court, dated 24 September 2001 was annulled and under the new Decision T.Kandelaki's claim was not met as ill-founded.

The Appellate Chamber considered it established that the motor vehicle Mercedes-Benz, registration plates MGM 595, owned by T.Kandelaki was transferred into possession of the potential buyer G.Popiashvili, together with the motor vehicle registration certificate. Through a forged General Power of Attorney, granting the right of disposal of the motor vehicle, the latter pledged the motor vehicle owned by T.Kandelaki with IntellectBank, borrowed USD 8000 from the bank, which he never repaid and fled away. The court also considered it established that a criminal case was initiated against Giorgi Popiashvili on the grounds of Article 180 II (c) and Article 362 II (b) of the Criminal Code. A search was declared as the location of Popiashvili was not established. T.Kandelaki was acknowledged as an aggrieved party of the case, but the criminal case was closed on 22 June 2001.

The Appellate Chamber considered it inadmissible to demand the revindication of motor vehicle from IntellectBank in the case concerned under the motivation that the bank was empowered to own the car. The court applied Article 159 of the Civil Code, under which a bona fide possessor is the one, who lawfully possesses a thing. In the opinion of the Appellate Chamber the joint-stock company Intellectbank lawfully possessed the motor vehicle on the grounds of a pledge agreement made with G.Popiashvili. Based on Article 162 I of the same Code, the Appellate Chamber considered it inadmissible to demand the revindication of the thing from the lawful owner.

In the opinion of the Appellate Chamber upon handing over the motor vehicle and its registration certificate to G.Popiashvili, T.Kandelaki partially abetted the commission of a crime. By virtue of Article 158 I of the Civil Code of Georgia it is supposed that the owner of a thing is a person who possesses it. The court stated that although the motor vehicle registration certificate was issued on behalf of T.Kandelaki, he could have supposed that G.Popiashvili would have used the transfer of the motor vehicle registration certificate to him, i.e. T.Kandelaki failed to display due vigilance. Consequently, the Chamber considered that he was less conscientious than the bank, which

could not have supposed that G. Popiashvili, who possessed the motor vehicle, had its registration certificate and duly drawn up General Power of Attorney, which included the right to dispose the motor vehicle, obtained this power of attorney illegally. Based on the above the court considered that the bank entered into a pledge agreement in full compliance with the law in force and by virtue of Article 261 I was authorised to possess the object of pledge. The Chamber stated that T.Kandelaki was entitled to demand damages from G.Popiashvili and from the notary, due to whose illegal actions he was caused damages.

T.Kandelaki appealed against the above Decision through cassation procedure. The cassator considers that the Decision of the Appellate Chamber is legally ill-founded and demands its annulment and delivery of a new decision with respect to the case concerned.

In the cassator's opinion the court misinterpreted his will, inasmuch as he never wanted to pledge the car – his intention was to sell it. The illegal possessor of the motor vehicle obtained it free of charge. The cassator considers that the motor vehicle was transferred into the possession of the defendant by a non-authorised person on the grounds of a forged power of attorney. T.Kandelaki believes that the absence of the intention to pledge the motor vehicle on his part is proved by fact that the court acknowledged him as an aggrieved party to the criminal case.

2. Motivation Part

Having examined the case file, the grounds of appeal and having heard the explanations of the parties the Grand Chamber of the Supreme Court considers that the appeal should be met due to following circumstances:

Pursuant to Article 411 of the Civil Procedure Code the cassation court makes a decision with respect of a case, when the facts of the case are established by the court chamber without any breach of procedural rules and there is no need for additional study of evidence.

With respect to the case concerned it is considered established that the plaintiff who is the owner of the disputed car, entered into a sales agreement with G.Popiashvili under the condition that the title would have been transferred to the latter only after the payment of the full cost of the car. The plaintiff handed over the motor vehicle and the registration certificate to G.Popiashvili. Using the motor vehicle registration certification, G.Popiashvili made a forged General Power of Attorney that allegedly T. Kandelaki transferred to him the right of disposal of the motor vehicle, owned by the plaintiff, the same day pawned the mentioned motor vehicle with IntellectBank as a collateral of the bank loan in amount of USD 8000 and fled away.

It is established that the notarised General Power of Attorney, on the basis of which G.Popiashvili pledged the motor vehicle with the bank and which is forged.

On 10 March 2001 the plaintiff found his car at an open market for sale by the bank as G.Popiashvili failed to repay the loan.

Both parties to the proceedings agree to these facts and do not dispute them.

The Grand Chamber upholds the cassator's opinion that the Appellate Chamber did not assess the established circumstances accurately from a legal point of view, misinterpreted the law, did not apply the law it should have applied and delivered the ill-founded decision with respect to the case. Consequently the Grand Chamber considers that the appealed decision is to be annulled and as the facts of the case are established without any breach of procedural rules, a new decision is to be delivered.

1) According to Article 172 I of the Civil Code the owner may demand the revindication of the thing from its possessor except for the cases, when the possessor enjoyed the right to possess it.

The right of revindication of a thing from illegal possession is one of the key rights of the owner and this right can be secured through filing a vindication claim. The demand may be met when the following three preconditions exist: first and foremost, there should be an owner of a thing, secondly, there should be a possessor of a thing and thirdly, the possessors should not have the right to possess the thing. Based on the above the plaintiff could have demanded the revindication of his motor vehicle from the defendant (the bank) on the grounds of Article 172 I of the Civil Code, if the motor vehicle was in illegal possession of the defendant.

For the verification of the validity of the claim it should be established in the first place that the plaintiff is the owner and, being an owner, he is entitled to demand the revindication of the thing from other person's illegal possession. This is necessary the more so, as according to the practice established in Georgia a motor vehicle is generally handed over to a buyer not on the grounds of a sales contract, but rather through issuing a General Power of Attorney on behalf of a buyer, which grants the right of alienation of the motor vehicle to the latter. The transfer of a motor vehicle under this procedure does not cause the transfer of title to it to the buyer.

The plaintiff is the owner of the disputed motor vehicle. This is also proved by the fact that the motor vehicle is registered on behalf of the plaintiff with the traffic police. Registration with the traffic police is not a mandatory precondition for the transfer of a title to a movable thing (including motor vehicles). Registration with the traffic police is not a civil-law act. It rather belongs to the administrative law, but may serve as evidence that a motor vehicle is owned by a person who is registered with the traffic police.

The fact that the plaintiff is the owner of the motor vehicle becomes disputable after the origination of relations between the plaintiff and G. Popiashvili (buyer). Namely, it should be verified whether the plaintiff lost the title to the motor vehicle after entering into agreement with the buyer.

According to the explanation of the plaintiff, he and G.Popiashvili agreed on the sale of the motor vehicle; he handed over the motor vehicle and the registration certificate to G.Popiashvili under the condition that he would have registered the motor vehicle on behalf of the buyer only after payment of the cost of the motor vehicle.

In this case the ground for the transfer of the title to the buyer is the sales agreement, which was to be made in accordance with Article 477 of the Civil Code. Under Article 327 I and II an agreement is considered to be made when parties have agreed upon its every essential condition in the form stipulated for such an agreement.

Under Article 327 II essential conditions are those on which an agreement must be reached on demand of one of the parties. The following may be considered as such a condition: the object of the agreement (motor vehicle), price and the condition to pay, about what, as already established, the plaintiff and G.Popiashvili have agreed. As regards the form of sales of a motor vehicle, the law does not provide for any special form in this respect. Such an agreement may be made even orally. Thus it is possible the sales agreement to be oral in the case concerned.

Entering into a sales agreement means the origin of rights and obligations assumed under the agreement, but it does not yet mean the transfer of titles to the buyer.

Under Article 186 I of the Civil Code for the transfer of title over movable things it is necessary for the owner to hand over the thing on the grounds of a valid right. Hence the following two preconditions are necessary for the transfer of the title over a thing: a valid right (in the case concerned the right of a buyer to demand the transfer of a thing, originating from sales agreement) and actual transfer of a thing (in the case concerned handing over of a motor vehicle to the buyer).

Formally, in the case concerned both preconditions exist: a sales agreement was made between the plaintiff and G.Popiashvili and the plaintiff transferred the motor vehicle into the possession of G.Popiashvili together with the registration certificate. However, the actual handing over of a thing is not enough for the origin of a title to it: under Article 186 II of the Civil Code handing over of a thing into direct ownership constitutes the transfer of a thing to the acquirer. Thus, handing over of a motor vehicle for trial driving does not constitute the handing over of a thing into direct ownership and it should not be qualified as a transfer, envisaged by Article 186 II of the Civil Code. Furthermore, the actual handing over of a thing should aim at the transfer of this into ownership.

Also, according to the explanation of the plaintiff, it becomes evident that the title to the motor vehicle was to be transferred to G.Popiashvili after payment of full cost of the car.

According to the first sentence of Article 188 I of the Civil Code if an alienator conditioned the transfer of a title to a buyer only upon the payment of the cost of the thing, it is presumed that the title will pass to the buyer after full payment of the cost of the thing. Until full payment of the cost of the thing, it is the property of the alienator.

The plaintiff conditioned the payment of full cost of the motor vehicle for G. Popiashvili. The plaintiff's words "that he would register the motor vehicle on behalf of G. Popiashvili after payment of the cost of the motor vehicle" shall be understood in this sense.

In the case of the existence of conditions, provided for by Article 188 of the Civil Code the handing over of a thing to acquirer (buyer) does not mean the transfer of a title to the latter. Thus, despite actual possession of the motor vehicle G.Popiashvili, was not entitled to alienate or pledge it.

Neither the defendant (bank) rejects the fact, that the owner of the motor vehicle is the plaintiff, which is proved by the following: the bank does not claim that the pledgee (G.Popiashvili) was the owner, but rather that he had the notarised power of attorney.

Despite the sales agreement made between the plaintiff and G.Popiashvili, the plaintiff remained the owner of the motor vehicle and he never transferred the title to G.Popiashvili. Thus, the plaintiff, in the capacity of the owner, is entitled to demand the revindication of motor vehicle from illegal possession by virtue of Article 172 I of the Civil Code.

The next issue, which is to be considered, is whether the defendant (bank) is the legal possessor of the motor vehicle.

2) The possession of a motor vehicle by the defendant is based on the pledge agreement by virtue of which a third person (G.Popiashvili) pledged the plaintiff's motor vehicle for the purpose of securing the loan drawn from the bank on the grounds of a notarised power of attorney. G.Popiashvili handed over the plaintiff's motor vehicle to the bank as collateral for the loan.

As far as G.Popiashvili failed to fulfil the obligation undertaken before the bank, i.e. failed to repay the loan, the bank decided to sell the motor vehicle at a car market. Inasmuch as the motor vehicle was pledged on the grounds of a notarised power of attorney, under which the owner (the plaintiff) granted a third person (G.Popiashvili) with the right to pledge, the bank considers, that it is the bona fide possessor and refuses to return the motor vehicle to the plaintiff.

Although the bank actually possesses the motor vehicle, and prima facie, it has the right to do so, for the fair settlement of the dispute it is important to clarify whether it was entitled to possess the motor vehicle concerned.

3) In the case of pledge the legal grounds for possession of the object of pledge is the right to pledge, which originates in compliance with the procedure, provided for by Article 254 of the Civil Code.

The pledger may be either a personal debtor of the pledgee (creditor) or a third person – owner of the pledged thing, who secures the fulfilment of debtor's obligation through his movable thing. A pledger may as well be the person who is not the owner of the object of pledge. However in this case the consent of the owner is required (e.g. Article 264, which in this case may be applied according to the principle of analogy as this Article concerns the pledge of a thing by a person who possesses a thing but is not its owner).

In the case concerned the pledger (G.Popiashvili), as mentioned above, was not the possessor of the motor vehicle. Not being the owner he was not entitled to pledge the motor vehicle. To this end he required the owner's consent, which he did not have.

According to the first sentence of Article 255 I of the Civil Code a movable thing can be pledged according to the procedure, provided for its acquisition. This means that here the law refers to the rule, provided for by Article 186 of the Civil Code, according to which: "for the transfer of a movable thing, it is required the owner to transfer a thing to the acquirer on the grounds of a valid right". Hence, a motor vehicle may be pledged with the bank only on the grounds of a valid right. In the case concerned the valid right is the right to pledge the motor vehicle granted by the owner to the third person (G.Popiashvili), which does not exist. Although the Power of Attorney is notarised, it is still forged. Thus it is groundless to state that upon pledge of the motor vehicle the third person (G.Popiashvili) was declaring the will of the plaintiff (owner). Furthermore, there is no agreement between the plaintiff (the owner of the motor vehicle) and the bank about pledging the thing. Hence the plaintiff did not assume any obligation with respect to the bank about pledging the motor vehicle.

In its counterclaim the bank states that it accepted the motor vehicle as a collateral on the grounds of the notarised power of attorney, consequently it considers that it is a bona fide pledger according to Article 257 of the Civil Code, as it did not know and could not have known that G.Popiashvili was not authorised to pledge the motor vehicle concerned. Also, according to Article 187 of the Civil Code the plaintiff dispossessed the motor vehicle under the latter's own free will.

The fact, that G.Popiashvili submitted the notarised power of attorney to the bank is not decisive due to following circumstances:

Firstly, the Civil Code does not provide for the procedure of mandatory notarisation for the pledge of movable things. By virtue of Article 255 II of the Civil Code the pledgee and pledger may notarise a pledge agreement, but in this case the pledge will originate only after the registration in the Public Register without any need for transfer of the object of pledge into the possession of the pledgee. No such pledge exists in the case concerned.

Secondly, the Civil Code is not familiar with the presumption of accuracy and validity of the notarised power of attorney: a notarised power of attorney does not mean the existence of authorisation of a representative by enabling person. The authorisation should be valid. The bank should have displayed vigilance, necessary for industrial activities; it should have contacted the owner of the motor vehicle and found out from him whether he agreed to the pledge of his motor vehicle with the bank.

According to Article 257 of the Civil Code if the object of the pledge (collateral) is transferred to another person through the transfer of a document and at the time of origination of the pledge, the pledger is in the possession of the thing (rights) concerned without the authorisation to pledge it, the pledgee is deemed to be a bona fide acquirer, provided he did not know and could not have known about this. The application of this provision with

respect to the case concerned is not right as it regulates such pledges when the pledge is exercised not through the physical handing over of the object of the pledge to the pledgee, but rather through the transfer of a document concerning this thing (right). When the owner of wheat pledges wheat, entrusted to a commodity warehouse for safekeeping, with the bank it does not hand over the wheat itself to the bank, but rather a warehouse certificate. The provision provided for by Article 257 of the Civil Code is applicable with respect to pledges executed on the grounds of such instruments. Consequently, it is groundless to prove the bank's good faith on the grounds of Article 257 of the Civil Code.

By virtue of Article 187 I of the Civil Code an acquirer becomes the owner of a thing even if the alienator is not the owner of the thing, but the acquirer is bona fide with respect to this case. The acquirer will not be deemed as such if he knew or ought to have known that the alienator was not the owner. In the case concerned the bank knew that the pledger (G.Popiashvili) was not the owner of the motor vehicle. According to Article 158 I of the Civil Code "it is supposed that the possessor of the thing is its owner". Neither this presumption is applicable as the bank knew that the pledger was not the owner of the motor vehicle. Hence, the possibility of bona fide acquisition on the part of the bank, provided for by Article 187 I of the Civil Code, is groundless as well.

The fact that the owner (plaintiff) dispossessed the motor vehicle at his own free will on the grounds of Article 187 II will not make the bank a bona fide acquirer. The transfer of the motor vehicle into possession of Popiashvili did not aim at its subsequent pledge. The transfer of the motor vehicle to the buyer can be qualified as dispossession of the owner against his free will in some other manner. Thus, the right to pledge never originated. Consequently there are no legal grounds for the bank to possess the motor vehicle. Based on this it can not be considered as a bona fide possessor.

The Grand Chamber considers that the claim should be met. The bank has to return the motor vehicle Mercedes-Benz, registration plates MGM 595, to the plaintiff.

3. Resolution Part

Based on Article 411 of the Civil Procedure Code the Grand Chamber ruled:
To meet the appeal of Teimuraz Kandelaki.

To annul the Decision of the Chamber for Civil, Entrepreneurial and Bankruptcy Matters of Tbilisi Circuit Court, dated 13 February, 2002 and to deliver a new Decision.

To return the motor vehicle Mercedes-Benz, registration plates MGM 595, possessed by the joint-stock company IntellectBank to its owner Teimuraz Kandelaki.

To oblige the joint-stock company IntellectBank payment of the state duty in amount of 1040 GEL of which 70% is to be transferred to the account of the Supreme Court of Georgia 000141107 (code 59) and 30% - to the State budget.

The decision is final and not subject to appeal.

4. Comments

From a systemic point of view the court is quite correct and fair when presenting the so called sub-summation and substantiation, carried out by it, in the motivation part. Non-disputable and disputable circumstances are clearly delimited. Furthermore, the systemic analysis of every presumably applied article is presented together with the separate examination of its every precondition and their comparison with the facts of the case concerned, through qualification. Attention is paid to the preconditions of Articles 172 and 186 of the Civil Code, on which the plaintiff bases his appeal.

According to the explanation of the Grand Chamber, in the first place, it is to be verified whether the plaintiff enjoys the title to the motor vehicle concerned. Under Article 186 of the Civil Code a valid right and actual transfer of a thing are required for the transfer of the title to a movable thing. The Grand Chamber considers, that although the plaintiff made a sales agreement with G.Popiashvili and actually handed over the thing to him, this transfer should not be considered as a transfer provided for by Article 186 II of the Civil Code as far as the sales agreement was made under the condition, that the title would pass to the buyer only after full payment of the cost of the motor vehicle.

The court correctly states that there is evidence of the valid right (namely, the right to demand originating from a valid sales agreement). As regards the actual handing over of the thing, the Chamber considers, that according to external signs there was a transfer of the thing, but this transfer was to aim at the transfer of title to this thing, which did not happen in the case concerned. Consequently, in the court's opinion T.Kandelaki did not lose the title to the motor vehicle.

With a view to inclusive analysis of the Decision concerned it would be reasonable to refer to paragraph 929 of German Civil Code (hereinafter BGB), which regulates the procedure of the transfer of title to movable things. According to Paragraph 929 of BGB for the transfer of a title to a thing there should be the handing over on the one hand (i.e. the actual transfer) and on the other – an agreement on the transfer of title. Handing over is not required when the acquirer is the owner.

Hence the German law identified two preconditions: handing over and agreement on the transfer of title. Consequently, handing over means the actual, physical transfer, while the agreement between the parties specifies that handing over should aim at the transfer of title from one person to another.

Article 186 of the Civil Code states that for the transfer of title to a movable thing, the following is required: a valid right and handing over of a thing (in Part II of this Article the law lists the types of handing over a thing). It is absolutely logical, that a valid right, envisaged by the Civil Code is not present in BGB, as unlike Georgian law German law employs the principle of abstraction, under which the validity of disposal (agreement on the transfer of title) does not depend on the validity of a law-of-obligation transaction, which gives origin to a respective obligation (e.g. a sales contract).

As regards the agreement between the parties concerned on the transfer of title, there is no such precondition in the respective article of the Civil Code (Article 186). Based on the content of the Decision concerned, one should suppose that it is simply omitted. Consequently, the wide sense interpretation of "transfer" by the Grand Chamber, under which one should imply the agreement on the transfer of title, becomes clear in the light of German law, though it would be better if the Georgian Civil Code included the respective specification as well. As far as the current wording of Article 186 II of the Civil Code does not provide for wide sense interpretation of "transfer" as it gives the detailed list of actions which can be regarded as a transfer (transfer into direct possession, transfer into indirect possession through retaining direct possession and transfer of the right to demand the revindication of a thing from a third person) and does not state the purpose of transfer as a mandatory precondition.

The court's argument for maintenance of title by the owner is based on Article 188 which regulates conditioned property. This is the case when an alienator defers the transfer of title until full payment of the price by the acquirer, what according to sales agreement made between T.Kandelaki and G.Popiashvili is beyond doubt. Furthermore, according to Article 92 of the Civil Code a conditional agreement is null and void if the fulfilment of this condition depends on the will of one of the parties to the agreement. It is apparent that there is an inconsistency between Articles 92 and 188 of the Civil Code. Consequently, the conditioned property (when the transfer of title depends on the condition – payment of the price – fulfilment of which depends on one of the parties to the agreement – the acquirer) is to be considered null and void. However Article 2 II of the Civil Code explicitly states that in the case of conflict between general and special rules, provided for by this Code, the special rule should apply. Thus, Article 188 shall be regarded as a special rule, which provides for a different procedure of transfer of property. Consequently the court was right to apply this Article, but it will be desirable to remove this legal deficiency.

The Grand Chamber correctly considers that the actual possessor is the joint stock company IntellectBank and then verifies whether it is a bona fide possessor.

According to Article 255 of the Civil Code the rules set for the acquisition of a thing shall apply to its pledge, namely Article 186 under which a valid right is to exist. As per the explanation of the court such a valid right does not exist, as a valid right should mean the right to alienate.

Consequently, in the case concerned the court misinterpreted the valid right. The valid right should mean the right to demand originating from the pledge agreement. In this case the court is to examine whether there exists a valid pledge agreement. With respect to the validity of the pledge agreement it is to be verified whether the alienator was an authorised person or whether the defendant was a bona fide pledgee.

First of all it is to be verified whether the pledger was the possessor or whether he had the valid authorisation granted by the owner. The fact that G. Popiashvili was not the owner is

beyond doubt. This is also proved by the fact that he made use of a forged authorisation when entering into the pledge agreement, i.e. he entered into the pledge agreement under another person's name, namely on behalf of T.Kandelaki.

Due to the practice established in Georgia motor vehicle sales agreements were mainly made through the so called General Power of Attorney (with a view to tax evasion) and later on they were alienated in the same manner. If we take account of this practice we could suppose that the bank believed in good faith that the alienator was the owner as he was in the possession of the motor vehicle and the registration certificate and he had the General Power of Attorney (the verification of the validity of which did not fall within the mandate of the bank). This is sufficient grounds for the pledgee to acknowledge the pledger as an owner. The fact that the motor vehicle was not registered on behalf of the pledger is of minor importance for the purpose of establishing the title, as according to Article 33a of the Order No. 59 of the Minister of Internal Affairs of Georgia, dated 28 February 2001 On the Procedure and Terms of Registration of Motor Vehicles the registration service registers a motor vehicle in order to enter data in the registration journal and computer database. Under Article 32 submission of the instrument certifying the ownership of the motor vehicle is required upon the registration of a motor vehicle. Thus, the registration of a motor vehicle is only of statistical nature. If the registration were the grounds for the origin of a title, then the submission of an instrument certifying ownership would not have been necessary for registration.

The position of the court, that IntellectBank should have displayed vigilance, necessary for industrial activities, it should have contacted the owner of the motor vehicle and found out from him whether he agreed to the pledge of his motor vehicle with the bank" should not be upheld.

According to Article 3 I of the Law on Notaries a notary exercises state authorisation when performing notarial acts. Thus, casting doubt upon the accuracy and validity of the document issued and certified by him and verification thereof can not fall within the mandate and powers of the parties to private law relations. According to the Georgian legislation a notary is liable for damages caused by his actions. Based on this the defendant (joint stock company IntellectBank) can not be required to verify the content and validity of the notarised power of attorney on the grounds of the principle of vigilance and good faith of an entrepreneur.

Usually the pledge of a movable thing is carried out through the actual handing over of the thing and the Civil Code does not provide for a special form thereof. Consequently it will not be right to demand the verification of the owner of the thing concerned from the pledger and whether the owner wants to pledge the thing. The lawmaker did not provide for any mandatory form for pledging movable things, because it would have caused the serious hindrance and complication of civil circulation.

Based on Article 255 the court correctly considers that Article 186 *et seq.* should apply to the pledge of a thing (namely, the rules provided for the acquisition of a thing).

The court verifies whether Article 187 I of the Civil Code is applicable in this case, according to which an acquirer shall acquire the title to a thing even if the alienator is not the owner but the acquirer is acting in good faith with respect to this fact. According to Part II of the same Article this rule shall not apply to cases when the owner lost the thing, or it was stolen or the owner was otherwise dispossessed of the thing against his will.

The court misinterprets Article 187 II and considers that "Transfer of the motor vehicle did not aim at its subsequent pledge. Transfer of the motor vehicle to the buyer can be qualified as dispossession of the owner against his free will in some other manner". This judgment is wrong as the rule concerning bona fide acquirers applies in cases when the owner transfers a thing into possession (gives for rent, lends, etc.), and the possessor alienates it. Decisive is whether the owner of a thing transferred the thing to a further alienator at his own free will and of minor importance is the purpose of the transfer. If the purpose mattered the institute of bona fide acquisition would have become meaningless, as this rule applies to those cases when one person transfers a thing into the possession of another person and the latter alienates it to a third person, who believed in good faith that the alienator was the owner.

In the case concerned the owner transferred the motor vehicle into possession under the condition of deferral of transfer of title. Account is to be taken of the fact that the motor vehicle and registration certificate were transferred not for a short period, i.e. not for trial driving (what is proved by the description of the facts of the case), but rather for a long period, namely, until full payment of the price of the motor vehicle by the buyer, when the buyer would have acquired the title to motor vehicle as well.

For backing up its arguments the court should have been guided only by Article 187 I. According to this provision a third party should believe in good faith that the alienator is the owner. The court considers that the existence of the power of attorney explicitly demonstrates that the bank was informed about the alienator not being an owner. Consequently, the verification of Article 187 II is meaningless if the preconditions envisaged by Part I of this Article do not exist.

However, according to the established practice the so called General Power of Attorney is regarded as a basic instrument certifying the title to a motor vehicle. Respectively, it is possible to regard the bank as a bona fide pledgee according to Article 187 I if it believed that the alienator was the owner. According to Article 158 I the presumption of being the owner of a thing implies that the possessor of a thing is regarded as its owner. Consequently the fact that the pledger possessed a motor vehicle and the registration certificate, as well as the forged power of attorney are sufficient grounds for the bank to believe in good faith that the pledger was the owner of the thing, except for the case, when he was aware of this (e.g. the pledger informed it about this fact, what is least possible).

Based on the above, it would have been correct for the joint-stock company IntellectBank to be regarded as a bona fide pledgee. In this case the plaintiff would have been authorised to protect his rights through demanding damages from the notary and the pledger.