



Legal Tools for Public Participation in the Environmental Decision Making Process. Case Study: Republic of Georgia as a Developing Country

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ABSTRACT

One of the most important tools for Georgia's democratic development is the involvement of the public in the decision-making process. For the newly independent Georgian society, public participation in the decision-making process in the area of the environment is not a traditional approach. Due to the prolonged Soviet regime, there had been no approaches to public participation in this country. The public needs to be actively and directly involved in Georgia's growing deterioration of the environment. The article draws attention to the fact that there is currently an increase in public participation at various levels, and stages and sets out obstacles that prevent Georgia from developing a high level of involvement by citizens in environmental decisions.

Keywords – decision-making process, democracy, environmental law, public participation, NGO, Georgia

Introduction

A mass and rather radical nationalist movement, aimed at breaking away from the Soviet Union and destroying the Communist political system, emerged in Georgia in 1988, following the liberalization of the policies of Perestroika and glasnost introduced by the new leadership of the Soviet Union. Georgia declared its independence on 26 May 1990. Georgia is no longer an independent state; it is a country that seeks to implement democratic development principles, which means the involvement of public administration, business, and NGOs in decision-making processes.

Public participation may be defined as a process that encourages the general awareness of actions and mechanisms for addressing problems that are being dealt with by competent authorities. Public participation in the decision-making process can help to make these issues more easily accepted. Participation by citizens is an encouragement for the identification of a lasting solution to this problem but entails some level of risk and expense on the part of authorities.

At present, there are three main objectives for the intensive promotion of civil society in Georgia: to promote further democratic development of the country, to catch up with the reforms taking place in the EU, and to ensure environmentally benign implementation of several large-scale projects in Georgia resulting from the increased interest of foreign investors in the geopolitical location of Georgia between East and West.

Georgia is a small country with a population of 3, 716, 900 million and a geographic area of 70 000 square kilometers. There are now approximately 270,000 refugees in Georgia as a result of the conflicts, mostly fleeing from Abkhazia and Samachablo to other regions. This has adversely affected the country's economy. The economy has been severely affected by this movement(Fig.1).



Fig .1 Map of Georgia, source: <https://www.burningcompass.com/countries/georgia/georgia-regions-map.html>

The progress made in this area during recent years has been underlined by the CSO METER 2020 report. The decision-making process is partially implemented, as the report points out, but most participation happens on a hoc basis. Civil society organizations and other individuals may use a number of key instruments for their participation at both national and local levels, e.g. the right to ask questions, submit comments on proposals for legislation, participate in budget processes, etc. [1].

In Georgia, there are significant numbers of major projects involving hydroelectric stations, railway lines, roads, and other infrastructure that will be implemented shortly. Each of these developments is funded by foreign investors and creates additional emissions, increasing the risk of pollution from accidents resulting in damage to buildings and natural monuments with noise and vibration. Public participation is of critical importance in the decision-making process, to ensure that these projects are environmentally and sustainably developed when they are implemented.

Several cases demonstrate that public participation in the decision-making process on environmental issues affects the proposed or planned action and final decisions are acceptable to all major stakeholders: government, civil society, and development organizations [2].

Nevertheless, no consultation is needed concerning the adoption of many legislative acts and strategic documents. Moreover, citizens and civil society organizations have little interest in participating in existing mechanisms. Some cases have been reported during the reporting period where Parliament has adopted several regulations without taking into account civil society organizations and activists' participation. Criticism has been raised of the adoption of a new Georgian Forest Code, which does not provide for any opportunities to participate [1].

1. Current Legal tools for the Public Participation in the Environmental Decision Making Process

1.1. Constitutional rights

The Georgian Constitution, which was adopted in 1995, with hard work from the Greens Movement of Georgia, added three paragraphs (#3, #4, and #5, article 37) on environmental issues. The amended version (2000) of the Constitution's Article 29 includes the right to live in a healthy environment, the right of each citizen to get timely and reliable information about the state of the environment, etc [3].

1.2. National Legal Tools

During the independence of Georgia concerning various environmental issues, legislation on the environment and ratification of International Conventions has been passed by Parliament since 1990. General environmental protection acts or more specific environmental laws, as well as administrative laws and codes set out the rights of participation in decision-making. Only general provisions on participation are usually included in environmental protection legislation since the law does not provide for any further implementing regulations; this is because it provides only vague and ambiguous possibilities.

There are two laws, the Law on Environmental Protection (articles #6 and #7) and, Law on Environmental Assessment Code (articles #12 and #13) give the right of access to environmental decision-making. By these laws, citizens have the right to join and participate in environmental public associations, to participate in the decision-making process and to examine the decision in the light of the protection of the environment, get compensation for damage resulting from the violation of Georgia's laws on environmental protection, and, under a court ruling, demand to change decisions on designing, building, deposition, reconstruction, and use of the units dangerous from an ecological point of view, participate in the EIA process. Environmental NGOs from Georgia participated in the environmental decision-making process as a result of these legal rights.

The international community thus recognized the essential role of public participation in decision making and, over time, all countries have been progressively trying to integrate some measures for Public Participation into their national legislation. However, mandatory requirements to ensure that the public is involved in decision-making have been introduced by all multilateral financial agencies such as the World Bank and International Finance Corporation. These actions will strengthen democracy and improve the environment in those countries. According to the literature review, the legislation on environmental impact assessments is the most common form of such measures, in most cases, particularly in developing countries, although it is clear that countries have different levels of public participation which raises several doubts as to the reliability and credibility of the decisions. The fact that most emerging democracies do not have a history of citizens' engagement in decisions and many legislative deficiencies is still present, while countries with high levels of democracy are much advanced in this respect [4].

The newly adopted Environmental Assessment Code in 2017 included the requirements of the convention “on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters” (hereafter, Aarhus Convention) in the environmental protection approaches and guaranteed public participation in the decision-making process on the environmental issues.

The Environmental Assessment Code regulates EIAs in Georgia. It consists of eight chapters and protects the environment and public health (Fig. 2)

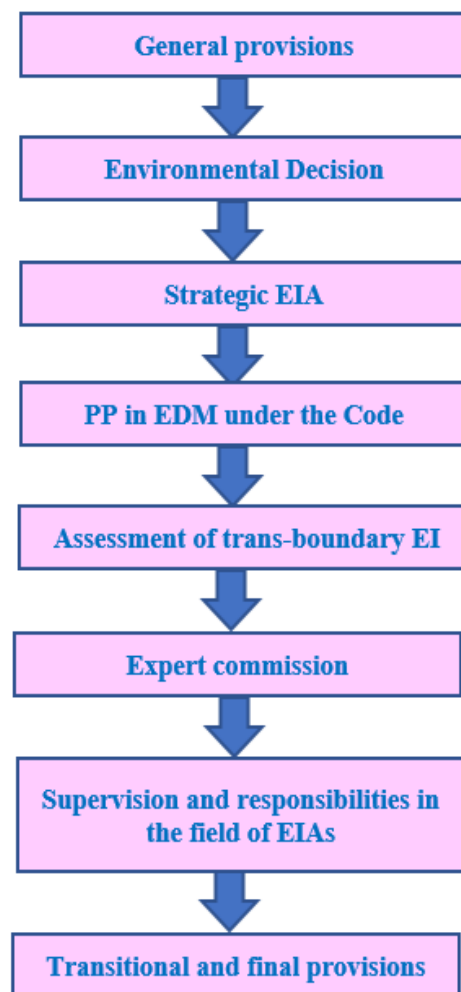


Fig.2 Chapters of the Environmental Assessment Code of Georgia

1.3. International Legal Tool

A Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters was adopted at the Fourth Ministerial Conference on the Environment for Europe in Sofia in 1995, hereinafter referred to as the Convention. The Convention has been drawn up by representatives of NGOs, who are referred to as the Coalition of NGOs. In 2001, the Convention came into force. The Parliament of Georgia adopted that Convention in the same year.

There are three areas in the Convention that envisage the minimum rights of citizens following three areas [5]:

- Right to information

- Right to participate in the decision-making process
- Access to justice

2. Public Participation in the Environmental Decision Making Process - Assessment of the Current Trends

A fundamentally improved environmental impact assessment system and important mechanisms for ensuring public participation in the decision-making process have been introduced by the Environmental Impact Assessment Code of Georgia, in addition to other important issues. Activities, that were subject to EIA have been changed, have been introduced screening and scoping procedures as well as mechanisms have been established for ensuring public participation in screening, scoping, environmental decision-making, and making recommendations relating to strategic documents; the State has been obliged to provide information to the public and organize public hearings, etc.

It had been common practice to sign agreements with investors, concluded through a memorandum of understanding on energy projects over the years. In most cases, the Memorandum of Understanding with investors has been deemed by the State to be incomplete or partially classified and does not comply with information and data transparency standards.

Some problems have not yet been resolved, and the effectiveness of regulation remains a challenge within the period after the implementation of the Environmental Assessment Code. In the case of major infrastructure projects, it is particularly relevant because they are subject to increased risk of human rights abuses, and ensuring that citizens have an active role in decisions has become a priority for them.

The practice shows that active protests of the local community and a lack of trust in government decisions have been associated with large project decisions. The practice demonstrates that, to the greatest extent, legal questions concerning big infrastructure projects, i.e. relating to specific aspects of them or their timing for being implemented, are still unknown despite the existence of EIA documents and public hearings. The completeness and competence of an assessment carried out is usually questioned by the public. The majority of the problems indicated that providing information to citizens concerning planned activities on time and their involvement in decision-making remain the main challenges, despite existing legal provisions.

The Namakhvani HPPC Cascade Project, which attracted considerable public attention in 2020, could serve as an example. In the last year, citizens have repeatedly and steadily expressed their opposition to the project's planned implementation. In addition to the fact that there was a problem in ensuring good information and citizens' involvement at the initial stage, it has been unfortunate that this State has not responded for long periods to protests rather than holding continuous, results-oriented dialogues with citizens or interested parties. This approach has led to a worsening of the crisis.



Fig3. Protest against the Namakhvani HP at Tbilisi's Republic Square, 2021, source: <https://bankwatch.org/blog/saving-private-rioni-georgia-s-growing-environmental-protest>

The case once again confirms that for years, the decisions of the State agencies have failed to answer the legitimate questions of the society. A complete or reasoned response to citizens' questions about important issues is, as a rule, lacking in public hearings. Trust in the quality of environmental impact assessment documents and procedures is also a cause for this. In complying with the procedural requirements, particular attention should be paid to citizens' genuine involvement and all relevant means of communication need to be used.

As regards the availability of information, there are also some problems with the quality of Environmental Impact Assessment reports. The concerns expressed by the population and professionals mainly concern the safety and scale of projected project effects, alternative possibilities as well as aspects related to residents' property. The fact that the EIA documents incorrectly reflect or do not reflect the above issues is, as a general rule, a major issue. The cost-effectiveness of projects and therefore the speed at which they are implemented is one of the most important questions not addressed in EIA documents. It is therefore clear that the objective of making information accessible to the public using this mechanism cannot, while not addressing all relevant questions in the EIA, be achieved [6].

Taking into account the risks and degrees of environmental impacts, the Environmental Assessment Code sets out a list of activities that are subject to two annexes. The activities referred to in Annex 1 shall be subject to an Environmental Impact Assessment because of the substantial impact on the environment; the actions specified in Annex 2 shall be subject to a screening procedure, which would determine whether the planned activity falls within the scope of EIA.

The adoption of the Code shall allow environmental impact assessments to be performed more closely with internationally recognized standards, but practice shows that it is necessary to review the list of activities that should be assessed. In some cases, taking into account the annexes and specificities of Georgia, it is necessary to improve the threshold criteria for activities set out in these paragraphs.

Another example is that the limitation on urban development projects with a development area of at least 10 hectares is disproportionate; it must be taken into consideration that Directive 2011/92/EU does not even provide for such zones. There is no scope for urban development projects in Directive 2011/92/EU.

Due to the risks of sand gravel extraction with infringements of established rules, it is necessary to take into consideration that screening does not apply to sand gravel extraction activities that are inadmissible. It also contradicts the obligation laid down by Directive 2011/92/EU, which requires that an environmental impact assessment be carried out for opencast mining of construction materials such as sand and gravel.

The practice has also shown that, as the most important stage in determining whether an Environmental Impact Assessment needs to be carried out and related to several mechanisms for information access and public involvement, it is necessary to improve regulations governing the screening process. Currently, the Code sets out general screening requirements but does not establish procedures to examine applications and make decisions by decision-making bodies. As a result, the verification of information submitted does not exist in those procedures. The consequences of this are that the formal procedure for decision-making about screening is threatened. To ensure that the public can participate in all decisions concerning projects that may be likely to have a potential impact on their legitimate interests, screening procedures must focus primarily on verifying information provided by the operator and making it compulsory at the legislative level [7].

About energy projects in Georgia, it is of particular importance that citizens are involved. Georgia does not yet have a long-term energy strategy, alongside these challenges of implementing an Environmental Impact Assessment system. Firstly, there is a need to develop appropriate long-term policies for the planning and development of the energy sector. The Parliament has to endorse a document on state energy policy for 10 years which is yet to be adopted, within the meaning of international obligations and national law.

What benefits the State has been able to derive from projects implemented is still unclear. Naturally, questions relating to energy projects are particularly acute as a rule and in particular given that the negative effects of construction tend to be very large.

3. Conclusions

The Code should, in addition to reducing the cancellation of urban development project-related indicators and establishing screening requirements for sand and gravel mining activities, adjust threshold indicators applicable under the Code I and II Annexes based on the country's location and other specificities.

Moreover, liability for infringement of rules on placement, transportation, or processing of dust-producing materials throughout all municipalities should be introduced in the Administrative Offences Code of Georgia.

As regards the HPP project, an adequate parliamentary committee should continue and carry out active and effective control of Namakhvani HPP in addition to examining government agencies' activities related to this project and developing a relevant conclusion.

In each case, so that quality improvement and control can be ensured, there must be effective enforcement of the regulations concerning the Environment Impact Assessment System through an examination of problems linked to the quality of EIA reports as well as identification of best efficient measures for their implementation.

Finally, should be developed by Article 7 of the Georgian Law on Energy and conduct all necessary procedures for its approval by the Parliament.

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