Funded by the European Union

GEORGIAN YOUNG LAWYERS' ASSOCIATION

CSRDG
Center for Strategic Research and Development of Georgia

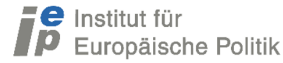
MONITORING THE ACCESS TO JUSTICE IN ENVIRONMENTAL CASES

MONITORING THE ACCESS TO JUSTICE IN ENVIRONMENTAL CASES

Tbilisi
2024

This study has been produced with the assistance of the Center for Strategic Research and Development of Georgia (CSRDG), within the framework of the European Union and Konrad-Adenauer-Stiftung funded project "**Civil Society STAR Initiative**: *CSOs as Sustainable, Transparent, Accountable and Resilient Development Actors in Georgia*". Its contents are the sole responsibility of the Georgian Young Lawyers' Association (GYLA) and do not necessarily reflect the views of the European Union and the Konrad-Adenauer-Stiftung.

The project is implemented by the Consortium led by the Konrad-Adenauer-Stiftung (KAS) and composed of the following CSOs: Center for Strategic Research and Development of Georgia (CSRDG), Civil Society Institute (CSI), Center for Training and Consultancy (CTC), Education Development and Employment Center (EDEC), and Institute for European Politics (IEP).



Head of Publication: NONA KURDOVANIDZE
TAMAR ONIANI

Author: ANA BERIDZE

Worked on the analysis of cases: ANA BERIDZE
DARINE SALDADZE

Technical Editor: IRAKLI SVANIDZE

Edited and published by Georgian Young Lawyers Association.

J. Kakhidze street №15, Tbilisi, Georgia
(+995 32) 295 23 53, 293 61 01
www.gyla.ge

CONTENTS

ABBREVIATIONS

GACG	General Administrative Code of Georgia
EIA	Environmental Impact Assessment
SEA	Strategic Environmental Assessment
GYLA	Georgian Young Lawyers' Association
Aarhus Convention	"Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters"
Berne Convention	"Convention on the Conservation of European Wildlife and Natural Habitats"
IUCN	International Union for Conservation of Nature

1. INTRODUCTION

The right to access a clean, healthy, and sustainable environment is one of the fundamental human rights.[1] In order to ensure the proper enjoyment of this right, to protect environmental, social, and cultural values, and to achieve ecologically sustainable development, it is crucial to strengthen the rule of law.[2]

The existence of the rule of law in the country is the guarantee that the agencies responsible for environmental management will not act in an arbitrary, biased, or unpredictable manner, which can jeopardize the proper enjoyment of the right to live in a healthy environment and other fundamental human rights.

According to the 2016 declaration of the International Union for Conservation of Nature (IUCN), the following elements, among others, are important to strengthen the rule of law with respect to environmental protection in the country:

- Development of enforceable and effective environmental laws and policies;
- Respect for human rights, including the right to live in a healthy environment;
- Development of criminal, civil, and administrative instruments necessary for the effective enforcement of the laws, including the mechanisms for timely, impartial, and independent resolution of disputes related to environmental matters;
- Ensuring access to information concerning environmental issues, public participation in the decision-making, and access to justice (environmental procedural rights guaranteed by the Aarhus Convention);
- Effective environmental accountability, transparency, and anti-corruption mechanisms;
- Use of best-available scientific knowledge.[3]

The aforementioned list highlights the critical importance of developing relevant legislation and ensuring its proper enforcement in practice, including the prompt, unbiased, and independent resolution of disputes pertaining to environmental damage in order to safeguard the rule of law in environmental matters. Judges and courts often play a crucial role in establishing the rule of environmental law at the national, regional, or international level.[4] The court shall be the institution that impartially interprets the law and provides the parties with equal opportunities to defend their interests, regardless of their rights and privileges.[5] The IUCN Declaration also emphasizes the necessity of preserving the independence of courts and enhancing their capacity to carry out their mandate and serve as guarantors of the rule of environmental law.[6] It also asserts the principle In *Dubio Pro Natura*, according to which, in cases of doubt, all matters before courts, administrative bodies, or other decision-makers shall be resolved in a way that will most effectively contribute to the protection of the environment and the conservation of nature, and give priority to the alternatives that are least harmful to the environment.[7] The aforesaid bodies shall not allow actions that may result in disproportionate damage to the environment or adverse consequences that are excessive in relation to benefits derived therefrom.[8]

[1] UGNA Res 76/L.75 (26 July 2022) UN Doc A/76/L.75.
[2] IUCN World Congress on Environmental Law, "Declaration on the Environmental Rule of Law" (Rio de Janeiro, 2016).
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid. art III (n).
[7] Ibid. art II, Principle 5.
[8] Ibid.

2. RESEARCH OBJECTIVES

With the above context in mind and by analyzing the environmental cases that have been litigated by the Georgian Young Lawyers' Association (GYLA), the research seeks to study and assess the extent to which the right to access justice in relation to environmental issues is guaranteed in Georgia, the court's role in defending the right to live in a healthy environment, and the challenges that people encounter when going through the legal system. The study aims to identify the problems in case law and develop all necessary recommendations for resolving them.

It should be noted that the aim of the study is not to analyze the content of the current environmental legislation and specific laws applicable in Georgia or to determine their compliance with international standards and best practices. The paper focuses on the procedural right of access to justice and the role of the court in environmental matters.

Access to justice in environmental issues and proper protection of the right to live in a healthy environment is particularly important in the context of the current triple planetary crisis (climate change, destruction of biodiversity, and global pollution) when the results of environmental problems threaten human life, health, and their dignified existence.

The right to live in a healthy environment is guaranteed by Article 29 of the Constitution of Georgia, according to which the State shall be obliged to respect and protect the right to live in a healthy environment and contribute to the sustainable development of the country considering the interests of current and future generations.

Safeguarding the right to live in a healthy environment also entails ensuring that environmental procedural rights are properly enjoyed. Environmental procedural rights encompass not only the right to access justice but also the public's right to participate in decision-making and access environmental information. All three of them are interdependent and tightly tied to one another. Therefore, for the purposes of this study, it is crucial to recognize and analyze the difficulties and obstacles that arise in practice when applying each of the three procedural rights.

3. RESEARCH METHODOLOGY

The research employed the following two key methodologies:

(1) Exploring the Georgian and international legislation;

(2) Analyzing the case law.

Based on the research objectives, the paper initially describes the current legal arrangement in Georgia regarding access to justice in relation to environmental matters. After that, the paper discusses the requirements set forth by the Aarhus Convention for the proper exercise of the right of access to environmental justice, with the view to conducting a comparative analysis and evaluating the degree to which Georgia's legislation is in compliance with international standards.

The major part of the research is devoted to the analysis of judicial practice. To achieve this, six cases pertaining to projects covered by the Environmental Impact Assessment procedure that have either been litigated or have already been finalized by the GYLA were selected. The administrative cases that were chosen for the research concern a variety of issues, such as construction, infrastructure, and energy projects in order to encompass a range of environmental protection topics and to pinpoint common challenges in terms of environmental justice. Specifically, the study has examined the following cases:

1. Namakhvani HPP Cascade Case;
2. Kheledula-3 HPPs Case;
3. Batumi Riviera Case;
4. Dvabzu Asphalt Plant Case;
5. Abastumani Bypass Road Case;
6. Dighomi Forest-Park Case.

The cases have been analyzed according to the following components:

- General information: case identification data;
- The essence of the dispute: case circumstances;
- Legal analysis: analysis of legal problems in each case;
- Procedural matters: procedural issues related to court trials (right to appeal, expenses, evidence, motions);
- Conclusion: evaluation of the effectiveness of using the right of access to justice in each specific case.

Based on the analyzed cases and identified problems, the paper presents specific findings and recommendations that are important to take into consideration in order to guarantee the proper enjoyment of the right of access to justice in relation to environmental matters and to ensure that the court serves as an effective mechanism for the protection of the right to live in a healthy environment.

It is important to clarify that the study solely examines administrative instances, which means that the participants are public entities whose decisions have been challenged. The document, therefore, is founded on an analysis of the existing legislative arrangement and judicial practice in the field.

4. FINDINGS

General part

- ✓ The Georgian legislation guarantees the environmental procedural rights necessary for the proper enjoyment of the right to live in a healthy environment. The applicable legal framework and institutional arrangement comply with the requirements established by the Aarhus Convention;
- ✓ Although the country has all necessary legislation and institutional arrangements for the exercise of environmental procedural rights, there are still challenges in practice with respect to enforcement;
- ✓ The case studies have shown that the procedural requirements provided for in the legislation of Georgia and the Aarhus Convention are violated:
  - ➢ **Individuals are not provided at all or inadequately provided with the requested information in relation to specific projects;**
  - ➢ **In the decision-making process regarding certain projects, individuals are limited in their possibilities to properly and substantively participate and get involved in the procedure.**
- ✓ When making decisions concerning specific projects, public institutions largely **breach** the requirements stipulated in the legislation of Georgia; the cases studied have confirmed that the following norms and obligations defined by the legislation were violated in various cases:
  - ➢ **Screening, scoping, and environmental impact assessment procedures defined by the Environmental Assessment Code;**
  - ➢ **The norms mandated by the Strategic Environmental Assessment procedure;**
  - ➢ **The timeframes for conducting the procedure as stipulated in the Environmental Assessment Code;**
  - ➢ **Decisions required by the Environmental Assessment Code - scoping conclusions and positive environmental decisions - are made without due diligence studies, information, and necessary documentation required by the legislation and the state bodies themselves;**
  - ➢ **The obligation to submit the above studies, information, and documentation is imposed on permit seekers post-factum, which means that the public institutions do not at all or insufficiently assess the impact of a project on various environmental or social factors before delivering such decisions. Accordingly, the requirements envisaged by the General Administrative Code for administrative agencies to comprehensively investigate the circumstances of a case in order to make a decision are violated;**
- ➢ **Against the background of inadequate consideration and violation of corresponding norms, the impact of certain projects on the following factors is inadequately evaluated:**
  - ▪ **Human health and safety;**
  - ▪ **Biodiversity (including plant and animal species, habitats, ecosystems);**

- **Water, air, soil, land, climate, and landscape;**
- **Cultural heritage and material values.**

- Project alternatives **are insufficiently considered**;
- The cumulative impact of projects on a range of factors **is inadequately assessed**;
- The correlation between the loss and benefit obtained from projects is **erroneously and unjustifiably calculated**;
- In terms of protecting cultural heritage, the requirements determined by national and international legislation **are violated**, among them:
  - Law of Georgia "On Cultural Heritage";
  - Ordinance №181 of the Government of Georgia issued on May 14, 2012, "On the Procedures for Establishing Buffer Zones for the Protection of Cultural Heritage";
  - European Convention for the Protection of the Architectural Heritage;
  - Convention on the Protection of World Cultural and Natural Heritage.
- National and international legislation in the field of biodiversity protection **is violated**:
  - Law of Georgia "On the System of Protected Areas".
  - Law of Georgia "On Red Book and Red List".
  - Berne Convention.
- With respect to environment and construction, the requirements stipulated in the Law of Georgia "On Licenses and Permits", the Law of Georgia "On the Spatial Development and Basis for City Building", the Ordinance №57 of the Government of Georgia issued on March 24, 2009, "On the Approval of Procedures for Issuance of Construction Permits and Permit Conditions" **are violated**;
- Neglecting the requirements of the environmental legislation could mean that public bodies give preference to the promotion of economic interests and pay less attention to the danger of project-related harm to the environment and population; this could stem from a low level of awareness regarding environmental issues.

Access to environmental justice

- ✓ In terms of access to environmental justice, the country has relevant institutional arrangements and procedures. The public has the right to file a complaint with a relevant administrative body or defend their legal interests and rights through the court. Therefore, in this regard, the minimum standards provided for in the Aarhus Convention are guaranteed.
- ✓ For submitting an appeal with the court and an administrative body, the legislation provides for specific timeframes and procedures, which are in conformity with the minimum standards defined by the Aarhus Convention;
- ✓ In relation to administrative cases that request nullifying any contested act, 100 GEL is determined as the state dutyin the first instance court, 150 GEL - in the second instance

court and 300 GEL - in the third instance court. These charges can be considered to be adhering to the standard established by the Aarhus Convention, according to which no financial barrier shall be created in terms of access to justice;

- ✓ The judicial practice regarding the payment of the state duty related to the lawsuit is not uniform. Specifically, the court may, within the framework of one dispute, where there are multiple plaintiffs in the same case, require from each of them to pay not 100 GEL in total, but 100 GEL for all plaintiffs separately, which unjustifiably increases procedural costs;
- ✓ The judicial practice regarding the payment of state duty related to the suspension of the administrative-legal act is not uniform. Specifically, according to the procedural legislation of Georgia, the state duty is imposed on an application for provisional measures. However, the request to suspend an administrative-legal act is not considered to be a provisional measure. Thus, the state duty in the amount of 50 GEL shall not be imposed on such requests;
- ✓ Obtaining public information in the form of evidence is free, which, in turn, proves the compliance of the norm with the standards established by the Aarhus Convention; The only fee imposed on obtaining public information is related to making copies of public information, the amount of which is not large. The Law of Georgia "On Fees for Photocopying of Public Information" defines specific amounts of such fees.
- ✓ Prior to filing a lawsuit in court, an individual must first appeal to an administrative body, if the relevant administrative body has a superior administrative body or a superior official;
- ✓ The studied cases have shown that the process of appealing a disputed act or action in an administrative body may not be effective and applicants be forced to file a lawsuit in court;
- ✓ Based on the analysis of the legislation and practice, it has been established that the court considers non-governmental organizations as appropriate complainants in administrative disputes related to environmental issues;
- ✓ **The reviewed cases have demonstrated that, in the majority of cases, the court does not grant the motions submitted by claimants requesting to halt the operation of disputed acts until the final decision is delivered (of the cases studied, the court suspended the operation of the impugned act in only one case). The court rulings in the aforementioned cases are unsubstantiated and contain only generic explanations. This practice, if not properly justified, is an indication that the court is apparently giving priority to economic interests and is neglecting the risk that the project may be causing irreparable damage to the environment and people. In the event that contested acts are not suspended, any subsequent ruling made by the court can be rendered meaningless, even if the court recognizes the disputed act as invalid since the damage may have already been inflicted and cannot be undone due to the implementation of the project;**
- ✓ **The court proceedings are protracted and last for several years.** Of all the cases that were examined, the court delivered a decision in relation to only two cases. In relation to other cases, proceedings are still ongoing in the court of first instance, despite the fact

that they are the disputes that started 5, 3 or 2 years ago.[9] In these cases, even the dates of the subsequent court hearings are unknown. With respect to the Namakhvani HPPs Cascade case, regarding which the applicant filed a lawsuit in court in 2019, not even a preparatory court hearing has been held so far. The lengthened practice is harmful to the environment, especially in the conditions when the court does not suspend the operation of the disputed acts before delivering the final verdict, which may cause irreparable damage to the environment;

- ✓ As for the case of the Asphalt Plant, concerning which the final decision was rendered, the **court provided an incorrect assessment of the evidence and the subject of the dispute**. Specifically, from the reasoning part of the ruling, it becomes clear that the court's rationale is based on a document that was not admitted as evidence during the case proceedings, and, at the same time, discusses a matter that was fundamentally unrelated to the dispute – namely, the inflicted damage, which was not the subject of the dispute at all. Consequently, this suggests that the court made an unsubstantiated and erroneous decision;
- ✓ With the decision delivered on the Asphalt Plant case, in which the court did not find any evidence of the violation of the law by the decision-maker, the court contributed to the **fortification of the vicious practice of** decision-making, wherein a decision-maker fully relies on an applicant, does not verify the accuracy of the information presented in the screening application at the screening stage, and in this manner makes a decision whether to submit the activity to the EIA procedure or not. Therefore, the court does not properly evaluate the importance of the screening procedure;
- ✓ In the Kheledula-3 HPP case, the court again helped to **reinforce the vicious practice**: the decision-makers submitted to the EIA procedure only the modifications made to the initial project and did not evaluate the altered project in its entirety. As a result, the cumulative impact of the project on the environment and the public is not adequately assessed, and the project is implemented in light of the two EIA reports. Furthermore, it is difficult for the public to locate the relevant information in the two EIA reports. Consequently, the court does not adequately assess the importance of the EIA procedure.

[9] Please see the detailed information presented in Chapter 7 as Table 2.

5. NATIONAL LEGISLATIVE FRAMEWORK AND INTERNATIONAL STANDARDS

The right to live in a healthy environment is guaranteed by Article 29 of the Constitution of Georgia. As per the Article:

> **"1. Everyone has the right to live in a healthy environment and enjoy the public space and the natural environment. Everyone has the right to receive full information about the state of the environment in a timely manner. Everyone has the right to care for the environment. The right to participate in making decisions related to environmental issues shall be guaranteed by law.**
>
> **2. Environmental protection and the rational use of natural resources shall be ensured by the law, taking into consideration the interests of the current and future generations."**

In line with the above Article, the Constitution of Georgia affirms people's right to live in a healthy, sustainable, and safe environment, while also defining the procedural rights required for the proper enjoyment of this right, including the right to access environmental information and the right to participate in environmental decision-making.

The right of access to justice in relation to matters of environmental protection is guaranteed by Article 31, paragraph 1 of the Constitution of Georgia, as follows:

> **"Everyone has the right to appeal to the court to protect their freedom. The right to fair and timely consideration of the case shall be ensured."**

Therefore, the Constitution of Georgia guarantees environmental procedural rights that are essential for both living in a healthy environment and for the proper protection of this right, and the constitutional obligation of the State is to ensure the proper exercise of these rights.

In addition to the Constitution of Georgia, procedural rights in the field of environmental protection are determined by the major environmental laws, including the Law of Georgia on Environmental Protection and the Environmental Assessment Code. The General Administrative Code of Georgia and the Code of Administrative Procedure also envisage important requirements and provide specific procedures.

In addition to domestic legislation, the Aarhus Convention, which establishes environmental procedural rights, plays a crucial role.[10] Georgia has been a member of the Convention since 2001. The Aarhus Convention specifically defines and establishes the minimum standards that the member states must implement in terms of providing access to environmental information, the participation of the public in decision-making, and access to justice.

5.1. Access to information related to environmental issues

According to the Aarhus Convention, the right of access to environmental information means, on the one hand, the obligation of public authorities and institutions to provide everyone with the requested information (passive obligation), and on the other hand, the obligation of the public institutions to collect and update such information on their own initiative without being requested and to make it publicly available (proactive obligation).[11]

[10] Convention on "Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters" (October 30, 2001).
[11] Aarhus Convention.

In the context of Georgia, according to the General Administrative Code of Georgia, public institutions that are obliged to provide public information include the following agencies:

"...any administrative body or legal entity of private law financed from state or municipal budget funds within the framework of such financing;"[12]

The public information itself, which these institutions are required to provide, according to the General Administrative Code of Georgia, includes **"... any official documents (including drawings, models, plans, charts, photographs, electronic information, video, and audio recordings), i.e. any information stored by a public institution, as well as information received, processed, produced, or transferred by a public institution or an official employee in connection with their official activities, as well as any information proactively published by public institutions;[13]**

It should be noted that according to the aforementioned Article, any person has the right to obtain public information, and he or she is not required to justify his or her request in connection with specific information or provide specific evidence of his or her interest in the requested information, nor to state how he or she intends to use the information.[14]

The Aarhus Convention creates the presumption of access to information, which means that public institutions are obliged to respond to any request filed by any person, without reservation, unless the type of information is the one that the public institution is legally permitted to withhold only in strictly limited, preliminarily determined, and exclusive cases. The exceptions are provided by the Georgian legislation as well. Specifically, according to Article 28, paragraph 1 of the General Administrative Code of Georgia:

"Public information shall be open, except for the cases provided by law and the information classified as state, commercial, or professional secrecy, or personal data according to the established procedure."

In the cases where the information requested by a person directly concerns the aforementioned information and data, an administrative body has the right, in compliance with the General Administrative Code of Georgia, to refuse to issue the requested information to the person seeking the data. In the event of the denial, the person shall be informed thereupon and he or she shall be informed within three days in writing of his or her rights and the procedure for appealing the decision.[15]

The Aarhus Convention also establishes the timeframes for the release of environmental information.[16] Specifically, within a month from the submission of the request, the information shall be provided for any person making such request. However, given the volume and complexity of the requested information, the period may be extended by an additional month if such an extension of the deadline is justified. In the event that the deadline is extended, the person requesting the information must be notified of the extension of the term and all pertinent explanations.

The General Administrative Code of Georgia provides for a relatively shorter time period for the release of information.[17] Specifically, a public institution shall provide the requested information to any person making such a request immediately or not later than ten days. The ten-day period

[12] General Administrative Code of Georgia, Article 27, ("a").
[13] General Administrative Code of Georgia, Article 2, (1) (l).
[14] Aarhus Convention, Article 4, (1) (a).
[15] General Administrative Code of Georgia, Article 41.
[16] Aarhus Convention, Article 2.
[17] General Administrative Code of Georgia, Article 40.

shall be applied whenever the reply to the request for public information from an administrative body requires:

"A) Retrieving information from its structural unit or other public institution in another settlement, and processing it;

B) Retrieving and processing of individual uncorrelated documents of significant volume;

C) Holding consultations with its structural subdivisions or other public institution in another settlement"[18]

It should be noted that if the ten-day timeframe is required, an administrative institution shall immediately notify the person requesting the information thereupon.[19]

As for the cost of information, according to the Aarhus Convention, public institutions can charge a certain fee for releasing requested information; however, the amount should not exceed the scope of reasonableness, so that individuals can effectively enjoy their environmental rights without any restrictions.[20] According to Article 38 of the General Administrative Code of Georgia, there are no fees for issuing public information in Georgia. However, a fee may be charged for requesting photocopies. The Law of Georgia "On Fees for Photocopying of Public Information" defines specific amounts of fees for the cases of issuing copies of public information in different forms. The fee charged is small.[21]

5.2. Participation of the public in decision-making

The second fundamental environmental procedural right defined by the Aarhus Convention concerns the participation of the public in decision-making. This right is divided into three major parts:

1. **The right of individuals to participate in decision-making regarding any actions, which directly affect them.[22]**
2. **The right of individuals to participate in the process of developing plans or policies related to environmental protection.[23]**
3. **The right of individuals to participate in the process of developing laws, rules, and legal norms.[24]**

The right of a person to be involved in decision-making mainly concerns such activities that, due to their nature, may have a significant impact on the environment[25] and require a permit.[26]

In order to ensure the enjoyment of this right, the State must implement an effective procedure. Specifically:

[18] Ibid, Article 40(1).
[19] Ibid, Article 40(2).
[20] Aarhus Convention, Article 4(8).
[21] Law of Georgia "On Fees for Photocopying of Public Information", Article 6.
[22] Aarhus Convention, Article 6.
[23] Aarhus Convention, Article 7.
[24] Aarhus Convention, Article 8.
[25] Aarhus Convention, Article 6, (1) (A and B).
[26] United Nations Economic Commission for Europe, „The Aarhus Convention: an Implementation Guide" (2014) 127, available: https://bit.ly/3Av5Dwj , last accessed: 11.28.2023.

- **The public who may be affected by any planned activities shall be identified in time and be provided with information by adequate means in a reasonable and timely manner about the proposed activity**;[27]
- **The public participation procedure shall include reasonable timeframes specifically for different stages, allowing sufficient time for informing the public to analyze this information, prepare views thereupon, and effectively participate in the decision-making process**;[28]
- **The participation of the public in decision-making shall take place at an early stage when all other alternatives related to the proposed action are still open**;[29]
- **The State shall encourage the exchange of information and dialogue between an implementer of the activity and the public**;[30]
- **The public shall have access to all necessary and relevant information**;[31]
- **The public shall be allowed to submit any comments, opinions, and information available to them in writing or at a public hearing**;[32]
- **The State shall ensure that the results of the public's participation are effectively taken into account by public agencies who are authorized to make decisions and subsequently explain how they have considered them**;[33]
- **The public shall be informed about the final decision and the text of the decision along with the reasons and considerations shall be made available**;[34]
- **The involvement of the public shall also be ensured if the terms and conditions of any previously issued permit are reconsidered or updated**;[35]

Chapter 4 of the **Environmental Assessment Code,** which stipulates the above basic conditions, also defines the matters concerning the participation of the public in decision-making over environmental matters.[36] According to the Code, the right of the public to participate shall be ensured:

- In decision-making concerning activities subject to an Environmental Impact Assessment;
- In decision-making concerning strategic documents subject to a Strategic Environmental Assessment; and
- In the case of conducting the procedure for a trans-boundary environmental impact assessment.[37]

The specific procedures and guidelines for informing the public and ensuring the public's participation in decision-making, which are in compliance with the requirements of the Aarhus Con-

[27] Aarhus Convention, Article 6(2).
[28] Ibid, (3).
[29] Ibid, (4).
[30] Ibid, (5).
[31] Ibid, (6).
[32] Ibid, (7).
[33] Ibid. Article (6 and 8).
[34] Ibid, (9).
[35] Ibid, (10).
[36] Law of Georgia Environmental Assessment Code.
[37] Ibid. Article 30(2).

vention, are also stipulated in the General Administrative Code of Georgia and the Order №2-94 of the Minister of Environment Protection and Agriculture of Georgia "On the Approval of the Procedure for Public Hearings".

5.3. Access to justice in environmental protection matters

Article 9 of the Aarhus Convention reinforces the right of access to justice in the field of environmental protection.

According to the article, any person shall have access to judicial or other types of independent and impartial bodies established by law in order to protect their interests and rights in relation to environmental matters. Specifically, every person shall have access to effective mechanisms to defend their interests and rights whenever they believe that:

- **Their right of access to environmental information is violated;**[38]
- **Their right to participate in decision-making is violated, including the procedures for issuing relevant permits;**[39]
- **The environmental legislation applicable in the country is violated by private persons or public institutions, through their action or inaction**.[40]

According to the legislation of Georgia, every person has the right to apply to an administrative body and court to protect their rights and interests in relation to administrative cases. Specifically:

- **An administrative complaint shall be submitted for consideration, reviewed, and resolved by an administrative agency issuing the administrative act, if there is an official at the administrative institution superior to the official or the structural subdivision that has issued the administrative act.**
- **An appeal submitted against an administrative act issued by a senior official of an administrative body shall be reviewed and resolved by a superior administrative body.**
- **A person must apply to a court under the procedure determined by the Administrative Procedure Code of Georgia for the protection of his or her rights and freedoms**.[41]

An administrative body shall have a one-month period for considering an administrative complaint.[42] The timeframe may be extended for an additional period of not more than one month in the event that more time is required to establish the circumstances essential to the case.[43] An administrative body shall substantiate its decision regarding the extension of the term.[44]

It should be noted that a person has the right to file an application in court after first having exercised the opportunity to submit an administrative complaint, if the relevant administrative body has a superior administrative body or a superior official.[45] The Administrative Procedural Code of Georgia establishes the timeframes for a court proceeding and for different stages. In practice, judicial proceedings related to environmental cases may last for years.[46]

[38] Aarhus Convention, Article 9(1).
[39] Ibid, Article 9(2).
[40] Ibid, Article 9(3).
[41] General Administrative Code of Georgia, Article 178.
[42] Ibid, Article 183(1).
[43] Ibid, Article 183(2) and (4).
[44] Ibid.
[45] Ibid, Article 178.
[46] UNDP, "Access to Environmental Justice in Georgia: Baseline Assessment" (2023) 33; GYLA, "Strategic Litigations against the Construction of Large Hydro Projects" (2021).

According to the Aarhus Convention, appeal mechanisms shall be accessible to members of the public whose interests and rights have been affected by any decision, act, or omission.[47] According to the Administrative Procedure Code of Georgia, a claim shall be deemed admissible if an act implemented by an administrative body or the refusal to take an action directly (individually) harms the claimant's legal rights and interests. Based on the legislation and court practice, we can conclude that every person, including non-governmental organizations, has the right to apply to the court or other relevant administrative institutions regarding environmental matters.[48] In this respect, the courts often rely on the Aarhus Convention.[49]

The Convention also sets a standard as to what the review mechanisms should be like. Specifically:

- **The review of a complaint in an administrative body or court shall be fair, prompt, and financially accessible - the legal process shall not be so expensive that it can create an artificial barrier for the public to protect their rights and interests**;[50]
- **Any measures implemented to protect and restore the interests and rights of the public shall be adequate and effective**;[51]
- **The public shall be informed about what administrative and judicial procedures are in place through which they can protect their rights and interests**.[52]

5.4. Conclusion

The applicable legal framework allows us to conclude that the country's Constitution, as well as other legal acts, guarantees people's environmental procedural rights. There are all relevant norms and procedures that specify the terms and conditions for access to information, participation of the public in decision-making, and access to justice in relation to environmental matters, which correspond to the minimum standards defined by the Aarhus Convention for member states.

Nevertheless, as the next section of the research shows, there may be significant obstacles and challenges to the rightful exercise of these rights in practice.

[47] Aarhus Convention, 9(2).
[48] UNDP, "Access to Environmental Justice in Georgia: Baseline Assessment" (2023) 32.
[49] The "Green Alternative", "Implementation of the Aarhus Convention in Georgia: Alternative Report" (2014) 43-44.
[50] Ibid 9(4).
[51] Ibid
[52] Ibid, 9(5).

6. ANALYSIS OF COURT PRACTICE

This chapter examines and analyzes six court cases, which address a variety of issues pertaining to the right to live in a healthy environment. Each case is related to the decisions made by state authorities concerning projects that could negatively affect the environment and harm people irreversibly.

The studied cases concern specifically the violations of legal provisions and administrative procedure requirements by public institutions in the field of environmental and cultural heritage protection and construction in the country.

The thorough analysis of the cases has demonstrated the types of legal and practical obstacles that the public currently is encountering in terms of the proper exercise of their right to live in a healthy environment and the problems they are having when seeking justice in the field of environmental protection.

6.1. Namakhvani HPPs Cascade

6.1.1. General Information

Case title/number	Namakhvani HPPs Cascade; Case/№3/2546-20
Date of filing the lawsuit	April 7, 2020
Court	Tbilisi City Court
Plaintiff	Residents of Tsageri and Tskaltubo municipalities
Respondent	The Ministry of Environment Protection and Agriculture of Georgia
Appeal	Invalidating an individual administrative act
Status of the case	No decision has been made on the case yet. The date of the court hearing has not been determined

6.1.2. The essence of the dispute

On December 25, 2015, the Minister of Environmental Protection and Natural Resources of Georgia approved a report of the ecological expertise №73 prepared in connection with the Environmental Impact Assessment (EIA) report of the JSC "Namakhvani"'s construction and operation of two-stage hydroelectric power plants cascade on the River Rioni presented by the Technical and Constructions Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia.

On January 18, 2019, the director of JSC "Namakhvani" applied to the Minister of Environment Protection and Agriculture with a screening application, as the initial project was planned to be modified. On June 13, 2019, the Director of "Enca Renewables" LLC appealed to the Minister of Environment Protection and Agriculture and requested to issue a final scoping conclusion on the scoping report of the changes made in the previously submitted Kvemo Namakhvani HPP construction and operation project. On October 1, 2019, the Minister of Environment Protection and Agriculture issued a scoping report.

The scoping report determined the list of mandatory studies and information to be obtained and examined for the preparation of the Environmental Impact Assessment (EIA) report. However, as it became clear during the review of the project's environmental impact assessment report, "Enca

Renewables" LLC, the company implementing the project, had not carried out the mandatory studies stipulated by the law and the scoping report of the project in order to check the safety of the project for human health and the environment. Nevertheless, the Ministry, as per the Order №2-191 of February 28, 2020, issued a positive environmental decision (permit) and instructed the company to submit critically important and mandatory documentation at the decision-making stage in the future.[53]

Consequently, the Ministry issued the conclusion without assessing the degree of risk that the project could pose for the environment, human life and/or health, cultural heritage, and material values as a result of its implementation, as well as without considering any measures for their mitigation or prevention.

Furthermore, the requirements specified by national and international legislation for informing and ensuring the participation of the public in decision-making were violated.

Accordingly, the plaintiff in the given case requests to invalidate the Order №2-191.

6.1.3. Legal analysis

Mandatory studies

According to Article 12, paragraph 9 of the Environmental Assessment Code, not earlier than the 51st and not later than the 55th day after the registration of an application requesting an environmental decision, the Minister shall publish an individual administrative act on the issuance of an environmental decision, and in the existence of the grounds specified in Article 14 of this Code – on the denial of the requested activity. **In the given case, the decision was made on the 77th day, although no corresponding decision on the extension of the procedure can be found in the case materials.**

In accordance with the Environmental Assessment Code, the purpose of an EIA is to identify, study, and describe any direct and indirect impacts caused by the implementation of the activities provided for in this Code on the following factors: a) human health and safety; b) biodiversity

[53] After the approval of the environmental decision, the company was instructed to submit to the Ministry: a detailed engineering-geological study of the derivation route as well as the lead tunnel; additional ichthyologic studies; waste management plan; water temperature monitoring system, reporting form, and frequency; the conditions of flood transforming in the reservoir and water discharge regimes in the Lower Bief (quantity, periodicity); project of construction sites/camps with shape files; the case studies of the dynamics of bank formation in connection of the so-called "Large Island" in Poti, discussion and research of bank protection/engineering and compensatory measures; traffic scheme for the construction through Kutaisi bypass; conditions for quenching the energy of flow carried by deep spillways; the project and program for the monitoring system of filtration water from the derivation-pressurization tunnel during the operation period; the list of inventory and equipment needed for the activities to be carried out for the prevention and elimination of accidental spillage of turbine oils into water; the reservoir fill up (first filling) schedule, referring to water release amount; installing an instrumental monitoring system on the landslide (Goni Array) and conducting relevant preliminary studies for this purpose; a detailed monitoring plan to include the development of a monitoring system for the spread of emissions and dust generated during the construction process; the results of hydro geological monitoring of springs existing in the project area; information regarding the impact of the change in the water regime and increased turbidity of the River Rioni caused by the operation of hydropower plants, which must specify the impact caused by the operation of hydropower plants and the information on the prevention of impacts and, if necessary, compensatory measures in relation to water biodiversity; the situation concerning the washing of reservoirs considering the results of additional studies on Sturgeon and water biodiversity; providing constant monitoring of air and soil temperature and humidity through agro-meteorology stations; monitoring the quality characteristics of grapes and wine produced in the Tvishi area; installing a level meter at the head of the hydroelectric power station, determining the flow rate of the river once in a quarter; waste rock dump projects with shape files.

(including plant and animal species, habitats, ecosystems); c) water, air, soil, land, climate, and landscape; d) cultural heritage and material values; e) correlation of the factors determined by items "a"-"d". The identification, investigation, and description of the impacts on the above factors shall also include activity-related hazards in relation to large-scale accidents and/or natural disaster risks.

The text of the disputed act that requires conducting a range of studies in the future however stipulates that, in the given case, the project's EIA failed to identify, study, and describe the direct and indirect impact caused by the implementation of the activity on the factors defined above.

According to Article 6 of the Environmental Assessment Code, the main stages of an EIA are a) a scoping procedure; b) the preparation of an EIA report by a person implementing or a consultant of the action; c) the participation of the public; d) the assessment by the Ministry of the information specified in an EIA report, as well as additional information submitted to the Ministry by the implementer of the activity if necessary, or information obtained as a result of the public participation and consultations with competent administrative bodies; e) the conduct of an expert examination;

According to Article 9, paragraph 3 of the Environmental Assessment Code, a scoping report issued by the Ministry during the preparation of an EIA report shall be mandatory for the person implementing the activity. However, **even though the company did not present all mandatory documentation in the EIA report, the Ministry still granted a positive environmental assessment. Moreover, the EIA report did not include the required studies defined by Article 10 of the Environmental Assessment Code, which is evidenced by the text of the appealed act.**

According to Article 13 of the Environmental Assessment Code, an environmental decision shall include terms and conditions that are required to be met during construction, operation, and after the completion of the operation phase. However, there is no norm in place that would grant the Ministry the authority to impose requirements on the party implementing the activities that need to be carried out prior to the start of the construction, particularly the obligation to submit any information that was of crucial importance to the decision-making process.

Participation of the public

The body responsible for organizing and conducting the public review of the EIA report was the Ministry.[54]The information about the public hearing was supposed to be published no later than 20 days before the public hearing.[55] As per the procedure provided for in the Code, a public hearing shall be held in the building of a relevant administrative body nearest to the place of implementation of the planned activity or in its vicinity. The public discussion shall be open and any member of the public shall have the right to participate in it. **In the given case, the information about the time and venue of the public hearing was not made available for a large part of the population affected by the project since the announcement about holding the hearing was not disseminated via the means accessible to the population.** The session was held in the building of the administrative unit of the Tskaltubo Municipality City Hall. The town of Tskaltubo is about 50 km away from the affected villages and it took at least 2-3 hours for most of the residents directly affected by the project to arrive at the meeting. It should be added that the public transportation

[54] Environmental Assessment Code, Article 12(5).
[55] Law of Georgia Environmental Assessment Code, Article 32.

from these villages to the place of the review is also quite limited. Therefore, a very small part of the interested community could physically attend the discussion.

6.1.4. Procedural matters

Right to appeal

The complainants in the above case are residents of the Tsageri and Tskaltubo municipalities. It was in the territory of these municipalities that the construction of the HPPs was planned and, therefore, the project affected their interests and rights.

Expenses

The state duty in the amount of 100 GEL at Tbilisi City Court;

The state duty in the amount of 50 GEL for the application for provisional measures;

The state duty in the amount of 50 GEL for private claim.

Timeframes

The Tbilisi City Court accepted the lawsuit on May 25, 2020. However, as of November 30, 2023, not even a preparatory court hearing has yet been scheduled.

Applying the security mechanism

In accordance with Article 29 of the Administrative Procedure Code of Georgia, on March 9, 2021, the plaintiff submitted a motion requesting the suspension of the operation of the Order №2-191 until the final resolution of the dispute.

The main argument of the motion was that the enforcement of the appealed individual administrative act **would cause** substantial and irreversible harm to the environment, cultural heritage, and material values. In addition, it threatened the life and health of people, including the plaintiffs, and made it impossible for them to protect their legal rights or interests. Furthermore, at the moment of submitting the motion, the environment had already been significantly altered as a result of the ongoing works in the project area. There were explosions from time to time in the construction area, which further damaged the environment and the residential houses of local residents. The construction waste was directly dumped in the River Rioni Gorge. There was also another administrative offense proceeding pending against the company.

According to the decision of the Tbilisi City Court of March 12, 2021, the motion regarding the application of the security measure was denied. The Court noted that the plaintiffs failed to confirm the circumstances referred to in the motion despite the fact that they submitted the case materials of the current administrative offense against the company, photos, and video materials depicting the ongoing construction process, as well as studies conducted by the Ministry itself.

The verdict was appealed at the Tbilisi Court of Appeals, but the case was dismissed.

6.1.5. Conclusion

The case of the Namakhvani HPPs Cascade project shows that the Ministry of Environment Protection and Agriculture issued the environmental decision without the studies required by the law and scoping report, which constitutes a gross violation of the legislation. Without all relevant studies, it is impossible to determine the nature and volume of the impact on the environment as well as any measures for the prevention and mitigation of harm to the environment. In such cases, according to Article 14 of the Environmental Assessment Code, the decision-maker administrative body ought to have refused the company to carry out the activity.

Certain discrepancies are also evident in terms of public participation in the decision-making process. In particular, interested persons may be restricted from participating in the public discussion in various ways. In particular, this can be manifested in limiting their possibility to ask questions as well as in leaving critically important questions unanswered. In addition, the venue selected for the public discussion was problematic - the discussion was held far away from the place of implementation of the activity. The Ministry's choice of the building of the Tskaltubo municipality's town hall as the only suitable location for the public discussion was unacceptable given that there are several administrative buildings in the villages of the project area. Consequently, the population affected by the activity was limited in their right to participate in decision-making. This practice is in contradiction with the approaches provided for in the Environmental Assessment Code, which, in the given case, can be considered as a mere formality.

The analysis of the procedural issues shows that the court proceeding is delayed. Hence, it is not an effective mechanism for protecting the rights and interests of the public. In addition, the Court's unjustified refusal to suspend the Order may be problematic and result in irreversible harm to the environment, cultural heritage, and material values, as well as pose a threat to human health and life.

6.2. Kheledula-3 HPP

6.2.1. General Information

Case title/number	Kheledula-3 HPP; Case/№3/5320-18
Date of filing the lawsuit	August 21, 2018
Court	Tbilisi City Court
Plaintiffs	Residents of Lentekhi municipality
Respondent	The Ministry of Environment Protection and Agriculture of Georgia
The third party	"Kheledula Energy" LLC
Appeal	Invalidating an individual administrative act
Status of the case	The decision on the case was delivered on March 30, 2020

6.2.2. The essence of the dispute

According to the Ordinance №266 of the Minister of Environmental Protection and Natural Resources of Georgia of May 24, 2017, the ecological expertise report №34 dated May 22, 2017, issued by the LEPL Technical and Construction Supervision Agency of Georgia on the construction and operation of the Kheledula-3 HPP in Lentekhi municipality by Khaledula Energy LLC was approved.

Later, some modifications were made to the Kheledula-3 HPP project. Accordingly, on February 14, 2018, Kheledula Energy LLC submitted a scoping report to the Ministry concerning the changes. According to the updated project, the following changes were introduced to the general scheme of the HPP: It was decided to arrange a combined derivation-pressurization system on the river Devashi instead of the planned pressurization tunnel from Dam-2 to the aggregate building of the HPP. The project modification also covered the installed capacity and annual output, however, this was not specified in the scoping report.

On June 13, 2018, the Ministry issued a scoping conclusion as per the Order №2-459 of the Minister. According to the conclusion, an EIA report was supposed to include all required studies, the data to be collected and reviewed, and relevant documentation.

According to the scoping report, as a result of the field visit to the project area, a group of the Ministry's experts discovered a number of problems on the spot. For example, it was established that periodic activation of landslide-gravitational and landslide processes occurred in the bed of the river Tskhvareshi, where two major landslide-gravitational centers were observed from which solid materials accumulated in the river bed and then transformed into a landslide current, which posed a threat to the major building of the HPP and the entrance portal of the tunnel.

The scoping report submitted by Kheledula Energy LLC to the Ministry as well as the 2017 and 2018 EIA reports on the modifications did not specify the heights of the dams. Moreover, the essential studies required by the scoping report were not conducted. The company did not either submit the methodology for calculating the environmental flow of the river, which the Ministry requested.

Accordingly, the plaintiffs contested the legality of the scoping report and sought the annulment of the Order №2-459 published on June 13, 2018.

6.2.3. Legal analysis

Screening

Replacing the production technology provided by an environmental decision with a different technology, and/or modifying the operational conditions, including the increase in production capacity, shall be considered an activity subject to a screening procedure as stipulated in this Code.[56] In the given case, the company neglected the screening stage and directly applied to start the scoping procedure, which is a **blatant violation of the law**.

Project alternatives

According to Article 8 of the Environmental Assessment Code, a scoping report shall include information on the planned activity and alternatives for its implementation. In the case under question, the modified project, in actuality, was an alternative to the initial project that had not been discussed. Accordingly, the alleged "change in the project" was merely an indication that the 2017 EIA's assessment of the available options was not sufficient. This should have been specified in the scoping report issued by the Ministry, requiring the company to prepare an EIA on the entire project and a thorough analysis of project alternatives.

[56] Law of Georgia "Environmental Assessment Code", Article 5(12).

The aforementioned circumstance ought to have been sufficient to reject the scoping report and require an EIA for the entire project. However, the Ministry failed to address the matter in the scoping report, which can be the grounds for invalidating the Order that approved the scoping report.

Environmental flow methodology

The environmental flow calculation methodology was not specified in the 2017 and 2018 EIA reports and the additional EIA report prepared for the EBRD.

The Ministry required the company to submit the methodology only in the 2018 EIA, and in 2017 it did not touch the matter at all despite the fact that the methodology is a crucial component for an HPP EIA. **This fact also suggests that the Ministry violated the law**. The Ministry could have rectified the error if it had requested in 2018 not only the modified part of the project but also the submission of an EIA for the entire project and the development of the methodology for the calculation of the ecological flow in both rivers (Kheledula, Devashi). In addition, the scoping report should have been rejected because it did not mention at all the need for the environment cost calculation methodology, while the Guidelines for the Methodology for the Assessment of Environmental Flows of Georgian rivers stipulates that the basis of environmental flows shall be assessed at the scoping stage.[57]

The Ministry also required the company to submit a biodiversity/ichthyologists' report, in which instead of the 10% standard, the "required quantitative" data of the ecological flow would be specified. However, the Ministry did not receive any relevant reply from the company. Merely this fact alone could have served as the ground for the Ministry to decline the scoping report and issue a negative scoping conclusion. Moreover, the Ministry could reject the EIA document as well.

Cumulative impact

In the given case, the cumulative impact of the planned changes/project alternatives, which must be included in the EIA report, was not considered.[58] The information on cumulative impact was not presented in the scoping report, nor did the scoping report require that this assessment be presented in the EIA report. Therefore, it is apparent that in the above case, the cumulative impact of the planned changes/project alternatives was not discussed.

Equipment to be applied

In the case under consideration, it was unclear whether the drilling and blasting methodology or the tunnel-boring machines were planned to be applied in the course of the implementation of the project. To the question asked by the Ministry about what equipment the company intended to utilize during the project, the company provided two contrasting answers: on the one hand, the company mentioned "low-brisance" explosives, which means carrying out drilling and blasting works (even in a "velvety" manner), and it was promised that during the construction of the

[57] Georgia's Environmental Outlook, „The Methodology for the Assessment of Environmental Flows of Georgian Rivers and Streams" (2017), available at: https://geo.org.ge/wp-content/uploads/2019/02/GUIDE-TO-EF-METHODOLOGY-GEO-28-FEB-2017-GEO.pdf , last accessed: 29.11.2023.

[58] Law of Georgia "Environmental Assessment Code", Article 10.

tunnel special equipment - "tunnel boring machines" would be used. However, the scoping report did not discuss the latter tunnel-making method at all, which could also have become the reason for the Ministry's denial of the scoping report.

Loss and benefits

According to the Environmental Assessment Code of Georgia, an EIA report shall include an assessment of irreversible effects on the environment and justification for causing such effects, which implies a comparison of the loss resulting from the irreversible effects on the environment and the benefits gained in environmental, cultural, economic and social terms.[59] The company failed to present such an assessment. In addition, the assessment was not requested from the Ministry either, which is a clear violation of the law.

Project specifications

A dam is the key and most important component of any HPP. Accordingly, the information about the heights of the dams, as one of the main parameters of the project, was supposed to be presented. Without this information, the Ministry should not have made the decision.

Studies

Despite the requirement to conduct an engineering-geological survey in the final scoping project corridor, drilling works were not carried out on most parts of the corridor, nor were drilling and water penetration tests conducted in the area of water intake dam 2, which calls into question the quality of the engineering-geological study.

Although the Ministry explicitly instructed the company to conduct the studies on water biodiversity, the information presented in the document does not contain any evidence that may confirm the conduct of a field study on water biodiversity. In addition, there are no data and photographs to support the control fish catches and aquatic habitats sampling. The most important basic studies for the HPP's EIA were not carried out on water inhabitants.

In addition, no report on the hydrological studies was presented. The company carrying out the activity was planning to submit the hydrological characteristics and the data along with the corresponding analysis to the Ministry after the commencement of construction works, which is absolutely unacceptable in the case of an HPP's EIA.

Despite the Ministry's demand, the flooding nature of the rivers and tributaries, which may pose a direct threat to the HPP itself, was not studied. With respect to the matter of floods, the EIA report only formally notes that the flood-prone peculiarity of the rivers was "taken into consideration" in the dam project.

Ichthyologic monitoring

No ichthyologic monitoring is mentioned at all in the scoping report. This deficiency should have been absolutely sufficient for the Ministry to refrain from issuing a positive scoping report. Ichthyologic monitoring was not carried out during the EIA process, nor was it properly required at the operational stage.

[59] Ibid., Article 10(3)("g").

6.2.4. Analysis of procedural matters

Right to appeal

The plaintiffs are Lentekhi municipality residents who live in the project implementation area. Therefore, the project directly affects their rights and interests.

Expenses

The state duty in the amount of 100 GEL at Tbilisi City Court;

The state duty in the amount of 50 GEL for the application for provisional measures;

The state duty in the amount of 50 GEL for private claim;

Expert report to be submitted as evidence – 3919 GEL.

Timeframes

The Tbilisi City Court accepted the lawsuit based on the court ruling of September 17, 2018. On March 30, 2020, the Court made a final decision on the case.

Evidence

The GYLA presented to the Court reports prepared by the "Green Alternative" and environmental assessment by an independent expert. In addition, experts invited by the plaintiff, an independent environmental assessment expert, and a representative of the "Green Alternative" were questioned at the court hearings. Based on the motion of Kheledula Energy LLC, a representative of Gamma Consulting LLC was invited as a specialist and interviewed at the court session.[60]

Applying the security mechanism

On March 20, 2019, a motion was submitted to the Court requesting the suspension of the impugned order until the final resolution of the dispute. According to the plaintiffs' arguments, the public review of the EIA for the construction of Kheledula-3 HPP was scheduled for March 22, 2019, which was directly related to the subject of the dispute. It was also argued that no public hearing should have been held since the EIA report of the project was prepared in gross violation of the current legislation. In addition, the company was planning to start the construction despite the two valid EIAs, which was also a **flagrant violation of the legislation**. Based on the aforementioned, the contested act was causing irreparable harm to plaintiffs. In the case of non-suspension of the act at the time and without being secured, the final decision in favor of the plaintiffs would remain unenforceable. The Court, based on a court ruling, rejected the motion. The court ruling was appealed to the Tbilisi Court of Appeals, which also turned down the appeal.

[60] Gamma Consulting LLC prepared a scoping report as instructed by Kheledula Energy LLC.

6.2.5. Conclusion

The GYLA submitted to the Court the reports prepared by the "Green Alternative" and an independent environmental expert, which confirmed that the **scoping report had been issued in gross violation of the requirements of the Environmental Assessment Code**, and the Ministry of Environment Protection and Agriculture of Georgia was in full capacity to refuse Kheledula Energy LLC to carry out the activities. However, the expert's conclusions remained beyond the Court's assessment.

The scoping report **did not present a range of important studies and information**, yet the Ministry still issued the disputed act. The Court did not at all give any assessment of this violation of the law.

Furthermore, in this particular instance, the **screening stage required by the Environmental Assessment Code was ignored**. However, from the Court's point of view, this aspect could not serve as the ground for invalidating the administrative act. The Court noted that the project could be reviewed in its entirety at any stage regardless of whether a separate screening procedure was conducted or not. However, in the present case, after the scoping stage, the Ministry submitted for the EIA only the changes made in the project and not the entire project. Therefore, the possible impact of the project on the environment was not assessed for the entire project, especially against the background that the company did not fully submit the requested information. Accordingly, the Court's explanation and decision in the given case contributed to the establishment of the vicious practice. After the introduction of the changes to the project, the implementer company of the activity prepared an EIA report and a scoping report for only the modified part of the project rather than for the entire project, as a result of which there were several EIA reports for the same project instead of one comprehensive EIA, due to which the cumulative impact of the project modifications on the environment was not evaluated. **Furthermore, in such cases, the public is forced to locate required information in various EIA reports, which may limit their possibility of access to information.**

It should be noted that on June 17, 2020, the appealed order that approved the scoping report was declared null and void by the Minister of Environment Protection and Agriculture. The reason cited for the above decision was the failure of the implementer of the activity to make an environmental decision within two years after the approval of the scoping report. Therefore, the decision of the Tbilisi City Court was not appealed to the Appellate Court.

The plaintiffs filed the lawsuit with the Court on August 21, 2018, and the decision by the Court was made on March 30, 2020. **Accordingly, the litigation was in progress for about two years. The lengthy consideration of cases that concern environmental matters may cause irreparable damage to the environment, especially when the Court does not suspend the action of the appealed act. In addition, the content of the court decision itself is problematic, as the Court maintains the validity of the administrative act notwithstanding its egregious violations of the legislation.**

6.3. Batumi Riviera (1)

6.3.1. General Information

Case title/number	Batumi Riviera Case/№3-589/18
Date of filing the lawsuit	November 22, 2018
Court	Batumi City Court
Plaintiff	Georgian Young Lawyers' Association
Respondent	Batumi City Hall; Batumi Municipality Council
Appeal	Invalidating an individual administrative act; Instructing the relevant body to issue a new act
Status of the case	The decision has not yet been made

6.3.2. The essence of the dispute

On September 29, 2017, the City Hall of Batumi Municipality and "Geographic Consulting Center of Remote Sensing and Geo-Information Systems" LLC (the Consulting Center) signed an agreement. Based on the agreement, the Consulting Center carried out the preparatory works that were needed for the approval of general protection zones for cultural heritage and also created an explanatory card, i.e. an information package, for the historical development projects and buffer zones of the development regulation for the City Hall.

Later, the City Hall made some modifications to the document prepared by the Consulting Center without any examination, justification, or due procedures, thereby reducing the boundaries of the historical protection zone. The arbitrarily amended document was presented by the City Hall to the Batumi Municipality Council. The City Council approved (agreed) the document as per the Ordinance №33 of March 30, 2018.

Upon revising the boundaries of the buffer zone of the so-called Riviera territory near the Alphabet Tower, the City Hall noted that the mentioned area is a free land plot (namely, private and municipal property), which is not a monument, there are no cultural heritage monuments located on the plot, and it is newly developed. In the given case, the plaintiff argues that the City Hall's decision regarding the modification of the boundaries is not based on a conclusion of any person with special expertise, which is why there are certain inaccuracies - the mentioned area is the home for the cultural heritage i.e. a monument, namely, the Batumi Lighthouse and, most likely, the Batumi Seaside Boulevard as well.

Taking into account these circumstances, the complainant requests the annulment of the Ordinance №33 of the Council.

6.3.3. Legal analysis

According to the Constitution of Georgia, the State shall take care of the protection of cultural heritage,[61]which is protected by law, and everyone shall have the right to care for it.[62] The preservation, protection, and sustainable development of cultural heritage serve a legitimate purpose,

[61] Constitution of Georgia, Article 5(6).
[62] Ibid., Article 20(4).

which means the preservation of the historical and cultural roots of the region and its residents.[63] At the same time, the Constitution guarantees the right to live in a healthy environment and everyone has the right to take care of it.[64]

According to the European Convention on the Protection of Architectural Heritage, of which Georgia is a member as well, all signatory states are obliged to develop a relevant legal system, control and permission procedures and to protect the architectural heritage. Any kind of distortion, damage, or destruction of any protected property shall not be permitted.[65]

The obligation to protect the cultural and natural heritage is also determined by the Convention on the Protection of the World Cultural and Natural Heritage and the responsibility for the above primarily rests with the State.[66]

According to the Law of Georgia "On Cultural Heritage", a buffer zone for the protection of cultural heritage is an area defined by the rules established by this law around immovable objects of cultural heritage and/or the area with the extension or influence zone of the object of immovable cultural heritage, within which there is a special exploitation regime, and which is designed to protect the cultural heritage within its area from adverse impacts.[67] Protection of objects of cultural heritage, in turn, represents a set of legal, scientific-research, rehabilitation, informational, and educational measures, the purpose of which is to preserve the cultural heritage in its full diversity and ensure its sustainable development. According to the law, a buffer zone of historical development protection is defined as an area where a large concentration of cultural properties and other immovable objects of cultural heritage, a network of streets, developed areas, planning structures, and morphology are preserved in an authentic form.[68] The purpose of establishing the historical development protection zone is to preserve the historically formed spatial-architectural environment of the protected heritage properties, the traditional forms and appearance of the developed areas, the historical part of the city as a historically formed organism (planning patterns, morphology, building scale, character, silhouette, appearance, landscape, etc), the regulation of the protection and maintenance activities, rehabilitation, construction, and other works, improvement of the city environment, bringing the degraded urban fabric as close as possible to the historical appearance, boosting the economic and cultural potential of historical development.

Ensuring the preservation of historical environment planning, development, and landscape, as well as the possibility of restoring any lost features, is crucial when creating construction documents and urban planning in any buffer zone of historical development. The ground for the development of a project on protective zones can become a historical-cultural study of the territory, which shall be a document created on the basis of historical, architectural, archaeological, bibliographic, and archival research of the territory. The final section of the historical-cultural study must include the justification based on the research done on the establishment of buffer zones and their boundaries in the territory.[69]

[63] Kozacıoğlu v. Turkey
[64] Ibid., Article 29; Decision of the Constitutional Court of Georgia №2/1/524 (10.04.2017).
[65] Convention for the Protection of the European Architectural Heritage (1985), Articles 3 and 4.
[66] Convention on the Protection of the World Cultural and Natural Heritage (1972), Article 4.
[67] Law of Georgia "On Cultural Heritage", Article 3(1)("j").
[68] Ibid., Article 37.
[69] Decree №181 of the Government of Georgia of May 14, 2012 "On Approval of the procedure for developing cultural heritage protection buffer zones", Article 3.

Due to the lack of adequate resources necessary to perform the above work, the City Hall signed an agreement with the Consulting Center and requested to prepare a project document based on the above requirements. Therefore, it is not clear why the project documentation prepared by professionals was eventually corrected by the City Hall without any studies, expertise, justification, or relevant activities, and why the City Council approved the amended document without investigating the circumstances that were important to the case, which, as a result, constituted a violation of the requirements of the GACG.[70] The administrative body shall justify its decision on the issuance of an administrative act and base it only on the circumstances, facts, evidence, or arguments that the agency has investigated and studied during the administrative proceedings.[71]

According to Article 5 of the GACG, an administrative body shall have no right to act contrary to the requirements of the law. Any administrative act that has been issued by exceeding the official powers shall have no legal force and shall be declared null and void.[72] On its part, an administrative act shall be null and void if it contradicts the law or if other requirements determined by law for drafting or issuing it have been substantially violated.[73] The issuance of an administrative act at a session held in violation of the procedure provided for in Article 32 or 34 of this Code or in violation of the type of administrative proceedings provided for by law and/or violation of the law, in the absence of which on a given matter a different decision would have been made, shall be considered a substantial violation of the rule for the preparation or issuance of an administrative act.

Taking into account the aforementioned circumstances, it is clear that the act approved by the City Council, during the issuance of which the agency failed to fully investigate the factual circumstances important to the case, shall be deemed unfounded and invalid. Therefore, the City Council must be instructed to issue a new act, which will be based on the document originally prepared by the Consulting Center.

6.3.4. Procedural matters

Right to appeal

In the given case, the plaintiff is the NNLP Georgian Young Lawyers' Association.

Expenses

The state duty in the amount of 100 GEL at Batumi City Court.

Timeframes

The Court accepted the lawsuit on December 14, 2018. Due to the complexity of the case at the stage of preparation for the proceeding, the Court extended the consideration period for five months on February 4, 2019.[74] However, as of November 2023, no decision has been made yet.

[70] GACG, Article 96.
[71] Ibid., Article 53.
[72] Ibid., Article 5(3).
[73] Ibid., Article 60(1).
[74] Civil Procedure Code of Georgia, Article 59(3).

Evidence

The documents available within the scope of administrative proceedings.

6.3.5. Conclusion

It is evident from the analysis of the case circumstances that the administrative bodies - the City Hall and the City Council - violated the provisions stipulated in the Georgian legislation. Specifically, the City Hall arbitrarily made corrections to the document prepared by the specialist - the Consulting Center, thereby changing the boundaries of the so-called Riviera territory buffer zone near the Alphabet Tower in Batumi, whereas the City Council approved the amended document without examination of the circumstances of the case, thus neglecting the requirement provided for in the Constitution of Georgia and international conventions to protect the environment, cultural heritage, and architectural monuments.

The court proceedings began in 2018 and have not yet been resolved as of 2023. This is the indication that, in the given case, it is problematic to protect a legal right through the Court..

6.4. Batumi Riviera (2)

6.4.1. General Information

Case title/number	Batumi Riviera Case/№3/252-21
Date of filing the lawsuit	January 22, 2021
Court	Tbilisi City Court
Plaintiff	Mariam Kajaia, Kristine Gurgenidze, Nino Lomaya, Lali Antidze, Guzel Derrin, Salome Tsetskhladze, Aza Gabunia, Davit Khiladze, Nino Nakashidze, Amiran Vadachkoria, Aiddan Derrin, Merab Jorbenadze, NNLP “Batomi”
Respondent	Ministry of Sustainable Development of the Economy of Georgia
Complaint	Invalidating the construction permit; Suspending the operation of the administrative act
Status of the case	The decision has not yet been made

6.4.2. The essence of the dispute

On May 27, 2018, Batumi Riviera LLC submitted an application to the City Hall of Batumi Municipality requesting the approval of the Development Regulation Plan (DRP). A report prepared by the legal advisor “Denton Georgia”, which Riviera Batumi LLC attached to the request, stated that the DRP was intended to be approved in the form of an individual administrative act or an ordinance, which was actually an erroneous statement.

On February 26, 2019, the Mayor of Batumi applied to the Ministry of Environment Protection and Agriculture, requesting an opinion on the procedures required by the Environmental Assessment Code in connection with the DRP.

On June 17, 2019, a screening application of Batumi Riviera LLC was sent to the Ministry of Environment Protection and Agriculture in order to determine the need for the procedures defined by the Environmental Assessment Code.

On July 4, 2019, the Ministry of Environment Protection and Agriculture of Georgia sent a letter to the Batumi City Hall, informing them that the DRPs for the land parcels located on Gogebashvili Street in Batumi were exempt from the strategic environmental assessment procedure since, according to the report prepared by Denton Georgia LLC, the City Council had the obligation to issue an individual-administrative act in order to approve the aforementioned Development Regulation Plan.

On August 20, 2019, the City Council adopted Resolution №20 instead of an ordinance on the approval of the DRP. Accordingly, it becomes obvious that the report prepared by "Denton Georgia" LLC, according to which the DRP was supposed to be approved by an ordinance rather than a resolution, was taken into account only at the stage when the matter of submission of the GRP to the procedure defined by the Environmental Code was being discussed. After the response of the Ministry, the City Council declared the DRP approved under a resolution, which is a normative administrative act and ought to have been subjected to the procedure defined by the Environmental Protection Code. Accordingly, the Resolution №20 was appealed to the Batumi City Court.

In parallel with the debate over the legality of the resolution,[75] it was discovered that, in accordance with the Order №224-04 of December 24, 2019, the LEPL Technical and Construction Supervision Agency had approved the architectural plan and construction design for a multipurpose high-rise building Silk Tower and Laguna in the disputed territory, and granted a construction permit as well. The examination of the obtained documentation has shown that the impact of the project on the environment, human health, and economy, historical and cultural heritage of the city was not discussed during the decision-making process. The urban compatibility of the project with the city, the boulevard, and the coastline, with the physical and socio-economic environment formed over the years, was not assessed. Therefore, the company carrying out the activity was unjustifiably exempted from the Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA).

Accordingly, the plaintiffs request the annulment of the Order №224-04 delivered by the Technical and Construction Supervision Agency and the suspension of the construction permit.

6.4.3. Legal analysis

EIA and SEA

The Order №224-04 issued by the LEPL Technical and Construction Supervision Agency is an individual administrative act, which shall be subject to the requirements established by the General Administrative Code stipulated for the issuance of an administrative act.[76] An administrative body shall not be authorized to base its decision on the circumstances, facts, evidence, or arguments that were not investigated and studied during an administrative proceeding.[77]

Any issues relating to a construction permit are regulated by the Law of Georgia on "Licenses and Permits" and the Decree №57 approved by the Government of Georgia in 2009, which defines the procedure for the issuance of a construction permit and conditions of such a permit. According to the Law of Georgia "On Licenses and Permits", a permit issuer shall not issue a permit if the application submitted by a permit seeker and the attached documents do not meet the requirements

[75] Letter from the LEPL Technical and Construction Supervision Agency (10.08.2020).
[76] GACG, Article 2 (1) ("d").
[77] Ibid., Article 53.

of the law or the permit conditions established by the law or a representative body of the local self-government defined by the law.[78]

As a result of the analysis of the actual circumstances, we have identified the grounds for the denial of the permit - there was no legal basis required by the Environmental Assessment Code under which the implementer of the activity would be exempted from the Strategic Environmental Assessment and Environmental Impact Assessment.

According to the Environmental Assessment Code, a strategic document the implementation of which may have a significant impact on the environment and human health shall be subject to an SEA,[79] whereas the activities provided for in Annex I and also those provided for in Annex II of the same Code, which are subject to EIA based on the screening decision made in accordance with the screening procedure defined in Article 7 of this Code, shall be submitted for an Environmental Impact Assessment under this Code.[80]

Denton Georgia LLC, the legal advisor of Batumi Riviera LLC, at the very beginning of its legal opinion submitted to the administrative body, notes that "a significant part of the land parcels is occupied by an artificial bay where a berth for yachts is to be arranged". It is obvious that arranging an artificial bay without changing the configuration of the seashore is impossible. This circumstance is confirmed by the mayor of Batumi in his letter №25/14101, by which the Ministry of Environment Protection and Agriculture of Georgia is informed that, based on the presented documents, the projected building modifies the coastline, the lagoon encroaches on the land plot, ultimately affecting the coastline.

Considering the fact that the requirements provided for in the Environmental Code for adopting any decision pertaining to strategic documents equally apply to both activities and strategic documents and since the planning is regarded by the Batumi City Hall as a strategic document in its written appeal, the requirement for an SEA was automatically created along with the EIA. However, the SEA and EIA were not used in the given case.

Screening

The documents submitted by Riviera Batumi LLC, which were prepared with complete disregard for the requirements of the screening procedure for an EIA and SEA of the project, did not meet the screening stage criteria provided for in Article 7, paragraph 6 and Article 23, paragraph 6 of the Environmental Assessment Code. Among them, **the scale of the activities was not or was insufficiently assessed, as well as the cumulative impact** on the ongoing and/or projected activities, the utilization of natural resources, the production of waste, environmental pollution and noise problems, the risks of large-scale accidents and/or disasters associated with the activities, the risks pertaining to the environment and/or human health, the value and vulnerability of the impacted area, in particular, natural characteristics or cultural heritage, the impact on the protected areas, as well as on the area and/or landscape that has been granted the status of local and/or international importance, etc.

Despite the requirements stipulated in the Environmental Assessment Code, the screening statement was not published, nor was the screening decision issued based on an order of the Minister. Moreover, the reply letter pursuant to which the activity/project of Batumi Riviera LLC

[78] Law of Georgia "On Licenses and Permits", Article 27.
[79] Law of Georgia "Environmental Assessment Code", Article 20(3).
[80] Ibid., Article 5.

was exempted from the EIA was sent in violation of the principle of publicity stipulated by the law and the requirement of the code, i.e. was not published. This violates the requirements of Article 7, paragraph 5[81] and paragraph 6 of the Environmental Assessment Code.[82] The same applies to the SEA screening application of the DRP submitted by the City Hall, which was not published, and the corresponding decision **was not issued by the Minister based on an order.**

According to the Constitution of Georgia[83] and the Aarhus Convention,[84] each member of the public concerned shall be informed in an adequate, timely, and effective manner either through public notice or individual means at the initial stage of the decision-making procedure related to environmental protection when there are still alternatives. In the given case, these rights were violated.

6.4.4. Procedural matters

Right to appeal

The plaintiffs in the case are the residents of Batumi and NNLP Batomi whose interests and rights are directly affected by the issued permit.

Expenses

The state duty in the amount of 100 GEL at Tbilisi City Court;

The state duty in the amount of 150 GEL for three private claims, 50 GEL for each;

2 expert reports to be submitted as evidence – 5000 GEL

Time

The plaintiffs filed the lawsuit on January 22, 2021. As of November 2023, the Court has not adjudicated the case yet.

Evidence

The documents available within the framework of administrative proceedings.

Applying the security mechanism

For this particular case, it was crucial to apply the security measure for the claim, namely the suspension of the validity of the permit was of critical importance. It was the mechanism that could make it feasible to use a temporary remedy to halt the construction until the final settlement of the dispute in order to prevent irreparable harm to the environment and people. Only in this manner, the complaint filed with the court would have a relevant effect and would not impede the enforcement of the judgment rendered in favor of the plaintiffs.

The Court rejected the motion of the claimants. In the judgment, the Court, without providing

[81] "No earlier than 10 days and no later than 15 days after the registration of a screening application, the Ministry shall make a decision based on the following criteria on whether the planned activity shall be subject to SEA or not."
[82] "No earlier than 10 days and no later than 15 days after the registration of a screening application, the Ministry shall make a decision based on the following criteria on whether the planned activity shall be subject to SEA or not."
[83] Constitution of Georgia, Article 29(1).
[84] Aarhus Convention, Article 6.

any substantiation, noted that "in the case under consideration, the party was not able to confirm the urgent necessity to suspend the validity of the impugned act, nor could the party indicate any factual circumstances due to which the urgent enforcement of the act could cause substantial harm or make it impossible to protect their legal rights or interests until the case is considered on merits."

The court ruling was appealed in the Tbilisi Court of Appeals. After reviewing the case materials, the Appellate Court accepted most of the plaintiffs' opinions and considered that the appealed decision ought to have been declared null and void and the matter should have been transferred to the Tbilisi City Court for reconsideration. From the Appellate Court's explanation, it is clear that the City Court did not specify in its decision all necessary specific and convincing reasons to support the refusal to suspend the permit, nor did it evaluate the plaintiffs' evidence and solely relied on an abstract analysis of the provisions. The City Court did not take into account the interpretation of the Appellate Court and did not halt the validity of the permit.

6.4.5. Conclusion

Given the circumstances, the construction permit was issued without conducting the procedures specified in the Environmental Assessment Code, which was required to evaluate the impact of the project on the environment, population, and cultural heritage. The process of issuing the permit - decision-making - **did not ensure the public's participation,** nor did it provide the public with relevant information, which is a violation of the rights guaranteed by the Constitution of Georgia and the Aarhus Convention.

Furthermore, the Court did not satisfy the motion requesting the suspension of the permit and delivered a ruling in favor of the company's economic interests. It is unclear why, in the process of weighing interests, the company's interests were given priority while the **impact of the project on the environment and people was not assessed and studied.**

As of November 2023, the lawsuit has been pending in Court for over three years, and the Court has not yet made a decision. Three years is a very long time to create irreversible harm to the environment and people, particularly in the event that the construction permit has not been revoked. We can accordingly draw the conclusion that, in this case, **it is problematic to protect a legal right through** the court.

6.5. Dvabzu Asphalt Factory

6.5.1. General Information

Case title/number	Asphalt and Inert Materials Crushing-Sorting Plant Case /№3/4949-18
Date of filing the lawsuit	August 02, 2018
Court	Tbilisi City Court; Tbilisi Court of Appeals
Plaintiffs	Residents of the village of Dvabzu and village Baghdadi of Ozurgeti municipality
Respondent	Ministry of Environment Protection and Agriculture of Georgia
The third party	"New Road" LLC
Status of the case	Tbilisi City Court delivered a decision on March 14, 2019. On April 19, 2022, the Tbilisi Court of Appeals left the decision unchanged

6.5.2. The essence of the dispute

In the vicinity of residential houses in the village of Dvabzu, Ozurgeti municipality, New Road LLC, the asphalt and inert materials crushing and sorting plant, is operating. The activity of the enterprise includes producing asphalt as well as processing minerals, which contain risks of adverse impact on the environment.

According to the Environmental Assessment Code, the production of asphalt and the processing of raw minerals shall be subject to an environmental impact assessment based on a screening decision made in accordance with the screening procedure.[85]

Based on an application of New Road LLC, on July 2, 2018, the Minister of Environment Protection and Agriculture of Georgia issued a screening decision as per the Order №2-534, stating that the activities of New Road LLC were not subject to an environmental impact assessment. The screening decision was prepared in violation of the requirements of the law; in particular, the decision of the administrative body was not based on a proper examination and analysis of the risks of environmental impact.

Accordingly, the plaintiffs filed a lawsuit with the court and requested to invalidate the screening decision.

6.5.3. Legal analysis

Screening

The primary purpose of the screening procedure is to help an implementer of activities to save financial and time resources as well as not to prepare a comprehensive EIA report in advance for activities that may not require an EIA.[86]

Within not earlier than 10 days and not later than 15 days after a screening application has been registered, a decision-maker shall, based on the following criteria, make a decision on whether the planned activity is subject to an EIA or not.[87] In addition, the General Administrative Code provides for the requirement to properly study all the circumstances relevant to the case and make a decision based on the assessment and reconciliation of the circumstances when issuing an administrative act.[88] Accordingly, the decision-maker, the Ministry in the given case, ought to have employed all possible measures and procedures to minimize the risk of harming the environment and people as a result of the activity. In the aforementioned process, while evaluating the criteria defined by the law, the agency could have requested documents, obtained information, listened to interested parties, commissioned expert examinations, applied all necessary documents and acts, etc., and only after that, should have determined whether the activity was subject to EIA or not.[89]

[85] Law of Georgia "Environmental Assessment Code", Annex II(5).
[86] Explanatory note for the Law of Georgia "Environmental Assessment Code".
[87] Article 7, paragraph 6 of the Environmental Assessment Code defines the following criteria: the size of the activity, cumulative impact on an existing activities and/or planned activities, the use of natural resources (especially water, soil, land, biodiversity), the generation of waste, environmental pollution and nuisances, the risk of a large-scale accident and/or disaster related to the activity, the place of implementation of the planned activity and its compatibility with a wetland area, the Black Sea coastline, the area densely covered with forest, where the species of the "Red List" of Georgia prevail, with a protected area, a densely populated area, the cultural heritage monument and with another object, the transboundary nature of the possible impact, the potential quality and complexity of the impact.
[88] GACG, Article 96(1).
[89] Ibid. Article 97.

In the course of the procedure, an official of the Ministry repeatedly noted that the screening decision was made only on the basis of the information submitted by a person seeking the permit – after reading out of this information by a representative of the Ministry. **This proves that the Ministry has established the practice in the above field and accepts the information provided by permit seekers without verification and thorough investigation**. **The above approach cannot adequately ensure the protection of the right to live in a healthy environment, as the decision-maker has established an erroneous practice, and the screening decision was delivered in violation of the legal norms.**

During the court hearing, the evidence presented by the respondent helped to identify additional significant circumstances. Specifically, the situation at the project implementation territory was twice inspected by the Ministry: the first time the permissible norms of noise were checked, and the second time, the agency was not able to study the situation despite visiting the site. In addition, the Ministry checked the permissible noise norms not on its own initiative but on the basis of a report submitted by local residents. These circumstances contradicted the Ministry's statement that the Ministry's involvement in the process was not limited merely to issuing the screening decision but rather they would regularly monitor the environmental impact of the activities. However, the lack of regular visits proves the opposite. That is why the decision from the outset should have been made based on a thorough investigation of the circumstances and the enterprise's activities ought to have been subjected to the EIA procedure.

In addition, the submitted evidence showed that the noise caused by the stone-crushing machine was measured only during the daytime hours, and was 42.7 decibels. Even though 42.7 decibels does not exceed the permissible noise parameters established for the daytime hours, it still exceeds the information specified in the company's screening application, according to which the noise level shall not exceed 38 decibels even when the enterprise is operating at its maximum capacity. Upon making the screening decision, the Ministry accepted the aforementioned component without verification, which once again confirms the need to re-examine the information submitted to the Ministry. In addition, according to the statements of the claimants, the enterprise was operating with the same workload at night as well and noise could be heard from the plant even during night hours. Thus, the noise level ought to have been measured at night as well in which case, a violation of the noise requirements determined by the relevant technical regulations would have been established.[90]

6.5.4. Procedural issues

Right to appeal

The plaintiffs in the case are residents of the village of Dvabzu and the village of Bagdadi, Ozurgeti Municipality. It is in this territory of the municipality that the company operates and affects the legal rights and interests of the people living here.

Expenses

The state duty in the amount of 100 GEL in the Tbilisi City Court;

The state duty in the amount of 150 GEL in the Tbilisi Court of Appeals.**Timeframes**

[90] Decree №398 of the Government of Georgia, "Technical Regulation - "On Acoustic Noise Ranges in Storerooms and Territories of Residential Houses and Public Institutions" (15.08.2017).

The plaintiffs filed the lawsuit on August 2, 2018. According to the decision of March 14, 2019, the complaint was dismissed. As per the ruling of April 19, 2022, the Tbilisi Court of Appeals left the decision of the Tbilisi City Court unchanged.

Evidence

The evidence in the case was the screening application of the company and the documents attached to the application, as well as the letters and orders issued by the Ministry in response to the application. There was not and the Ministry could not present any documentary material prepared during the administrative proceedings, which once again confirms the fact that the Ministry did not thoroughly investigate the matter.

Furthermore, the Court, in the reasoning part of the judgment, referred to the document - an act issued by the Department of Environmental Supervision on February 18, 2019 - which was presented by the third party at the court hearing in violation of the requirements of the procedural law, and the Court did not discuss at all the admissibility of the document as evidence. Therefore, this document should not have been applied by the Court. Even in the case of using the act as evidence, it could confirm only one circumstance - the compliance of the noise, air, and water reference information for a specific day of the inspection with the legislation - which was not the subject of the dispute in question.

An erroneous interpretation of burden and subject of proof

The court's decision was mainly based on the rationale that the plaintiff failed to provide any piece of evidence confirming the harm caused by the enterprise to the environment and human health, whereas the subject of the dispute was not at all to determine the damage caused by the company.

As for the subject of the dispute - the conformity of the act issued by the Ministry of Environment Protection and Agriculture with the legislation - the respondent administrative institution failed to prove within its burden of proof that the impugned act was issued in compliance with the requirements of the law – on the basis of a comprehensive and thorough examination of the case circumstances. According to the court's opinion, the Ministry examined the issue thoroughly and comprehensively, however, this assessment of the court was not supported by any specific piece of evidence and facts.

Applying the security measure

The plaintiff requested the suspension of the activity of the disputed act. On August 27, 2018, the Court rejected the motion.

6.5.5. Conclusion

The court's decision in the above case contributes to the establishment of a vicious practice in the implementation of the screening procedure. When issuing the screening decision, the Ministry was obliged to decide whether the activity was subject to EIA or not, taking into account the criteria defined by the law. In addition, the GACG required the Ministry of Environment Protection and Agriculture to properly investigate and evaluate the circumstances.

In the given case, the Ministry violated the requirements of the legislation; in particular, the agency fully accepted the information provided by the implementer of the activity during the screening procedure without verification and the assertion that the planned activity would not cause a significant impact on the environment. Accordingly**, the Ministry did not thoroughly investigate the risks, nor did it base its decision on the findings of a comprehensive study of the circumstances of the case.** The major part of the appealed order was a summary excerpt of the annex of the screening application submitted by New Road LLC. For instance, the contested act contained only the information about the size of the activity (the capacity of the machinery, etc.) copied from the appendix of the screening application and did not provide any evidence about the scale that the Ministry itself determined the planned activity to be. Nevertheless, the Court noted in its judgment that the Ministry thoroughly studied the matter and made the screening decision on this basis.

The Tbilisi Court of Appeals also shared the City Court's reasoning, further endorsing the application of the vicious practice in conducting the screening procedure.

In addition, the final decision concerning the lawsuit filed in 2018 was announced by the Court of Appeals in 2022. Due to the denial of the motion to suspend the contested act, there might have been irreparable harm to the environment and human life during that time.

Therefore, in the aforementioned case, **it was problematic to protect a legal right through** the Court.

6.6. Abastumani Bypass Road (1)

6.6.1. General Information

Case title/number	Abastumani Bypass Road case/№3/7564-20
Date of filing the lawsuit	November 27, 2020
Court	Tbilisi City Court
Plaintiff	NNLP Georgian Young Lawyers' Association (GYLA)
Respondent	Ministry of Environment Protection and Agriculture of Georgia (Ministry)
Appeal	Invalidating the individual administrative act
Status of the case	The case has not yet been resolved

6.6.2. The essence of the dispute

On March 24, 2020, the Roads Department of Georgia submitted an EIA report on the construction and operation of the Abastumani entry highway project to the Ministry of Environment Protection and Agriculture and requested the issuance of an environmental decision.

According to the project, the construction of the road was planned within the 82 km - 95 km section of the Kutaisi (Saghoria)-Baghdati-Abastumani-Benara highway. The road was supposed to connect south and west of Georgia. The primary reason for the construction of the road was the defense interests of the country. In case of necessity, the design of the highway would facilitate the easy transportation of personnel and military cargo.

The construction of the road was planned within a zone of traditional use, namely, Borjomi-Kharagauli National Park. A zone of traditional use means that only agricultural activities

related to the traditional use of natural resources shall be permitted in the area.[91] In addition, in the same area there are species provided in the "Red List of Georgia" and priority habitats and species strictly protected as per the Berne Convention.[92] However, approximately the nine-meter-wide longitudinal infrastructure, which is needed for the road construction, requires the destruction of forest and vegetation along its entire length – by carrying out clearing, explosions, and excavation activities, which creates the risks of destruction, degradation, and fragmentation of habitats of various species.

On March 27, 2020, the Ministry published an EIA report on its website and set the deadline for the public to submit comments and opinions until May 29, 2020. On April 3, 2020, a statement was published on the website of the Ministry, according to which, in order to prevent the spread of the new Coronavirus in Georgia, and due to the state of emergency in effect at the time, the administrative proceeding initiated with respect to the EIA report would be conducted without holding a public discussion.

On April 13, 2020, the Ministry's website published another statement, based on which, on April 10, 2020, the Roads Department of Georgia presented an updated version with the view to rectifying a technical mistake in the first volume of the EIA report. The statement did not specify what kind of mistake was identified in the previously published document, and interested members of the public were forced to review again a rather lengthy document. Owing to the aforementioned modifications, the consideration of the application started from afresh and the deadline for submitting comments and opinions was extended to June 15, 2020.

On June 19, 2020, the Ministry published another statement, according to which, instead of making a final decision, the agency suspended the administrative procedure, which would be resumed only after the Roads Department of Georgia submitted specified information in accordance with the Ministry's comments. As it becomes clear from the materials of the administrative proceeding, the opinions regarding the EIA report were submitted by the LEPL Agency of Protected Areas, the LEPL National Agency of Mineral Resources, the LEPL National Agency of Cultural Heritage, the Department of Biodiversity and Forestry of the Ministry of Environment and Agriculture, pinpointing the inadequacy of the document submitted by the Roads Department, the need for its revision, additional studies and an appropriate assessment of the environmental impact of the project.

In addition, the "Green Alternative" provided its comments for the Roads Department of Georgia outlining in detail why the Ministry ought not to have issued an environmental decision regarding the project. The Ministry sent to the Department the opinions provided by "Nacres", the Centre for Biodiversity Conservation and Scientific Research, according to which the EIA report did not provide a comprehensive picture of the impact on the habitats (GE0000010) of Borjomi-Kharagauli National Park and the Emerald Network site, and could not in any way be used as a ground for making the decision.

On July 20, 2020, the Roads Department submitted additional information in the form of a 622-page document. On July 24, the department also presented answers concerning the issues highlighted by the "Green Alternative" and "Nacres". The Ministry set August 7, 2020, as the deadline for the public to submit comments and opinions relating to the additionally presented information.

[91] Law of Georgia "On the System of Protected Areas", Article 5.
[92] European Convention for the Conservation of Wildlife and Natural Habitats (1979).

The Ministry considered the additional information and documents received within one month after opening the deadline for the comments to be sufficient and, after imposing certain conditions, granted an environmental decision on September 3, 2020, based on the Order №2-785.

According to the plaintiff, the procedure for making the environmental decision was conducted in violation of a number of requirements stipulated in the Georgian legislation and the Aarhus Convention, which is why the Order №2-785 should be declared invalid.

6.6.3. Legal analysis

According to GACG, an administrative act shall be declared null and void if it contradicts the law or if other requirements established by law for drafting or issuance of it have been substantially violated.[93] Substantial violation of the procedure for drafting or issuing an administrative act shall be considered the issuance of an administrative act at a session held in violation of the procedure under Article 32 or 34 of this Code or in breach of the administrative procedure provided by law, or a violation of the law that would result in a different decision on the given question. An administrative body shall not have the right to take any action contrary to the requirements of the law.[94] In the given case, the requirements of the GACG were violated, which is the basis for the invalidity of the contested act. Specifically:

- **Environmental Assessment Code**

Article 10 of the Environmental Assessment Code provides for an extensive list of what an EIA report shall include. However, as confirmed by the documents published for consideration, the text of the appealed act, the opinions presented by the interested parties, and several agencies in the process of administrative proceedings, the environmental impact assessment report did not fully include the required information. Accordingly, the Ministry should not have issued an environmental decision.

According to the Environmental Assessment Code, an administrative procedure related to environmental decision-making includes an expert's assessment, participation of the public and competent administrative bodies, and in case of possible transboundary impact - the procedure provided for in Chapter V of the Code.[95] The efforts to make modifications and fix errors in the document that the implementer of the activity submits are not mentioned in any provision of the Administrative Procedure Code. The Ministry of Environment Protection and Agriculture, the body making decisions on the issuance of an environmental decision, was required to remain within its authority and refrain from being involved in the process of modifying/correcting the documentation submitted for decision-making.

According to Article 12, paragraph 9 of the Environmental Assessment Code, not earlier than the 51st day and not later than the 55th day after the registration of an application for obtaining an environmental decision, the Minister shall deliver an individual administrative act on the issuance of an environmental decision and, if there are grounds provided for by Article 14 of this Code, on the refusal of carrying out of the activity. The administrative proceeding for the issuance of the appealed act was underway for almost six months - it started on March 24, 2020, and ended on

[93] GACG, Article 60(1).
[94] Ibid., Article 5(1).
[95] Law of Georgia "Environmental Assessment Code", Article 12(1).

September 3, 2020. Nevertheless, the decision on the extension of the administrative procedure was not adopted.

According to Article 14 of the Environmental Assessment Code, the minister shall issue an individual administrative act on the refusal to carry out activities if the activity contravenes the requirements established by the legislation of Georgia or the legally binding decision of the court/arbitration has entered into force, or the EIA report and/or expert opinion establishes the unacceptability of the nature and volume of environment impact, the impossibility of preventing the risk of environmental impact and/or carrying out measures to mitigate the environmental impact. In the given case, both requirements were present, and the Ministry was obliged to make a decision to refuse the activity.

- **Law of Georgia "On the System of Protected Areas"**

The project was planned to be implemented within a zone of traditional use in the Borjomi-Kharagauli National Park, which is a zone of traditional use. A zone of traditional use is a national park area that is arranged for the conservation of nature and economic activities related to the traditional use of renewable natural resources.[96] Activities such as mowing, pasturing, and harvesting of firewood and others limited to the needs of the local population and natural productivity shall be permitted in the zone. In the zone, it shall be inadmissible to plough, sow, and erect agricultural buildings. Therefore, the construction of a highway cannot be considered an economic activity related to the traditional use of natural resources. Accordingly, the implementation of the planned project in the form proposed by the EIA report contradicts the requirements established by the Georgian legislation.

Within the territory protected by the Law of Georgia "On the System of Protected Areas", the following shall be prohibited: the disturbance and alteration of natural ecosystems, as well as destruction, extraction, ripping, damage, disturbance of any natural resource for exploitation or any other purposes.[97] The project-related activity will likely cause such an impact. According to this law, it is also prohibited to bring explosive and poisonous substances inside the protected area.[98] According to the project, the construction of the highway is planned to be arranged by means of drilling and blasting works. It will be necessary to carry out blasting works along the entire length of the area that passes through the territory of the Borjomi-Kharagauli National Park.

- **Law of Georgia "On Red Book and Red List"**

The project area is a residential environment for many species protected by the "Red List of Georgia". According to the law of Georgia "On Red Book and Red List", any action that may lead to the death of endangered wild animals, reduction of their number, disturbance of their habitat, breeding areas, rescue stations, migration, and access roads to water and drinking water locations shall be prohibited.[99] In addition, any action that may lead to the extermination of endangered wild plants, the reduction of their number and/or distribution area shall be prohibited.[100] Furthermore, on the lands in the ownership of the Forestry Fund, it shall be prohibited any cutting of endangered wild plants or planning and implementing such forestry activities that may harm wild

[96] Law of Georgia "On the System of Protected Areas", Article 5.
[97] Ibid., Article 20(4).
[98] Ibid., ("e").
[99] Law of Georgia "On Red Book and Red List", Article 11(1).
[100] Ibid., Article 12(1).

plant species in danger of extinction.[101] The law allows certain exceptions; however, the EIA report does not contain any evidence that can confirm the existence of such exceptions.[102]

In the above case, the highway is a longitudinal infrastructure of about nine meters wide and entails the destruction of forest and vegetation along its entire length - through clearing, blasting, and excavation works. This will lead to the destruction, degradation, and fragmentation of habitats of various species, including species protected by the "Red List of Georgia". Accordingly, the requirements of the Georgian legislation are violated.

- **Berne Convention**

In the project territory, there are priority habitats or species strictly protected by the Berne Convention, which will be affected by the construction of the road. The project area includes at least two habitats[103] and a number of animal species protected by the Berne Convention Resolution 4[104]. The EIA report notes that the project corridor is a migratory or foraging area for several species protected by the Berne Convention.

Accordingly, the contested act violates the requirements of Article 4, paragraphs 1 and 2 of the Berne Convention, according to which the signatory parties to the Convention are obliged to implement appropriate and necessary measures for the conservation of habitats of wild flora and fauna species protected by the Convention and natural habitats under threat, ensure that the conservation requirements of protected areas are taken into account in order to avoid or minimize the deterioration of such areas to the maximum extent possible. According to paragraph 3 of the Article, special attention shall be paid to the protection of important places for migratory species.

The appealed act also contravenes Article 5 of the Convention, which prohibits the deliberate harvesting, gathering, cutting, or uprooting of plants protected by the Convention, and Article 6 of the Convention, which prohibits the intentional damage and destruction to resting or breeding sites of species of wild fauna protected by the Convention, intentional disturbance of wild fauna, especially during breeding, rearing, and hibernation periods.

- **Directive 92/43/EC[105]**

According to the European Union Association Agreement, Georgia undertook to fulfill the provisions of the Directive on the Conservation of Natural Habitats and Wild Fauna and Flora. In particular, Georgia is obliged to carry out an inventory of the territories of the Emerald Network and determine the priorities for their management; Georgia shall establish a strict protection regime for the species listed in Annex IV of the Directive. According to Article 4 of the Directive, in an area where a priority natural habitat type and/or a priority species is found, any project with a negative impact may be implemented only if there is a necessity due to an overriding public interest and this must be agreed with the European Commission or the Berne Convention Secretariat. The EIA report in question does not look at this project as a necessity caused by an overriding public interest; it has not been agreed with the European Commission or the Berne Convention Secretariat;

[101] Ibid., (2).
[102] Ibid., Article 12(21).
[103] "G1.21 Riverside Alnus forest that only gets wet when the water level rises" and "G3.1H Oriental spruce Picea orientalis forests".
[104] Resolution 4 includes a list of endangered natural habitats that require specific conservation measures.
[105] European Union Directive 92/43/EC on the Conservation of Natural Habitats and Wild Fauna and Flora (1992).

the presented documentation does not prove that the project will not harm the species and habitats protected by the Convention and Directive. The fact that the Ministry additionally requests to study the matter for the period after the issuance of the permit is a confirmation of the above.

- **Aarhus Convention**

As stated by the Aarhus Convention, members of the interested public should be informed in an adequate, timely, and effective manner at the initial stage of the environmental decision-making procedure when other project alternatives are still available, and submit their opinions and comments.[106] The public should be allowed to check, free of charge and in a timely manner, all the information needed to make a decision.[107]

A statement on the initiation of the administrative procedure for the environmental decision-making on the Abastumani bypass road project was published on the website of the Ministry of Environment and Agriculture of Georgia on March 27, 2020. On April 13, 2020, a new statement was published on the website of the Ministry, in which it was mentioned that in order to correct a technical error in the first volume of the EIA report, the Roads Department presented a modified version of the first volume of the EIA report. However, it was not specified what was changed in the document. Accordingly, the interested public was forced to review the document again. Therefore, the public was not provided with the required information through simple means.

In addition, on April 3, 2020, an announcement was published on the website of the Ministry of Environment and Agriculture, according to which, due to the spread of the new Coronavirus in Georgia, the administrative procedure for the issuance of the scoping report and environmental decision was scheduled to be carried out without public discussions, and the public's participation in the administrative proceeding and submission of opinions and comments would be possible only in writing. Making a decision without a public discussion significantly harms the process. Here, it should be noted that the restrictions imposed to prevent the spread of the new Coronavirus were lifted on May 23, 2020. After that, the Ministry of Environment Protection and Agriculture took another three months to make a final decision, yet without holding a public discussion. Accordingly, the requirement to properly ensure public involvement in the decision-making process was violated.

6.6.4. Procedural issues

Right to appeal

In the above case, the plaintiff is the NNLP Georgian Young Lawyers' Association.

Expenses

State duty in the amount of 100 GEL at Tbilisi City Court.

Timeframes

The court accepted the lawsuit on December 1, 2020. A preparatory court hearing was held on April 7, 2021. The final decision has not yet been issued.

[106] Aarhus Convention, Article 6.
[107] Ibid., Article 4.

Evidence

The documents submitted as part of the administrative procedure necessary for issuing an environmental decision were presented as evidence.

6.6.5. Conclusion

The analysis of the above case demonstrates that the procedures defined by the Environmental Assessment Code are not properly conducted. **The EIA report did not include the relevant information required by the legislation, and the Ministry, when making the environmental decision, did not adequately take into account all possible negative impacts of the project on the environment, including habitats and species protected by the Georgian legislation and international conventions.**

In addition, the procedures stipulated in the Code of Administrative Procedure **were also violated**. In particular, the administrative proceeding for the issuance of the disputed act was underway for almost six months, and the decision on extending the administrative procedure was not made.

Procedural rights provided in the Aarhus Convention **were violated** as well. The public was not properly informed about the alterations made to the project, and the Ministry did not hold a public consideration of the project, even though the restrictions imposed against the spread of the new Coronavirus in the country had been lifted before the final decision was made by the Agency.

The plaintiffs filed the lawsuit on November 27, 2020. As of November 2023, the final decision has not been issued yet. Therefore, the three-year period, under the conditions of road construction, is quite a long time for inflicting irreparable harm on the environment.

We can accordingly draw the conclusion that, in this case, **it is problematic to protect a legal right through** the court.

6.7. Abastumani Bypass Road (2)

6.7.1. General Information

Case title/number	Abastumani Bypass Road Case/№3/65-21
Date of filing the lawsuit	January 18, 2021
Court	Tbilisi City Court
Plaintiff	NNLP Georgian Young Lawyers' Association (GYLA)
Respondent	Ministry of Environment Protection and Agriculture of Georgia
The third party	Roads Department of Georgia
Complaint	Invalidating the individual administrative act
Status of the case	The case has not been resolved yet

6.7.2. The essence of the dispute

On August 21, 2019, the Roads Department of Georgia submitted a scoping report of the Abastumani highway construction project to the Ministry of Environment Protection and Agriculture for consideration.

On January 28, 2020, the Ministry requested the Roads Department to clarify certain issues, due to which the administrative procedure was extended. On February 4, 2020, the Roads Department submitted additional information to the Ministry. The opinions regarding the scoping report were presented to the Ministry by the LEPL National Forestry Agency, the Department of Environment and Climate Change, as well as the Department of Biodiversity and Forestry of the Ministry.

The Ministry of Environment Protection and Agriculture also applied to the Ministry of Defense and requested their opinion regarding the strategic and military importance of the existing road. On October 23, 2019, the Ministry of Defense informed the Ministry of Environment Protection and Agriculture that the road connecting Akhaltsikhe-Baghdati-Kutaisi was one of the alternative communication infrastructures for the Ministry of Defense from a military point of view. The letter of the Ministry of Defense sent on January 21, 2020, makes it clear that the Ministry of Environment Protection and Agriculture, after receiving the above reply, communicated with the Ministry of Defense again on October 24, and in response to the request in the letter, the Ministry of Defense added the following sentence to its opinion presented in the first letter: "Accordingly, the existence of the road, during all twelve months of the year, is of strategic importance from the point of the country's defense interests."

On March 6, 2020, the Minister of Environment Protection and Agriculture decided to issue a scoping report concerning the highway project.

On November 26, 2020, the plaintiff filed a lawsuit with the Tbilisi City Court challenging the issuance of the environmental decision on the highway project and requested the annulment of the Order №2-785 of September 3, 2020. The scoping report issued as per the Order №2-208 in connection with the road project was not appealed in the lawsuit, since the complete documentation was handed over to the claimant only on December 17, 2020. After getting familiar with the scoping report, the plaintiff believes that the Minister delivered the Order №2-208 in gross violation of the Georgian Law "On the System of Protected Areas", the Georgian Law "On the Red Book and Red List", the Environmental Assessment Code, and the requirements of the Constitution of Georgia.

6.7.3. Legal analysis

Any administrative act shall be declared null and void if it contradicts the law or substantially violates other requirements established by the legislation for its preparation or issuance.[108] An administrative body shall not have the right to implement any action contrary to the requirements of the law.[109] In the given case, the following requirements were violated. Specifically:

Environmental Assessment Code

A scoping report shall include the information required by law.[110] The text of the appealed act and the opinions presented by various agencies during the administrative procedure confirm that the scoping report did not include mandatory information.

A person making the decision no earlier than the 26th day and no later than the 30th day after the registration of a scoping application, the Ministry in the given case, shall issue a scoping report,

[108] GACG, Article 60(1).
[109] GACG, Article 5(1).
[110] Law of Georgia "Environmental Assessment Code" Article 8(3).

which shall be approved by an individual administrative act of the Minister.[111] For the issuance of the appealed act, the administrative procedure lasted for almost seven months - from August 21, 2019, to March 6, 2020. However, the decision to extend the administrative proceeding was not made.

An individual administrative act on the refusal to carry out an activity shall be issued when the activity contradicts the requirements established by the legislation of Georgia or a legally binding decision of the court/arbitration that has entered into legal force or an EIA report and/or expert's conclusion establishes the unacceptability of the nature and scope of the environmental impact, the impossibility to prevent the risk of environmental impact and/or implement measures to mitigate the environmental impact.[112]

In the given case, upon the issuance of the appealed act, the above requirements were present and the Ministry was obliged to refuse the activity.

Law of Georgia "On the System of Protected Areas"

According to the scoping report, the project was planned to be implemented within a zone of traditional use of the Borjomi-Kharagauli National Park, which is a traditional use zone. A zone of traditional use is a national park zone organized for the conservation of nature and economic activities related to the traditional use of renewable natural resources.[113] Activities such as mowing, pasturing, and harvesting of firewood and others limited to the needs of the local population and natural productivity shall be permitted in the zone. In the zone, it shall be inadmissible to plough, sow, or erect agricultural buildings. Therefore, the construction of a highway cannot be considered an economic activity related to the traditional use of natural resources. Accordingly, the implementation of the planned project in the form proposed by the EIA report contradicts the requirements of the Georgian legislation.

Within the protected territory it shall be prohibited the disturbance and alteration of natural ecosystems, as well as destruction, extraction, ripping, damage, or disruption of any natural resource for exploitation or any other purposes.[114] It shall also be prohibited to bring explosive and poisonous substances inside the protected area.[115] According to the project, the construction of the highway is planned by means of drilling and blasting works. It will be necessary to carry out blasting works along the entire length of the area that passes through the territory of the Borjomi-Kharagauli National Park. According to the scoping report, the projected activities will definitely cause the above impact and, therefore, contravene the law.

Law of Georgia "On Red Book and Red List"

The project area is a residential environment for many species protected by the "Red List of Georgia". According to the law of Georgia "On Red Book and Red List", any action that may lead to the death of endangered wild animals, reduction of their number, disturbance of their habitat, breeding areas, rescue stations, migration, and access roads to water and drinking water locations shall

[111] Ibid., Article 9(4).
[112] Law of Georgia "Environmental Assessment Code", Article 14.
[113] Law of Georgia "On the System of Protected Areas", Article 5.
[114] Ibid., Article 20 (4).
[115] Ibid., ("e").

be prohibited.[116] In addition, any action that may lead to the extermination of endangered wild plants, the reduction of their number and/or distribution area shall be prohibited.[117] Furthermore, on the lands in the ownership of the Forestry Fund, it shall be prohibited cutting endangered wild plants or to planning and implementing such forestry activities that may harm wild plant species in danger of extinction.[118] The law allows certain exceptions; however, the scoping report does not contain any evidence that can confirm the existence of such exceptions.[119]

Consequently, the grounds for the annulment of the contested individual administrative act are evident.

6.7.4. Procedural issues

Right to appeal

In the given case, the plaintiff is the NNLP Georgian Young Lawyers' Association.

Expenses

State duty in the amount of 100 GEL.

Timeframes

The plaintiff filed a lawsuit with the court on January 18, 2021. The preparatory court hearing was held on April 7, 2021. The hearing on the merits was scheduled for June 25, 2021, but ended up in the adjournment. Finally, as of November 2023, the decision on the case has not yet been made.

Evidence

Documents within the scope of administrative procedure.

Motion

The applicant submitted a motion and requested to merge the cases. Specifically, the court had already been considering another case, in which the claimant, NNLP Georgian Young Lawyers' Association, requested the annulment of Order №2-785 issued by the Minister of Environment Protection and Agriculture of Georgia on September 3, 2020, pursuant to which an environmental decision concerning the highway project was delivered. The consolidation of cases as per Article 182, paragraph 4 of the Civil Procedure Code of Georgia would help to resolve the dispute more quickly and adequately. On April 26, 2021, the motion requesting the consolidation of cases was declined. Furthermore, the respondent's motion asking for the termination of the case due to the expiration of the statute of limitations was denied. The court recognized the claim as admissible.

[116] Law of Georgia "On Red Book and Red List", Article 11(1).
[117] Ibid., Article 12(1).
[118] Ibid., (2).
[119] Ibid., Article 12, (21).

6.7.5. Conclusion

According to the circumstances of the case that were further supported by the opinions presented by various public agencies, the scoping report **did not include** the **information mandated by law**. The Ministry issued the scoping report without a comprehensive investigation of the circumstances of the case and allowed the Roads Department to proceed with its operations despite the project's inconsistency with several requirements of the Georgian legislation and potential harm to the protected areas, habitats, and species. It is also problematic that the Ministry of Defense added a new sentence to their opinion with the view to confirming the necessity of the road in response to the re-appeal of the Ministry of Environment Protection and Agriculture.

Moreover, **there was a breach** of the administrative procedure. Specifically, the administrative procedure for the issuance of the contested act was in progress for almost seven months, but no decision was made on extending the administrative procedure.

The plaintiff sought to merge the cases, which would have allowed for a quicker and more efficient resolution of the dispute but the court denied the motion. Ultimately, as of November 2023, the court has not yet decided on the lawsuit filed by the claimant on January 18, 2021. Therefore, the court cannot be considered an effective mechanism for protecting the legal right in the present case.

6.8. Dighomi Forest-Park

6.8.1. General Information

Case title/number	Dighomi Forest-Park Case/№3/7412-18
Date of filing the lawsuit	November 27, 2018
Court	Tbilisi City Court
Plaintiff	NNLP "Safe space"
Respondent	The LEPL Architecture Service of the Tbilisi Municipality; Mayor of Tbilisi Municipality
The third party	Anagi LLC
Complaint	Invalidating the individual administrative act
Status of the case	The case proceeding is suspended; The final decision has not yet been made

6.8.2. The essence of the dispute

On May 17, 2018, a citizen of Georgia applied to the Architecture Service of Tbilisi Municipality and requested to determine the terms and conditions for the use of the land parcel located in the territory of Dighomi Forest Park for the construction of a multi-purpose complex.

On May 29, 2018, based on the decision №3984089, the applicant was found to have a deficiency in his application and was additionally asked to submit documentation.

On June 20, 2018, as per Order №4026294, the citizen's application of May 17, 2018, was approved and the terms for the use of the land plot (I/C 01.13.01.022.194) for construction purposes were approved.

On July 20, the plaintiff challenged the decision and the Order issued by the Architecture Service

to Tbilisi Municipality City Hall. On August 30, 2018, the complaint was discussed at an oral hearing, however, the plaintiff was not provided with relevant information about the decision.

Over the years, a number of acts have been adopted specifically in connection with the Dighomi Forest-Park and for the protection of green areas in the city, reiterating that any type of construction on the territory was prohibited.

In particular, in 2003, Resolution №35 was adopted for the city of Tbilisi, under which any capital construction was prohibited in the territory of Dighomi Forest-Park. In addition, the administrative bodies confirmed that the area was historically a green zone. The letter №105 of the Head of Architecture and Prospective Development Service dated 21.07.04 also states that due to its significance, uniqueness, and town planning importance, the territory is assigned the status of a landscape-recreational zone, and in terms of functionality the area was defined as a serene recreation zone, which means that the territory should be developed as a quiet recreation area.

On March 31, 2006, the Tbilisi City Council adopted a resolution declaring Dighomi Forest-Park as a special recreational area – thus prohibiting any construction on the territory of the Forest-Park. On February 27, 2007, as per Resolution №16, the development of a landscape plan for maintaining and restoring green cover on an area of 20.5 ha within the boundaries of the Forest-Park was entrusted with the government of Tbilisi. According to the same resolution, an irrigation and drainage system was supposed to be arranged. The activities were launched, yet were terminated due to the resistance of the owners of a land plot in the Forest-Park (a part of the territory in the Dighomi Forest-Park was acquired by a private company in 1999).

According to the General Plan 9-16 approved on June 5, 2009, the area was fully defined as a Recreation Zone-1. Under the decision №10-24 of the Tbilisi City Council dated September 11, 2009, the status of a certain part of the area was changed. The Recreational Zone-1 was transformed into Public-Business Zone-2, meaning that the Forest-Park area was re-classified as a zone of high-intensity development, where the predominant facilities are of public purpose, including multi-functional buildings, multi-apartment residential complexes with medium to high development intensities. The exact amount of hectares on which the status has been changed is still debatable and unknown. It should be noted that the decision of September 11, 2009, is accompanied by two different graphic annexes. According to the first, the status was changed for the roadside strip, while the other says for the half territory of the park. The land plot determined by the contested decision and the Order is located exactly in the inner part of the territory.

As per the decision №10-24 delivered in 2009, the City Council converted the strip along the military road on the David Aghmashenebeli Alley into Public Business Zone-2. On September 25, 2009, it became known to the plaintiff that the Tbilisi City Council's decision was falsified, thus transforming approximately 7 hectares of the inner territory of the Forest Park into Public Business Zone-2, along with the above-mentioned strip of the Dighomi Forest-Park.

On December 30, 2014, the City Council of Tbilisi Municipality adopted a resolution, by which the General Plan of Land Use in the capital city was approved in an unchanged form without investigating circumstances important to the case.

The plaintiff believes that the construction will harm the Dighomi Forest-Park area and will fundamentally contravene the concept of arranging a landscape-recreational space and a quiet recreation area in the territory. In connection with the matter, NNPL "Safe Space" also submitted administrative complaints to the City Hall on July 20, 2018, November 14, 2018, and March 27, 2019. After the consideration of the first complaint, in response to the NNLP "Safe Space" application requesting to be informed of the decision, the City Hall replied that no pertinent decision

had been made. Accordingly, the plaintiff filed a lawsuit with the court. On April 19, 2019, the City Hall refused to grant the administrative complaint.

Consequently, the applicant urges the Court to invalidate the following documents:

- **Order №402694 of the Architecture Service of June 20, 2018, "On the Approval of the Construction Terms and Conditions for the Land Plot";**
- **Decision №398489 of the Architecture Service of May 29, 2018, "On the Approval of the Construction Terms and Conditions for the Land Plot";**
- **Order №409 of the First Deputy Mayor of Tbilisi Municipality of April 19, 2019, in the section where the administrative complaint №10/01182011640-01 filed by the NNLP "Safe Space" on July 20, 2018 was rejected.**

6.8.3. Legal analysis

An administrative act shall be declared null and void if it contradicts the law or substantially violates other requirements established by the legislation for its preparation or issuance.[120] A substantial violation shall be considered the drafting of an act at a session held in violation of the rules defined by law or in violation of the administrative procedure provided for in the law, or in violation of the law in the absence of which a different decision would have been made concerning the matter.[121] An administrative act shall be declared as invalid by an administrative body that has issued it and in the case of a complaint or lawsuit - by a superior administrative body or a court.[122]

An administrative body shall be obliged, during the administrative proceeding, to investigate all the circumstances that are important for the case and make a decision based on the evaluation and reconciliation of these circumstances.[123] After the comprehensive investigation and examination of the circumstances important for the case, the administrative body shall deliver a reasoned decision.[124] The administrative body shall not have right to base its decision on circumstances, facts, evidence, or arguments that were not thoroughly investigated and studied during the administrative procedure.[125]

The disputed land parcel in connection with which the Architecture Service made the decision and issued the impugned Order is located in the territory of Dighomi Forest-Park, which was sold to a private company back in 1999. Today, there is a KIA showroom and car service on the territory, which belongs to Anagi LLC. There used to be a forest in the place of the garage that was destroyed during the construction. The facility has been in the territory for 20 years and is inflicting harm on the Forest-Park: it is not connected to the sewage network and the sewage water from the car showroom flows into the Forest-Park area. The adjacent land parcel also belongs to Anagi LLC, where the company stores its construction equipment.

Back in 2006, the population applied to the City Council in writing, demanding to determine the zoning status of the area and prohibit any constructions there. In response to the letter, on March 31, 2006, the Tbilisi City Council adopted a resolution declaring the Dighomi Forest-Park as a spe-

[120] GACG, Article 6(1).
[121] Ibid., Articles 32 and 34.
[122] Ibid., Article 60^1(3).
[123] Ibid., Article 96, (1 and 2).
[124] Ibid., Article 53, (1).
[125] Ibid., Article 53, (5).

cial greening zone - prohibiting any construction works in the Forest-Park area - and tasking the Department of Urban Planning with determining, approving the boundaries, and developing a plan for restoring the green landscape of the greening zone of the forest-park. In accordance with the resolution, the boundaries of the forest park were specified and constructions were banned. The land plot disputed in the given case falls within the mentioned borders. The maps provided on the website of the Tbilisi Architecture Service show that the territory has the status of a restricted zone - a special greening zone. By the time of the adoption of the resolution, there had already been a building in the area, which was not demolished. However, according to the resolution, any type of new construction on this and other adjacent land plots was prohibited. It is worth noting that regarding the area of Dighomi Forest-Park, the Architecture Service rejected a number of applications submitted to the department requesting the construction, citing the recreational status of the area as the ground.

According to the legislation of Georgia, a construction permit shall be issued after the completion of three interdependent yet independent stages of the administrative proceeding.[126] The first stage means to determine terms and conditions for city-building, during which an administrative body is obliged to investigate all circumstances relevant to the case and only after that make a decision to approve or reject the request. In the given case, the applicant believes that the administrative body adopted the disputed act without investigating a range of circumstances that would preclude the approval of the request.

The scope of the Architecture Service's authority includes developing the concept of Tbilisi's development, conducting relevant studies and preparing recommendations on the city's spatial-territorial planning, and managing architectural-city-building processes.[127]The Service is guided by the Constitution of Georgia, the Law of Georgia "On Spatial Development and Basis for City Building", the General Administrative Code, and other legislative acts.

The Law of Georgia "On Spatial Development and Basis for City Building" facilitates the realization of the right to enjoy a healthy environment defined by the Constitution of Georgia. The spatial-territorial planning is an activity that regulates the use of settlement territories, land use, development and beautification, protection of the environment and immovable cultural heritage, spatial-territorial conditions of recreation, transport, engineering, and social infrastructure, as well as spatial aspects of economic development and territorial issues of settlement.[128] The law distinguishes between public and private interests. A private interest may be restricted if it conflicts with the law and public interests, or infringes on the rights of others. The scientific research presented as evidence confirms that the city currently suffers from a shortage of green urban recreational areas and the key priority today must be the maximum preservation and restoration of greenery in the city. The area between Aghmashenebeli Alley, G. Chokhonelidze Street, S. Akhmeteli, and Ljubljana Streets should be preserved as a green territory since this is a public interest which is confronted by the private interest of the land plot owner.

In the given case, it is obvious that upon the issuance of the disputed acts, the resolution of the Tbilisi City Council of March 31, 2006, was not taken into consideration, pursuant to which any

[126] Decree №57 of the Government of Georgia of March 24, 2009, "On the Approval of Construction Permit and Permit Conditions", Article 37; The stages determined by the article: Stage I - determination of urban construction terms and conditions (the approval of the terms of use of a land plot for construction), II stage - agreement of the architectural-construction project (agreement of a architectural project, construction and/or technological scheme), and III stage - issuance of a construction permit.

[127] Tbilisi City Council's Ordinance №20-104 of December 30, 2014, "On the Approval of the Charter of the Architecture Service".

[128] Law of Georgia "On the Spatial Arrangement and Basis for City Building", Article 2("c").

construction in the territory of the Dighomi Forest-Park, including the given land plot, was prohibited.

When debating the legality of an individual administrative act, the reasonableness of the use of discretionary powers, which grant an administrative body the freedom to act and make a decision when issuing an individual administrative act, including the right to reject a request, should also be considered. Interestingly, the Architectural Service, which constantly endorsed this practice, denied several requests like the above.

6.8.4. Procedural issues

Right to appeal

The plaintiff in the case is NNLP "Safe Space", which has been protecting the Dighomi Forest-Park for years.

Expenses

State duty in the amount of 100 GEL at Tbilisi City Court;

The state duty in the amount of 50 GEL for the application for provisional measures.

Timeframes

The plaintiff filed the lawsuit with the Court on November 27, 2018. A preparatory court hearing was held on February 27, 2019. Based on a motion of the plaintiff, the proceedings in the case were suspended by the Court's decision of January 17, 2020, until the completion of the case proceedings №3/2783-19. As of today, the final decision has not been made and the construction has also been halted.

Evidence

The resolutions adopted at different times and decisions of administrative bodies, maps, expert opinions and reports of non-governmental organizations, studies, and documentation available within the administrative proceedings have been presented as evidence in the case.

Motions

The court granted the motion of the applicant and suspended the proceedings on the case until the final decision on the case №3/2783-19 is delivered by the Administrative Cases Panel of the Tbilisi City Court.

The court did not satisfy the motion presented by representatives of Anagi LLC and refused to merge the administrative cases (№3/955-19 and №3/2783-19.).

- In the case №3/955-19, the plaintiff is the NNLP "Safe Space" and the respondents are the City Hall of Tbilisi Municipality and the Architecture Service. The claimants request the annulment of the refusal of the Mayor of Tbilisi Municipality to satisfy the Order №4218244 of the Architecture Service of October 15, 2018, and the administrative complaint;

- In the case №3/2783-19, the plaintiff is the NNLP "Safe Space" and the respondent the City Council of Tbilisi Municipality. The applicant requests:
    - Annulment of Resolution №39-18 of March 15, 2019, issued by the Tbilisi City Council "On the Approval of the General Plan of Land Use in the Capital City", in the section where a part of the territory of Dighomi Forest-Park was granted the Public Business Zone-3 status;
    - Annulment of the decision №10-24 of the City Council of the City of Tbilisi Municipality dated September 11, 2009, on making changes in the decision №6-17 of the Tbilisi City Council dated June 5, 2009, "On the Approval of the General Plan for the Potential Development of the Capital City", in the section which changed the Digomi Forest-Park Recreation Zone-1 status into Public Business Zone-2;
    - Annulment of Resolution №20-105 of Tbilisi City Council of December 30, 2014, "On the Approval of the General Plan for Land Use in the Capital City", in the section that established the Public Business Zone status for a part of the Dighomi Forest-Park.

Applying the security measure

On September 16, 2019, the court considered the motion of the plaintiff and suspended the validity of the construction permit until the final decision in the case was made. In this way, the court averted to cause irreparable damage to the Dighomi Forest-Park.

6.8.5. Conclusion

Based on the aforementioned circumstances, it becomes clear that the **legal acts adopted at different times aimed at preserving the Dighomi Forest-Park and prohibiting constructions on the territory were not taken into account during the adoption of the disputed act**. In addition, it is a fact that the zoning status assigned to the Dighomi Forest-Park has been changed several times, which can become a subject of another dispute.

The issuance of a construction permit in the area **without a comprehensive investigation** of the circumstances of the case is a violation of administrative law. During the case proceeding, the impact of the project on the Dighomi Forest-Park and its conservation objectives was not properly assessed. In addition, the Architecture Service changed its established practice - at various times it constantly refused to issue building permits for other permit seekers, whereas in the given case, the Service **issued a permit based on the contested act, without any justification.**

In the given case, the court approved the motion of the plaintiffs and suspended the validity of the construction permit, which should be appreciated. Thus, until the final resolution of the dispute, the threat of irreparable damage to the Dighomi Forest-Park has been ruled out. **In addition, positive evaluation should be given to the court's decision to halt the case proceedings in relation to the disputed case until the case proceedings pertaining to altering the zone status for Dighomi Forest-Park at various points of time are concluded.**

Therefore, currently, in light of the suspended construction permit, the court may be considered an effective mechanism for the protection of the legal right.

7. SUMMARY

Violations of the rules defined by the law

The studied cases have demonstrated that the procedures required by a variety of laws and international conventions relating to environmental protection may be violated and neglected by the authorized bodies when making decisions concerning the above projects (see Table 2).

№	Case	Violated legislative acts
1	**Namakhvani HPPs Cascade**	➢ The procedure determined for the EIA process by the Environmental Assessment Code; ➢ Aarhus Convention; ➢ General Administrative Code of Georgia;
2	**Kheledula-3 HPP**	➢ The screening and scoping procedures determined by the Environmental Assessment Code; ➢ General Administrative Code of Georgia;
3	**Batumi Riviera**	➢ Law of Georgia "On Cultural Heritage"; ➢ Decree №181 of the Government of Georgia dated May 14, 2012, "On the Approval of the Procedure for the Development of Cultural Heritage Protection Zones"; ➢ The procedures for screening, EIAs, and SEAs required by the Environmental Assessment Code; ➢ Law of Georgia "On Licenses and Permits"; ➢ General Administrative Code of Georgia; ➢ Convention on the Protection of European Architectural Heritage; ➢ Convention On the Protection of World Cultural and Natural Heritage.
4	**Dvabzu Asphalt Factory**	➢ The EIA procedure required under the Environmental Assessment Code; ➢ General Administrative Code of Georgia;
5	**Abastumani Bypass Road**	➢ The EIA and scoping procedures required by the Environmental Assessment Code; ➢ Law of Georgia "On the System of Protected Areas"; ➢ Law of Georgia "On Red Book and Red List"; ➢ Berne Convention; ➢ Aarhus Convention; ➢ General Administrative Code of Georgia;
5	**Dighomi Forest-Park**	➢ Resolution №57 of the Government of Georgia of March 24, 2009, "On the Approval of the Procedure for Issuing Construction Permits and Permit Conditions"; ➢ Law of Georgia "On the Spatial Arrangement and Basis of City Planning"; ➢ General Administrative Code of Georgia;

Information and studies needed for decision making

From the reviewed cases, it has been revealed that one of the main problems when **making decisions** regarding specific projects is that an implementer of the activity does not or incompletely submits necessary studies and information required by the legislation for making a reasoned

decision. This has been confirmed by the **Fourth National Environmental Action Programme of Georgia**, according to which one of the important challenges of the ineffectiveness of the environmental management system is the poor quality of the documentation presented for the EIA and SEA procedures.[129] According to the document, in frequent cases, an EIA report is not prepared based on relevant studies, contains significant inaccuracies and inconsistencies in relation to the planned activities, and fails to properly describe the conditions at the place of activity.[130]

Submitting all relevant studies and information is necessary to properly assess the impact of a particular project on the environment and population, and to prevent or mitigate risks.[131] The studies and information are required to properly evaluate and compare the loss and benefits and to protect not only the economic interests of individuals but also the environmental and social interests of the public.[132] Therefore, making decisions by competent authorities without the required research and information is a violation of the obligations stipulated in the legislation. Administrative bodies, in all circumstances, shall make appropriate decisions based on the assessment and analysis of all circumstances. Therefore, it is necessary to eradicate the vicious practice, for which the court's role is important. This research has found that the majority of the studied cases have not yet been resolved. In those cases though, on which the final decisions were made, the court did not find any violation of the requirements of the legislation by the competent authorities. However, the court decisions were not properly substantiated, nor were based on specific arguments. This indicates that the court may not be an effective mechanism for protecting the legal right.

Length of trial

The ineffectiveness of the court is also evidenced by the fact that the **court proceedings are delayed and last for years** (See Table 2).

№	Case	Date of commencement	Case Status	Court Instance
1	**Dvabzu Asphalt Plant**	August 02, 2018	Completed: April 19, 2022	The second instance (appeal)
2	**Kheledula 3 HPP**	August 21, 2018	Completed: March 30, 2020	The first instance
3	**Batumi Riviera (1)**	November 22, 2018	Pending	The first instance
4	**Dighomi Forest-Park**	November 27, 2018	Case proceeding uspended	The first instance
5	**Namakhvani HPPs Cascade**	April 07, 2020	Pending	The first instance
6	**Abastumani Bypass Road (1)**	November 27, 2020	Pending	The first instance
7	**Abastumani Bypass Road (2)**	January 18, 2021	Pending	The first instance
8	**Batumi Riviera(2)**	January 22, 2021	Pending	The first instance

[129] The Fourth National Environmental Protection Action Programme of Georgia for 2022-2026 (2022) 16.
[130] Ibid. 17
[131] EU, "35 years of EU Environmental Impact Assessment" (2021) 5.
[132] OECD, "Cost-Benefit Analysis and the Environment: Further Developments and Policy Use" (2018).

The fact that the legal disputes related to environmental cases are pending for years may be explained by the overload of the judicial system, the complexity of environmental disputes and the evaluation of evidence, and/or the fact that environmental issues are not a priority for judges.[133] Frequent are the cases across the world when environmental and social interests related to it are believed to be damaging and hindering factors of economic interests.[134] However, when making decisions to achieve sustainable development, it is necessary to consider both economic and environmental as well as social interests and goals.[135]

Denial of motions

The decisions made in relation to the cases studied and the rejection of the motions requesting the suspension of the disputed acts by the Court without providing any proper substantiation may be the indication of an unequivocal preference for financial interests. The possibility for this is provided in the Georgian legislation itself. Specifically, according to the Administrative Procedural Code of Georgia, the submission of an appeal to the court shall suspend the action of the appealed individual administrative act, yet in the event that the exceptions defined by law are present, the operation of the act may not be terminated.[136] The grounds for the exceptions are, among others, cases when the delay in the execution of an individual administrative act may cause significant material damage, or pose a significant threat to public order and security, and its suspension may result in significant harm to the legal rights and interests of another person.[137] Therefore, in the presence of the above circumstances and if it is considered that the party's request for the suspension is unsubstantiated, the court has the right not to halt the action.[138] However, making such a decision without justification is against the law. Therefore, the role of the court in the process is of crucial importance, which must adequately assess the circumstances and deliver a reasoned decision.

Generally speaking, in environmental cases, the court rarely grants motions requesting the suspension of acts and requires solid evidence to confirm the existence of an immediate threat.[139]

The practice of unreasonable denial of the motions requesting the suspension of disputed acts (the court halted the operation of the disputed act only in the Dighomi Forest-Park case) contradicts one of the core principles of environmental law - prevention. According to the principle of prevention, the purpose of environmental legislation and provisions is to avert the danger of harming the environment. In addition, there is also a principle of taking preliminary measures, according to which, in the event that there is an assumption that the environment may be harmed, even in the absence of scientific evidence or conflicting scientific evidence, the matter shall be resolved in favor of the interests of environmental protection until it is proven beyond doubt that the risk of harm does not exist anymore or is minimized.

The studied cases have demonstrated that the court does not attach due importance to the damage that has not yet occurred. This is evidenced by the denial of the motions and also the decision made in relation to the Dvabzu Asphalt Plant. In particular, the court established its reasoning in

[133] UNDP, "Access to Environmental Justice in Georgia: Baseline Assessment" (2023) 45.
[134] Richard C. Feiock and Christopher Stream, "Environmental Protection Versus Economic Development: A False Trade-Off?" (2001) 61(3) Public Administration Review 313.
[135] World Commission on Environment and Development, "Our Common Future" (1986).
[136] Law of Georgia "Administrative Procedure Code of Georgia", Article 29(1).
[137] Ibid. Article 29(2).
[138] Ibid. Article 29(3).
[139] UNDP, "Access to Environmental Justice in Georgia: Baseline Assessment" (2023) 43.

the decision on the fact that the damage caused in the case was not confirmed, even though the matter was not the subject of the dispute and the court should not have discussed it at all. Therefore, this may also represent the court's attitude and indicate that the court pays more attention to the existing damage and does not properly assess the threat of any potential harm.

Accordingly, the analysis of the cases shows that the court makes decisions based on the economic objectives of projects and unjustifiably gives them a preference.

Specialization in Environmental Law

The length of court proceedings and delivering unsubstantiated decisions may also be related to the specific nature of environmental law and the difficulty of assessing case circumstances and evidence.[140] That is why some countries have specialized environmental courts or judges equipped with special expertise and skills.[141] Given the institutional arrangement of Georgia, it is important for the effective resolution of environmental disputes to retrain judges in the environmental matters and equip them with specialized knowledge and skills, which, in turn, will increase their sensitivity to environmental disputes, contribute to a relatively simple and prompt assessment of evidence and circumstances, and the effective resolution of disputes.

Court expenses

As regards the court expenses, a state fee for matters related to the invalidity of an administrative act is 100 GEL in the first instance court, 150 GEL in the Appellate Court, and 300 GEL in the Supreme Court.[142] The fees are within the limits of reasonableness and are not restrictive in terms of access to justice. In addition, the state duty in the amount of 50 GEL is imposed on requesting provisional measures and submitting private claims.[143]

The cases at hand show that the judicial practice regarding the payment of the state duty related to the lawsuits is not uniform. Specifically, in the Batumi Riviera case the Tbilisi City Court demanded from each plaintiff to pay the state duty in the amount of 100 GEL. Since there are 14 plaintiffs in the case, the amount paid as state duty amounts to 1400 GEL. Regarding the Batumi part of the Batumi Riviera case, where the plaintiffs are the same persons, only 100 GEL was paid as a state duty and the Batumi City Court did not demand each plaintiff to pay this amount separately. According to the Georgian law, the state duty in the amount of 100 GEL is imposed for non-property disputes.[144] In this case, the plaintiffs are demanding the annulment of the same administrative-legal act within the same dispute, therefore they should have had the obligation to pay only 100 GEL as state duty. Accordingly, the Tbilisi City Court should not have required from each plaintiff separately to pay 100 GEL.

Additionally, the cases at hand show that the judicial practice regarding the payment of state duty related to the suspension of an administrative-legal act is not uniform. Specifically, according to the procedural legislation of Georgia, the state duty is imposed on an application for provisional measures. However, the request to suspend an administrative-legal act is not considered to be a provisional measure. Thus, the state duty in the amount of 50 GEL shall not be imposed on

[140] UNEP, "Environmental Courts & Tribunals: A Guide for Policy Makers" (2016) 9.
[141] Ibid.
[142] Law of Georgia "On State Duty", Article 4.
[143] Ibid.
[144] **Civil Procedure Code of Georgia, Article 39, (I) (h)**

such requests. However, the judicial practice is not uniform and some courts may demand the payment of state duty when the suspension of an administrative-legal act is requested. Thus, in some cases at hand, the plaintiffs opted to pay 50 GEL to preclude the court from finding defect regarding the state duty payment, which would prolong the legal proceedings. But, for instance, in Batumi Riviera and Dvabzu Asphalt Plant cases the plaintiffs did not pay this amount and the courts did not find any defect regarding this. Thus, in order for the plaintiffs to be sure that the court will not demand from them to pay the state duty when they request the suspension of an administrative-legal act, the judicial practice must become uniform and it should be clearly stated that in such cases they are not required to pay the state duty.

As for other expanses, the evidence presented in the studied cases was the documentation created in the process of administrative proceedings, which is regarded as public information, and no fee is charged for its retrieval, which corresponds to the standard established by the Aarhus Convention. The only fee imposed on obtaining public information is related to making copies of public information, the amount of which is not large. This also corresponds to the standard established by the Aarhus Convention. However, the involvement of experts, who willprepare expert/scientific reports to be presented as evidence may be associated with high costs. In addition, it may be difficult to find a suitable expert.[145] Additionally, in cases, where free legal aid is not available, the involvement of lawyers in the process may be also associated with high costs. Accordingly, the expenses for expert and lawyer services may create certain barriers in terms of access to justice.[146]

[145] UNDP, "Access to Environmental Justice in Georgia: Baseline Assessment" (2023) 41.
[146] UNDP, "Access to Environmental Justice in Georgia: Baseline Assessment" (2023) 5.

8. RECOMMENDATIONS

- In order to raise awareness and sensitivity to environmental matters, it is important to conduct relevant awareness-raising and information campaigns. Raising awareness about the importance of environmental protection is important for state agencies, decision-makers, and judiciary, as well as for the private sector, private individuals, and the public;
- Public agencies must follow the obligations defined by the law and the procedures stipulated for decision-making. To this end, on the one hand, it is important to deepen their knowledge and equip them with relevant skills, and on the other hand, it is crucial to strengthen the principles of good governance in the country, which means improving the appropriate control and accountability mechanisms;
- Public agencies should ensure proactive dissemination of information available to them. In addition, in case of any request for public information, they should provide the requested information to the interested persons in a timely manner;
- Competent bodies should ensure the public's participation in decision-making. To this end, all required mechanisms for the dissemination of information and the arrangement of public discussions must be improved;
- It is necessary to conduct information campaigns and provide information to the public about the possibilities and procedures for the enjoyment of environmental procedural rights;
- The quality of studies and expert opinions necessary for decision-making must be improved. For this, public institutions should support the development of relevant expertise in the country, prepare various guidelines and manuals, introduce appropriate accreditation and certification systems for various research institutes and experts;
- The court should take appropriate measures to reduce the timeframes for case proceedings related to environmental matters, which is necessary for the effective enjoyment of the right of access to justice related to environmental issues;
- In relation to environmental protection, judges must be equipped with special knowledge and skills. Accordingly, it is necessary to develop and carry out programs and training courses necessary for retraining the judiciary;
- For the effective use of the right of access to environmental justice, it would be reasonable to have judges with specific expertise who would consider disputes related to environmental matters. This, in turn, will contribute to faster consideration of disputes and adoption of well-reasoned decisions;
- It is necessary that the courts have a uniform approach regarding the payment of state duty in relation to the claim. The plaintiffs shall not be required separately to pay the amount of state duty, when they file a lawsuit together and demand the annulment on the same administrative-legal act. They must pay 100 GEL totally at the first instance court;It is necessary for the courts to have a uniform approach regarding the payment of state duty in relation to the request for suspension of an administrative-legal act (according to the procedural legislation of Georgia, such request is not considered a provisional measure). In such cases, the courts shall not demand from the parties to pay a state duty. The state duty is only imposed when the parties request the application of provisional measures.
- The statistics should be produced separately and information about court decisions should be published on the official website so that the interested members of the public can access relevant information.

BIBLIOGRAPHY

Georgian legislation

Constitution of Georgia

Law of Georgia "General Administrative Code of Georgia"

Law of Georgia "On the System of Protected Areas"

Law of Georgia "On the System of Protected Areas"

Law of Georgia "Environmental Assessment Code"

Law of Georgia "On Cultural Heritage"

Law of Georgia "On Licenses and Permits"

Law of Georgia "On Fees for Photocopying of Public Information",

Law of Georgia "Administrative Procedure Code of Georgia"

Law of Georgia "On Customs Duty"

Law of Georgia "On the Spatial Arrangement and Basis for City Planning"

Law of Georgia "On Red Book and Red List"

The explanatory card for the Law of Georgia "Environmental Assessment Code"

Decree №57 of the Government of Georgia issued on March 24, 2009, "On the Approval of the Procedure for Issuing Construction Permits and Permit Conditions"

Decree №181 of the Government of Georgia dated May 14, 2012, "On the Approval of the Procedure for the Development of Cultural Heritage Buffer Zones", Article 3.

Decree №398 of the Government of Georgia issued on August 15, 2017, "Technical Regulation - "On the Approval of Acoustic Noise Ranges in the Storerooms and Territories of Residential Houses and Public Institutions"

The Civil Procedure Code of Georgia

Ordinance №20-104 of Tbilisi City Council dated December 30, 2014 "On the Approval of the Charter of the Architecture Service"

International legal acts

"Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters" (October 30, 2001)

European Union Directive 92/43/EC "On the Conservation of Natural Habitats and Wild Fauna and Flora" (1992)

Convention for the Protection of the European Architectural Heritage (1985)

European Convention on the Conservation of Wildlife and Natural Habitats (1979)

Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)

Court decisions

Judgment of the Constitutional Court of Georgia №2/1/524 (10.04.2017) Kozacıoğlu v. Turkey

Other sources

The "Green Alternative", "Implementation of the Aarhus Convention in Georgia: An Alternative Report" (2014)

The Fourth National Environmental Action Programme of Georgia for 2022-2026 (2022)

Georgia's Environmental Outlook, "Methodology for the Assessment of Environmental Flows for Rivers and Streams in Georgia" (2017)

GYLA, "Strategic Litigations against the Construction of Large Hydro Projects" (2021)

English sources

EU, "35 years of EU Environmental Impact Assessment" (2021)

IUCN World Congress on Environmental Law, "Declaration on the Environmental Rule of Law" (Rio de Janeiro, 2016).

OECD, "Cost-Benefit Analysis and the Environment: Further Developments and Policy Use" (2018)

Richard C. Feiock and Christopher Stream, "Environmental Protection versus Economic Development: A False Trade-Off?" (2001) 61(3) Public Administration Review 313

UGNA Res 76/L.75 (26 July 2022) UN Doc A/76/L.75

UNDP, "Access to Environmental Justice in Georgia: Baseline Assessment" (2023)

UNEP, "Environmental Courts & Tribunals: A Guide for Policy Makers" (2016)

United Nations Economic Commission for Europe, „The Aarhus Convention: an Implementation Guide"(2014)

World Commission on Environment and Development, "Our Common Future" (1986).