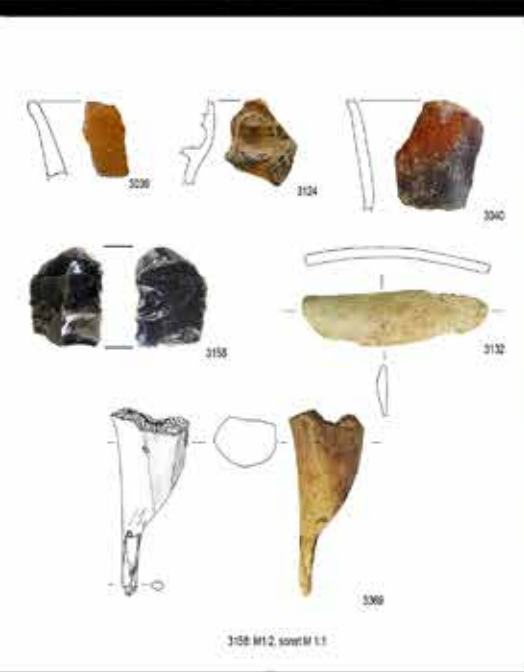


# SAKDRISI-KACHAGHIANI: DESTRUCTION IN THE NAME OF LAW



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## 1. GOALS AND REASONS

In summer 2014, the Georgian Young Lawyers' Association (GYLA) has publicized the research about the developments, surrounding the oldest gold mine – Sakdrisi-Kachaghiani. The research included the detailed analysis of the issues, such as: stripping Sakdrisi-Kachaghiani of the Status of the Cultural Heritage and the work of the Commission, created specifically for this purpose; prolongation of the license for the ltd. “RMG Gold” and its connection with the Sakdrisi-Kachaghiani oldest gold mine; decisions, made by various administrative bodies and the simultaneous processes, relating to Sakdrisi-Kachaghiani; pending court cases on Sakdrisi-Kachaghiani and other issues.<sup>1</sup> The research has been broadly discussed with the interested public.

Simultaneously, the developments in the second half of the 2014 and especially, towards the end of the year have inflamed the issue of the legality of the decision, made in relation to the oldest gold mine. This has raised the necessity of preparing the new research, which will provide additional information to the public.

Invalidation of the Status of the Site, explosion of the mine and prolongation of the license for mining the minerals – developments that the public was periodically being informed of, represent only a fraction of the existing issues. Therefore, the second research of GYLA about Sakdrisi-Kachaghiani has made accessible the portion of the information that has not been known to the public up to now. This information has crucial meaning for the holistic understanding of the developments surrounding the Sakdrisi-Kachaghiani oldest old mine for the past few years.

At the same time, the process of the research has once again demonstrated that the decisions of the various administrative bodies and the mining company represent an interesting research topic in terms of the environmental impact, performance of the ecologic duties and the rights of the workers, employed in the company. Those aspects require a separate research.

Despite the fact that the current research only covers the legal aspects of Sakdrisi-Kachaghiani issue and it is limited to the analysis of the decisions, made on the cultural heritage and the prolongation of the mining license, in a number of instances, the research has raised much more unanswered questions addressed towards the administrative bodies than there were before, prior to starting the research.

### 1.1. *Methodology*

In terms of methodology, similarly to the first research, the current research covers a number of components, namely:

- Analysis of the official documentation, obtained from the public entities;
- Processing the data, existing in the Commercial Entity Registry for the research purposes;
- Examination of the various documentaries and reports, prepared by media and the involved partner organizations at various times.

### 1.2. *Key Findings*

The research, presented by GYLA, allows to outline the following key findings, organized thematically:

#### ***Revocation of the Status of the Cultural Heritage Site of the Sakdrisi-Kachaghiani and De-Construction (taking out from the original environment)***

- On December 12, 2014, the Ministry of the Culture and Monument Protection of Georgia (the Ministry of Culture, hereinafter) and the National Agency for Cultural Heritage Preservation (the Agency or Heritage Agency, hereinafter) have made total of 17 actions and 4 decisions regarding Sakdrisi-Kachaghiani oldest mine, in one day, in the extremely suspicious circumstances. As a result, on December 13, 2014, the ltd. “RMG Gold” has illegally exploded the Sakdrisi-Kachaghiani archaeological object (at the area #1 of the Kachaghiani) under the name of de-construction (taking out from the original environment).
- At the time when the Director General of the Agency has issued the Order (December 12, 2014) regarding the revocation of the Site Status of the Sakdrisi-Kachaghiani oldest gold mine, there was no conclusion, prepared in accordance with the scientific (methodological) criteria that would have confirmed that the Site has lost its main characteristics that represented the preconditions for granting it the Site Status in the first place.
- In its statement #445/1, sent on December 12, 2014, the company “RMG Gold” did not request revocation of the Cultural Heritage Site Status of the Sakdrisi-Kachaghiani oldest gold mine. The company only requested the consent for the de-construction of the archaeological object. Therefore, the initia-

<sup>1</sup> The electronic version of the research is available in English: <https://gyla.ge/uploads/publications/researchpaper.pdf>

tive of invalidating the Cultural Heritage Site Status of the Sakdrisi-Kachaghiani was coming not from the company, but from the Director General of the National Agency for Cultural Heritage Preservation itself.

- On December 12, 2014, the National Agency for Cultural Heritage Preservation and the Ministry of the Culture and Monument Protection have conducted the administrative proceedings regarding the Sakdrisi-Kachaghiani in one day, without informing neither the National Museum of Georgia, neither the Archaeological Research Center, nor the members of the Sakdrisi Georgian-German Archaeological Expedition. However, both the Agency and the Ministry knew from the outset that not informing the interested stakeholders about the start of the administrative proceedings, and especially, issuing the administrative-legal act in one day could have significantly deteriorated the conditions of those stakeholders.

### ***Difficult Geologic Conditions***

- The issue of the difficult geologic conditions on the Sakdrisi-Kachaghiani archaeological object has become topical only after the National Museum has provided the company with the relevant expenditure calculation and information about the intensive field works. According to the official information, the forecast summary cost of the works to be conducted at Sakdrisi-Kachaghiani totaled EUR 1 080 000 and the intensive archaeological field works should have been finalized in October 2015.

### ***Legality of the Explosion***

- On December 13, 2014, the ltd. "RMG Gold" did not have the permit from the Technical and Construction Supervision Agency (the legal entity of public law) to use the industrial explosives for exploding the area #1 of Sakdrisi. Therefore, the company has exploded Sakdrisi-Kachaghiani illegally.

### ***De-Construction (taking out from the original environment) vs. Broad-Scale Works***

- The ltd. "RMG Gold" has renewed the broad-scale works since December 13, 2014. Under the ruling of the Tbilisi City Court, dated June 30, 2014, the ltd. "RMG Gold" was ordered to temporarily suspend the broad-scale works on Sakdrisi-Kachaghiani (and this ruling is still in force). Because of this, the company in reality conducted the broad-scale works, but under the name of the "de-construction".

### ***De-Construction (taking out from the original environment) of the Archaeological Object without Participation of Specialists***

- According to the information of the ltd. "RMG Gold", the company has finalized the so-called "de-construction" of the Sakdrisi-Kachaghiani archaeological object on December 29, 2014. At the same time, the fact that the representatives of the National Agency for Cultural Heritage Preservation have arrived in Sakdrisi-Kachaghiani on January 9, 2015 for the first time, means that since December 13, 2014 to January 9, 2015, the mining company was independently conducting those activities, which necessitated the special knowledge and supervision by the archaeologists. It is possible that in between the December 13, 2014 and the January 9, 2015, in the process of the broad-scale works conducted by the company, the newly-revealed artifacts could have been destroyed deliberately or negligently, due to the lack of the participation of the archaeologists.

### ***Prolongation of the License***

- The decision, made by various administrative bodies on December 30, 2014 in the accelerated manner - practically, in one day, raises numerous questions. The decision has resulted in prolongation of the license for use of the mineral resources by the ltd. "RMG Gold" in relation to the Sakdrisi-Kachaghiani, at the specific location. In this process, the expeditious actions of the Ministry of Environment and Natural Resource Protection, the National Agency for Cultural Heritage Preservation, the Roads Department, the National Environment Agency and the Government of Georgia, cause justified doubts that the ltd. "RMG Gold" had the preliminary guarantee that the license would be prolonged and the end of the 2014 has only marked the legal formalization of the decision.

## **Investigation**

- The approach of the Prosecution towards the issue creates the grounds to assume that it is highly likely that the investigative body has no readiness to properly investigate the occurred fact. This assumption is further strengthened due to the circumstances and the form, in which the Site Status of Sakdrisi-Kachaghiani was revoked on December 12, 2014 and in which the license covering the Sakdrisi-Kachaghiani location was prolonged on the 31<sup>st</sup> of the same month.

## **Conflict of Interests**

- The National Agency for Cultural Heritage Preservation of Georgia did not manage to compose the group for the permanent monitoring of the de-construction process of the Sakdrisi-Kachaghiani that was working since January 9 to April 16, 2015, in such a way, the members of which would not have been in some way related to the ltd. "RMG Gold". Thus, there were questions relating to the members of the group in terms of the conflict of interest.

## **The Court, as the Contributor**

- With the decisions, made on February 4 and April 27 of the 2015, the Tbilisi City and Tbilisi Appellate Courts, have significantly caused the demolition of the of the Sakdrisi-Kachaghiani archaeological object, in terms of timing. Specifically, in case of the February 4/2015 decision of the Tbilisi City Court – the request to suspend the force of the disputed acts was rejected by the Court without justification. In case of the April 27/2015 decision of the Tbilisi Appellate Court – the problem is that it took very long for the Court to make the decision.

## **Manipulating the Discretion**

- Considering that the Director General of the Agency of the Cultural Heritage Protection unilaterally selects the members the Sections, existing in the Councils of the Agency and can change their composition at any moment, it is fully possible that the renewal of the composition of the Strategic Section on November 24, 2015 and adding three new members aimed precisely at "deciding" the Sakdrisi-Kachaghiani issue. It is important to consider that the votes of precisely those new members have determined the issue of revoking the Site Status of the Sakdrisi-Kachaghiani, decided at the voting during the session of the Strategic Section on December 12, 2014 that was gathered specially for discussing the issue of revoking the Site Status of Sakdrisi-Kachaghiani.

Moreover, the case of Sakdrisi-Kachaghiani clearly indicates that the Council, existing in the system of the National Agency for Cultural Heritage Preservation and issues relating to it, are part of the systemic problem. This means that the decisions made "in the name of law" may sacrifice any other site, similarly to Sakdrisi-Kachaghiani.

The present research describes the above findings in detail and supports them with relevant documentation.

## **2. BEFORE SAKDRISI-KACHAGHIANI WAS EXPLODED**

On May 30, 2014, the Tbilisi City Court made an extremely important decision regarding Sakdrisi-Kachaghiani, by satisfying the motion of the claimant to suspend the force of the individual administrative-legal act of the Ministry of the Culture and Monument Protection of Georgia #01/01-1227 (dated March 13, 2014) before the final ruling of the court on the case.<sup>2</sup> **As a result, the consent, received by the ltd. "RMG Gold" to conduct the broad-scale works was suspended. This decision of the Court is still in force and the Tbilisi Appellate Court did not change it.**<sup>3</sup>

Later on, on June 13 of the same year, the Tbilisi City Court made the decision on one more case, relating to Sakdrisi-Kachaghiani and, simultaneously with invalidating other acts, invalidated the Order of the Ministry of the Culture and Monument Protection, dated July 5, 2013. Through this ruling, the Court has declared that this Order, which stripped the Sakdrisi-Kachaghiani of the Status of the Immovable Site of the Cultural Heritage, was illegal.<sup>4</sup>

<sup>2</sup> The ruling of the Tbilisi City Court, dated May 30, 2014, on the case #3/1654-14. Parties of the dispute: claimants – Kakha Kozhoridze, Dali Mamulashvili; defendant – the Ministry of Culture and Monument Protection of Georgia. Third party engaged in the dispute: the ltd. "RMG Gold". The decision is available online at the following link, in Georgian: <http://gyla.ge/uploads/sakdrisiganchineba.pdf>;

<sup>3</sup> The ruling of the Tbilisi Appellate Court, dated June 30, 2014, on the case #3/b-784-14;

<sup>4</sup> The ruling of the Tbilisi City Court on the case #3/3877, dated June 13, 2014. Parties to the dispute: claimant: Association "Green Alternative", Davit Sakhvadze. Defendant – The Ministry of Culture and Monument Protection of Georgia, Government of Georgia. Third party engaged in the dispute – Ministry of Economy and Sustainable Development, ltd. "RMG Gold". Ruling is available at the following link, in Georgian: [http://greenalt.org/wp-content/uploads/2013/10/court\\_decision\\_Finall.pdf](http://greenalt.org/wp-content/uploads/2013/10/court_decision_Finall.pdf);

Therefore, since June 13, 2014, the Ministry of Culture, the Cultural Heritage Protection Agency and the ltd. "RMG Gold" were facing the unexpected reality. The Court has unambiguously confirmed that the entire process, which resulted in stripping Sakdrisi-Kachaghiani of its Site Status, was illegal. At the same time, the Court ruling meant that the company should have forgotten the mere thought of conducting the broad-scale works at Sakdrisi-Kachaghiani for a long time. It has become clear that ***the strategy, exercised by the ltd. "RMG Gold" since 2013 to June 2014, in which, it is highly possible that it was supported by various administrative bodies, has completely failed. Changes were necessary.***

Changes came about very soon. On June 16, 2014, based on the decision of the ltd. "RMG Gold" partner, the members of the Supervisory Board of the company: Zurab Kutelia, Dimitry Troitsky and Dimitry Korzhev were substituted with Sergey Eganov, Alvidas Brusokasy and Vakhtang Paresishvili.<sup>5</sup> The mentioned decision of the partner was confirmed on June 26 of the same year with the record from the public registry.<sup>6</sup> Sergey Eganov, Alvidas Brusokasy and Vakhtang Paresishvili remain to be the members of the Supervisory Board of the ltd. "RMG Gold".<sup>7</sup>

***Thus, on June 26, 2014, in legal terms (i.e. formally), the management of the ltd. "RMG Gold" that was unable to "resolve" the Sakdrisi issue, was changed. However, as the later developments have revealed, the change in the management only was not enough to "resolve" the Sakdrisi-Kachaghiani matter.***

### 3. GERMAN AND BULGARIAN EXPERTS

On April 24, 2014 the Ministry of Culture and Monument Protection of Georgia made the official statement regarding Sakdrisi-Kachaghiani. The statement emphasized on the Memorandum, signed between the National Agency for Cultural Heritage Preservation of Georgia and the ltd. "RMG Gold", which, according to the Ministry, was targeted at the necessity of Cooperation between the state and private sectors.<sup>8</sup> In the statement, the Ministry further explained that according to the Memorandum, the Inspection Group under the Agency of Cultural Heritage Protection was conducting the monitoring at Sakdrisi-Kachaghiani. The Ministry noted that the international experts were visiting to monitor the works to be conducted under the license.<sup>9</sup>

Following the publication of the above statement, GYLA got interested in two important issues. The first related to the work of the inspection group, the second – to the international experts. Therefore, GYLA addressed the National Agency for Cultural Heritage Preservation in writing and requested the following information:

- The Memorandum, signed between the National Agency for Cultural Heritage Preservation and the ltd. "RMG Gold" on March 25, 2014;
- The legal act, issued for the creation of the Inspection Group under the National Agency for Cultural Heritage Preservation;
- The protocols, reflecting all of the sessions held by the Inspection Group of the Agency;
- The exhaustive list of the actions of the Inspection Group under the Agency, performed for the monitoring the works described under the license (with the specific dates of an each activity);
- The exhaustive list of the actions of the Inspection Group under the Agency performed at the Kachaghiani area, for the monitoring of the works (with the specific dates of an each activity);
- Copies of the entire correspondence with the international experts (both sent and received – among others, through the e-mail);<sup>10</sup>

The National Agency for Cultural Heritage Preservation has started providing the above information only after GYLA filed the lawsuit before the Court.<sup>11</sup> At first, the Agency provided GYLA with the copy of the Memorandum and among other issues, has informed GYLA that:

- The staff members of the Inspection under the Agency and the relevant specialists were systematically monitoring Sakdrisi-Kachaghiani hill and photographing the territory from April 23, 2014 to May 3 of the same year;
- Within the monitoring period, no works were conducted at the specified territory and no violations

<sup>5</sup> The decision of the partner of the ltd. "RMG Gold", dated June 16, 2014; [www.reestri.gov.ge](http://www.reestri.gov.ge);

<sup>6</sup> The June 26, 2014 record from the Registry of Commercial Entities, regarding the ltd. "RMG Gold"; [www.reestri.gov.ge](http://www.reestri.gov.ge);

<sup>7</sup> The February 9, 2015 record from the Registry of Commercial Entities, regarding the ltd. "RMG Gold"; [www.reestri.gov.ge](http://www.reestri.gov.ge);

<sup>8</sup> The official statement of the Ministry of Culture and Monument Protection, dated April 24, 2014, in English- <http://www.culture.gov.ge/topicdetails-11.12174.html>

<sup>9</sup> The official statement of the Ministry of Culture and Monument Protection, dated April 24, 2014, in English - <http://www.culture.gov.ge/topicdetails-11.12174.html>

<sup>10</sup> GYLA's correspondence #g-04/171-14, dated April 30, 2014;

<sup>11</sup> GYLA's complaint on the administrative case, dated May 29, 2014. Defendant – the National Agency for Cultural Heritage Preservation.

were witnessed. Therefore, according to the Agency, the monitoring group was not obliged to present the reports in this regard and they have only photographed the territory;

- In relation to the correspondence with the international experts it was mentioned that prior to signing the contract, the letters were sent and received and the conditions of the contract were negotiated through the private e-mail of one of the staff members of the Agency. At the same time, according to the Agency, the requested information represented the so-called *executive privilege* under the General Administrative Code of Georgia<sup>12</sup> and the Agency lacked the possibility to share it.<sup>13</sup>

However, it is important to note that GYLA did not request the Agency to reveal the identity of the staff member, whose e-mail was being used during the correspondence, at all. Therefore, citing the *executive privilege* for withholding the information was absolutely irrelevant. Apart from this, it is a separate issue, whether it is acceptable for the staff member of the administrative body to use the private e-mail in the official work-related correspondence.

At a later stage, the Agency has informed GYLA that ***the special Inspection group for monitoring the Sakdrisi-Kachaghiani archaeological object was not created and therefore, neither the legal act was issued. At the same time, the monitoring group has not issued any act and has not held any sessions. They have only photographed the territory.*** In relation to the German and Bulgarian experts the Agency maintained its position unchanged and reiterated the executive privilege as the reason for withholding the information.<sup>14</sup>

The Tbilisi City Court went even further, when, in relation to the correspondence between the Agency and the German and Bulgarian experts, it concluded that:

*“Each public entity that holds the relevant public information or has access to it, is the subject of the obligation of providing the public information. Since the requested information, as confirmed by the defendant, is not stored at the National Agency for Cultural Heritage Preservation, because the correspondence took place prior to signing the contract, through the private e-mail of the Agency staff member and only related to the negotiations on the date of arrival of the experts, the public entity (the Agency) cannot be tasked with providing the information that does not represent an official document and that it does not hold.”<sup>15</sup>*

***According to the Court decision, what is important is that the correspondence took place through the private e-mail - not the status under which the Agency staff member was conducting the correspondence, nor the subject of that correspondence. Moreover, it means that the communication with the Bulgarian and German experts was held on behalf of the concrete individual and not on behalf of the National Agency of the Cultural Heritage.***

GYLA still does not have access to the details of the correspondence, through which one of the staff members of the Agency was selecting the international experts by using his/her private e-mail.

However, the final report prepared by the German and Bulgarian experts that is accessible to GYLA (dated May 19, 2014) reveals that the following issues were examined in the separate chapters:

- 1) Introduction
  - a. Document (the contract);
  - b. Expert qualification;
  - c. Object of the contract;
- 2) Short overview of the Sakdrisi-Kachaghiani problem and circumstances;
- 3) Objective and the approach;
- 4) The results of the archaeologic and geologic monitoring, conducted at the Kachaghiani Site of the Sakdrisi mine;<sup>16</sup>
- 5) Recommendations;
- 6) Conclusions;<sup>17</sup>

<sup>12</sup> According to the Article 29 of the General Administrative Code of Georgia – identities of other public servants (except for the state and political officials) participating in the process of preparing decisions by an official shall be protected against disclosure by reason of executive privilege.

<sup>13</sup> Correspondence #10/09/615 of the National Agency for Cultural Heritage Preservation, dated June 2, 2014;

<sup>14</sup> Correspondence #10/09/1785 of the National Agency for Cultural Heritage Preservation, dated December 1, 2014;

<sup>15</sup> The ruling of the administrative chamber of the Tbilisi City Court, dated December 22, 2014 (case #3/1859-14);

<sup>16</sup> Site of Cultural Heritage;

<sup>17</sup> The Final Report Regarding the Sakdrisi-Kachaghiani Problem. Authors: professor doctor Venelin Zhelev and professor doctor Albrecht Jokenhovel. May 19, 2014;



Naturally, it is not GYLA's goal to review and analyze the report in detail (especially that the report requires specific knowledge). However, it is important to emphasize the recommendations, elaborated by the Venelin Jhelev and Albrecht Jokenhovel, which outline the three alternatives for resolving the issue, namely:

- Grant the Site Status to the territory;
- Start mining, neglecting the existing archaeological data;
- Achieve the consensus.<sup>18</sup>

According to the experts, achieving the consensus was the best solution in the given situation and that it required compromise from the both sides. Considering the existing international experience in resolving similar problems (Adatepe gold mine in Bulgaria) it was necessary for the state institutions to convince the sides that the only peaceful solution in the given situation was organizing meetings, existence of the monitoring plan in the process of the immediate archaeological preservation works and mining.<sup>19</sup>

***However, later on, the developments that evolved on December 12 and 13, 2014 have turned those recommendations upside down (the recommendation of the Bulgarian and German experts that considered consensus to be the best solution).***

#### 4. CORRESPONDENCE BETWEEN THE AGENCY, NATIONAL MUSEUM AND THE COMPANY

Starting from the second half of the 2014 the correspondence between the ltd. "RMG Gold" and the relevant administrative bodies has resumed. The correspondence, main participants of which were the company, the National Museum and the National Agency for Cultural Heritage Preservation, includes numerous important details. Therefore, we have presented the information about this correspondence below, nominally divided into different Rounds:

##### ***Round I***

According to the information, provided by the National Museum of Georgia, the ltd. "RMG Gold" has submitted the statement to the National Museum on September 10, 2014, according to which the company expressed its readiness to allow the group of specialists to enter Sakdrisi-Kachaghiani and asked the Museum to provide the necessary information by September 17 of the same year, for defining the scope of work required and budget, necessary for elaborating the conclusive research about the Sakdrisi-Kachaghiani.<sup>20</sup>

In response to the company's letter, the Museum wrote on September 12 that due to the objective circumstances, the group of researchers would have been able to visit the Site only from September 17 and would have tried to finish the works in the shortest possible time. According to the National Museum, considering that the specialists were denied the possibility to work on the Site for the past one year, it was necessary to examine the situation on the ground.<sup>21</sup> Therefore, ***the National Museum has informed the ltd. "RMG Gold" from the outset that due to the objective circumstances, it was practically impossible to provide the requested information before September 17.***

##### ***Round II***

In response to the above letter from the National Museum of Georgia, the ltd. "RMG Gold", in its letter, sent to the Museum on the September 17 of the same year, once again reiterated its readiness to cooperate and promised the Museum to offer all kinds of support for the purpose of evaluating the situation on the ground. However, in the same letter, the company expresses dissatisfaction with the postponement of the visit of the specialists to the Sakdrisi-Kachaghiani. In the same letter, the ltd. "RMG Gold" asked the National Museum to present the full list of immediate works that need to be conducted for the archaeological research and the relevant expenditure description by September 22 of the 2014.<sup>22</sup>

In response to the September 17/2014 letter of the "RMG Gold", the National Museum has informed the company that the group of scientists was conducting the archaeological works at Sakdrisi-Kachaghiani since September 17 for the purpose of evaluation and that they have conducted the planned research on the surface of

<sup>18</sup> The Final Report Regarding the Sakdrisi-Kachaghiani Problem. Authors: professor doctor Venelin Zhelev and professor doctor Albrecht Jokenhovel. May 19, 2014;

<sup>19</sup> The Final Report Regarding the Sakdrisi-Kachaghiani Problem. Authors: professor doctor Venelin Zhelev and professor doctor Albrecht Jokenhovel. May 19, 2014;

<sup>20</sup> Correspondence #621 of the ltd. "RMG Gold", dated September 10, 2014;

<sup>21</sup> Correspondence #04/08-1072 of the National Museum of Georgia, dated September 12, 2014;

<sup>22</sup> Correspondence #633 of the ltd. "RMG Gold", dated September 17, 2014;

the ground at the territory of the Site. However, the National Museum underlined that the bad weather has caused certain problems for the scientists. At the same time, the Museum has indicated that the evaluation works in the underground tunnels were planned to be conducted on September 23 and that the final documentation would have been finalized by September 26 of the 2014.<sup>23</sup>

It is also notable that in its response to the September 17/2014 letter of the ltd. "RMG Gold", the National Museum has emphasized on the dissatisfaction of the company regarding the postponement of the visit to Sakdrisi-Kachaghiani by the group of scientists and reminded the company that there was no agreement made between the ltd. "RMG Gold" and the National Museum regarding the dates.<sup>24</sup>

On September 26, 2014, the National Museum sent another letter to the ltd. "RMG Gold" in response to the September 17 letter of the company and shared the report, prepared by the international archaeological expedition of Sakdrisi-Kachaghiani, in English. At the same time, the National Museum expressed readiness to share the Georgian translation of the report in the nearest future, along with the budget, which was being processed.<sup>25</sup>

### **Round III**

On September 30, 2014, the ltd. "RMG Gold" sent another letter to the National Museum and, in addition to reiterating the dissatisfaction over the timing of the work conducted by the group of scientists at Sakdrisi-Kachaghiani, asked to immediately provide the information about the exact date when the Georgian translation of the documentation about the necessary archaeological preservation works would have been provided, along with the attached budget. According to the company, as a result, the company would have been ready to discuss the cooperation possibilities.<sup>26</sup>

In response to the above letter, on October 6, 2014, the National Museum of Georgia, through the National Agency for Cultural Heritage Preservation, sent the letter to the ltd. "RMG Gold" and shared the Georgian translation of the documentation, prepared by the international scientific group regarding the future archaeological works to be conducted on Sakdrisi-Kachaghiani. ***The mentioned documentation included the information about the evaluation of the current situation, future action plan and the estimated expenditures, needed for the comprehensive research of the Site.***<sup>27</sup>

According to the letter, the research of the Site should have been resumed by the international group, which united the experienced specialists of various institutions and that directly participated in the research in 2004-2013, within the project, financed by the Volkswagen Foundation.<sup>28</sup>

The list of the presented expenditures, the estimate of which totaled EUR 1 080 000 covered: the field works, laboratory and in-office research, publications and other necessary activities. The National Museum of Georgia, within its capacities, was supporting the implementation of the project in the proposed format. At the same time, the Museum expressed hope that conducting comprehensive research work and conservation of the revealed historic heritage would have been made possible with the participation and support of the National Agency for Cultural Heritage Preservation. In entirety, the intensive archaeological field works should have been finalized in October 2015.<sup>29</sup>

The National Agency of the Cultural Heritage sent the above letter of the National Museum to the ltd. "RMG Gold" on October 8, 2014 and asked the company to present its position on the matter.<sup>30</sup>

Thus, on October 8, 2014 the ltd. "RMG Gold" had access to the documentation and the relevant expenditure estimates that it requested from the National Museum on September 10 of the same year for the first time.

### **Round IV**

In the smallest period of time, since October 10, 2014, the position of the ltd. "RMG Gold" regarding Sakdrisi-Kachaghiani has drastically changed. In its October 22 letter, the company informed the National Museum and the National Agency for Cultural Heritage Preservation that the time, requested by the National Museum

<sup>23</sup> Correspondence #04/08-1104 of the National Museum of Georgia, dated September 2, 2014;

<sup>24</sup> Correspondence #04/08-1104 of the National Museum of Georgia, dated September 22, 2014;

<sup>25</sup> Correspondence ##04/08-1128 of the National Museum of Georgia, dated September 26, 2014;

<sup>26</sup> Correspondence #662(g) of the ltd. "RMG Gold", dated September 30, 2014;

<sup>27</sup> Correspondence #04/08-1156 of the National Museum of Georgia, dated October 6, 2014;

<sup>28</sup> Correspondence #04/08-1156 of the National Museum of Georgia, dated October 6, 2014;

<sup>29</sup> Correspondence #04/08-1156 of the National Museum of Georgia, dated October 6, 2014;

<sup>30</sup> Correspondence #10/09/1431 of the National Agency of the Cultural Heritag Protection, dated October 8, 2014;

for further research of the Sakdrisi-Kachaghiani posed significant problems for the company.<sup>31</sup> However, the ltd. “RMG Gold” did not provide any justification for why the time, requested by the National Museum caused “significant problems” to the company.

Simultaneously, in the same letter, the ltd. “RMG Gold” indicated the difficult geologic conditions in the Sakdrisi-Kachaghiani and underlined that entering the object would have threatened life of any visitor. As the confirmation of this, the company shared the information, submitted by the geologists to the company about the existing conditions.<sup>32</sup>

***This way, on October 22, 2014, the ltd. “RMG Gold” has publicly, for the first time cited the ostensibly “difficult geologic conditions” in the context of Sakdrisi-Kachaghiani and practically from the very same day, has changed its strategy that the company has been using from September to October 22 of the 2014.***

In its turn, the Museum, in its November 5/2014 letter, sent to the company, addressed the new reality, mentioned by the company in its October 22/2014 letter about the Sakdrisi-Kachaghiani. In the letter, along with mentioning other issues, the Museum agreed that it was necessary to examine the soundness of the hill by the geologists.<sup>33</sup>

In response to the above letter from the National Museum, the ltd. “RMG Gold” shared the engineering-geologic conclusion about the area #1 of the Kachaghiani at Sakdrisi. The conclusion (report) was prepared by the geologists, hired by the company. Based on the report, prepared by the geologists that were contractors of the company, in its letter, the ltd. “RMG Gold” mentioned that: “the Sakdrisi-Kachaghiani hill is in the unstable condition, in engineering-geologic terms, is highly intensive in terms of safety, while the risks of collapse exceed the acceptable limits. Considering the natural-geologic conditions, the excavations and other activities are risky for human life and health.”<sup>34</sup>

The letter further mentioned that the natural destruction of the object, due to the environmental conditions (impact of the meteorological and seismic, along with other tectonic processes) was inevitable in the future.<sup>35</sup>

Considering the above, the ltd. “RMG Gold” offered the National Museum to build the archaeological museum in Bolnisi municipality. As a result, the company said that it would be possible to protect and display the existing archaeological materials to the broad public.<sup>36</sup>

Another, conclusive round of correspondence between the National Museum and the company was held on November 25, 2014. This time, the National Museum has referred to the geologic report, shared by the company and said: “it is very unfortunate that due to the various circumstances, the conditions, described in the report have emerged, which made it problematic to fully preserve the Site, as well as questioned the possibility of resuming the archaeological works.”<sup>37</sup>

### ***What Has Remained Beyond the Rounds***

If we summarize the 2014 autumn correspondence between the company and the National Museum, it becomes clear that the discussions relating to the evaluation, future action plans, immediate archaeological and comprehensive research of the Site and its expenditures, have all the sudden changed the direction and finally, ended on the discussions about the difficult engineering-geologic conditions. ***Unfortunately, the correspondence left the question unanswered – when did the archaeological works on Sakdrisi-Kachaghiani have become risky for life and health, as well as – what has caused the deterioration of the conditions at Sakdrisi-Kachaghiani. Up to day it is unknown, whether all of this was the outcome of the actions of the ltd. “RMG Gold”, as well as the ineffective and inconsistent policy of the administrative bodies.***

<sup>31</sup> Correspondence #703 of the ltd. “RMG Gold”, dated October 22, 2014;

<sup>32</sup> Correspondence #703 of the ltd. “RMG Gold”, dated October 22, 2014;

<sup>33</sup> Correspondence #01/08-1306 of the National Museum of Georgia, dated November 5, 2014;

<sup>34</sup> Correspondence of the ltd. “RMG Gold”, dated November 18, 2014;

<sup>35</sup> Correspondence of the ltd. “RMG Gold”, dated November 18, 2014;

<sup>36</sup> Correspondence of the ltd. “RMG Gold”, dated November 18, 2014;

<sup>37</sup> Correspondence #01/08-1391 of the National Museum of Georgia, dated November 25, 2014;

## 5. FROM THE “ROUND TABLE” AT THE MINISTRY, TO THE EXPLOSION OF SAKDRISI-KACHAGHIANI

On April 4, 2014, the round table was held in the Ministry of Culture and Monument Protection of Georgia, in which the Ministry itself and the National Agency of the Cultural Heritage participated. The discussion of the round table related to the administrative contract between the two bodies. According to the administrative contract, the Ministry delegated the authority to issue some of the individual administrative-legal acts, relating to the cultural heritage, upon the Agency. At the same time, the Ministry maintained the supervising authority, as well as the authority to lead the policy in the sphere of culture.<sup>38</sup> Finally, the relevant administrative contract between the Ministry and the Agency was signed on April 8, 2014 and the Ministry has delegated upon the Agency the authority of the following actions:

- 1) Granting and revoking the Status of the Site of the Cultural Heritage based on the conclusion of the Council of the Cultural Heritage Protection under the Agency. As for the objects, located in the capital – Tbilisi, to make proposals to the Ministry, regarding initiating such issues at the Government sessions;
- 2) Expanding the individual protection zone of the Cultural Heritage Site, or part of it;
- 3) The authority to include the objects in the List of the Cultural Heritage Objects and the authority to exclude objects from the List;
- 4) Confirming the documentation, relating to urban construction in the protection zones of the cultural heritage, in accordance with the procedures prescribed under the legislation;
- 5) Issuing permits (only in the special cases, and based on the expert conclusions) to initiate constructions in such territories, that historically did not include constructions, in the zones of historic urban development;
- 6) Issuing conclusions about processing the pits, mining the minerals, as well as construction of the objects of particular importance, described in the legislation of Georgia on the entire territory of Georgia;
- 7) Issuing permits on de-construction (taking out from the original environment) of the archaeological objects;
- 8) In accordance with the legislation of Georgia, along with the relevant state bodies, suspending all types of activities that might endanger cultural heritage.<sup>39</sup>

Out of the above delegated duties, the Agency applied #1, #3 and #7 in its decisions on December 12, 2014, which resulted in the exploding Sakdrisi-Kachaghiani on the next day.<sup>40</sup>

Let us follow the developments, evolving after the signing of the administrative contract between the Ministry and the Agency:

- On May 6, 2014, the Statute of the Council of the Cultural Heritage Protection was confirmed (the Council under the Agency of the Cultural Heritage Protection);<sup>41</sup>
- Under the Statute, the Council, consisting of the eight (8) thematic Sections, was proclaimed to be the advisory body of the Director General of the Agency. The Director General was armed with the exclusive right to compose the Sections at his/her own discretion. The Statute prescribed that each Section must be composed of no less than five (5) members, while the term of the Section was prescribed to last until the approval of the new members of the Council Section by the Agency. Thus, the Director General has received the exclusive right to compose the Sections of the Council unilaterally, and, as needed, to change the composition (members), as he/she deemed necessary.<sup>42</sup> ***Later on, it is highly likely that this is precisely what happened in relation to Sakdrisi-Kachaghiani.***
- The Strategic Section (Section of the Strategic Issues) of the Council, existing within the system of

<sup>38</sup> The statement of the Ministry of Culture and Monument Protection of Georgia, dated April 4, 2014 <http://www.culture.gov.ge/topicdetails-1.10392.html>;

<sup>39</sup> Administrative contract #1, dated April 8, 2014. Parties of the contract: Ministry of Culture and Monument Protection of Georgia and the National Agency for Cultural Heritage Preservation. Article 1;

<sup>40</sup> Order #2/271 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated December 12, 2014; Order #03/266 of the Minister of Culture and Monument Protection of Georgia, dated December 12, 2014; Correspondence #05/09/1857 of the National Agency for Cultural Heritage Preservation of Georgia, dated December 12, 2014;

<sup>41</sup> Order #2/56 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated May 6, 2014;

<sup>42</sup> Order #2/56 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated May 6, 2014; Appendix #1;

the Agency, has significantly determined the future of Sakdrisi-Kachaghiani with its decision, made on December 12, 2014 that had recommendatory force. At first, the composition of the Section was the following:

- Besik Matsabidze – (chairperson of the Section) art specialist. Director of the Department of the Cultural Heritage Strategy, Coordination with Organizations and Permits under the Ministry of the Culture and Monument Protection of Georgia;
- Giorgi Gagoshidze – art specialist. Head of the Services of Accounting-Documenting Cultural Heritage under the Agency;
- Davit Khoshtaria – art specialist;
- Giorgi Chanishvili – art specialist;
- Nikoloz Zazunashvili – architect. The Senior Specialist of the Department of the Permit Conditions’ Control under the Agency.<sup>43</sup>

On July 11, 2014, one more member has joined the Strategic Section – Eka Kacharava (historian), the Senior Specialist at the Services of the Accounting-Documenting Cultural Heritage under the Agency.<sup>44</sup>

Later on, the developments evolved even faster. On November 24, 2014 the signature of the Deputy Director General of the Agency has brought the new Order into force. The new Order has fundamentally changed the composition of the Strategic Section.<sup>45</sup> Fourteen (14) work days prior to making the decision on Sakdrisi-Kachaghiani, the composition of the Strategic Section of the Agency was the following:

- Kakha Trapaidze – (Section Chairperson), cultural heritage expert;
- Besik Matsaberidze – art specialist. Director of the Department of the Cultural Heritage Strategy, Coordination with Organizations and Permits under the Ministry of the Culture and Monument Protection of Georgia;
- Giorgi Gagoshidze – art specialist. Head of the Services of Accounting-Documenting Cultural Heritage under the Agency;
- Teimuraz Bibiluri – archaeologist;
- Giorgi Chanishvili – art specialist;
- Nikoloz Zazunashvili – architect. The Head of the Department of the Permit Conditions’ Control under the Agency;
- Shalva Melikadze – architect-restorer.<sup>46</sup>

Thus, as a result of the decision made by the Agency, the renewed composition of the Section, which increased up to seven (7) members, no longer included Davit Khoshtaria and Eka Kacharava from the previous members, while the new members were added: Kakha Trapaidze (under the status of the Section chairperson), Teimuraz Bibiluri and Shalva Melikadze. ***It was the position of the precisely new members that has played the decisive role during the session, held on December 12, 2014, where the decision on revoking the Site Status of Sakdrisi-Kachaghiani was made.***

Out of the seven (7) members of the Section, six (6) were attending the session, held on December 12, 2014. The session, where the revocation of the Status of the Cultural Heritage Site of the Sakdrisi-Kachaghiani oldest gold mine was discussed, and which was personally attended by the Director General of the Agency for providing the relevant information to the Section members, has concluded with the following result:

*Revoking the Status of the Cultural Heritage Site of Sakdrisi-Kachaghiani archaeological object was positively evaluated by the following members of the Section: Kakha Trapaidze, Besik Matsaberidze, Teimuraz Bibiluri and Shalva Melikadze. The revocation was negatively evaluated by the following members: Giorgi Chanishvili and Nikoloz Zazunashvili.<sup>47</sup>*

<sup>43</sup> Order #2/56 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated May 6, 2014; Appendix # 6;

<sup>44</sup> Order #2/108 (and Appendix) of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated July 11, 2014;

<sup>45</sup> Order #2/238 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated November 24, 2014;

<sup>46</sup> Order #2/238 (and Appendix) of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated November 24, 2014;

<sup>47</sup> Protocol (record) of the Session of the Strategic Section under the Cultural Heritage Council of the National Agency for Cultural Heritage Preservation, held on December 12, 2014;

Finally, with the majority of votes, the Section has concluded that: ***“Because the Sakdrisi object is so damaged that it is impossible to restore/preserve its historic/cultural value and because it has lost its key characteristics that represented the preconditions for granting it the Site Status, the Council addresses the National Agency for Cultural Heritage Preservation with the recommendation to revoke the Status of the Cultural Heritage Site, granted to the Sakdrisi-Kachaghiani oldest gold mine.”***<sup>48</sup>

The above factual circumstances testify that in reality, the issue of revocation of the Site Status of Sakdrisi-Kachaghiani was determined by the position (votes) of the new members of the Section. Therefore, **the fact that the Director General unilaterally composes the Council Sections and can change its members at any time, raises justified suspicion that the new members of the Section could have been selected specifically for the purpose of resolving the Sakdrisi-Kachaghiani “dilemma”.**

Overall, the developments, which evolved around the Council under the Agency and the relevant Section in relation to Sakdrisi-Kachaghiani, have clearly demonstrated that **the Council and relating issues are part of the systemic problem and the decisions, made “in the name of law” may sacrifice any other Site, similarly to Sakdrisi-Kachaghiani.**

## 6. MARGOTTINI CONCLUSION

After the Ltd. “RMG Gold” has exploded the Sakdrisi-Kachaghiani oldest gold mine on December 13, 2014, in their media appearances, the management of the National Agency for Cultural Heritage Preservation has been frequently mentioning the document that was prepared by the Italian geologist – professor Claudio Margottini, for the engineering-geologic research-evaluation of the stability of the rocks in the Sakdrisi-Kachaghiani tunnels.

According to the official information, on November 12, 2014, the state procurement contract was signed between the Agency and the professor Margottini, as a result of the simplified procurement.<sup>49</sup> By signing the state contract through the simplified procurement procedure, the Agency, from the outset, has excluded the possibility of a competitive process of selection of an expert. This means that the Director General of the Agency has practically decided unilaterally, with whom to sign the contract.

Under the contract, professor Margottini was tasked with engineering-geologic research-evaluation of the Sakdrisi-Kachaghiani object and preparation of the relevant conclusion. The deadline for performing this task was December 9 of the same year, while the contract fee amounted to 25 000 GEL.<sup>50</sup>

The research, prepared by Claudio Margottini under this contract is dated December 5, 2014. The document is quite voluminous and its evaluation requires specific knowledge. However, the conclusive part of the research, prepared by Margottini is particularly important, the clause 7 of which clearly indicates that ***“excavation in the tunnels is not possible without the use of adequate supporters, such as the torcrete concrete supporters or clips.”***<sup>51</sup> This means that if certain measures were applied, it was fully possible to conduct excavations at Sakdrisi-Kachaghiani. However, as it seems, this information, shared in the conclusive part of the research by the Italian professor was left “unnoticed” by the National Agency for Cultural Heritage Preservation and the research of the professor was used for the absolutely different purpose; namely, for leaving Sakdrisi-Kachaghiani without the Status of a Site on December 12, 2014.

The legislation of Georgia unambiguously defines the cases, in which the Status of a Site may be revoked. Difficult engineering-geologic conditions, as the grounds for revocation of the Site Status, are unknown to the legislation of Georgia.<sup>52</sup>

It is also noteworthy that the National Agency for Cultural Heritage Preservation, within six (6) days from signing the contract with professor Margottini, has received the conclusion by Zurab Varazashvili and Guram Khomeriki about engineering-geologic condition of Sakdrisi-Kachaghiani, prepared under the contract with

<sup>48</sup> Protocol (record) of the Session of the Strategic Section under the Cultural Heritage Council of the National Agency for Cultural Heritage Preservation, held on December 12, 2014;

<sup>49</sup> Contract #4/96 on the simplified state procurement, dated November 12, 2014; parties of the contract: National Agency for Cultural Heritage Preservation and professor Claudio Margottini;

<sup>50</sup> Contract #4/96 on the simplified state procurement, dated November 12, 2014; parties of the contract: National Agency for Cultural Heritage Preservation and professor Claudio Margottini;

<sup>51</sup> Engineering-Geologic Research-Evaluation of the Stability of the Rocks in Sakdrisi-Kachaghiani Tunnels –professor, geologist Claudio Margottini. December 5, 2014;

<sup>52</sup> Law of Georgia on the Cultural Heritage, Article 17;

the ltd. "RMG Gold".<sup>53</sup> However, the Agency, instead of making efforts to save Sakdrisi-Kachaghiani and conducting the relevant state procurement for this purpose, went in the reverse direction.

***Unfortunately, this entire process leaves an impression that the National Agency for Cultural Heritage Preservation was looking for an additional argumentation to revoke the Status of the Cultural Heritage Site of the Sakdrisi-Kachaghiani.***

## 7. DECEMBER 12, 2014

The chronology and the logical connection of the evolving developments has turned upside down in a matter of one working day. On December 12, 2014, the Ministry of Culture and Monument Protection and the National Agency of the Cultural Heritage of Georgia made total of seventeen (17) actions, followed by four (4) decisions relating to Sakdrisi-Kachaghiani. In terms of legal and chronologic considerations, it is important to emphasize the specific timing of the actions and decisions, made on December 12. Precisely those details, relating to the 17 actions and the 4 decisions are presented below.

At 12:55 (December 12, 2014), the letter of the ltd. "RMG Gold" was delivered to the Ministry of Culture and Monument Protection of Georgia.<sup>54</sup> ***In its statement, the company requested the legally required consent for de-construction of the Sakdrisi-Kachaghiani archaeological object.***<sup>55</sup>

In the shortest period of time from the moment of its registration at the Ministry, ***after only 11 minutes***, at 13:06,<sup>56</sup> the above statement of the ltd. "RMG Gold" was sent to the National Agency for Cultural Heritage Preservation,<sup>57</sup> along with the signature, made by the Deputy Minister. It is unknown, how did the statement end up before the Deputy Minister immediately after the registration and how it was sent to the Agency only 11 minutes after the registration at the Ministry. As it seems, the Deputy Minister was informed about the statement of the ltd. "RMG Gold" in advance and was waiting in the reception of the Ministry for the registration of the statement of the private company. In reality, the statement of the ltd. "RMG Gold" should have passed certain procedures before being sent from the Ministry to the Agency and, in accordance with the practice, established in the public sector, the Deputy Minister should have only signed the document, while the correspondence on sending the statement should have been prepared by the relevant services of the Ministry. According to the official information, available to GYLA, the Legal Department and the Records' Management Authority of the Ministry were engaged in the process of preparing the correspondence on sending the December 12 statement of the ltd. "RMG Gold" from the Ministry to the Agency.<sup>58</sup> This fact further strengthens the suspicion about how did the Ministry really manage to send the statement of the ltd. "RMG Gold" to the Agency in only 11 minutes from the moment of the registration.

Despite GYLA's attempts, the exact registration time of the statement that arrived in the Agency from the Ministry, remains unknown. What also remains unknown is the exact time, when the Strategic Section of the Council under the Agency has started and ended its session.<sup>59</sup> According to the Agency, the regulations, applied by the Agency for the proceedings, do not prescribe the obligation to indicate the exact time of start and end of the Section sessions in its protocols.<sup>60</sup> However, the Administrative Code of Georgia prescribes absolutely different rules that the administrative body must comply with.<sup>61</sup>

To follow the chronology of the events, on the same day, December 12, 2014, the session of the Strategic Section of the Council of the Cultural Heritage was convened at the Agency.<sup>62</sup> The only issue, included on the Agenda for the discussion was:

*"Revoking the Status of the Cultural Heritage Site of the Sakdrisi-Kachaghiani oldest gold mine."*

<sup>53</sup> Correspondence #1344 of the ltd. "RMG Gold", dated November 18, 2014;

<sup>54</sup> Correspondence #11/11-379 of the Ministry of Culture and Monument Protection of Georgia, dated January 23, 2014; and the copy of the registry of the proceedings on December 12, 2014 of the Ministry of Culture and Monument Protection of Georgia;

<sup>55</sup> Statement #445/1 of the ltd. "RMG Gold", dated December 12, 2014;

<sup>56</sup> Correspondence #11/11-379 of the Ministry of Culture and Monument Protection of Georgia, dated January 23, 2014; and the copy of the registry of the proceedings on December 12, 2014 of the Ministry of Culture and Monument Protection of Georgia;

<sup>57</sup> Correspondence #05/05-5968 of the Ministry of Culture and Monument Protection of Georgia, dated December 12, 2014;

<sup>58</sup> Correspondence #11/11-598 of the Ministry of Culture and Monument Protection of Georgia, dated February 5, 2015;

<sup>59</sup> Statement #g-04/553-15 of GYLA, dated January 6, 2015;

<sup>60</sup> Correspondence #10/09/589 of the National Agency for Cultural Heritage Preservation, dated April 6, 2015;

<sup>61</sup> General Administrative Code of Georgia, Clause "b" of the Article 27, Article 34;

<sup>62</sup> Protocol (record) of the Session of the Strategic Section under the Cultural Heritage Council of the National Agency for Cultural Heritage Preservation, held on December 12, 2014;

**In reality, the company did not, at all, request revocation of the Site Status of the Sakdrisi-Kachaghiani. The ltd. "RMG Gold" only requested the legally required permit to de-construct the Sakdrisi-Kachaghiani archaeological object.<sup>63</sup> Thus, the Director General of the Agency has initiated the discussion about the revocation of the Site Status of Sakdrisi-Kachaghiani, himself.<sup>64</sup>**

The Strategic Section, the session of which was of course, held on the same day – December 12, 2014 and which was attended by six (6) members of the Section, with four (4) votes against two (2) made the decision of recommendatory force. Namely, the four (4) members of the Section have supported the revocation of the Status of the Cultural Heritage Site of Sakdrisi-Kachaghiani oldest gold mine.<sup>65</sup> It is notable that ***the three (3) out of the four (4) members of the Section that supported revocation of the Status, were appointed as the members of the Section shortly before the session – on November 24, 2014.***<sup>66</sup> Therefore, it is quite possible that the changes in the composition of the Strategic Section were made specifically for making the decision about Sakdrisi-Kachaghiani.

The decision of the Strategic Section of the Cultural Heritage Protection Council, due to its recommendatory nature, would have had importance, only if the Director General took it into consideration and revoked the Status. ***It did not even take one work day for the Director General to make the final, legally binding decision, based on the recommendatory decision provided by the Section.*** As a result, on December 12, 2014, the Director General has issued the Order, revoking the Status of the Cultural Heritage Site of the Sakdrisi-Kachaghiani oldest gold mine.<sup>67</sup>

However, the December 12, 2014 did not end with the revocation of the Site Status of the Sakdrisi-Kachaghiani. On the same day, the Agency sent the Order of the Director General to the Ministry and requested the follow-up response for the purpose of introducing amendments to the Order #3/133 of the Minister of Culture, Monument Protection and Sports (dated March 30, 2006).<sup>68</sup> The Order of the Agency was registered at the Ministry after the official working hours – at 18:30.<sup>69</sup> The Order of the Agency turned out to be the last document, registered in the Ministry on December 12, 2014 as the incoming correspondence.<sup>70</sup>

This time, it took the Ministry only 39 minutes to follow-up on the above Order of the Agency.<sup>71</sup> Therefore, ***on December 12, 2014, the Minister of Culture and Monument Protection has passed all of the formalities, accompanying the administrative proceedings, required to issue the legal act in only 39 minutes and based on the Order of the Agency, decided that the Appendix #2042 (the Sakdrisi-Kachaghiani oldest gold mine, Bolnisi municipality) of the Order #3/133 of the Minister of Culture (dated March 30, 2006) should be revoked.***<sup>72</sup> The Ministry sent the mentioned new follow-up Order to the Agency on 19:09 and on 19:20 – to the Legislative Herald of Georgia.<sup>73</sup>

Finally, on December 12, 2014, the National Agency for Cultural Heritage Preservation made the decision regarding the de-struction (taking out from the original environment) of the Sakdrisi-Kachaghiani archaeological site and, in its new letter, informed the ltd. "RMG Gold" that from the moment of the coming into the force of the Order #2/271 (dated December 12, 2014) of the Director General of the Agency, the company was granted the permit to de-construct (take out from the original environment) the Sakdrisi-Kachaghiani archaeological site.<sup>74</sup> At the same time, the Agency has registered the 2014 Order of the Director General, preceding

<sup>63</sup> Statement #445/1 of the ltd. "RMG Gold", dated December 12, 2014;

<sup>64</sup> Protocol (record) of the Session of the Strategic Section under the Cultural Heritage Council of the National Agency for Cultural Heritage Preservation, held on December 12, 2014;

<sup>65</sup> Protocol (record) of the Session of the Strategic Section under the Cultural Heritage Council of the National Agency for Cultural Heritage Preservation, held on December 12, 2014;

<sup>66</sup> Order #2/238 of the Director General of the National Agency for Cultural Heritage Preservation, dated November 24, 2014;

<sup>67</sup> Order #2/271 of the Director General of the National Agency for Cultural Heritage Preservation, dated December 12, 2014;

<sup>68</sup> Correspondence #05/09/1857 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated December 12, 2014

<sup>69</sup> Correspondence #11/11-379 of the Ministry of Culture and Monument Protection of Georgia, dated January 23, 2014; and the copy of the registry of the proceedings on December 12, 2014 of the Ministry of Culture and Monument Protection of Georgia;

<sup>70</sup> Correspondence #11/11-379 of the Ministry of Culture and Monument Protection of Georgia, dated January 23, 2014; and the copy of the registry of the proceedings on December 12, 2014 of the Ministry of Culture and Monument Protection of Georgia;

<sup>71</sup> Correspondence #11/11-379 of the Ministry of Culture and Monument Protection of Georgia, dated January 23, 2014; and the copy of the registry of the proceedings on December 12, 2014 of the Ministry of Culture and Monument Protection of Georgia;

<sup>72</sup> Order #03/266 of the Minister of Culture and Monument Protection of Georgia, dated December 12, 2014;

<sup>73</sup> Correspondence #11/11-379 of the Ministry of Culture and Monument Protection of Georgia, dated January 23, 2014; and the copy of the registry of the proceedings on December 12, 2014 of the Ministry of Culture and Monument Protection of Georgia;

<sup>74</sup> Correspondence #05/09/1857 of the National Agency for Cultural Heritage Preservation of Georgia, dated December 12, 2014;



the decision of the de-construction of the archaeological object, in the Legislative Herald of Georgia at 20:13, for publication.<sup>75</sup>

It should also be mentioned that GYLA's attempt to receive the comprehensive copy of the registry of the proceedings, conducted on December 12, 2014 from the Agency, was unsuccessful.<sup>76</sup> The information, provided as a result of the court litigation only reflects the incoming correspondence from various persons to the Agency on December 12, 2014, but not the copy of the registry of the outgoing correspondence from the Agency.<sup>77</sup> **Therefore, it is unknown – when, in reality, the decision of the Agency, permitting the company to de-construct Sakdrisi-Kachaghiani archaeological object was prepared and delivered to the ltd. “RMG Gold”?**<sup>78</sup>

Later on, in its correspondence, dated May 18, 2015, the Agency mentioned that: “Considering the practice, established for years, there is no separate registry for the outgoing letters from the Agency.”<sup>79</sup> As it seems, the “established practice” is much more important for the Agency than the legally binding requirements. At the same time, according to the Agency, the fact that the two separate documents, prepared on December 12, 2014 on Sakdrisi-Kachaghiani have the same registration number is only a “technical flaw” and ostensibly ended up in the registration journal due to the “mechanic” request.<sup>80</sup>

Undoubtedly, on December 12, 2014, the Agency could not have made the decision on the de-construction of the Sakdrisi-Kachaghiani archaeological object until the Orders of the Director General of the Agency and the Minister of Culture would have entered force, leaving Sakdrisi-Kachaghiani without the Site Status.

According to the official information, the Order of the Minister was presented to the Legislative Herald on 20:53 of the December 12, 2014, while the Order of the Director General of the Agency - at 20:13. In its turn, the Legislative Herald has publicized both Orders on the same day, at 21:27.<sup>81</sup>

Thus, it is clear that the Agency could not have made the decision on the de-construction earlier than 21:27 of the December 12, 2014.

Overall, the Ministry and the Agency have tried very hard on December 12, 2014 and, in the extremely suspicious circumstances, made 17 actions, resulting in 4 important decisions regarding Sakdrisi-Kachaghiani.

The above 17 actions and 4 decisions can be demonstrated visually in the following way:

<sup>75</sup> Correspondence #15/g-40 of the Legislative Herald of Georgia, dated January 21, 2015;

<sup>76</sup> Statement #g-04/553-15 of GYLA, dated January 6, 2015;

<sup>77</sup> Correspondence #10/09/589 of the National Agency for Cultural Heritage Preservation of Georgia, dated April 6, 2014;

<sup>78</sup> Correspondence #05/09/1857 of the National Agency for Cultural Heritage Preservation of Georgia, dated December 12, 2014;

<sup>79</sup> Correspondence #10/09/889 of the National Agency for Cultural Heritage Preservation of Georgia, dated May 18, 2015;

<sup>80</sup> Correspondence #10/09/889 of the National Agency for Cultural Heritage Preservation of Georgia, dated May 18, 2015;

<sup>81</sup> Correspondence #15/g-40 of the legal entity of public law – the Legislative Herald of Georgia, dated January 21, 2015;



## 8. DECEMBER 13, 2014 – FROM THE BIG BANG TO TODAY

December 13, 2014 started with the explosion of Sakdrisi-Kachaghiani. Apart from the issue of legality of the developments, evolved around Sakdrisi-Kachaghiani as of the Site of Cultural Heritage, it is important to discuss whether the explosion performed by the ltd. “RMG Gold” was permissible.

According to the legislation of Georgia, one of the functions of the legal entity of public law – Technical and Construction Supervision Agency (Supervision Agency, hereinafter) is issuing permits on the use of industrial explosives and performing control over the compliance with permit conditions. Also, the function of the same Supervision Agency (prior to creation of a separate accredited inspection body) is to periodically inspect such objects, as: pit, mine and shaft, in case of mining minerals through the mechanic methods.<sup>82</sup> However, according to the official information, available to GYLA, ***the ltd. “RMG Gold” did not address the Technical and Constructions Supervision Agency for obtaining permit to explode the Sakdrisi area #1 of Kachaghiani on December 13, 2014.***<sup>83</sup>

At the same time, the information, provided by the Technical and Construction Supervision Agency to GYLA, reveals that the explosion works on the mine of ltd. “RMG Gold” is performed by the Joint Stock Company “RMG Copper”. In its turn, the Supervision Agency has issued total of five (5) permits to the JSC. “RMG Copper” for the use of industrial explosives on the mines of the ltd. “RMG Gold”.<sup>84</sup>

The permits, issued on November 13 and 18, 2014, relate to the areas #3, #4 and #5 of the pit of the Sakdrisi mine, that contained quartzite rocks with gold. Therefore, based on those permits, the ltd. “RMG Gold” had no right to explode the area #1 of the Kachaghiani, containing the quartzite rocks with gold.<sup>85</sup>

Prior to 2014, in 2012, the permits #000 125 and #000 126 were issued to the JSC. “RMG Copper”, dated October 10. In both cases, the permits were issued for the sole purpose of changing the company name inscriptions in the permits, issued in 2011 (due to the change in the name of the company).<sup>86</sup> ***Considering that Site Status of Sakdrisi-Kachaghiani was first revoked under the July 5, 2013 Order,<sup>87</sup> the above two permits could not have been the grounds for explosion of the area #1 of Kachaghiani on December 13, 2014.***

As for the permit, issued on January 6, 2015, despite the fact that it relates to the area #1 of the Kachaghiani, containing quartzite rocks with gold, it cannot cover the explosion, carried out much earlier – on December 13, 2014.<sup>88</sup>

***At the time of carrying out the explosion on December 13, 2014, on the license area #1 of Kachaghiani (which included/includes the archaeological object – Sakdrisi-Kachaghiani oldest gold mine), the ltd. “RMG Gold” did not have the legally required permit from the legal entity of public law – the Technical and Constructions Supervision Agency.*** Therefore, conducting any type of works on the archaeological object, without the permit of the archaeological works, or any type of deliberate impact, ***which caused its damage or demolition***, or as a result of which it is impossible to establish a date of the object, identify the object or obtain any other important scientific information from it, represent a punishable crime under the Criminal Code of Georgia.

Therefore, on April 24, 2015, GYLA has officially addressed and called upon the Chief Prosecutor of Georgia to launch the investigation on the above facts.<sup>89</sup>

***The ltd. “RMG Gold” has responded to GYLA’s statement on the same day, and confirmed the inexistence of the permit to explode the area #1 of the Sakdrisi-Kachaghiani on December 13, 2014.***<sup>90</sup>

<sup>82</sup> Order #1-1/1527 of the Minister of Economics and Sustainable Development of Georgia, dated July 23, 2012 – regarding the approval of the Statute of the Technical and Constructions Supervision Agency;

<sup>83</sup> Correspondence #353/01-21/sh of the legal entity of public law - the Technical and Constructions Supervision Agency, dated March 16, 2015;

<sup>84</sup> Correspondence #09/68 of the legal entity of public law - the Technical and Constructions Supervision Agency, dated April 17, 2015;

<sup>85</sup> Correspondence #353/01-21/sh of the legal entity of public law – Technical and Constructions Supervision Agency, dated March 16, 2015; Permits #000 181 and #000 182 on the use of the industrial explosives, dated November 13 and 18, 2014;

<sup>86</sup> Correspondence #353/01-21/sh of the legal entity of public law – Technical and Constructions Supervision Agency, dated March 16, 2015; Permits #000 125 and #000 126 on the use of industrial explosives, dated October 10, 2012;

<sup>87</sup> Order #03/108 of the Minister of Culture and Monument Protection of Georgia, dated July 5, 2013;

<sup>88</sup> Correspondence #353/01-21/sh of the legal entity of public law – Technical and Constructions Supervision Agency, dated March 16, 2015; Permit #000189 on the use of industrial explosives, dated January 6, 2015;

<sup>89</sup> Statement #g-01/286-15 of GYLA, dated April 24, 2015;

<sup>90</sup> The statement of the ltd. “RMG Gold”, publicized through media on April 24, 2015, available in Georgian; <http://www.interpressnews.ge/ge/sazogadoeba/327032-qaremjiq-saias-ganckhadebas-pasukhobs.html?ar=A>;

According to the company, explosion without the permit represents not a crime under the Criminal Code, but - the administrative violation, and that the Technical and Construction Supervision Agency has already imposed the relevant administrative responsibility upon the ltd. "RMG Gold" on December 19, 2014.<sup>91</sup> However, it has "escaped" the company's attention that **on December 13, 2014 it not only performed the unauthorized explosion on the area #1 of Kachaghiani, but exploded the Sakdrisi-Kachaghiani Archaeological Object.** At the same time, the reference that the ltd. "RMG Gold" is making to the permit of "de-construction (taking out from the original environment)", which ostensibly gave it a right to perform the explosion and use the special technology, is irrelevant, because the consent, issued by the National Agency for Cultural Heritage Preservation on December 12, 2014 to "de-construct" the object does not include the right to explode the object.<sup>92</sup>

In terms of the technical aspect of the explosion, it is important to consider *how exactly* did the ltd. "RMG Gold", manage to conduct all the preparatory works necessary to set up the explosion, in a short period of time as the December 13 started, in the night hours. This circumstance once again indicates that **allegedly, with high probability, the company had started the preparatory works for the explosion much earlier than the National Agency for Cultural Heritage Preservation gave the ltd. "RMG Gold" the consent to de-construct the archaeological object.**

### 8.1. Monitoring Issues

Since December 13, 2014, the ltd. "RMG Gold" was permanently repeating that it performed the "de-construction (taking out from the original environment)" of the archaeological object at Sakdrisi-Kachaghiani. However, the mining company performed the so-called "de-construction" of the archaeological object, so that for a long period of time, not only the archaeologists were not present there, none of them has even seen what exactly was happening at the Sakdrisi-Kachaghiani archaeological object. In reality, **since December 13, 2014, the company has resumed the broad-scale works on Sakdrisi-Kachaghiani, despite the fact that the Tbilisi City Court had ordered the ltd. "RMG Gold" to temporarily suspend the broad-scale works, in its June 30 decision of the same year. This decision remains in force even today.**<sup>93</sup> Thus, the company performed the broad-scale works under the name of "de-construction" of the archaeological object.

It is also notable that, according to the information provided by the company itself, on December 29, 2014, the ltd. "RMG Gold" has officially informed the Ministry of Culture and Heritage Protection of Georgia and the Cultural Heritage Protection Agency about the completion of the "de-construction" of the Sakdrisi-Kachaghiani archaeological object.<sup>94</sup>

**Therefore, if the company has really completed the ostensibly "de-construction" of the archaeological object on December 29, 2014, it means that all of this process was performed without any participation from the side of archaeologists and the National Agency for Cultural Heritage Preservation.** However, prior to those developments, **the conclusion, prepared by the Bulgarian and German experts under the initiative of the Agency itself, clearly indicated that it is absolutely necessary to ensure presence of archaeologists at the Sakdrisi-Kachaghiani during the works.**<sup>95</sup> For some reason, the National Agency for Cultural Heritage Preservation "has overlooked" this detail.

### 8.2. Conflict of Interest

According to the official information, available to GYLA, the relevant monitoring group of the National Agency for Cultural Heritage Preservation of Georgia has first visited Sakdrisi-Kachaghiani on January 9, 2015 – for the purpose of monitoring the ongoing works.<sup>96</sup> Considering that archaeologists were not present during the broad-scale works, conducted by the company from December 13, 2014 to January 9, 2015, it is quite possible that due to the absence of the archaeologists, the newly revealed artefacts might have been destroyed – deliberately or due to negligence.

<sup>91</sup> The statement of the ltd. "RMG Gold", publicized through media on April 24, 2015, available in Georgian; <http://www.interpressnews.ge/ge/sazogadoeba/327032-qaremjiq-saias-ganckhadebas-pasukhobs.html?ar=A>;

<sup>92</sup> Correspondence #05/09/1857 of the National Agency of the Cultural Heritage Protection of Georgia, dated December 12, 2014;

<sup>93</sup> The ruling of the Tbilisi City Court, dated May 30, 2014, on the case #3/1654-14. Parties of the dispute: claimants – Kakha Kozhoridze, Dali Mamulashvili; defendant – the Ministry of Culture and Monument Protection of Georgia. Third party engaged in the dispute: the ltd. "RMG Gold". The decision is available online in Georgian, at the following link: <http://gyla.ge/uploads/sakdrisiganchineba.pdf>;

<sup>94</sup> Statement of the ltd. "RMG Gold", submitted to the Tbilisi City Court on January 22, 2015;

<sup>95</sup> The Final Report Regarding the Sakdrisi-Kachaghiani Problem. Authors: professor doctor Venelin Jhelev and professor doctor Albrecht Jokenhovel. May 19, 2014;

<sup>96</sup> Correspondence #10/09/27 of the National Agency for Cultural Heritage Preservation of Georgia, dated January 13, 2015;

As for the composition of the group that arrived in Sakdrisi-Kachaghiani on January 9, 2015, ***Lali Akhalaia was one of the members, participating under the status of the Agency employee, while the monitoring report, sent to the ltd. "RMG Gold" is signed by Davit Lomitashvili.***<sup>97</sup> ***Lali Akhalaia and Davit Lomitashvili were the members of the 11-member Commission,***<sup>98</sup> ***illegally created in May, 2013, which considered the existence of the oldest gold mine in Sakdrisi-Kachaghiani not convincing.***<sup>99</sup> Later on, the Tbilisi City and Appellate Courts recognized the illegality of the decision of the Minister of Culture regarding the creation of this 11-member Commission.<sup>100</sup>

According to the official information, the representatives of the Agency monitoring group were visiting Sakdrisi-Kachaghiani on January 20, March 13 and April 2. The reports about the monitoring, conducted on those dates, are dated January 20, April 6 and April 16.<sup>101</sup> The report of the monitoring conducted on January 20 clearly indicated that, as a result of the visual inspection of the territory, archaeological materials were not revealed.<sup>102</sup> As for the monitoring reports of the March 13 and April 2 visits, the documents say that the group has only looked through the territory briefly and again, no traces of cultural layers of archaeological materials were found.<sup>103</sup>

On April 17, 2015, the National Agency for Cultural Heritage Preservation made the decision on termination of the monitoring on the ongoing works at Sakdrisi-Kachaghiani. This is confirmed by the correspondence from the Agency dated April 17, 2015, in which the Agency addressed the ltd. "RMG Gold" and informed the company that according to the report of the Agency monitoring group dated April 16, 2015, the Sakdrisi-Kachaghiani object was entirely "de-constructed" and that because there was no probability of revealing any new artifacts on the territory, continuation of the monitoring by the Agency was groundless.<sup>104</sup>

***The monitoring reports, dated January 20, April 6 and 16, 2015 are signed by Konstantin Pitskhelauri. The same person- Konstantin Pitskhelauri, was implementing the archaeological works on Sakdrisi-Kachaghiani, on behalf of the ltd. "Union of Archaeologists", contracted by the ltd. "RMG Gold" in Autumn 2013.***<sup>105</sup> ***Then incumbent Archaeological Section of the Council, existing within the Ministry of Culture and Monument Protection of Georgia considered the report of this company to be incomplete, indicating the need for further research.***<sup>106</sup>

***As of today, Davit Lomitashvili is the Deputy Director General of the Cultural Heritage Protection Agency,***<sup>107</sup> ***while Konstantin Pitskhelauri is heading the archaeological department of the same Agency; Lali Akhalaia is the staff member of the Agency. Those three individuals participated in preparation of a number of documents in relation to Sakdrisi-Kachaghiani in 2013. The illegality and non-comprehensive nature of those documents was later confirmed by the Court, as well as the relevant administrative bodies. Therefore, naturally, the objectiveness of those documents is questionable.***

It is notable that the report, prepared under the leadership of Konstantin Pitskhelauri, by the ltd. "Union of Archaeologists" contracted by the ltd. "RMG Gold" in 2013, includes the following extract: *"As a result of the expedition, we can make one conclusion with full responsibility: the entire territory of the examined Sakdrisi-Kachaghiani hill is absolutely free of archaeological objects. In this regard, it is appearing completely sterile, considering that no single fragment of an archaeological artifact was found in the dug territory."*<sup>108</sup>

Thus, as early as in 2013, as the archaeologists of the company, hired by the ltd. "RMG Gold", Konstantin Pitskhelauri was indicating an inexistence of the cultural trace in Sakdrisi-Kachaghiani. Therefore, designating this person on behalf of the Cultural Heritage Protection Agency to conduct permanent monitoring on the Sakdrisi-Kachaghiani archaeological object, represents a clear conflict of interest.

<sup>97</sup> Correspondence #10/09/27 of the National Agency for Cultural Heritage Preservation of Georgia, dated January 13, 2015;

<sup>98</sup> Order #03/82 of the Minister of Culture and Monument Protection of Georgia, dated May 28, 2013;

<sup>99</sup> Report Available in Georgian: <http://greenalt.org/wp-content/uploads/2013/08/annex10.pdf>;

<sup>100</sup> Court Rulings available in Georgian: [http://greenalt.org/wp-content/uploads/2013/10/court\\_decision\\_Final.pdf](http://greenalt.org/wp-content/uploads/2013/10/court_decision_Final.pdf); <http://bit.ly/1cFf9BQ>;

<sup>101</sup> Monitoring reports of the monitoring group of the National Agency for Cultural Heritage Preservation, dated January 20, April 6 and April 16, 2015;

<sup>102</sup> Monitoring report of the monitoring group of the National Agency for Cultural Heritage Preservation, dated January 20;

<sup>103</sup> Correspondence #10/09/826 of the National Agency for Cultural Heritage Preservation of Georgia, dated May 8, 2015;

<sup>104</sup> Correspondence #10/09/656 of the National Agency for Cultural Heritage Preservation of Georgia, dated April 17, 2015;

<sup>105</sup> Ltd. "Union of Archaeologists" - Report of the Archaeological Works, Conducted at the Sakdrisi-Kachaghiani Territory (October 21-November 12, 2013). Implementer of archaeological works - Konstantin Pitskhelauri;

<sup>106</sup> Protocol #1 of the session of the Archaeological Section of the Cultural Heritage Protection Council, dated January 9, 2014;

<sup>107</sup> As seen at the National Agency of Cultural Heritage Protection on July 8, 2015; <http://www.heritagesites.ge/geo/about/managements/>;

<sup>108</sup> Ltd. "Union of Archaeologists" - Report of the Archaeological Works, Conducted at the Sakdrisi-Kachaghiani Territory (October 21-November 12, 2013). Implementer of archaeological works - Konstantin Pitskhelauri;

In the context of the conflict of interest, it is also necessary to mention the Deputy Director General of the Agency – Davit Lomitashvili. According to the investigative documentary, prepared by the “Studio Monitor” in 2014, Davit Lomitashvili was preparing the report about Sakdrisi-Kachaghiani, being hired by the non-commercial legal entity “Club Temple” in 2013.

In its turn, the “Club Temple” was the contractor of the ltd. “RMG Gold”. Therefore, Davit Lomitashvili was related to the ltd. “RMG Gold” through the “Club Temple”.<sup>109</sup> At the same time, since 2013, Davit Lomitashvili has been doubting the possibility that Sakdrisi-Kachaghiani could have been considered to be the oldest gold mine, which he has been repeating in numerous TV shows.<sup>110</sup>

The above circumstances clearly indicate that ***Konstantin Pitskhelauri, Lali Akhalaia and Davit Lomitashvili must not have been engaged in the work of the permanent monitoring group of the National Agency for Cultural Heritage Preservation that started in January 2015 at Sakdrisi-Kachaghiani.***

## 9. WHO VIOLATED THE LAW?

According to the Article 1 of the “Law of Georgia on the Cultural Heritage”, the goal of this law is to protect the cultural heritage of Georgia. However, during the deliberations on the Sakdrisi-Kachaghiani oldest gold mine, held on December 12, 2014, the National Agency for Cultural Heritage Preservation and the Ministry of Culture and Monument Protection have violated a number of requirements of the above law. Namely:

According to the Article 17 of the “Law of Georgia on the Cultural Heritage”, revocation of the Status of the Site is only allowable if ***the Site is destroyed or damaged in such a way that it has lost its historic or cultural value, which cannot be restored or, under the scientific (methodological) criteria, has lost its key characteristics, which were the precondition for granting the Status.*** Notably, when the Ministry and the Agency were making the decision about Sakdrisi-Kachaghiani on December 12, 2014, the Site was not destroyed or damaged in such a way that would have caused loss of its historic or cultural value.

***At the time, when the Director General of the Agency has issued the Order to revoke the Site Status of the Sakdrisi-Kachaghiani oldest gold mine, there was no conclusion, prepared on the basis of scientific (methodological) criteria, that would have confirmed that the Site had lost its key characteristics, for which it was granted the Status.*** Therefore, the decision of the Director General of the Agency<sup>111</sup> that resulted in revocation of the Site Status of Sakdrisi-Kachaghiani, violates the “Law of Georgia on the Cultural Heritage.”<sup>112</sup>

The Order #2/271 of the Director General of the Agency (dated December 12, 2014) also violated the Article 13 of the “Law of Georgia on the Cultural Heritage”, according to which, “de-construction (taking out from the original environment)” of the immovable archaeological object is only allowable ***if the object is fully excavated and fully studied and there are no sufficient grounds for granting it the Status of the Site.*** In case of Sakdrisi-Kachaghiani, it is clearly confirmed that the object was not fully studied and years of the Georgian-German expedition has examined only part of Sakdrisi-Kachaghiani.

***It must be emphasized that the Article 13 of the “Law on the Cultural Heritage of Georgia” considers the possibility of “de-construction” of only such an archaeological object, in relation to which there are no sufficient grounds to grant it the Site Status. In case of Sakdrisi-Kachaghiani, it already represented the Site of the Cultural Heritage. Therefore, the Order #2/271 of the Director General of the Agency dated December 12, 2014 and the decision #05/09/1857 of the Agency made on the same day, clearly violate the Articles 13 and 17 of the “Law of Georgia on the Cultural Heritage.”***

In its statement (letter) #445/1 dated December 12, 2014, the ltd. “RMG Gold” ***did not request revocation of the Site Status of the Sakdrisi-Kachaghiani oldest gold mine.*** The company has only requested the permit to de-construct the archaeological object.<sup>113</sup> Therefore, the Agency did not have a right to initiate the issue of revocation of the Site Status of Sakdrisi-Kachaghiani on the Strategic Section of the Council, based on this letter (#445/1) from ltd. “RMG Gold”.

<sup>109</sup> “Studio Monitor” – “The Golder Interval of the Prime Minister”, available in Georgian- <https://www.youtube.com/watch?v=oAQcmApCmso>;

<sup>110</sup> “Studio Monitor” – “The Golden Interval of the Prime Minister”, available in Georgian; - <https://www.youtube.com/watch?v=oAQcmApCmso>; talk show “Real Space”, available in Georgian - <https://www.youtube.com/watch?v=aLrH3KTY1bc>;

<sup>111</sup> Order #2/271 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia, dated December 12, 2014;

<sup>112</sup> “Law of Georgia on the Cultural Heritage”, Article 17;

<sup>113</sup> Statement #445/1 of the ltd. “RMG Gold”, dated December 12, 2014;

According to the General Administrative Code of Georgia, the grounds for launching the administrative proceedings are the following:

- a) Statement of the affected person;
- b) The obligation to issue individual administrative-legal act, imposed under the legislation;<sup>114</sup>

However, judging from the content of the letter from the ltd. “RMG Gold”, as from the “affected” legal person, submitted on December 12, 2014, ***the Agency must have only launched the administrative proceedings about the permit to de-construct the archaeological object and should not have initiated the issue of revocation of the Site Status of Sakdrisi-Kachaghiani.*** Therefore, it is clear that the Agency must have rejected the request, submitted by the ltd. “RMG Gold”.<sup>115</sup> ***While Sakdrisi-Kachaghiani still represented the Site of the Cultural Heritage, it was prohibited to initiate the issuance of the permit to de-construct the archaeological object.***

In the same context, it is also important that according to the General Administrative Code of Georgia, one of the mandatory requisites of the statement is the ***request*** of the affected person.<sup>116</sup> Therefore, the ltd. “RMG Gold” has itself defined its own request and the National Agency of the Cultural Heritage Protection must not have exceeded the scope of the request, indicated in the letter from the ltd. “RMG Gold” #445/1, dated December 12, 2014.

Considering the circumstances, indicated above, the Agency has conducted the administrative proceedings in violation of the legislation and finally, made the decision that is in conflict with the law.

Apart from the above, the illegality of the decision, made regarding Sakdrisi-Kachaghiani on December 12, 2015 is caused by other factors as well.

The legislation of Georgia stipulates that the administrative body has the authority to engage the stakeholders in its administrative proceedings if the stakeholders request to be included. In cases, explicitly determined under the law, the administrative body is obliged to ensure the participation of stakeholders in its administrative proceedings. Moreover, the General Administrative Code of Georgia imperatively indicates that ***the administrative body is obliged to inform a stakeholder of the launch of an administrative proceeding, if an administrative-legal act may deteriorate his/her legal conditions; the administrative body is further obliged to ensure his/her participation in the administrative proceedings.***<sup>117</sup>

In the given case, the National Agency for Cultural Heritage Preservation conducted the administrative proceedings in one day, so that it did not inform any of the stakeholders: the National Museum of Georgia, the Archaeological Research Center and the Georgian-German Archaeological Expedition members. ***The Agency did so, despite knowing from the outset, that not informing those stakeholders about the administrative proceedings and more than that – issuing the administrative legal acts in one day could have significantly deteriorated the conditions of those stakeholders.*** This can be confirmed by the fact that on December 15, 2014, the National Museum of Georgia has officially expressed its position,<sup>118</sup> which essentially differed from the decision, made by the Agency on December 12, 2014 about Sakdrisi-Kachaghiani. For example, the statement said that:

- Based on the research, conducted by the German side and other partner institutions, in accordance with all of the international standards, Sakdrisi represents the archaeological Site of worldwide significance;
- Since 2004, the National Museum of Georgia, together with the German Mining Museum of Bochum (DBM) and other foreign partners, was conducting the international inter-disciplinary research of the mining-metallurgic origins, at the territory of Sakdrisi-Kachaghiani. As a result, the science communities have recognized the Site to be the oldest origin of the gold mining in the world, which is reflected in the works from both abroad and Georgia, published at various times;
- The current deplorable condition of the archaeological object was caused by the decision of the Ministry of Culture and Monument Protection, made in 2013, under which the status of the gold mining Site was revoked. The basis of this decision (the Order), was the conclusion of the 11-member Com-

<sup>114</sup> General Administrative Code of Georgia, Article 76;

<sup>115</sup> Statement #445/1 of the ltd. “RMG Gold”, dated December 12, 2014;

<sup>116</sup> General Administrative Code of Georgia, Article 78;

<sup>117</sup> General Administrative Code of Georgia, Article 95;

<sup>118</sup> Available in Georgian [http://museum.ge/index.php?lang\\_id=GEO&sec\\_id=105&info\\_id=13200](http://museum.ge/index.php?lang_id=GEO&sec_id=105&info_id=13200);

mission, made in circumvention of those Georgian and Foreign scientists, who have been researching the Site for almost ten (10) years. The international expedition group was isolated from the Site in 2013. The same year, another group of archaeologists conducted research on the Site, which resulted in the activation of the destruction process of the Site. Our researchers did not have a possibility to not only engage in the ongoing works – they did not even have the information about the ongoing processes, surrounding the Site.<sup>119</sup>

The above statement of the National Museum clearly demonstrates the tremendous importance of engaging the National Museum and the Sakdrisi-Kachaghiani Georgian-German Expedition Group in the administrative proceedings, held on December 12, 2014. Apart from this, the fact that the National Agency for Cultural Heritage Preservation has conducted the administrative proceedings covertly, in one day, has taken away the possibility from the stakeholders to address the Agency with the request to participate in the administrative proceedings.

The legislation of Georgia also defines the rule of ‘examination of the circumstances’, according to which, during the administrative proceedings, the administrative body is obliged to examine all of the circumstances, important for the case and to make the decision based on the evaluation and reconciliation of those circumstances.<sup>120</sup> Naturally, the administrative proceeding, conducted in less than a day, could not have ensured an examination of all of the circumstances, important for the case. Therefore, the Agency has violated the obligation, prescribed under the law, according to which ***it is prohibited to issue an administrative legal-act based on a circumstance or fact, not investigated by an administrative body in accordance with the legally prescribed procedures.***<sup>121</sup>

Notably, for the purpose of properly investigating the circumstances of the case, the Article 97 of the General Administrative Code of Georgia authorized the Agency to perform the following actions: request/obtain documentation; collect information; listen to the stakeholders; visit and see the place of occurrence of an event/concerned case; launch an expertise; use the necessary documentation and acts; apply other legally-prescribed measures for collecting, examining and evaluating the evidences. Contrary to this, the Agency did not properly apply the means, available under the Article 97 of the Administrative Code, which was extremely important for making the objective (impartial) decision on the issue. Instead, ***the National Agency for Cultural Heritage Preservation conducted the administrative procedures in the accelerated manner, in the short period of time, in less than a day, by initiating the issue, absolutely differing from what the ltd. “RMG Gold” has requested in its December 12, 2014 statement.***

Conducting the administrative proceedings the way the Agency did in relation to the statement of the ltd. “RMG Gold”, naturally, makes the objectiveness of its decision questionable.

On December 12, 2014, the Agency has issued the Order #2/271 and the decision #05/09/1857, allowing the ltd. “RMG Gold” to de-construct the archaeological object, without giving any stakeholder a possibility to participate in the process, despite the high public interest towards the issue.

On December 12, 2014, the Ministry of Culture and the Monument Protection was acting even faster regarding Sakdrisi-Kachaghiani. Only 39 minutes after the registration of the Order of the Director General of the Agency (under which the Site Status of Sakdrisi-Kachaghiani was revoked), another Order – of the Minister of Culture, was registered at 19:09 (under which the provision in the Order #3/133 of the Minister of Culture, dated March 30, 2006, about the Sakdrisi-Kachaghiani being the Site of the Cultural Heritage, was invalidated).<sup>122</sup>

Considering that on December 12, 2014, the Minister of Culture has managed all of the formalities, necessary for issuance of the legal act and moreover, in his Order, decided to invalidate the provision #2042 in the appendix of the Order #3/133 dated March 30, 2006 (Sakdrisi-Kachaghiani oldest gold mine, Bolnisi municipality), naturally, it is difficult to consider this decision to be compliant with the legislation.<sup>123</sup>

***Similar to the National Agency for Cultural Heritage Preservation, the actions of the Ministry of Culture and Monument Protection of Georgia demonstrate numerous violations of the law. Therefore, part of the violations of the legislation, described in the context of the Agency, is relevant in relation to the Ministry as well. Namely, the violations on the issues, such as: issue of possibility to revoke the Status of the Site;***

<sup>119</sup> Available in Georgian [http://museum.ge/index.php?lang\\_id=GEO&sec\\_id=105&info\\_id=13200](http://museum.ge/index.php?lang_id=GEO&sec_id=105&info_id=13200);

<sup>120</sup> General Administrative Code of Georgia, Article 96;

<sup>121</sup> General Administrative Code of Georgia, Article 96;

<sup>122</sup> Correspondence #11/11-379 of the Ministry of Culture and Monument Protection of Georgia, dated January 23, 2014; and the copy of the registry of the proceedings on December 12, 2014 of the Ministry of Culture and Monument Protection of Georgia;

<sup>123</sup> Order #03/266 of the Minister of Culture and Monument Protection of Georgia, dated December 12, 2014;



***de-construction of the archaeological site; engaging the stakeholders in the administrative proceedings and issuance of the administrative-legal act on the basis of thorough examination of the circumstances and facts.***

## 10. PROLONGED LICENSE

### 10.1. *Prior to the Government Session*

After the decisions, made by the Ministry and the Agency on December 12, 2014, which was immediately followed by the explosion of Sakdrisi-Kachaghiani on the next day, it was clear that the ltd. "RMG Gold" would have needed prolongation of the license, which has already been prolonged once and which was expiring starting from 2015.<sup>124</sup>

On December 15, 2014, the ltd. "RMG Gold" has addressed the National Agency of the Environment in writing and requested prolongation of the license, relating to Sakdrisi-Kachaghiani, until April 21, 2021.<sup>125</sup> In its letter, the company explained, that it has received the permit to de-construct the Sakdrisi-Kachaghiani archaeological object under the decision dated December 12 of the same year and that it has resumed the mining works on the next day. Therefore, due to the little time left before the expiration of the license on January 1, 2015, there was no sufficient time left for the comprehensive industrial processing of the mine.<sup>126</sup>

Considering that prolongation of the company's license, legally, required postponement of the entry into force of another license,<sup>127</sup> the National Agency of the Environment, based on the legislation of Georgia, informed the ltd. "RMG Gold" that: *"In case if the license prescribes a specific date of its entry into force and this date has not come yet, on the basis of the justified request from the license-recipient, through the mediation of the Ministry and the decision of the Government, the license issuer may introduce the changes to the license, regarding the date of the entry into force of the license (and can introduce those changes only once). At the same time, the overall time of the postponement of the license must not exceed 5 years."*<sup>128</sup>

Due to the above, the Environment Agency has additionally informed the company that: *"in case of the license, held by the ltd. "RMG Gold" (series 53, number 0010, type VI ABC and #100 21 22), the mechanisms of, in the first case - prolongation, and in the second case - of the postponement of the entry into force of the license, were already used (by prolonging the current license, the entry into force of another license, covering the same territory, was once already postponed) and there are no legal mechanisms of performing this procedure again."*<sup>129</sup>

Following the correspondence from the Environmental Agency and three (3) days prior to the expiration of the license, the ltd. "RMG Gold" has once again addressed the Agency and requested prolongation of the license once again; this time, only on the part of the territory, which was related to Sakdrisi-Kachaghiani.<sup>130</sup>

The Environmental Agency needed the approval from the Government of Georgia for making the decision; approval of the Government, in its turn, required mediation from the Ministry of the Environment and Natural Resource Protection. Therefore, it was necessary for two (2) more bodies to receive the correspondence from the company, except for the direct recipient (the Environment Agency) to hold the administrative proceedings and make the decision. Moreover, the Environment Ministry and the Environment Agency must have prepared the relevant explanatory cards with proper justification. At the same time, as the documentation, available to GYLA reveals, on December 30, 2014, the Environment Ministry, prior to initiating the issue on the Government session, faced the need to receive the relevant responses from the two more bodies; namely, from the National Agency for Cultural Heritage Preservation and the Roads Department.<sup>131</sup>

According to the official information, the correspondence, sent on December 30, 2014 from the Environment Ministry to the Cultural Heritage Agency was registered in the reception of the Environment Ministry at

<sup>124</sup> Decree #593 of the Government of Georgia, dated April 4, 2014;

<sup>125</sup> Correspondence #449/1 of the ltd. "RMG Gold", dated December 15, 2014;

<sup>126</sup> Correspondence #449/1 of the ltd. "RMG Gold", dated December 15, 2014;

<sup>127</sup> See GYLA's research: "Sakdrisi-Kachaghiani – From the Cultural Heritage to the Contemporary Gold Mining", 2014; is electronically available in English at the following link: <https://gyla.ge/uploads/publications/researchpaper.pdf>

<sup>128</sup> Correspondence #21/1376 of the legal entity of public law – National Environment Agency, dated December 23, 2014;

<sup>129</sup> Correspondence #21/1376 of the legal entity of public law – National Environment Agency, dated December 23, 2014;

<sup>130</sup> Correspondence #469 of the ltd. "RMG Gold", dated December 29, 2014;

<sup>131</sup> Correspondences #7614 and #7615 of the Ministry of Environment and Natural Resource Protection, dated December 30, 2014;

11:29.<sup>132</sup> The Environment Ministry asked the Cultural Heritage Agency to examine and to provide the information on whether the territory, included in the specific coordinates was part of the “Sakdrisi-Kachaghiani oldest gold mine”.<sup>133</sup> In its turn, the Cultural Heritage Agency has returned the response quickly and informed the Environment Ministry that the Site Status of the Sakdrisi-Kachaghiani was revoked.<sup>134</sup> The response of the Heritage Agency was registered in the Environment Ministry on the same day, at 15:20.<sup>135</sup>

As for the Roads Department, the outgoing correspondence was registered in the reception of the Environment Ministry at 11:32, December 30, 2014.<sup>136</sup> The Environment Ministry asked the Road Department to present their opinion about the mining within the specific territory.<sup>137</sup> The letter also mentioned that the Ministry, due to the important nature of the issue, requested the response in the short period of time.<sup>138</sup> The Road Department considered the request from the Environment Ministry to examine the issue in the short time. Therefore, the response of the Road Department was registered in the Ministry at 14:25, December 30, 2014.<sup>139</sup> Specifically, the Road Department informed the Ministry that it was not against giving the consent on the mining, in the event the technical conditions were followed, namely:

- The exact coordinates of the mining territory were to be defined;
- The schematic draft of the entrance and exit for the automobile transportation, across the automobile road, adjacent to the license object, should have been drafted in compliance with the existing norms and standards, where the automobile arrangements would have been made;
- The shipping of the load from the license territory must have been conducted in compliance with the “Law on the Transportation”
- The elements of the automobile road and the waterproof mechanisms should have been maintained near the license object;
- In the period of the mining, it should have been prohibited to store the materials, to throw the industrial waste, to stop and park the cars-mechanisms on the sides of the road;
- Throughout the functioning of the license, the road elements must have been preserved in the technically appropriate conditions, throughout the entire territory.<sup>140</sup>

***Finally, at 15:20, December 30, 2014, the Environment Ministry was holding all of the documentation, for which it has addressed various bodies earlier on the same day.<sup>141</sup> Therefore, considering that the response from the Cultural Heritage Agency was registered in the reception of the Ministry at 15:20, the Ministry should have addressed the Government of Georgia after receiving those documents and should have presented to it the Draft Decree of the Government of Georgia on the prolongation of the mining license of the ltd. “RMG Gold”, along with the supporting documentation.***

In reality, the developments have evolved in the entirely different direction. According to the official information, available to GYLA, ***the Environment Ministry has addressed the Government of Georgia (along with the Draft Decree and the supporting documentation) for the prolongation of the mining license for the ltd. “RMG Gold” not after the 15:20 of December 30, 2014, but at 14:28 of the same day.<sup>142</sup> In other words, the Ministry addressed the Government,<sup>143</sup> without having all of the documentation, required for the prolongation of the mining license of the ltd. “RMG Gold”.***

However, the discrepancy of the timing is not the only problem, characterising the December 30, 2014 decision regarding prolongation of the license of the ltd. “RMG Gold”.

<sup>132</sup> Correspondence #2469 of the Ministry of Environment and Natural Resource Protection, dated April 21, 2015;

<sup>133</sup> Correspondence #7614 of the Ministry of Environment and Natural Resource Protection, dated December 30, 2014;

<sup>134</sup> Correspondence #08/09/1949 of the National Agency for Cultural Heritage Preservation, dated December 30, 2014;

<sup>135</sup> Correspondence #2469 of the Ministry of Environment and Natural Resource Protection, dated April 21, 2015;

<sup>136</sup> Correspondence #2469 of the Ministry of Environment and Natural Resource Protection, dated April 21, 2015;

<sup>137</sup> Correspondence #7615 of the Ministry of Environment and Natural Resource Protection, dated December 30, 2014;

<sup>138</sup> Correspondence #7615 of the Ministry of Environment and Natural Resource Protection, dated December 30, 2014;

<sup>139</sup> Correspondence #2469 of the Ministry of Environment and Natural Resource Protection, dated April 21, 2015; Correspondence #2-03/9107 of the Roads Department of Georgia, dated December 30, 2014;

<sup>140</sup> Correspondence #2-03/9107 of the Roads Department of Georgia, dated December 30, 2014;

<sup>141</sup> Correspondence #2469 of the Ministry of Environment and Natural Resource Protection, dated April 21, 2015;

<sup>142</sup> Correspondence #2469 of the Ministry of Environment and Natural Resource Protection, dated April 21, 2015;

<sup>143</sup> Correspondence #7625 of the Ministry of Environment and Natural Resource Protection, dated December 30, 2014;

The Regulations of the Government of Georgia prescribe the rules of both initiating the legal act, as well as presenting the draft act to the Government administration. According to the mentioned Regulations: *“The issue must be nominated in the Government administration for a discussion at the Government session no later than Tuesday, before 15:00. In case if the Government session is appointed on another day of the week, the issue may be nominated no later than two (2) days prior to the Government session. The projects, presented in violation of this timeframe, will be examined at the stage of preparation of the agenda of the Government session.”*<sup>144</sup>

December 30, 2014 was Tuesday. According to the Government Regulations, the Environment Ministry must have presented the draft project two days in advance to the Government administration. However, considering that the statement of the ltd. “RMG Gold” was registered in the Environment Agency on December 29, compliance with the timeframes prescribed under the Regulations was practically impossible. ***Therefore, if we take into account the above provision in the Regulations of the Government, it is clear that the Government should not have examined the issue, relating to the ltd. “RMG Gold” on its December 30, 2014 session.***

## 10.2. ***The Government Session***

On December 30, 2014, in the Government administration, the Government of Georgia has conducted its last session in 2014. According to the official information, the Government session started at 15:00 and lasted approximately two hours.<sup>145</sup> According to the agenda, total 10 issues were discussed, which did not include the issue of prolongation of the mining license of the ltd. “RMG Gold”.<sup>146</sup> However, later on, the official web-site of the Government posted the session-related information where it was noted that 19 extra issues were added to the 10 issues already on the Agenda and finally, 29 issues were discussed.<sup>147</sup> Among others, the 18<sup>th</sup> in a row, related to the prolongation of the mining license for the ltd. “RMG Gold”.<sup>148</sup>

On the same day, December 30, 2014, the Government Decree was issued, in which the Environment Agency was given consent upon prolongation of the mining license of the ltd. “RMG Gold” (series 53, #0010, type VI ABC) until January 1, 2020, covering the specific location, the so-called “X” and “Y” coordinates, where Sakdrisi-Kachaghiani was located.<sup>149</sup>

After receiving the consent from the Government of Georgia, the Environment Agency, on the last working day of 2014, December 31, issued the Order and prolonged the license of the ltd. “RMG Gold” on the concrete location, so-called “X” and “Y” coordinates, until the January 1, 2020.<sup>150</sup>

For more clarity, the chronology of the events, taking place on December 29-31, 2014 are demonstrated on the below info-graphic.

<sup>144</sup> Government Decree #54, dated March 7, 2013 – on the approval of the Government Regulations; Article 12, Clause 3;

<sup>145</sup> Correspondence #27171 of the Government Administration of Georgia, dated April 21, 2015;

<sup>146</sup> Agenda of the Government session, held on December 30, 2014. Electronically available at: [http://gov.ge/index.php?lang\\_id=ENG&sec\\_id=389&info\\_id=46346](http://gov.ge/index.php?lang_id=ENG&sec_id=389&info_id=46346);

<sup>147</sup> [http://gov.ge/index.php?lang\\_id=ENG&sec\\_id=389&info\\_id=46346](http://gov.ge/index.php?lang_id=ENG&sec_id=389&info_id=46346);

<sup>148</sup> Correspondence #27171 of the Government Administration of Georgia, dated April 21, 2015;

<sup>149</sup> Decree #2597 of the Government of Georgia, Dated December 30, 2014;

<sup>150</sup> Order #478/s of the legal entity of public law – National Environment Agency, dated December 31, 2014;

## The Chronology of December 29-31, 2014



### 10.3. *The Issues, Forgotten Before and After the Government Session*

Unfortunately, none of the administrative bodies (Environment Agency, Environment Ministry, the Government), have taken into account that while they were prolonging the license of the ltd. "RMG Gold" in the context of Sakdrisi-Kachaghiani, the stakeholders have already appealed on the issue through the administrative complaint mechanism.<sup>151</sup> Under the complaint, the stakeholders challenged the legality of the December 12, 2014 decisions of the Agency, based on which, the company has conducted broad-scale works on Sakdrisi-Kachaghiani, under the cover of ostensibly "de-construction". Importantly – the ltd. "RMG Gold" attached the above decisions of the Heritage Agency to the statement<sup>152</sup> addressed to the Environment Agency. The rules of the administrative proceedings obliged the Environment Agency to take an interest in the condition of the attached documentation;

While deliberating on the issue of the license, practically none of the administrative bodies took into account that the cases regarding the revocation of the Site Status and the broad-scale works in relation to Sakdrisi-Kachaghiani, were pending before the court<sup>153</sup> and the company, along with the decision-making administrative bodies, were not in the most enviable situation.

***The above circumstances clearly indicate that the December 31, 2014 decision, regarding prolongation of the license for the ltd. "RMG Gold", was not preceded by the legally required administrative proceedings. The administrative proceedings imply thorough examination of all circumstances. The approach of the responsible bodies towards the issue raises suspicion that the administrative bodies were no less in a hurry to prolong the license, than the company itself.***

Moreover, logically, after the ltd. "RMG Gold" received the consent to de-construct the Sakdrisi-Kachaghiani from December 13, 2014, instead of the explosion, the company should have directly addressed the Environment Agency for prolongation of the license. ***In a normal situation, there could have been no prior guarantee that the request on prolongation of the license would have been satisfied, even on the Sakdrisi-Kachaghiani territory. However, in the context of the prolongation of the license, the developments that evolved around Sakdrisi-Kachaghiani, create the grounds to allege that it is highly likely that the company had prior guarantee that its license would have been prolonged.***

## 11. THE INVESTIGATION

For the first time, the information that Sakdrisi-Kachaghiani, as the archaeological object, has been damaged, has become known on January 8, 2014. According to the publicized information, the prehistoric water collector, carved in the rock, as well as the so-called "amboss" (the pre-historic concentration pits) nearby – also carved in the rocks,<sup>154</sup> were demolished. The Heritage Agency has shortly forwarded this information to the relevant department of the Ministry of the Internal Affairs (MIA), for the purpose of investigating the issue regarding Sakdrisi-Kachaghiani archaeological object, within their competence.<sup>155</sup>

Simultaneously, on March 14, 2014, while preparing the documentary investigative film, the "Studio Monitor" has made the video recording of the fact of the demolition of Sakdrisi-Kachaghiani. The mentioned video-recordings were very soon publicized through the TV channel "Maestro", as the announcement of the documentary.<sup>156</sup> Finally, the public saw the documentary on April 6, 2014.<sup>157</sup>

Both of the above cases represented enough grounds for the launch of the investigation. However, the public has never received the information about the launch of the investigation.

As a result, on March 21, 2014, GYLA has addressed the MIA itself and requested the information on whether the investigation on the demolition of Sakdrisi-Kachaghiani was launched.<sup>158</sup> The MIA has informed GYLA that

<sup>151</sup> Administrative complaint of Kakha Kozhoridze and Giorgi Gogochuri against the National Agency for Cultural Heritage Preservation, dated December 19, 2014;

<sup>152</sup> Correspondence #469 of the ltd. "RMG Gold", dated December 29, 2014;

<sup>153</sup> Ruling of the Tbilisi City Court on the case #3/3877, dated June 13, 2014. Parties of the dispute: claimant – Association "Green Alternative", Davit Sakhvadze. Defendant – Ministry of Culture and Monument Protection of Georgia, Government of Georgia. Third party engaged in the dispute – Ministry of Economy and Sustainable Development, ltd. "RMG Gold". The decision is available in Georgian, electronically at the following link - [http://greenalt.org/wp-content/uploads/2013/10/court\\_decision\\_Final.pdf](http://greenalt.org/wp-content/uploads/2013/10/court_decision_Final.pdf); The ruling of the Tbilisi City Court, dated May 30, 2014, on the case #3/1654-14. Parties of the dispute: claimants – Kakha Kozhoridze, Dali Mamulashvili; defendant – the Ministry of Culture and Monument Protection of Georgia. Third party engaged in the dispute: the ltd. "RMG Gold". The decision is available online, in Georgian at the following link: <http://gyla.ge/uploads/sakdrisiganchineba.pdf>;

<sup>154</sup> Explanatory card of the member of the Archaeologic Section of the National Agency for Cultural Heritage Preservation – Giorgi Narimanishvili, dated January 9, 2014;

<sup>155</sup> Statement of the National Agency for Cultural Heritage Preservation of Georgia, dated January 14, 2014;

<sup>156</sup> Announcement of the film in Georgian - <https://www.youtube.com/watch?v=FueBxZvF8I0>;

<sup>157</sup> Documentary available in Georgian: <https://www.youtube.com/watch?v=oAQcmApCmso>;

<sup>158</sup> Statement #g-04/121.14 of GYLA, dated March 21, 2014;

the documentation was forwarded to the Chief Prosecutor's Office.<sup>159</sup> Therefore, this time, GYLA addressed the Prosecution, with the questions: ***whether the investigation was being conducted; if yes – under which allegations (which Article of the Criminal Code) and whether the legal responsibility of concrete individuals was revealed.***<sup>160</sup>

Unfortunately, the Chief Prosecutor's Office provided information to GYLA only after eight (8) months, as a result of GYLA's successful litigation before the court. The Prosecution informed GYLA that the main investigative department started investigation on February 14, 2014 on the fact of the Abuse of the Authority, under the Criminal Code of Georgia. According to the Prosecution, the investigation was being conducted based on the signs of the crime, described under the Article 332 of the Criminal Code. However, no criminal persecution was launched against any concrete individual.<sup>161</sup>

The Article 332 of the Criminal Code, indicated by the Chief Prosecutor's Office differentiates between the two distinct parts of the Abuse of Authority. The first part relates to the abuse of authority by the public servant or person in the equal circumstances, committed against the public interest, for the purpose of personal gain or any advantage and which caused significant damage to the legitimate interests of a physical or legal person, public or the state.<sup>162</sup> The second part relates to the abuse of authority, committed by a person in a state political office.<sup>163</sup>

Considering the definition of the crime under the Article 332 and the facts, submitted to the Prosecution by the Heritage Agency and GYLA in relation to Sakdrisi-Kachaghiani, it is unclear, why did the investigation only limited itself to Article 332 and why did the Prosecution omit the Article 259 of the Criminal Code, which relates to illegal archaeological works and demolition of an archaeological object. According to this article, conducting any type of works on the archaeological object, without the permit, or ***any type of deliberate impact, which caused its damage or demolition***, or as a result of which it is impossible to establish a date of the object, identify the object or obtain any other important scientific information from it, represent a punishable crime under the Criminal Code of Georgia.<sup>164</sup>

***It is notable that the Prosecution, launching the investigation based on Article 332 of the Criminal Code of Georgia only, significantly decreases the possibility of revealing the alleged responsibility of the ltd. "RMG Gold", for the damage, identified in Sakdrisi-Kachaghiani archaeological object as early as January 2014.***

The Prosecution's approach towards the issue creates the grounds to suspect that most likely, the investigative body does not have willingness to properly investigate the occurred fact. This suspicion is further strengthened by the circumstances and the form, in which the Site Status of Sakdrisi-Kachaghiani was revoked on December 12, 2014, as well as the circumstances and the form in which the license on the Sakdrisi-Kachaghiani territory was prolonged, on the 31<sup>st</sup> of the same month.

The above circumstances are fully enough to assume that the public should not have high hopes that the Prosecution of Georgia will conduct a timely or objective investigation on the Sakdrisi-Kachaghiani issue. Therefore, the address of the civil society organizations (CSOs) and over 2 500 individuals through the petition, requesting the parliament to deliberate upon the appropriateness of creation of the temporary investigative commission on Sakdrisi-Kachaghiani, was absolutely logical.<sup>165</sup> Although the parliament has supported the separate initiative (on the same issue) of the parliamentary faction "Free Democrats" to create the investigative commission,<sup>166</sup> later on, the parliament stopped the process and the temporary investigative commission was never created in the parliament.<sup>167</sup> This is unfortunate, because in the context of the investigation of the Prosecution and the approach executive government in the Sakdrisi-Kachaghiani issue, the Parliament of Georgia was the remaining institution that could have shed the light upon the issue, through creation of the temporary investigative commission.

<sup>159</sup> Correspondence #651757 of the Ministry of Internal Affairs of Georgia, dated April 4;

<sup>160</sup> Statement #g-04/149/14 of GYLA, dated April 11, 2014;

<sup>161</sup> Correspondence #13/81579 of the Chief Prosecutor's Office of Georgia, dated December 30, 2014;

<sup>162</sup> First Part of the Article 332 of the Criminal Code of Georgia;

<sup>163</sup> Second Part of the Article 332 of the Criminal Code of Georgia;

<sup>164</sup> Article 259 of the Criminal Code of Georgia;

<sup>165</sup> News, available in Georgian: <https://gyla.ge/geo/news?info=2378>;

<sup>166</sup> Decree #2986-rs of the Parliament of Georgia, dated December 25, 2014; electronically available at – [www.parliament.ge](http://www.parliament.ge);

<sup>167</sup> Decree #3120-IIs of the Parliament of Georgia, dated March 4, 2015; electronically available at- [www.parliament.ge](http://www.parliament.ge);

## 12. THE COURT – VACATION OF THE JUDGE, AS THE “SOLUTION”?

During the developments, evolving around Sakdrisi-Kachaghiani in 2013 and the first half of 2014, the relevant administrative bodies were reiterating that practically no-one had a right to litigate regarding Sakdrisi-Kachaghiani (as the Site of the Cultural Heritage) under the status of a stakeholder, whether through administrative or court litigation procedures.<sup>168</sup>

The Government of Georgia and the Ministry of Culture were most active in this process. However, the litigation of the citizens regarding the revocation of the Sakdrisi-Kachaghiani Site Status in 2013, as well as on the broad-scale works conducted by the ltd. “RMG Gold”, has produced the results and the court has recognized the claimants to be the stakeholders.<sup>169</sup>

Therefore, in 2013 and 2014, the Tbilisi City Court has clearly confirmed the right of citizens of Georgia to litigate on the issues relating to cultural heritage. Despite this, when the stakeholders have appealed the December 12, 2014 decisions of the Agency on the revocation of Site Status and issuance of the de-construction permit through the administrative procedures (at the Ministry of Culture), the Ministry maintained its previous position on the issue.<sup>170</sup>

It is notable that during the deliberations on the issues, relating to the cultural heritage, the administrative bodies have been permanently neglecting both the Court position, as well as the UN “Convention on the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters” (so-called Aarhus Convention). The Aarhus Convention, ratified by the Parliament of Georgia on February 11, 2000, defines the “environmental information”, which covers, among others, the information that is related to the condition of the cultural objects.<sup>171</sup> The Aarhus Convention also defines the “public concerned”, which includes the public that is affected or may be affected by, or have an interest in engagement in an environmental decision-making.<sup>172</sup> Therefore, unlike the administrative bodies, the Aarhus Convention does not question the right of citizens, to actively engage in the ongoing processes relating to cultural heritage and in general, the cultural objects; moreover, to protect their rights through litigation, whenever needed.

As already indicated above, the Ministry of Culture rejected to deliberate upon the administrative complaint, submitted in relation to the December 12, 2014 decision of the Heritage Agency about Sakdrisi-Kachaghiani. In its rejection, the Ministry of Culture argued that the claimants did not have a real, factual interest, that may have been affected by the disputed acts.<sup>173</sup>

Following the rejection of the Ministry, the dispute continued at the Court, with the request being invalidation of the December 12, 2014 decisions of the Agency. Although, the hearing on merits did not yet start at that stage, but some of the facts have already occurred, which may have had the significant impact upon the decision-making by the Court. Let us follow chronologically.

Representing the interests of Kakha Kozhoridze and Giorgi Gogochuri, GYLA addressed the Tbilisi City Court on January 21, 2015. Under the lawsuit, GYLA requested invalidation of the Agency’s acts (dated December 12, 2014), regarding the revocation of the Site Status of Sakdrisi-Kachaghiani and regarding the issuance of the de-construction permit, as well as requested to suspend the force of the disputed acts.<sup>174</sup>

According to the Court system of proceedings – [www.info.court.ge](http://www.info.court.ge), the case was assigned to be heard before the judge Nana Daraselidze. On January 26, 2015, the court has indicated the shortcoming in the documentation, attached to the lawsuit,<sup>175</sup> which was resolved in the shortest period of time from the moment when the

<sup>168</sup> Decision #14986 of the Government of Georgia, dated May 5, 2014, regarding the rejection to deliberate upon the administrative complaint of Marine Mizandari; decision #14990 of the Government of Georgia regarding the rejection to deliberate upon the administrative complaint of Kakha Kozhoridze and Dali Mamulashvili, dated May 5, 2014; Order #03/287 of the Minister of Culture and Monument Protection of Georgia (dated December 31, 2014) on leaving the administrative complaint, submitted by Kakha Kozhoridze and Giorgi Gogochuri unattended;

<sup>169</sup> For example, the Ruling of the Tbilisi City Court on the case #3/344-15, dated February 4, 2015;

<sup>170</sup> Order #03/287 of the Minister of Culture and Monument Protection of Georgia (dated December 31, 2014) on leaving the administrative complaint, submitted by Kakha Kozhoridze and Giorgi Gogochuri unattended;

<sup>171</sup> UN “Convention on the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”, Article 2, clause 3;

<sup>172</sup> UN “Convention on the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”, Article 2, clause 5;

<sup>173</sup> Order #03/287 of the Minister of Culture and Monument Protection of Georgia (dated December 31, 2014) on leaving the administrative complaint, submitted by Kakha Kozhoridze and Giorgi Gogochuri unattended;

<sup>174</sup> Complaint of Kakha Kozhoridze and Giorgi Gogochuri, dated January 21, 2015. Registration #15702354;

<sup>175</sup> Ruling of the Tbilisi City Court on the case #3/444-15, dated January 26, 2015;

judge's order was received.<sup>176</sup> Therefore, on February 4, 2015, the Tbilisi City Court issued the order, which related to suspending the disputed acts.<sup>177</sup> The mentioned decision is important for two reasons:

- Who was the judge of the Tbilisi City Court that made the decision;
- The reason and motive for why the judge did not grant the motion of the claimants to suspend the force of the disputed acts.

In the first case, it is notable that the decision on the case was made not by Nana Daraselia, who was assigned to the case during the registration of the lawsuit, but the judge Nino Buachidze.<sup>178</sup>

According to the official information, the judge Nana Daraselia took vacation, from January 29, 2015 to February 6 of the same year.<sup>179</sup> Considering the relevant provisions of the Administrative Procedure Code of Georgia, precisely the period between January 29 and February 6 was the time-frame, within which the judge Nana Daraselia must have deliberated on the motion of the claimants.<sup>180</sup>

Naturally, it is difficult to prove that the judge Nana Daraselia took vacation because of the motion, submitted for suspending the force of the disputed acts, relating to Sakdrisi-Kachaghiani; however, it is notable that the case was forwarded to the judge Nino Buachidze, and not any other judge of the Tbilisi City Court.

According to the Tbilisi City Court web-site, the judge Nino Buachidze started working as a judge since 2014 and was appointed as the judge of the administrative section of the Tbilisi City Court since July of the same year.<sup>181</sup>

According to the official information, available to GYLA, the judge Nino Buachidze has already once deliberated on suspending the December 12, 2014 decisions of the Agency to revoke the Site Status of Sakdrisi.<sup>182</sup> In her January 15, 2015 decision, the judge has rejected the motion of the claimant and did not suspend the force of the December 12, 2014 decisions of the Agency to revoke the Site Status of Sakdrisi.<sup>183</sup> The judge cited the following reasoning:

- 1) The disputed act was already implemented;
- 2) The lawsuit and the submitted motion did not include the proper argumentation regarding the illegality of the disputed act;<sup>184</sup>

Thus, the judge Nino Buachidze has already deliberated upon suspending the force of a disputed act.

Naturally, considering the above, it has become all the more important to deliberate upon the motion, presented in the lawsuit of GYLA for protection of the interests of Kakha Kozhoridze and Giorgi Gogochuri. Granting the motion should have resulted in suspending the force of the decision of the Agency, dated December 12, 2014.<sup>185</sup>

On February 4, 2015, the judge has deliberated upon the motion, submitted by the claimant and rejected the motion.<sup>186</sup> In her decision, the judge indicated that:

- *The motion of the claimants is based upon the assumption that in the event of continuation of the broad-scale works at Sakdrisi-Kachaghiani, in the context of upholding the lawsuit, the Sakdrisi-Kachaghiani may not exist at all, as the oldest gold mine.*<sup>187</sup>
- *The submitted motion does not include the justification on what negative outcome may result from not suspending the force of the disputed acts. The motion on suspending the disputed acts must reflect the damage that will directly result from not suspending the force of the acts.*<sup>188</sup>

<sup>176</sup> Statement of Kakha Kozhoridze and Giorgi Gogochuri, submitted to the Tbilisi City Court on January 29, 2015;

<sup>177</sup> Ruling of the Tbilisi City Court, on the case #3/444-15, dated February 4, 2015;

<sup>178</sup> Ruling of the Tbilisi City Court, on the case #3/444-15, dated February 4, 2015;

<sup>179</sup> Correspondence #125/225-03-o of the Supreme Council of Justice, dated February 13, 2015;

<sup>180</sup> Administrative Procedural Code of Georgia, Article 29;

<sup>181</sup> Biography available in Georgian: <http://www.tcc.gov.ge/index.php?m=501&newsid=1280>;

<sup>182</sup> Ruling of the Tbilisi City Court on the case #3/120-15, dated January 15, 2015;

<sup>183</sup> Ruling of the Tbilisi City Court on the case #3/120-15, dated January 15, 2015;

<sup>184</sup> Ruling of the Tbilisi City Court on the case #3/120-15, dated January 15, 2015;

<sup>185</sup> Lawsuit of Kakha Kozhoridze and Giorgi Gogochuri, dated January 21, 2015. Registration number - #15702354;

<sup>186</sup> Ruling of the Tbilisi City Court on the case #3/344-15, dated February 4, 2015;

<sup>187</sup> Ruling of the Tbilisi City Court on the case #3/344-15, dated February 4, 2015; page 4;

<sup>188</sup> Ruling of the Tbilisi City Court on the case #3/344-15, dated February 4, 2015; pages 4-5;



The court has overlooked the fact that the implementation of the disputed acts gravely damaged the Sakdrisi-Kachaghiani archaeological object and if the acts were not suspended, it would have become impossible to protect the interest, for which the claimants have addressed the Court.

Moreover, during the deliberation regarding the motion, the Court has neglected the statement of the members of the Georgian-German Expedition that was created for researching Sakdrisi-Kachaghiani, in which they stated that the trace of the ancient gold miners was revealed 70 meters from the top of the hill and 38 meters from the first entrance to the mine. This meant that the works, conducted at Sakdrisi-Kachaghiani and the explosions would not have had entirely erased the trace of the ancient culture.<sup>189</sup>

Similar to the decision, made on January 15, 2015,<sup>190</sup> the judge of the Tbilisi City Court – Nino Buachidze repeated in the decision, rejecting to suspend the disputed acts, that “the December 12, 2014 decision of the Agency, revoking the Site Status, was already implemented. **As for the decision regarding de-construction of the archaeological object, the decision was so-called “beneficial administrative act” and suspending it would have caused significant damage to the legitimate rights or interests of another person.**”<sup>191</sup>

The Court did not take into consideration the extent, to which non-suspension of the act would increase the risk of complete destruction of the object. The Court also did not take into consideration that the Ltd. “RMG Gold”, in reality, was conducting the broad-scale works at Sakdrisi-Kachaghiani, instead of the “de-construction” of the object. All of this must be considered in the context that both threats were properly justified in the motion, submitted to the Court regarding Sakdrisi-Kachaghiani.

However, the developments did not end with the rejection of the Court to suspend the force of the disputed act. Based on the decision of claimants, on February 17, 2015, GYLA submitted private complaint to the Tbilisi Appellate Court, which, in its April 27, 2015 ruling, partially upheld the lawsuit of the claimants and **considering that the decision of the Tbilisi City Court was not properly justified**, the Appellate Court ordered the Tbilisi City Court to re-examine the issue.<sup>192</sup>

The judge Nana Daraselia was tasked with the re-examination of the issue at the Tbilisi City Court level, who, due to the importance of the issue, personally visited Sakdrisi-Kachaghiani on May 16, 2015.<sup>193</sup> In her May 18, 2015 decision, the judge has ruled that the Court would not have suspended the force of the disputed acts.<sup>194</sup>

It is important to consider that the Tbilisi City Court, which, despite the sufficient evidences, submitted by the claimants, did not suspend the force of the disputed acts in its February 4, 2015 decision,<sup>195</sup> while later on – Tbilisi Appellate Court, which maximally used the time-frame prescribed under the law, and made the decision as late as April 27, 2015,<sup>196</sup> have largely caused the destruction of the Sakdrisi-Kachaghiani archaeological object.

At the same time, considering the high public interest and the permanent discussions held around the topic, the courts should have known the extent, to which it was important to make the timely and well-justified decision regarding the request to suspend the force of the disputed acts.

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<sup>189</sup> Letter from the members of the Sakdrisi Georgian-German archeological expedition – Giorgi Mindiasvili, Giorgi Gogochuri and Bidzina Murvanidze, as well as the head of the Trialeti archaeological expedition – Goderdzi Narimanishvili, dated December 17, 2014; the appendix #12 of the lawsuit;

<sup>190</sup> Ruling of the Tbilisi City Court on the case #3/120-15, dated January 15, 2015;

<sup>191</sup> Ruling of the Tbilisi City Court on the case #3/344-15, dated February 4, 2015; pages 3-4;

<sup>192</sup> Ruling of the Tbilisi City Court on the case #3b/227-15, dated April 27, 2015;

<sup>193</sup> Video news report available in Georgian: <http://1tv.ge/ge/news/view/title/99505.html>;

<sup>194</sup> News report available in Georgian: <http://rustavi2.com/ka/news/16532>;

<sup>195</sup> Ruling of the Tbilisi City Court on the case #3/344-15, dated February 4, 2015;

<sup>196</sup> Ruling of the Tbilisi Appellate Court on the case #3b/227-15, dated April 27, 2015;

### 13. CONCLUSION

The present research clearly confirms that on December 12, 2014, the Ministry of Culture and Monument Protection of Georgia, as well as the National Agency for Cultural Heritage Preservation, while deliberating on the Sakdrisi-Kachaghiani issue, made the decisions in the extremely accelerated manner and numerous rules of administrative proceedings were violated in this process.

The fact of the illegal explosion at the area #1 of Kachaghiani at Sakdrisi by the ltd. "RMG Gold", on December 13, 2014, has not been properly responded to by the relevant administrative bodies and the issue of the criminal evaluation of the fact has not been raised up to date.

The decisions, made by various administrative bodies on December 30, 2014 for the prolongation of the license covering the concrete location of the Sakdrisi-Kachaghiani for the ltd. "RMG Gold", in one single day, in the short period of time, create the impression that the company has received prior consent for the prolongation of the license.

The decisive factor in relation to Sakdrisi-Kachaghiani has been the fact that the Director General of the National Agency for Cultural Heritage Preservation unilaterally selects the members of the Sections of the Council, existing within the Agency. Precisely the unilateral decision of the Director General of the Heritage Agency has resulted in such a composition of the Strategic Section, the members of which have upheld the decision to revoke the Site Status of Sakdrisi-Kachaghiani.

The National Agency for Cultural Heritage Preservation did not manage to compose the permanent monitoring group for supervising the de-construction process of the Sakdrisi-Kachaghiani archaeological object in such a way, to avoid the questions regarding the conflict of interest towards its members.

In the developments, surrounding Sakdrisi-Kachaghiani, the Court did not turn out to be the institution, which, on the one hand, would have properly justified the ruling, while on another hand, would have made the decisions in a maximally timely manner. The February 4, 2015 ruling of the Tbilisi City Court and the April 27, 2015 ruling of the Tbilisi Appellate Court, in terms of timing, have significantly caused the destruction of the Sakdrisi-Kachaghiani archaeological object.

Overall, the developments, evolving from the second half of the 2014, especially, in the November-December, create the grounds to suspect that the future of the Sakdrisi-Kachaghiani, as the Cultural Heritage Site, has been determined much earlier before the December 12, 2014 decision to revoke the Site Status, the December 13, 2014 explosion and the prolongation of license on December 30-31 of the same year. As it seems, the mentioned dates marked only legal formalization of the documentation.

The developments that evolved around the Sakdrisi-Kachaghiani oldest gold mine are the clear example that the possibility of proper protection of the cultural heritage is extremely low in Georgia. Those developments are also an indicator of how the law is being executed. The Sakdrisi-Kachaghiani case has clearly and undoubtedly demonstrated that it is possible to make the decisions in the dubious circumstances, in circumvention of the law, which are being justified in the name of the dubious investment interest and which endanger the protection and preservation of the Cultural Heritage, as well as handing it over to the future generations.