

Role and Importance of Public Participation in the Environmental Decision Making Process in Georgia

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Abstract

An effective public participation in the decision-making process is one of the main tools for the democratic development of Georgia. The public participation in the decision-making process, especially in the field of the environment, is not the traditional approach for the newly independent Georgian society. The long period of soviet regime resulted in an absence of tradition for public participation in the country. Due to the geo-political location of the country, there are significant numbers of the large scale international and trans-boundary projects that take place and will be implemented in the nearest future in Georgia. Most of these developments are financially supported by foreign investors and bring additional environmental problems -emissions, increase risk of the pollution through accidents, and damage to the architectural and natural monuments with noise and vibration.

To ensure the environmental protection and sustainable development during implementation of those projects, the public participation, including participation of NGOs, is a key element and crucially important in the decision-making process. The new emphasis on democracy in the country's development and increasing number of problems in the field of environmental protection was the main reason for rapid involvement of the environmental NGO sector in the decision-making process in Georgia. For this reason, finding new ways to activate the involvement of the non-government sector in this procedure were both useful and important. The article observes current trends of the public participation in the environmental decision-making process on the different levels, stages and defines obstacles that slow down development of an effective public participation in the environmental decision making in Georgia.

Keywords: decision-making process, democracy, environment, public participation, NGO, civil society, Georgia

Роль і важливість участі громадськості в процесі прийняття екологічних рішень в Грузії

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Анотація

Ефективна участь громадськості в процесі прийняття рішень є одним із основних інструментів демократичного розвитку Грузії. Участь громадськості в процесі прийняття рішень, особливо у сфері навколишнього середовища, не є традиційним підходом для нового незалежного грузинського суспільства. Тривалий період радянського режиму призвів до відсутності традиції громадської участі в країні. Через геополітичне розташування країни існує значна кількість великомасштабних міжнародних та транскордонних проектів, які відбуваються та будуть реалізовані найближчим часом у Грузії. Більшість цих розробок здійснюються за фінансової підтримки іноземних інвесторів і створюють додаткові екологічні проблеми - викиди, збільшення ризику забруднення через аварії та пошкодження архітектурних і природних пам'яток через шум і вібрацію.

Для забезпечення захисту навколишнього середовища та сталого розвитку під час реалізації цих проектів участь громадськості, включаючи участь неурядових організацій, є ключовим елементом і надзвичайно важливим у процесі прийняття рішень. Новий акцент на демократії в розвитку країни та збільшення кількості проблем у сфері охорони навколишнього середовища стали основною причиною швидкого залучення сектору екологічних неурядових організацій до процесу прийняття рішень у Грузії. Тому пошук нових шляхів активізації залучення неурядового сектору до цієї процедури був і корисним, і важливим. У статті розглядаються сучасні тенденції участі громадськості в процесі прийняття екологічних рішень на різних рівнях, етапах та визначаються перешкоди, які уповільнюють розвиток ефективної участі громадськості в прийнятті екологічних рішень у Грузії.

Ключові слова: процес прийняття рішень, демократія, середовище, громадська участь, НУО, громадянське суспільство, Грузія

Problem Definition.

Public participation can be defined as a process which promotes the public understanding of the actions and mechanisms through which problems are investigated and solved by relevant authorities. Public participation in the decision-making process can create an easier acceptance of the issues. Public participation promotes the finding of a sustainable solution to the problem, but it is still associated with a certain level of risk and cost for the authorities.

Analysis of the Publications.

“At a moment of low citizens’ trust and confidence in European institutions, improving citizens’ participation and transparency at EU level is necessary to close the perceived gap between the European Union on the one hand, and citizens and representative organizations on the other hand. Several ongoing developments offer the opportunity to address this gap and improve citizens’ participation and transparency. This Policy Position offers several concrete proposals in this regard. However, the participation of citizens in the political life of the European Union depends to a large extent not only on the ‘policies’, but also on the ‘politics’, namely on progress in the integration process towards a real multilevel democracy” (Citizens’ participation, 2016)

Civil society engagement is a main target for achieving sustainable development and environmental goals. Governments cannot develop environmental protection goals alone – they need support from the public. Public participation increased citizen’s responsibility actively participates in the decision making process, and ensures that policy-makers obtain valuable local knowledge. Public participation in environmental decision-making means both participation in the decision-making processes and citizen mobilization. Policymakers should invest resources in the public participation - insure transparency in decision making and legitimacy during public participation processes (Berry, Koski, Verkuijl, Strambo, & Piggot, 2019).

In Germany, citizens, business, NGOs and other initiatives had the opportunity to participate in the planning procedure at an early stage by indicating problems and discuss solutions on an online-platform and in workshops in a way that goes beyond what would have been necessary to meet the formal requirements. In this way senate administration and the citizenship could enter into a dialogue (A Guide to Environmental, 2019).

In Portugal, public participation can deepen knowledge about the environment and assist the decision makers in their work (The Environmental Implementation, 2019).

“Civil participation in policy development, including participation of NGOs, is a key element of participatory democracy in Europe. Thus, it is noted in the Preamble to the European Charter of Local Self-Government that “the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are

shared by all member States of the Council of Europe” (Golubović, 2021).

The Purpose of the Research.

In 1988-89, following the liberalization under the policies of perestroika and glasnost introduced by the USSR’s new leadership, a mass and rather radical nationalist movement developed in Georgia with an aim to break away from the Soviet Union and destroy the Communist political system. On 26 May 1990 Georgia declared its independence. At present Georgia is not an Independent State, it is a country, that follows democratic principles for development, which means the participation of the governmental, business and non-governmental sectors in decision making process.

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

Georgia is a small country with a population of 3 716 900 million and a geographic area of 70 000 square kilometers. Georgia suffered from intensive civil conflicts after its independence. The conflicts resulted in a large number of refugees (about 270 000) moving mostly from Abkhazia to the other parts of Georgia, worsening the economic plight of the country. This movement had a devastating effect on the economy.

CSO METER 2020 Report underlined the improvement of the situation under this area last years. As stressed in the report, the decision-making process is partially institutionalized; however, in most cases the participation happens “ad hoc”. On the national and local level CSOs and other individuals have access to important tools for participation such as: right to petition, submitting comments to draft laws, participation in budgetary process, etc (SCO Meter, 2020).

Here are significant numbers of the large-scale projects (hydro electro stations, railways, roads, etc.) that takes place in Georgia and that will be carried out in the near future. All of these developments are financed by foreign investors and bring additional emissions, increased risk of the pollution through accidents, and damage to the architectural and natural monuments with noise and vibration. To ensure the environmental protection and sustainable development during their implementation of those projects the public participation is crucially important in the decision-making process.

Many cases prove that involvement of the public in the decision-making process on environmental issues has a real influence on proposed or planned activities and the final decisions are acceptable for all main stakeholders: government, the public, and developer of activity (Gokhelashvili, 2015).

However, numerous laws and strategic documents are adopted without consultations. In addition, there is low interest among citizens and CSOs in participating in already established mechanisms. There were cases observed when parliament enacted several regulations without consideration of participation of CSOs and activists in the process. The adoption of new Forest Code of Georgia without creating possibilities of participation in the process was criticized (CSO Meter, 2020).

Unfortunately, there are no national or internal guidelines on complaints tools for services provided by public institutions; on the other side, it is not necessary to have national regulations/laws to develop simple/sustainable mechanisms that would provide public with a possibility to provide their feedback on the delivery of public services in Georgia. If effective mechanisms are developed in the municipality, it will have a positive effect as well as quality of public participation and increase desire to participate in the decision-making process (GEORGIA, 2017).

Nowadays, The Ministry of the Environmental Protection and Agriculture of Georgia is the main regulatory body, which is responsible for decisions with regard of allowing, refusing in granting consent and monitoring legislative requirements for activities/projects having significant impacts on the environment, human life/health as well as conducting an EIA (Environmental Impact Assessment, 2019)

A group of scientists from I. Javakhishvili Tbilisi State University believe that the role of public space in active citizenship development is crucial. Public space is an essential part of social life, where citizens can come together for discussing and identifying different kind of problems and influence decision makers. The scientists called such kind of discussion "public debate" as expressing opinions of public. In most cases, public debates carried via media outlets, manifestations, social media, academic publications and government produced documents. This term was initially used by the German philosopher Jürgen Habermas and defined as "a public space, or an imaginary community that does not necessarily exist in any given space." Sociologists suppose that social media increase democracy via discussions in the virtual public space (Promoting Active Citizenship, 2019)

The Main Material.

Legal instruments for the public participation in the environmental decision-making process.

There are rights directly related to the environment in the Georgian Constitution. In 1995, with great efforts from the Greens Movement of Georgia, three paragraphs (#3, #4, and #5) were added to article 37 of the Constitution of Georgia: #3 - Everyone has the right to live in a safe environment, and to use the natural and cultural environment. Everyone must protect the natural and cultural environment; #4 - To ensure a safe environment, considering the ecological and economic

interests of the society and considering the interest of this and future generations, the State ensures protection of the environment and rational use of natural resources; #5 - Everyone has the right to receive full, non-biased and timely information about the condition of the environment where he/she works and lives.

National and international laws on the public participation in the environmental decision-making process in Georgia.

National Legal Provisions for the public participation in the environmental decision-making process.

Since 1990 the Parliament of Georgia has adopted environmental laws and ratified international conventions during the independence on the different environmental issues. The participation rights in decision making are specified in general environmental protection acts or more specific environmental laws, as well as in administrative laws or codes. General environmental protection laws usually only include general provisions for participation; due to the lack of further implementing regulations these laws only provide vague and ambiguous possibilities.

Only two laws, the Law on Environmental Protection (article #6 and #7), Law on Environmental Assessment Code (article #12 and #13) allow the right of access to environmental decision making. According to these laws, citizens have the right to unite and participate in environmental public associations, take part in the decision making process and examine of the decision in the light of environmental protection, get compensation for damage resulting from the violation of Georgia's laws on environmental protection, and, under a court ruling, demand to change decisions on designing, building, deposition, reconstruction and use of the units dangerous from an ecological point of view, take part in the EIA process. Due to those legal rights Georgian environmental NGOs participated in the environmental decision-making process.

The global community realized the central role of the public participation in decision making and gradually all countries attempted to integrate measures for the PP in their national legislation. However, all the multilateral financing agencies such as World Bank and IFC set mandatory requirements for guaranteeing involvement of public decision. These efforts lead the countries to stronger democracy and better environment. The review of the literature reveals that in most cases, especially in developing countries, such measure is the EIA legislation, though it is obvious that countries experience the different level of public participation that raise a lot of questions regarding the reliability and credibility of the decisions. While countries with higher level of democracies are much advanced in this sense, most newly emerged democracies still have many problems due to the nonexistence of the history of the public engagement in the decisions and number of legislative deficiencies (Antidze, 2013).

Adoption of the Environmental Assessment Code in 2017 envisaged the requirements of the convention “on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters” (hereafter, Aarhus Convention) in the environmental protection issues and ensured public participation in the decision-making process in relation with effects on the environment.

The Environmental Assessment Code regulates EIAs in Georgia. It consists of eight chapters: General provisions (I); Environmental Decision (II); Strategic EIA (III); Public participation in environmental decision-making contemplated under the Code (IV); Assessment of trans boundary environmental impact (V); Expert commission (VI); Supervision and responsibilities in the field of EIAs (VII); and Transitional and final provisions (VIII). The main purposes of the Code include regulating the relations in the cases where EIAs are required and protecting the environment and public health.

International Legal Provision for the public participation in the environmental decision-making process.

In 1995, at the Fourth Ministerial Conference on the Environment for Europe in Sofia, it was decided to create a Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter - the Convention). The two-year Convention text preparation period expired, and the text was submitted for signature to the Fourth Pan-European Environmental Ministerial Conference, in Aarhus, Denmark, 1998. The convention came to force in 2001. The same year the Parliament of Georgia ratified the convention.

The Aarhus Convention establishes the minimum rights of citizens in the following three areas (Aarhus Convention, 1998): Right to information - according to the Convention, the Government shall ensure the collection and dissemination of environmental information; all citizens have the right to request and receive such information; Right to participation in decision-making - representatives of the public are entitled to participate in the decision-making process on environmental matters. That is, any action that may lead to the environmental deterioration shall be subject to consideration in public and to the public's consent; Access to justice - in the case of violation of the public participation rights in the process of open consideration and decision-making, the Convention entitles citizens and public organizations to address the bodies of administrative and court appeal.

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

Article 6, Aarhus Convention - Public participation in decision-making.

Public participation in the decision-making process should be separate between the periods before and after the adoption of the Environmental Assessment Code.

Before adoption of the Code, existing laws, were annulled, because none of them did not provide adequate guarantees for public participation in the decision-making process; in addition, the licensing authority did not have any obligation to inform the public about the decision-making process or to ensure their participation in the decision-making process, and a number of responsibilities were delegated only to the operator. It should be also underlined that the list of activities subject to Environmental Impact Assessment (EIA) did not correspond to the activities defined by the Aarhus Convention.

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

The decisions made before the enactment of the Environmental Assessment Code did not explicitly meet the minimum standards set out in the Convention and can be considered as decisions made without informing the public, which were usually based on formal administrative proceedings.

The “bed” practice of signing agreements with investors through concluding memoranda regarding energy projects had been common over the years. For the most part, the memoranda with investors were considered by the State to be a complete or partially commercial secret, which did not meet the standards relating to information and data transparency.

The period after the practicing of the Environmental Assessment Code, some of the problems remain unresolved and the effective enforcement of regulations is still a challenge. This is especially true for large infrastructure projects, as the risk of human rights abuses is always higher in relation to such projects and therefore it is more important to ensure that citizens are involved in the decision-making process.

Practice shows that, as a rule, decisions relating to large projects are accompanied by active protests of the local population and lack of trust in the decisions made by the State. The practice shows that despite the existence of environmental impact assessment documents and organization of public hearings, for the most part, legitimate questions remain unanswered relating to large infrastructure projects, namely relating to individual aspects of the projects or expediency of their implementation. The public usually questions the comprehensiveness and qualifications of the assessment conducted. Most of the problematic issues

indicate that despite the existing legislative regulations, communication with citizens regarding the planned activities at an early stage, provision of comprehensive information to the public and their involvement in the decision-making process remain as the main challenges.

As an example, could serve the Namakhvani HPP Cascade Project attracted special public attention in 2020. The population has been actively and continuously protesting against the planned implementation of the project throughout the last year. Apart from the fact that it was problematic to ensure proper provision of information and involvement of citizens at the initial stage, unfortunately the State did not respond to the protests for a long time, did not hold continuous, result-oriented, in-depth or comprehensive dialogue with citizens or stakeholders. Such approach enlarged the crisis.

This case has once again confirmed that decisions of state agencies have failed to answer the legitimate questions of the society for years. As a rule, public hearings fail to provide comprehensive or reasoned answers to citizens' questions on important issues. This, in turn, is caused by distrust in the quality of the EIA documents and the procedures conducted. It is important for the State, in compliance with the procedural requirements, to pay special attention to the real participation of citizens and to use all effective means of communication with them.

Challenges relating to the quality of EIA reports are also problematic in terms of access to information. The safety and scale of the expected impacts of the planned project, alternative options, and aspects of the impact on the property of local residents, is mostly the subject of concern of the population and professionals. As a rule, main questions arise from the fact that the above issues are incorrectly reflected or not reflected in the EIA documents at all; In addition, one of the main questions, which is usually not answered by the EIA documents, is the cost-effectiveness of the project and thus the expediency of the implementation of the project. Thus, while the EIA fails to address a number of important questions, it is clear that it is impossible to achieve the goal of providing information to the public through this mechanism.

The Environmental Assessment Code provides a list of activities subject to environmental impact assessment, which are presented in two annexes, taking into account the environmental impact risks and degrees. The activities listed Annex 1 are subject to EIA due to significant environmental impacts; the activities listed in Annex 2 are subject to the screening procedure, which determines, by assessing the scale of environmental impact, whether the planned activities are subject to EIA.

Adoption of the Environmental Assessment Code brings the environmental impact assessment activities closer to international standards, but practice shows that the list of activities subject to environmental assessment needs to be revised. The threshold criteria for the activities defined in the above-mentioned annexes need to

be refined in some cases, taking into account the specifics and reality of Georgia.

Another example, setting a 10-hectare threshold for urban development projects with development area is unjustified; It should be taken into account that Directive 2011/92/EU does not specify an area for urban development projects at all. Directive 2011/92/EU does not specify an area for urban development projects at all.

It should be taken into account, that screening does not apply to sand-gravel extraction activities, which is inadmissible considering the risks relating to the extraction of sand-gravel with violation of the established rules, besides, it contradicts the requirement of Directive 2011/92/EU, which provides for the obligation to assess the need for EIA for open-cast mining of construction materials, including sand and gravel. The present issue is quite problematic for Georgia, as the extraction of inert materials from rivers is one of the intensive activities and is sometimes carried out completely illegally, without any environmental impact assessment.

The practice shows that the regulations related to the screening procedure also need to be improved, as screening is the most important stage that determines the need for EIA, which in turn is related to a number of mechanisms of access to information and public involvement. Currently, the Code sets out general criteria for screening procedures, but does not establish procedures for reviewing screening applications and making decisions by a decision-making body. Unfortunately, those procedures do not provide for the need to verify the information submitted. This, in turn, creates a threat of formal conduct of the screening-related decision-making process. The screening procedure should be focused on verifying the information provided by the operator and to make the above mandatory at the legislative level, in order to enable the public to participate in all decisions relating to projects that are potentially related to their legitimate interests (Alternative Report, 2021).

Article 7 - Public participation concerning policies.

Public participation is aiming special importance in relation to energy projects in Georgia. In addition to the above-mentioned challenges relating to the implementation of the EIA system, which are clearly relevant to such projects as well, it is also noteworthy that Georgia does not have a long-term state energy strategy. In order to plan and develop energy sector, first of all, it is necessary to develop relevant long-term policies. In line with international obligations and national law, the Parliament has to approve a 10-year state energy policy document, which has not been done yet. This situation, in turn, is directly related to the issue of transparency of and access to information, as the lack of a document developed and adopted on the basis of public participation and relevant procedures completely calls into question the activities planned/implemented in this area and makes it impossible to ensure the standard of transparency of information.

It is still unclear what benefits the State has received/is receiving from the implemented projects, and it is natural that, as a rule, questions are particularly acute in relation to the energy projects, because the negative consequences of the construction of energy projects are usually large-scale.

Conclusions.

The Code should modify threshold indicators for the activities envisaged under the environmental Assessment Code I and II Annexes considering urban development projects related indicator.

The Administrative Offences Code of Georgia should introduce the liability for breaching the rules for placement, transportation/processing of dust-producing materials;

Appropriate parliamentary committee should continue and carry out active and effective supervision over HPP projects (like Namakhvani HPP Cascade Project) and develop a relevant conclusion.

In each case ensure effective enforcement of the regulations related to the EIA system and examine the challenges related to the quality of EIA reports and identify best effective measures and carry out all necessary activities for implementing them to ensure quality improvement and control.

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

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