

Remarks and Comments Concerning the Draft Law on Amendments to Some Legislative Acts of Georgia

Remarks and Comments by Articles

According to paragraph 1 of article 4 of the draft law, amendments shall be made to article 53 of the Forest Code of Georgia; in particular, paragraphs 4 and 6 will be added to article 53. According to added paragraph 4, hunting will be permitted in National Parks, Habitat/Species Management Areas, Protected Landscapes and Protected Areas with sustainable use of natural resources. The draft does not provide any justification about why hunting in national parks should be permitted. Under current legislation, hunting is permitted in certain parts of habitat/species management areas; but under the given wording, hunting is possible on the entire management area that will pose an irreversible threat to biological diversity. Under current legislation, hunting is already possible in a protected landscape and protected area with sustainable use of natural resources and no additional definitions are needed. We should emphasize that the mentioned amendments are not in line with the EU Directives¹ and Georgia's multilateral agreements² (we have similar comments regarding paragraphs 1, 2 and 3 of article 8 offering similar amendments to articles 5, 7 and 8 of the Law of Georgia on the System of Protected Areas).

According to paragraph 1 of article 4 of the submitted draft law (which adds subparagraph "c" of paragraph 5 to article 53 of the Forest Code), hunting is permitted on the territories of the state forest fund existing on the territories of Abkhaz and Adjara Autonomous Republics; hence, hunting in the state reserves may be possible in the autonomous republics, since the reserves make a part of the state forest fund.

It is unclear what is meant under permitting hunting in the forests of local importance, because no such forests are allocated on the territory of Georgia (paragraph 1 of article 4 of the draft law, according to which subparagraph "d" of paragraph 5 is added to article 53 of the Forest Code).

According to paragraph 2 of article 4 of the draft law, the following subparagraph "g" shall be added to article 116 of the Forest Code: "g) to issue before August 1, 2012 an order by Minister of Energy and Natural Resources of Georgia "On the list of animal species specified as objects of hunting."

Orders of similar contents shall be issued in line with the Law on Wildlife (on the approval of the list of animal species specified as objects of hunting, article 69, paragraph 2, subparagraph "Q"); thus, the fact is certain that one and the same legal relation is being settled by two different acts. It should also be noted that the Ministry of Energy and Natural Resources has already issued an order under the same title (order No 175 as of September 11, 2011). Subparagraph "l" of article 3 of the Law on Management of Forest Fund serves as the basis for issuing the mentioned order.

Article 5 of the draft law is absolutely unacceptable. In particular, it offers amendments to the Law of Georgia "On the Red List and Red Book of Georgia".

According to paragraphs 1 and 2 of article 5 of the submitted draft law, under articles 10 and 11 of the Law of Georgia "On the Red List and Red Book of Georgia", it will be quite possible to reduce number of endangered species, to aggravate their habitats and living conditions, to decrease number of wild animals, to violate their habitats, propagation areas, sanctuaries, migratory routes and paths leading to water, if such is determined by the law. These articles have nothing to do with settlement of the issues related to removal of animal species from the environment. The wording of the last part of these paragraphs (except for the cases defined by the given law and

¹ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora)

² The Convention on Biological Diversity; The Ramsar Convention - The Convention on Wetlands of International Importance; The Bonn Convention – The Convention on the Conservation on Migratory Species of Wild Animals; the Bern Convention on the Conservation of European Wildlife and Natural Habitats

the Georgian legislation) makes us suppose that a certain ground is being created to implement various commercial projects harmful to ecosystems in the protected areas and other places rich in biodiversity.

Paragraphs 5 and 6 of article 5 of the draft law abolish a number of functions imposed on the Commission of Endangered Species at the Academy of Sciences of Georgia. An explanatory note does not explain the necessity of the mentioned amendment.

According to paragraph 7 of article 5 of the draft law, an amendment shall be made to article 22 of the Law of Georgia "On the Red List and Red Book of Georgia". It discusses various cases of extraction (removal from the environment) of endangered wild animals and wild plants and identifies decision making bodies. It is unclear why a decision is made by the Minister of Environment Protection of Georgia, when the issue is about setting a quota on removal of species for commercial purposes, while the rule of captive breeding and removal of endangered animals is approved by the Agency of Natural Resources at the Ministry of Energy and Natural Resources. At the same time, the procedures of adopting an act or issuing a written consent by the Ministry of Environment Protection on removal of endangered species from the environment are quite obscure (it is unclear, which particular researches should be conducted, who will conduct them, timeframes of issuing a permit, etc.). So, this issue should be settled. Furthermore, it contradicts the assertion provided in the explanatory note of the draft law, according to which the goal of the submitted draft law is to improve the rules and procedures of removal of species from the environment at a legislative level.

It is desirable that the Ministry of Environment Protection be defined as a decision making subject in both cases and that the mentioned decisions be issued under the rule of public administrative proceeding. According to the Convention on Biological Diversity (as well as the Bonn and Ramsar Conventions), such decisions should be made through the procedure of environmental impact assessment. Thus, it is expedient to make relevant amendments to the Law of Georgia on Environmental Permits³.

Paragraph 9 of article 5 of the draft law is absolutely unacceptable. In particular, this paragraph offers new formulation of subparagraphs "E" and "F" of paragraph 1, article 24 of the Law of Georgia on the Red List and Red Book. In case of the offered formulation ("E" for the purpose of improving the sanitary state of forests while conducting sanitary cutting), it will be possible to neglect the environmental requirements and make a decision about commercial cutting of rare, valuable timber species. This is in direct conflict with the Bern Convention⁴, the guidelines of the International Union for Conservation of Nature (IUCN) on which the Georgian environmental legislation is based, as well as the EU Habitats Directive and the decisions and working programs of the Convention on Biological Diversity (protected areas, environmental impact assessment, forest program). The same can be said about paragraph 10 of article 5 of the draft law, under which subparagraphs "G", "H" and "I" are added to paragraph 1 of article 24 of the Law of Georgia on the Red List and Red Book.

It is unclear what are the criteria for defining the projects "of state and public importance" as mentioned in subparagraph "F", the implementation of which will pave the way to the destruction of endangered species. The sense of added subparagraph "I" is also unclear. Particularly, it is unclear how the endangered species can pose a threat to the safety in the process of exploitation of existing enterprises and infrastructure or what kind of threat is meant?

The removal of plants entered in the Red List of Georgia from the environment on the territory of the state forest fund, traditional use areas of national parks, habitat/species management areas and protected landscapes may contribute to the destruction of habitats and degradation of ecosystems. This contravenes the essence of protected areas and Red List, even if these species are extracted under the pretext of sanitary or other cutting.

³ The mentioned recommendation concerns paragraphs 7 and 11 of article 5 of the draft law.

⁴ The Bern Convention on the Conservation of European Wildlife and Natural Habitats was ratified by the Georgian Parliament by decree No 940 as of December 30, 2008.

According to paragraph 11 of article 5, an amendment shall be made to paragraphs 2¹–3 of article 24 of the Law of Georgia “On the Red List and Red Book”; various cases of extraction (removal from environment) of endangered wild plants and their products are discussed; various agencies have been identified as decision makers, though the procedures of decision making are not specified. It is desirable that the Ministry of Environment Protection be defined as a decision making subject in all cases and that the mentioned decisions be issued under the rule of public administrative proceeding (as we have already mentioned above, according to the Convention on Biological Diversity, such decisions should be made through the procedure of environmental impact assessment. Thus, it is expedient to make relevant amendments to the Law of Georgia on Environmental Permits).

According to paragraph 12 of article 5 of the draft law (state agencies in charge of controlling the protection of endangered species), the Ministry of Environment Protection and other state agencies determined by articles 15 and 16 of the Forest Code of Georgia shall assume control over the protection of endangered species within their competence.

According to the explanatory note of the draft law, “adoption of the draft law does not oblige the state to assume a new financial liability; neither does it require setting up new structural units for administration or expanding the existing ones.”

As a result of some reforms implemented in spring, the functions of the Environment Ministry were downgraded. Thus, the Environment Protection Inspection and Investigation Department were transferred under the subordination of the Ministry of Energy and Natural Resources, while regional departments were abolished at all. Although the representatives of the government and the parliamentary majority, as well as the government’s parliamentary secretary had been claiming that as a result of these reforms the environmental functions of the Ministry of Environment Protection would have further strengthened, there are no relevant signs of it. If the Ministry staff does not increase even after emergence of this new liability, it will become obvious that there will be no state control imposed over protection of endangered species.

According to paragraph 4 of article 6 of the draft law making amendments to paragraph 5 of article 5 of the Law of Georgia “On Fees for the Use of Natural Resources”, a zero rate was defined for game mammals and birds, including the species entered in the Red List. The explanatory note gives rather strange and unconvincing justification of it. At the same time, the draft law offers the following formulation of paragraph 2 of article 8 of the Law of Georgia “On Fees for the Use of Natural Resources”: “The fee for the use of natural resources, including wild animals and wild plants entered in the Red List can be used for calculation of harm (damage) caused by illegal extraction of resources”. Damage calculated by zero rates will be equal to zero.

Article 7 of the draft law offers withdrawal of paragraph 2 of article 47 of the Law of Georgia “On Environmental Protection” (parliamentary bulletin, No 1-2 (33-34/7), January 22, 1997, p. 24), prohibiting any activities that could contribute to the reduction of plants and animals entered in the Red List of Georgia and the destruction of their habitats and living conditions. Instead, the draft law offers adding of an absolutely opposite article to the Law of Georgia “On the Red List and Red Book of Georgia”. As we have already mentioned above, this amendment has nothing to do with hunting rules and can become the basis for irreversible environmental degradation. Such important and environmentally dangerous article is mentioned in the explanatory note as “an amendment of technical nature.”

The amendments offered by article 8 of the draft law to the Law of Georgia “On the System of Protected Areas” are categorically unacceptable (parliamentary bulletin, No 003, 27.03.96, p. 27). The content of these amendments is similar to the amendments offered by article 4 and envisage legalization of hunting in the protected areas, including for the Red List species. Actually, this is the key point of the entire draft law. The question is that it will be difficult to achieve the goal of the project authors and launch commercial hunting for rare, endangered species, because these species are mostly preserved in the protected areas.

Issuing of a permit on hunting in national parks is in conflict with the EU Directives, as well as Georgia's multilateral and bilateral agreements⁵. At the same time, it is not justified how the commercial hunting in national parks will influence the flow of ecotourists and how it will be reflected on the amount of incomes from ecotourism, including on the employment and incomes of local population involved in the sphere of ecotourism services. It is not also justified whether issuing of a permit by the Ministry of Energy and Natural Resources on the removal of endangered species from the environment, including on protected areas is in line with the decisions of the Nagoya Protocol to the Convention on Biological Diversity⁶.

According to article 9 of the draft law, a document on extraction of huntable animal species (except for migratory birds) is issued: "Article 9. To formulate subparagraph "K" of article 3 of the Law of Georgia on Management of the Forest Fund (Georgian Legislative Bulletin, No 39, 19.07.2010, article 235) as follows: "K") document on extraction of hunting animal species (except for migratory birds) – document on the basis of which a person has the right to extract animal species determined by order of the Minister of Energy and Natural Resources of Georgia (hereinafter – Minister) on a certain territory, in a certain period and by using established means."

This document, by its contents, represents permission. In our opinion, the given article contradicts the Law of Georgia "On Licenses and Permits". According to paragraph 1 of article 4 (Inadmissibility of Introducing Additional License and Permit) of this law, a detailed list of the varieties of license and permit of the areas of licensed activity and actions of the permission is defined by this law. Introduction of the license of permit for the activity or action, which is not define by this law shall be inadmissible under the other legislative or sub-legislative act.

Article 10 of the draft law offers the formulation of paragraph 2 of article 301 of the Criminal Code of Georgia, which tightens the responsibility for committing a crime. We welcome it, though it is unclear, what will be the principle of calculation of the amount of fine.

Article 11 of the draft law offers amendment to article 853 of the Code of Administrative Offences of Georgia. According to the draft, destruction of endangered wild animals entered in the Red List or destruction of their eggs, dens and other parts, that can lead to their death, reduction of their number or violation of their habitats, or removal of these animals through violation of the conditions indicated in the document verifying the removal right, their illegal buying-selling or capturing, will trigger penalizing of citizens within GEL 150-650, as well as penalizing of officials within GEL 300-850 with confiscation of personal things of the violator, which were used for committing the mentioned violations, or without it, as well as with confiscation of removed animals."

If we discuss articles 10 and 11 of the draft law in a uniform context with paragraph 4 of article 6 (according to this letter, a zero rate was defined for game mammals and birds, including the species entered in the Red List), it appears that compensation of damage for killing the Red List species amounts to zero, while a fine may constitute only GEL 150-650; if an offender is an official – a fine will constitute GEL 300-850. Hence, hunting license or permit must cost much cheaper. Respectively, these articles of the draft law do not offer economic levers to combat/prevent poaching.

According to article 12 of the draft law, this law should come into effect upon its publishing. However, the state agencies are not at all ready for it; quotas, places, protection and monitoring mechanisms are not specified so far. Thus, such hastiness is absolutely unclear and it makes us support that probably certain private interests are put above the state and public interests.

⁵ EU Habitats Directive; Convention on Biological Diversity; Ramsar Convention; Bonn Convention; Bern Convention

⁶ The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity

Remarks and Comments Concerning the Explanatory Note of the Draft Law

The explanatory note of the draft law cites “rather imperfect and frequently unsettled procedures and mechanisms related to removal of animal species from the environment” as the reason for developing the draft law.

Improvement of the given laws, simplification of procedures, offering more and qualitative services are named as the main purpose of the draft law. It should be emphasized that this purpose of the submitted draft law is radically different from the purposes of those laws, which are being amended, and is in conflict with their main essence.

The explanatory note marks that “under current legislation, it is allowed to remove wild animals from the environment both in and outside hunting areas; however, the rules and procedures for removal of wild animals from the environment are not perfectly regulated at a legislative level. Just settlement of the mentioned problems is one of the key goals of the draft law.”

Naturally a question arises – what other purposes does the submitted draft law serve? Simultaneously, it should be noted that in 2010, on initiative of the Ministry of Environment Protection and Natural Resources of Georgia (Minister G. Khachidze), amendments were made to the legislation regulating the forest sector in an absolutely non-transparent manner. The purpose of these amendments was to obtain more sources of incomes for the newly established Forest Agency. By this reason, as a result of amendments made to the forest code, they tried to launch hunting on the territory of the State Forest Fund for Economic Use. These amendments were prepared by the Ministry staff, without consultations with scientific and NGO experts that triggered those problems, which are discussed in the explanatory note of the draft law. However, the range of action of the submitted draft law goes beyond the range of the above mentioned laws. The question is that owing to the proposed amendments, the government tries to legalize hunting of endangered species entered in the Red List, including on the protected areas that is prohibited nowadays. Thus, improvement of legislative shortcomings cannot be cited as the reason for developing the draft law.

According to the explanatory note, the amendment, which is made to the Law of Georgia on Environmental Protection, “represents an amendment of technical nature and is in line with the above mentioned projects.” Actually, the amendment envisages the withdrawal of paragraph 2 of article 47 of the Law of Georgia on Environmental Protection, that has nothing to do with legal regulation of the issue concerning removal of animal species from the environment and can become the basis for irreversible environmental degradation.

According to the explanatory note, “amendment shall be made to the Forest Code of Georgia that can be explained by the fact that the Forest Code of Georgia determines hunting as one of the forms of forest use, though it does not specify the places, where hunting shall be permitted, under which particular documents it shall be permitted and who will issue such documents. So, it became necessary to develop the given amendment to eradicate this shortcoming.”

This statement is not true. Although the Forest Code (1999) determined hunting as a form of forest use, it was specified by legislation that removal of hunting species except for migratory birds was allowed only in hunting economies and habitat/species management areas (Law on Wildlife; Law on the System of Protected Areas). Establishment of hunting economies was possible on the territory of the State Forest Fund for Economic Use. According to the Law of Georgia “On Forest Fund Management”, the Forest Fund is determined as “the State Forest Fund, excluding protected areas of the State Forest Fund, forests of local importance and forest funds existing on the territories of Abkhaz and Adjara Autonomous Republics.” Thus, not only the submitted draft law fails to improve the existing legislative shortcomings, it contributes to legalization of hunting in national parks.

According to the explanatory note, “the cases and rules for the removal of the Red List species from the environment are being specified in the Law of Georgia on the Red List and Red Book.”

Actually, the formulation provided by the draft law offers root changes; it contradicts the principles of environmental protection and sustainable development and is in conflict with the EU Directives and Georgia's international commitments.

According to the submitted draft law, "an amendment shall be made to the Law of Georgia on Fees for the Use of Natural Resources." Though, the explanatory note gives an absolutely obscure explanation about these amendments. It is absolutely unclear why the compensation of damages for illegal removal of the Red List species shall be abolished.

According to the explanatory note, "amendments shall be made to the Law of Georgia on the System of Protected Areas that became necessary after making amendments to the Forest Code of Georgia, which determined those territories of the State Forest Fund, where it is possible to remove wild animals from the environment under an established rule."

This is not true because the amendments to the Forest Code, under which hunting will be permitted in the protected areas, including in national parks, are made under the submitted draft law. The explanatory note misleads the readers, when it says that such amendments had been made to the Forest Code and now only discrepancies are being corrected.

According to the explanatory note, "the draft law will not have any influence on the revenue part of the budget." Hence, it is unclear, why the state is so much interested in killing rare species and weakening and actually destructing the system of protected areas.

The explanatory note claims that "adoption of the draft law does not contradict the EU Directives" and that "the draft law does not contradict bilateral and multilateral agreements of Georgia," that is not true.

The explanatory note mentions that the relevant governmental institutions of the executive authorities have participated in developing the draft law, though it does not mention whether the views of the Ministry of Environment Protection and the Agency of Protected Areas were taken into consideration at all.

According to the explanatory note, "non-governmental and/or international organizations/institutions and experts have not participated in development of the draft law." Unfortunately, this is true and despite wide public interest, experts from scientific and non-governmental organizations were not invited. It should be noted that the representatives of governmental institutions have extremely scarce knowledge about these issues. It should also be noted that the Commission of Endangered Species at the Academy of Sciences of Georgia, which was established in accordance with paragraph 3 of article 14 of the Law of Georgia on the Academy of Sciences of Georgia, was deprived of an opportunity to participate in the development of the draft law. This commission has a number of rights and obligations under the Law of Georgia on the Red List and Red Book of Georgia.

Recommendations

We agree with the authors of the draft law that the legislation related to the protection and use of Georgia's biological resources needs urgent changes. The current legislation is not in line with the sustainable development requirements and is far from the best international practices: it fails to prevent or mitigate environmental impacts caused by development projects; there are no legislative procedures for implementing various conservation projects (creation of conservation centers and reserves; removal of animals from the environment with the purpose of their restoration and reintroduction; setting quotas on extraction of biological resources); the procedures for approval of the plans on establishment and management of protected areas, forest and hunting farms either do not exist at all, or need improvement.

We believe that the submitted draft law should be improved in line with modern principles of sustainable development, so that not to pose a threat to Georgia's unique ecosystems, to take the interests of all stakeholders

into consideration, not to harm the country's political image and the amount of investments put by the international community and financial institutions.

According to the Convention on Biological Diversity, as well as the Ramsar⁷ and Bonn⁸ Conventions, Environmental Impact Assessment (EIA) is a universal tool of conservation and sustainable use of biological diversity; the Conventions determine the mechanisms for integration of biodiversity conservation issues into national legislations.

Settlement of the problems persisting in our country through using this mechanism would be acceptable from (a) environmental, (b) political and (c) economic points of view:

- (a) Mitigation of environmental impacts caused by development projects will be provided; an orderly procedure of implementing conservation projects will be established; protection and sustainable use of endangered species will be provided.
- (b) This position is in line with the Georgian government's course to strengthen its struggle against corruption; not to increase number of existing varieties of permits and licenses; to strengthen the country's EU integration process.
- (c) Such approach is profitable for attraction of investments and in terms of saving time and non-purposeful expenses by the executor of activities; it will become easier to avoid conflict situations caused by neglecting the interests of local population.

Based on the above mentioned, we offer you to discuss relevant amendments to the legislation regulating environmental impact assessment; in particular, removal of protected species from the environment (including with the purpose of their restoration, propagation or trophy hunting), as well as creation of conservation centers, gene pool reserves; setting quotas on extraction of biological resources; we also offer to regulate the procedure of approving the plans on establishing protected areas, forest and hunting economies through environmental impact permits. For this purpose, it is necessary to make relevant amendments to the Law of Georgia on Environmental Permit. In particular, the following subparagraphs shall be added to paragraph 1 of article 4 of this law:

V) Removal of the species entered in the Red List of Georgia from the environment, including for the purpose of their restoration and propagation under artificial conditions;

W) Setting quotas on extraction of natural resources;

X) Creation of conservation centers, gene pool reserves, nurseries, forest plantations;

Y) Approval of plans on management of forestry and hunting economies.

The Ministry of Environment Protection of Georgia will be responsible for making the mentioned decisions. Such changes will definitely restore the balance, which was violated as a result of the spring structural changes in the Georgian government.

⁷ The Ramsar Convention - The Convention on Wetlands of International Importance, especially as Waterfowl Habitat – is in force in Georgia by decree No 201 dated April 30, 1996 of the Parliament of Georgia.

⁸ The Bonn Convention – The Convention on the Conservation of Migratory Species of Wild Animals – is in force in Georgia by decree No 136 dated February 11, 2000 of the Parliament of Georgia.