



# Problems related to the Protection of Property Rights

## The case of village Gonio

### Report Summary in English

Full version of the present report is available in the Georgian language only

The Report is prepared within the scopes of the project "Protection of Property Rights in New Touristic Zones of Georgia" by four Non Governmental Organizations: Association Green Alternative, Georgian Young Lawyer's Association, Georgian Regional Media Association and Transparency International Georgia



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# 1 About the Project

Property rights were often infringed in recent years in Georgia. Absence of concrete legal regulations for the protection of citizens' property rights, mechanisms of respective compensation for the injured persons, and the uniform state policy on "resettlement" in general, as well as non-awareness of citizens on their own rights and obligations enables interested parties to breach property rights through the improper application or interpretation of the law.

For this very reason, at the initiative and with the financial support of the "Open Society – Georgia" Foundation, the project "Promoting Property Rights Protection in the New Tourist Zones" was launched in 2011. The project is implemented by four local non-governmental organizations: Association "Green Alternative", "Georgian Young Lawyers' Association", "Georgian Regional Media Association", and "Transparency International – Georgia",

The project aims at promoting property rights protection in the new tourist regions (namely Samegrelo-Zemo Svaneti and Adjara); promoting the application in practice of the property rights protection guarantees recognized under the law, Constitution, and international norms; further, minimizing the threats of property violation and rendering legal assistance to the already injured population; raising public awareness on the legalization and protection of property through a relevant media campaign; and initiating the development of the "resettlement" policy.

Present report describes the recognition and deprivation of property of 271 residents of village Gonio, on the Black Sea coast in 2007-2010, without any compensation whatsoever. The report provides as legal assessment of the issue, as well as the analysis of its link to ongoing processes in the country. The report strives to draw public attention to the facts of property violation for the prevention and elimination of such facts, and to offer recommendations to the decision-makers for systemic solution of similar issues.

The report is built on the visit of representatives of the project implementing organizations to village Gonio,<sup>1</sup> direct meeting with the injured population, information provided from the state agencies and local government, relevant studies of the project member or other organizations, and information published in the media.

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<sup>1</sup> Field visit of the project team "Promoting Property Rights Protection in the New Tourist Zones" participant organizations in Adjara, 17-19 February 2011.

## 2 Facts of Property Infringement at the Example of Village Gonio

Materials obtained by the project participant organizations have established the following:

Under the decision of the Commission for Recognition of Right to Ownership of the Khelvachauri Municipality Sakrebulo, the land plots being in the possession of local residents of village Gonio for years were transferred in their ownership in 2007-2010. Based on the ownership certificates issued by the Commission, the citizens were registered in the Public Registry as the owners of land plots. Nevertheless, on 9 November 2010 the Commission for Recognition of Right to Ownership of the Khelvachauri Municipality Sakrebulo has simultaneously revoked the ownership certificates of 271 residents of village Gonio issued by itself on land plots, without examining factual circumstances and undertaking compensation measures.

The Commission for Recognition of Right to Ownership has justified the revocation of the right to ownership by various legal arguments.<sup>2</sup> On several occasions, non-existence of evidence required under the legislation for recognition of the ownership right to a land plot was the reason for revoking the right to ownership. On other occasions, indicated reason was the coverage of these plots by the cultural heritage zone, as well as coverage of them by such a resort strip, which requires the observance of conditional procedures foreseen for the infrastructure development. When examining factual circumstances in one of the cases, the Commission even writes that for the current period a land plot represents a non-processed free territory and is located on the high slope of village Gonio, adjacent to the territories acquired by the so-called "Sheikhs", i.e. within the prospective development strip of the resort infrastructure of the Khelvachauri Municipality and the whole region. From legal standpoint, revocation of a right to ownership may be based on the adoption of illegally issued administrative-legal act or non-fulfilment of requirements under the law, but it is unclear what does the prospective development strip of the resort infrastructure acquired by the so-called "Sheikhs" mean and what legal status does it enjoy.

Remarkably, over 90% of 271 revoked ownership certificates were issued during the pre-presidential and pre-parliamentary election periods in 2008.

The 7 November 2007 events have radically changed the environment in the country. Snap presidential elections were appointed on 5 January 2008, and the snap parliamentary elections in the spring of 2008. In parallel, Georgian authorities launched an active large-scale advertising campaign ("What is yours is yours"), which aimed to simplify the registration of land and real estate in the ownership of private persons, even in instances when the possessor was unable to submit documentation in proof of legality. However, after the 2008 parliamentary elections, amendments brought to the Law on recognition of right to ownership made the possibility of recognition of the right to ownership tougher once again, and increased a fixed fee also. Yet, it was most unfortunate that the Commissions on numerous occasions have revoked ownership certificates issued by them. In the aftermath of the 2008 elections one could find a host of articles in the press as to how were the recognized ownership rights taken away, how the Ministry of Economy privatized<sup>3</sup> this property, etc. Problems were experienced not only by regional, but by the Tbilisi-based population as well.<sup>4</sup>

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2 <http://www.humanrights.ge/index.php?a=main&pid=12804&lang=eng>

3 "What is Yours is Yours", <http://old.kvirispalitra.ge/archive/2008/21-2008/htm/politika%20da%20sazogadoeba-2.htm>

4 "Up to 80 families in borough Tskneti are being deprived of cottages acquired 20 years ago", <http://versia.ge/index.php/ekonomika/286--80-20-.html>

Problem of the Gonio residents is not an isolated problem, which is out of context of the socio-economic and most importantly political processes developing in the country. Notably, infringement upon property rights is not a new problem for Georgia. In February 2008 the Human Rights Protection Center published a report "Vast Eviction".<sup>5</sup> According to GYLA's study of 2007,<sup>6</sup> since 2004 Georgian authorities grossly violated the property rights of citizens, buildings-constructions in the ownership of population were dismantled illegally, and the injured citizens were offered neither compensation nor alternative spaces. Although the Constitution of Georgia is the guarantor of the property, the authorities permanently revise legal foundations of ownership, owing to which the property rights of thousands of persons were breached in 2004-2007, including among them through dismantling of buildings-constructions, sale of property, deprivation, etc.

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<sup>5</sup> <http://chechenrefugees.info/admin/editor/uploads/files/reports/didi%20gamosaxleba.pdf>

<sup>6</sup> GYLA, "Property Rights in Georgia", Tbilisi, 2007.

## 3 Conclusions

Since 2008, the Commission for Recognition of the Right to Ownership of the Khelvachauri District periodically revoked ownership certificates issued by it to the citizens, which has injured hundreds of local families. Based on the materials obtained within a project framework it can be stated assuredly that in the case of Gonio, numerous violations of the law had taken place as at the moment of issuing ownership certificates to at least 271 citizens, as well as at the moment of their revocation.

The Commission has entirely ignored the obligation to issue some kind of compensation (monetary, alternative land plot) for the deprived land. As a result, decisions of the Commission inflicted significant damage on 271 land owners and their families. Many of them were left as without a sole source of income, as well as without a place to live.

Weak legislative mechanism of protection of property rights, coupled with inadequate degree of the court independence and absence of the “resettlement” policy in the country, makes the possibility of injured citizens to protect their property rights guaranteed under the Constitution of Georgia extremely difficult.

It is unfortunate, but the “What is yours is yours” campaign launched by the authorities prior to the snap presidential and parliamentary elections, which should have been distinguished for simplicity of legalizing the land and benefits generated through the use of such land, did not live up to existing expectations. In case of Gonio this program did not bring any benefit to the land owners, while their efforts to act pursuant to the law and legally register land plots used by them for decades turned out in most of the cases to be only detrimental.

## 4 Recommendations

Examination of the Gonio case has revealed a need to undertake a host of measures, including:

### ▶ **Drafting, adoption and practical application of legislative amendments.**

Property right is the right guaranteed under the Constitution of Georgia, however, effective legislation does not adequately provide protection guarantees of these rights. To secure full protection of the property rights, it is necessary to introduce at a legislative level the statutes of limitation on the revision of decisions adopted by the Commission for Recognition of the Right to Ownership, while in case of revocation of issued ownership certificates later on, the same decision should include the obligation to compensate for damages and time-frames for fulfillment of this obligation.

### ▶ **Compensation of damages inflicted on citizens.**

Citizens residing in Gonio, whose ownership certificates were revoked by the Commission for Recognition of the Right to Ownership, should be compensated for the expenses rendered for the use of this property, as a minimum owing to the financial costs rendered for the recognition and registration of the right to ownership.

### ▶ **Raising the liability of the Commission for Recognition of the Right to Ownership.**

Results of examination and analysis of activities of the Khelvachauri Municipality Sakrebulo cast doubt on qualification of effective members of the Commission for Recognition of the Right to Property. Their illegal actions caused significant damage to the interests of the state and physical persons.

a) The issue of liability of the Commission members should be raised. Non-coordination with relevant agencies at the time of recognition was one of the main reasons for revoking the ownership certificates, which was the duty of the Commission itself. Accordingly, current outcome is the result of the Commission's incompetence; further,

b) Level of qualification of the Commission members should be checked prior to their approval, in order to establish if the knowledge and experience of nominated candidates meet the necessary requirements for holding the position/office.

### ▶ **Initiating the development of the "resettlement" policy**

Work should be launched for the development of the settlement/resettlement policy, which will become the effective protection mechanism of the interests and rights of local population in the course of implementation of infrastructure and tourist projects.

If resettlement of local population during the implementation of development projects is inevitable, the resettlement process should be planned in detail already at the initial stage of project planning and subsequently duly monitored.