

Management and Protection of Water Resources in Georgia

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1. Introduction

Georgia is considered to be rich in water resources. It should also be noted, however, that water resources are unequally distributed, and are mainly accumulated in the western part of the country. Hence correct distribution of the water resources and supplying resource-poor eastern region with water remain one of the main tasks of water management. Aside from this, pollution of surface waters including transboundary pollution remains a serious threat in Georgia.

Nowadays the issues of management and protection of water resources are priorities in the field of environment protection in Georgia. The priorities of the Ministry of Environment Protection and Natural Resources for the year of 2007 include ensuring transition to the basin management of water resources. Apart from this, the issues of protecting surface waters from pollution are part of the Georgian National Environmental Action Programme.

The commitments Georgia undertook within the framework of the European Neighborhood Policy also mention issues related to water management. In particular, among the priorities of the field of environment protection in the EU-Georgia Action Plan are: elaboration of framework legislation and basic procedures and ensuring of planning in the field of water quality, improvement of the transboundary approach in the field of water management, and also active participation in the Eastern Europe, Caucasus and Central Asia component (EECCA) of the EU water initiative (EUWI).¹

Aside from this, harmonization of Georgia's legislation with the EU legislation constitutes an important component of the Agreement on Partnership and Cooperation between the EU and Georgia, which should ensure strengthening of economic ties between Georgia and EU member states and invigorating further cooperation². The National Program of Harmonization of the Georgian legislation with the EU law places harmonization of the Georgian legislation in the field of water resource management and protection with the EU law among first-rate priorities. The action plan of the years 2004-2006 for implementation of the national program presents the EU's crucial directives in the field of water, with which the Georgian water legislation should be aligned.

As a non-EU state Georgia is not obliged to ensure compatibility with the EU law. Nor does the process of approximation per se imply a mechanical copying of European directives to the Georgian legislation. But to the extent that Georgia undertakes the commitment to come near to the standards of the EU law, the process of harmonization is often understood superficially and the complicated system of regulation as envisaged by the EU law is neglected.

The research objective presented in this chapter is to assess the current or prospective amendments to the Georgian legislation: to what extent the Georgian legislation ensures implementation of the main principles of water resources management as envisaged by the EU law, and what is planned in this regard.

2. Georgian Legislation on Water

Georgian legislation on water comprises rather numerous laws and legally binding regulations. Out of them the most important document that determines water policy is the Georgian Law on Water (1997). The Law on Water represents the fundamental document of the water legislation, which must ensure implementation of a unified state policy in the field of water protection and consumption; protection of water facilities and rational use of water resources with principles of sustainable development in mind; meeting the population's demand for clean drinkable water in the place; sustainability and sustainable use of water fauna; avoidance of negative impact of water and effective liquidation of consequences, etc³.

Other critical laws regulating water are: Law on Environmental Protection, Law on Entrails, Law on Licenses and Permits, Law on Amelioration of Soils, etc.

2.1 Management of Water Resources

According to the Law on Environment Protection, state management of the use of natural resource means regulation of the use of natural resources, namely accounting, licensing, monitoring and control (Article 4). Deriving from the principles of "pay use of nature", fees are in place in for the use of natural resources. The amount of the fee for each natural resource, including water, is laid out in the Georgian Law on the Fees for Use of Natural Resources (2004) in accordance with the groups of water bodies and taking into account the type of the activity.

¹ EU-Georgia Action Plan adopted within the framework of the European Neighborhood Policy in October 2006

² National program of harmonization of the Georgian legislation with the EU law

³ Georgian Law on Water, 1997, Article 4

Also, state regulation of natural resources is carried out via the system of licenses and Permits. The rules for use of water resources and for licensing are stipulated in the Georgian Law on Water, Law on Licenses and Permits, Law on Entrails, and Law on Amelioration of Soils.

Status of Water

According to the Georgian legislation, the water on the territory of Georgia is a state property and could be given away for consumption only. The law prohibits all sorts of actions that directly or indirectly impinge upon the state ownership of water⁴. Violation of the state ownership right on water is punished with appropriate fines as envisaged by the Georgian Code of Administrative Violations⁵.

Water use is paid in Georgia. Bodies of the Georgian State Water Fund are provided for water use, namely surface and underground waters of Georgia: rivers, lakes, reservoirs, natural and man-made surface bodies of water, waters of channels and ponds, undergrounds waters (including springs and waters of continental shelf); glaciers and permanent snow cover); swamps; territorial waters of Georgia. In addition, use of bodies of water that are of particular state importance or of particular scientific and/or cultural value could be wholly or partially prohibited, as envisaged by the Georgian legislation⁶.

Management of Water Resources

As was already mentioned, general water use in Georgia for non-industrial, individual, drinkable, household, aesthetic, recreation, healthcare and other needs, and without using such structures and equipment that have an impact on the state of water is free and does not require license⁷. Specific water use, which implies use of such facilities and technical equipment that have an impact on the state of water is paid and requires an appropriate license⁸.

The Law on Licenses and Permits of June 24, 2005 sets types of licenses and permits for different activities and actions. Prior to the adoption of this law, licensing for water use was regulated by the Law on Water, whose Article 48 determined more than 10 types of water use, for which it was necessary to obtain the license, including extraction of water from a surface water body, discharge of wastewater into bodies of water, resort and sport purposes, log driving on bodies of water, establishment of hunting and fish farms, etc.

Adoption of the Law on Licenses and Permits limited the types of water use that require state regulation via licensing. In the field of use of water and related natural resources the law sets a license of use for fishing, use of underground space and extraction of minerals (including underground waters). As for the direct water use, the Law – unlike the Law on Water – requires a permit for two types of activities only: extraction of water from a surface water body, and discharge of water into a surface water body⁹. Correspondingly, amendments to the Georgian legislation are planned and carried out. Nowadays, the conditions and terms of issuance of permits for the aforementioned two types of water use are regulated by the Statute on Rules and Terms of Issuance of Permits for Water Extraction from Bodies of Water and for Water Release into Bodies of Water, which was issued to implement the requirements of the Law on Licenses and Permits and approved by the Resolution #137 of 11 August 2005 of the government of Georgia. The permits are issued by the Georgian Ministry of Environment Protection and Natural Resources, and also by the Department of Environment Protection and Natural Resources, a sub-agency unit of the government of Adjara Autonomous Republic, in the cases determined by the Resolution #21 of 26 January 2006 of the government of Georgia on Delegation of Authority to the Department of Environment Protection and Natural Resources, a sub-agency unit of the government of Adjara Autonomous Republic, to Issue Licenses and Permits. The Ministry could grant the authority to issue permits to its own territorial units too¹⁰.

According to the Article 6 of the Statute, apart from the conditions for permit set by the relevant legislative acts of Georgia, an applicant might be requested to present additional information and relevant documentation like explanatory letter for the type of water use and parameters; master plan of the facility showing the system of water pipes; topographic map pinpointing the sites of water extraction or a conclusion from a relevant local environment protection body. In order to obtain a permit for water release [the applicant should also be requested to follow] the permissible standards of polluting materials released into the water body together with out flowing waters, as set by the ministry. Apart from this, the Law on Licenses and Permits stipulated that additional conditions for permits could be determined by representative bodies of local self-governance (Article 25).

⁴ Georgian Law on Water, 1997, Article 6

⁵ Georgian Code of Administrative Violations, 1984, Article 48

⁶ Georgian Law on Water, 1997, Article 30

⁷ Georgian Law on Water, 1997, Article 32

⁸ Georgian Law on Water, 1997, Article 33

⁹ Georgian Law on Licenses and Permits, 2005, Article 24

¹⁰ Resolution #137 of 11 August 2005 of the government of Georgia on Approving the Statute on Rules and Terms of Issuance of Permits for Water Extraction from Bodies of Water and for Water Release into Bodies of Water

Licensing for use of underground waters is regulated by the Statute on Rules and Conditions of the Issuance of License for Extraction of Minerals, approved by the Resolution #136 of 11 August 2005 of the government of Georgia. As in the cases of other types of licenses, the license for use of underground waters is issued through an auction (Article 3). The license-issuing body is the Georgian Ministry of Environment Protection and Natural Resources and the Department of Environment Protection and Natural Resources, a sub-agency of the government of Adjara Autonomous Republic (Article 2). For the use of minerals (including underground waters), concrete rules and requirements as well as quantitative, qualitative and temporal norms and rules are decided by the Ministry and approved by a separate legally binding regulation in each particular case (Article 3).

The control over the implementation of the conditions of licenses and permits issued by the Ministry is exercised by the Inspectorate of Environment Protection, a state sub-agency unit of the Ministry. The Inspectorate of Environment Protection is authorized to review cases of administrative violations and to make a ruling on imposition of an administrative fee. Also, in the cases as envisaged by the law, it is authorized to bring up the issue of canceling license or permit¹¹.

Punitive measures for a violation of license conditions envisage fining of the license holder. At the same time, the license issuer sets further dates for the license holder to meet the license conditions. If the punishment notwithstanding the license holder fails to meet the license conditions within these terms too, then the imposed fines will be tripled and further dates will be set; if they are still not met, then the fine will be tripled once more. And if the license holder still fails to meet the license conditions within the set dates, then the license issuer takes a decision to cancel the license. Violation of permit conditions by the permit holder incurs similar measures. In case the permit conditions are not met within the set dates after three rounds of fines, then the permit issuer takes a decision to cancel the permit¹².

Georgian Law on Water sets establishment of a state system for calculation of water and its use, and implementation of state cadastre, which means ascertainment of water bodies and the volume and quality of the water they contain, ascertainment of the data of their use, a scientifically proven distribution of water between users bearing in mind that the population's need for water for drinking and household purposes should be met first of all. Works to study underground waters and all other uses of underground waters are also subject to state registration and calculation, which is regulated by the Georgian Law on Entrails¹³.

The Statute on State Registration of Water Use, approved by the Order #106 of August 12 1996 of the Georgian Minister of Environment Protection and Natural Resources, sets the state rules for calculation of water use for ministries, departments, and agencies; state, joint-stock, private, cooperative and public enterprises; organizations and institutions.

State registration of water use implies setting-up a system of regular monitoring of the quantitative and qualitative features of sources of anthropogenic influence on bodies of water. Afterwards its data should be used to plan water use and protection, to work out norms for water use and release, to determine the quality of water, etc. According to the statute, the water-consuming organizations are obliged to measure water extraction and release with water-meters and the equipment that checks the quality of the released water, while the Ministry of Environment Protection and Natural Resources must exercise state control over the correctness of the primary registration of the water extracted from/released into bodies of water by water users and over the finding of qualitative characters of the released water. On the basis of reports provided by water users, the Ministry must also carry out state registration of water, analysis of the data, and publication.

2.2 Water Protection

According to the Georgian legislation, planning of water protection measures must be carried out on the basis of the strategy of sustainable development of the country; the national program of environment protection actions; regional, institutional and local environment protection action programs; and environment protection management plans of operating facilities, in accordance with the Georgian Laws on Environment Protection, on Water, on the Entrails, on the Fauna, on the System of Protected Territories and other normative acts¹⁴.

During the planning and implementation of water protection measures, it should be ensured that bodies of water are protected from pollution, waste, shrinking and other negative influences that may inflict damage to the health of population, reduce the stock of fish, worsen the conditions of water supply, and induce deterioration of physical,

¹¹ Order #277 of 29 August 2005 of the Georgian Minister of Environment Protection and Natural Resources on Approving the Statute of Inspectorate of Environment Protection, a Sub-agency Unit of the Georgian Ministry of Environment Protection and Natural Resources

¹² Georgian Law on Licenses and Permits, 2005, Articles 21, 22 and 33

¹³ Georgian Law on Water, 1997, Articles 76 and 77

¹⁴ Georgian Law on Water, 1997, Chapter III, Article 14

chemical, biological features of the water, weaken the ability of natural self-purification, disrupt the hydrological and hydro-geological regimes of water, etc¹⁵.

In order to keep the ecological balance in the environment, the Georgian legislation sets the qualitative norms of the state of the environment and the thresholds for permissible emission of dangerous materials and pollution of the environment with microorganisms, the norms of using chemical substances in the environment, etc. Qualitative norms of the state of the environment should be elaborated once in five years by the Georgian Ministry of Labor, Healthcare and Social Protection in agreement with the Ministry of Environment Protection and Natural Resources. In the field of water protection and use the Georgian legislation sets the following:

- Qualitative norms of the state of water: permissible norms of concentration of dangerous substances and amount of microorganisms harmful for human health and natural environment and
- Permissible norms of emission (release) of dangerous substances into bodies of water: norms of release of industrial, household-communal and other out flowing waters into bodies of water, which are ascertained for each particular source on the basis of considering its technological peculiarities and background pollution of the location to the extent that on-the-spot concentration of emission substances and microorganisms does not exceed the permissible threshold of concentration.
- Norm of loading bodies of water: quotas for extraction of water from bodies of water, which are set in each particular case on the basis of approved general, basin, and territorial complex schemes of water use and protection, and balances of water economy, taking into account the principles of sustainable development¹⁶.

Apart from this the law envisages accounting, reporting, and assessment of the qualitative and quantitative indicators of the environment, which means creation of cadastres of natural resources and environment condition, compilation of statistics, inventorying, establishment of passport system and cartography¹⁷.

Main rules of protecting surface waters of Georgia from pollution are laid out in the Rules of Protection of Surface Waters of Georgia, approved by the Order #130 of 17 September 1996 of the Georgian Minister of Environment Protection and Natural resources, which regulates different types of entrepreneurship that could exert a negative influence on the condition of water and pollution of surface bodies of waters by point and diffuse sources of water. The document lays out main measures to avoid and counter pollution of surface waters: to set up norms for the quality of water in bodies of water; to set time limits for release of polluting substances into bodies of water; to set time limits for the economic activities that influence water conditions; to plan water protection measures; to conduct ecological examination of new equipment and technology, materials and substances, also of construction (reconstruction) projects of facilities; to exercise control on meeting the conditions set for release of polluting substances by point and diffuse sources of water; to monitor surface waters; to use economic leverage to reduce water pollution; the issue of responsibility in case water protection requirements and rules are violated.

The document sets the standards of water quality of reservoirs according to particular categories of water use (water use for drinking and domestic purposes; water use for economic/domestic purposes; water use for fishery purposes). For this purpose, appendices of the document lay out the set standards for the composition and characteristics of surface waters, which should be elaborated at appropriate scientific-research institutions. Besides, standards of release are set for each site of wastewater.

Order #105 of 12 August 1996 of the Georgian Minister of Environment Protection and Natural Resources approved methodology of calculating standards of permissible norms of polluting substances released into water reservoirs alongside outflowing waters. The project for the permissible standards of release is prepared by the water user. Further standards for each water user are approved by the Department of Water Resources Protection of the Georgian Ministry of Environment Protection and Natural Resources.

Order #279/N of 16 August 2001 of the Georgian Minister of Labor, Healthcare and Social Protection sets the standards for the qualitative conditions of the environment. The order determines qualitative standards for the water of centralized, non-centralized, and surface water supply system, rules and standards of sanitary protection of surface waters and springs, and also determines hygienic rules and norms for the protection and use of coastal sea waters, etc.

Violation of water protection procedures: water pollution of different types, is punishable by appropriate fines as envisaged by the Georgian Code of Administrative Violations (Article 58).

State control and monitoring of water protection is exercised by the Ministry of Environment Protection and Natural Resources. According to the law, water user is obliged to conduct self-control and provide the ministry with the

¹⁵ Georgian Law on Water, 1997, Chapter III

¹⁶ Georgian Law on Water, 1997, Article 84

¹⁷ Georgian Law on Water, 1997, Articles 26, 28 and 29

information on water use, volume and composition of wastewater, also inform about the cases when the standards of permissible norms of polluting substances are exceeded¹⁸.

Protection and use of underground waters, protection of water fauna, exploitation of fauna, flora, forest, soil and other natural resources during water use is regulated by the Law on Water as well as by other relevant legislation: Law on the Entrails, Law on the Fauna, etc.

2.3 New Initiative in the Field of Water Management Policy

Draft Law on Water¹⁹

According to the new Draft Law on Water, management of water resources in Georgia should be based on the principles of basin management (Article 10). The Ministry of Environment Protection and Natural Resources should set the rule for preparing plans of management of river basins. Elaboration of the basin management plan, planning of water resource use, and management of river basins based on appropriate plans will be carried out by legal entities of public law, whose number, operational territory, and statute is approved by the Minister of Environment Protection and Natural Resources (Article 12 and 13). Legal entity of public law must also ensure to make an inventory of surface waters; inventory of all types of water users; create a network for quantitative and qualitative monitoring of surface bodies of water and carry out monitoring; to register permits of water extraction and water release issued by the Ministry of Environment Protection and Natural Resources; to monitor issued permits; to control the meeting of permit conditions; to protect river basin from illegal activities; to develop and implement plans for the protection against floods and droughts; to carry out riverbank protection works (Article 13). The state control over activities of the legal entities of public law is exercised by the Ministry of Environment Protection and Natural Resources (Article 12).

Local self-governance bodies on their part exercise management of water resources under their ownership. According to the draft law, the property of local self-governance bodies comprises of water resources falling under the groups of local importance (Article 9). Accordingly, in the field of the management of the water resources they own, self-governance bodies ensure: to set rules for water resources management; to monitor measures of rational use and protection of water; to prevent unpermitted use of water and willful economic activities on bodies of water; to control protection and use of water on the territory of local self-governance; to conduct state accounting of water on the territory of local self-governance; to conduct accounting of its use, etc.

Article #19 of the draft law lays out standards for use and protection of surface waters. The draft law envisages only the qualitative norms of the condition of surface water and ascertainment of permissible norms of release of polluting substances into surface bodies of water. Unlike the acting Law on Water, the draft law does not envisage norms of loading bodies of waters, which implies "quotas of water extraction from bodies of water, which are ascertained with the principles of sustainable development in mind on the basis of general, basin, and territorial schemes and water economy balances of the approved use and protection of water in each particular case"²⁰.

The fifth chapter of the Draft Law, which touches upon water use, envisages those amendments that were made to the legislation regulating license and permit rules. According to the Article 32, two types of permits are issued for special water use: permit for water extraction from a surface body of water and permit for wastewater release to a surface body of water. Also, in order to get permits of water extraction or water release additional documentation might be required as envisaged by the acting legislation, for example, an explanatory note on the type of water use and parameters; a conclusion of the appropriate territorial environmental protection body; standards of permissible norms of polluting substances released alongside wastewater into the surface body of water, etc²¹, which the Draft Law on Water considers obligatory.

Water Policy

Of the policy-setting documents in the field of water, attention should be drawn to the two main documents, none of which are officially approved as of yet. The first is the draft concept of integrated water management²², which according to official sources has already been mulled over and approved at a governmental session²³. The other

¹⁸ Order #130 of 17 September 1996 of the Georgian Minister of Environment Protection and Natural Resources on Approval of Rules for Protection of Georgian Surface Waters from Pollution

¹⁹ It is known that a new draft Law on Water is elaborated at the Ministry of Environment Protection and Natural Resources for more than one year, which should replace the acting law of the same title. The draft law has not yet been disseminated officially. Therefore the description or comments about the draft law are based on the version unofficially obtained in March 2007.

²⁰ Georgian Law on Water, 1997, Article 84

²¹ Resolution #137 of 11 August 2005 of the government of Georgia on Approving the Statute on Rules and Conditions of Issuance of Permits for Water Extraction from Surface Bodies of Water and Water Release into Surface Bodies of Water, Article 6

²² The document was not officially disseminated or made accessible to the public in some other ways. The opinions expressed here draw on an unofficially obtained presentation document of the draft concept, presented at a session of the government of Georgia

²³ Information on main activities of the Office of State Minister for Reform Coordination Issues for the year 2006, available at http://www.government.gov.ge/full_text.php?nid=1980

document is the draft concept of water resource management policy of Georgia, prepared by the Ministry of Environment Protection and Natural Resources.

Similar to the Draft Law on Water, both of these documents underline the necessity of implementation of basin management of water resources. Also, the first document places particular emphasis on the importance of effective use and economic profit of water resources. A river is presented as a "single physical and economic object." Crucial importance for the formation of a river basin unit falls on a geographic principle that "a basin should be physically united" and an economic principle that "a basin should be economically sustainable."

The project of the Ministry of Environment Protection and Natural Resources aims to create a 25-year model of improved and effective management of water resources which must ensure: preservation of ecologic values and functions of waters of Georgia; preservation and improvement of quantitative and qualitative indicators of water; access to safe clean water; protection from and prevention of floods and droughts; preservation of hydrological mode.

The project mentions ineffectiveness of the current administrative model of water resources management. In particular, the project states that with the existing administrative model it is impossible to plan effective use of water resources within the confines of river basin with consideration of the interests of water users and preservation and protection of ecosystems.

Accordingly, the priority direction of the water resource management policy presented in the project is to implement basin management of water resources and to strengthen appropriate legal and institutional foundations.

3. Compatibility of Georgian Water Legislation and New Initiatives with International and European Approaches

Even though Georgia actively supports the necessity of making the national legislation compatible with the EU law and the necessity of implementing integrated methods of water resources management in Georgia, in many cases the existing legal basis or planned amendment are only of superficial character and do not guarantee real implementation of the EU water policy and of the principles of sustainable water management in general.

As was mentioned, at present water pollution represents one of the serious environmental problems in Georgia. The quality of surface waters as well as of potable water is often unsatisfactory. Malfunctioning and in a number of cases absence of potable water supply and sewerage infrastructure are problematic too. One of the main features that distinguish the Georgian legislation from the EU law is that even within the confines of the extant regulation it is rather difficult to execute and implement the set standards. The effectiveness of EU directives stems from the very fact that concrete measures are placed within strictly defined dates and the procedures of implementation are laid out clearly. The issues of accountability are in order too. The Georgian legislation gives much more room for maneuvering and evasion of obligations, especially provided that in many cases the body responsible for a particular action is not explicitly determined or sanctions are not envisaged in case provisions are not met.

3.1 Integrated Management of Resources

Like almost in the whole region of the Eastern Europe, the Caucasus, and Central Asia, Georgia too does not yet have the institutions necessary to implement integrated management of water resources. In the same vain, integrated management of water resources so far does not represent a foundation for national policy²⁴. A 2006 report of the Ministry of Environment Protection and Natural Resources, however, mentions "ensuring the transition to basin management system of water resources" as a priority direction. The necessity to implement basin management system is also actively discussed in the water concepts prepared by the government of Georgia and the Ministry, and in the Draft Law on Water. It should also be noted here that when the matter refers to the system of basin management of water resources one should take into account the fact that basin management is only a part of integrated management of water resources, or more precisely, an instrument to implement integrated management. Therefore, it is necessary to consider the whole context of integrated management.

It should also be noted that the Georgian legislation so far does not envisage the procedures for transition to basin management of water: identification of basins, procedures of water management, involvement of interested parties, etc. The institutions necessary to implement basin management do not exist. Water management is still conducted in a centralized way.

²⁴ Status and plans of EECCA countries in fulfilling the WSSD (World Summit for Sustainable Development) target on IWRM (Integrated Water Resources Management) plans by 2005

3.2 Identification and Study of Basins

The aim of the united water policy of the European community, among the main issues of water management and protection, is to ensure: identification of Europe's bodies of water and their characteristics in the confines of river basins; and elaboration of an appropriate plan of water management and programs of the actions to be implemented for each body of water. Also, the framework directive on Water sets the timeframe for identification of concrete basins and a competent body for basin management. Identification of basins should be preceded by a thorough analysis of river basins, namely: analysis of characteristics of river basins; evaluation of the impact of human activities on the quality of surface and underground waters; and economic analysis of water. Analysis is carried out in terms of detailed technical characteristics whose list is provided in the appendices of the directive. Apart from this, member states should conduct an evaluation of the status of surface waters' sensibility. Considering the requirements envisaged by the directive, an evaluation of the quality of surface waters should be conducted on the existing data of analysis. For those bodies of water that do not meet the benchmarks of surface water quality, an optimization of monitoring programs and programs of prospective actions should be conducted.

It is noteworthy that to conduct this research member states were given the period of four years after the directive's entry into force, and the period of nine years to elaborate plans of basin management and programs of measures to be implemented.

According to the above-mentioned draft concept of integrated water management in Georgia, identification of basins has already been implemented in Georgia. Similar research works in terms of studying basin characteristics or assessing anthropogenic influence have not yet been conducted, however. Nor is the necessity to conduct such works envisaged by any legislative document.

As was mentioned, preliminary works for the identification of basins includes an economic analysis. The EU's approach in this regard, however, is somewhat different from the recently established viewpoint in Georgia which perceives water only as a source of economic profit. In particular, as discussed in the Appendix III of the EU's framework directive on Water, the goal of economic analysis is to ensure that the costs of water supply are covered, including the environment protection costs and the resource price, and bearing in mind the principle of "the polluter pays." According to the directive, by 2010 the economic policy of water must ensure implementation of mechanisms that facilitate rational use of water resources (Article 9, Appendix III). For this end, it is required to make a long-term forecast on the demand and supply of water, to determine the volume, prices and costs related to water supply; to estimate required investments; to develop the financially most convenient combination for the program of actions that is to be implemented under the directive.

It is noteworthy that as a result of amendments to the Georgian legislation the tax on polluting the environment with harmful substances was abolished. Thus, no mechanism is in place to implement the principle of "the polluter pays." The real costs of water supply, with the factor of environment protection taken into account, are not estimated either.

Thus, identification of basins requires thorough research, studying of many parameters included. Identification of a river basin in the Georgian draft concept of water is based, however, only on two main parameters: "a basin should be physically united" and "a basin should be economically sustainable."

It is also noteworthy that renewal of the analyses and assessment envisaged by the EU framework directive on water takes place at a certain frequency (Article 5). In comparison, bulk of the data currently existing in Georgia is obsolete and based on Soviet-era estimates.

It could be said that a legislative basis to ensure basin management of water resources has not yet been prepared in Georgia. Despite of this, a document prepared by Georgian-European Policy and Legal Advice Center (GEPLAC) refers to the water concept prepared by the Georgian government as the document based on the principles of basin management of water, according to which the amendments made to the Law on Water should harmonize the Law on Water with the EU framework directive on water 2000/60/EC, which could be considered a total nonsense at this stage. According to the same document the main problem that might arise with regards to this concept is possible debates that will presumably follow the issue of water ownership discussed in the concept. It is also utterly groundless to argue as if the implementation of certain crucial, long-term priorities of the national program of harmonization of legislation have already been implemented or are under way (for example, harmonization with the EU framework directive on water) and that so far changes have not been observed only with regards to the directives on municipal sewerage waters and on the quality of recreation waters²⁵.

²⁵ Implementation of the National Programme for Harmonization of the Georgian Legislation with that of the EU, GEPLAC, June, 2006

As for the likelihood of giving out water resources in long-term use, it is again doubtful that the issue has been properly studied and prepared in Georgia. It is noteworthy that frequently the amendments elaborated on the basis of only theoretical profit (for example, market instruments) or success stories of other countries (as a rule, developed countries) without an inclusive analysis of the background situation is completely unjustifiable. For example, participation of the private sector is not reasonable when the country does not possess appropriate regulatory and expert resources²⁶.

3.3 Water Use

As was mentioned, the Georgian Law on Water envisages creation of the national system of water consumption accounting and doing the national cadastre. Because of the lack of finances, however, the cadastre is not carried out. During the issuance of permits for water use, the evaluation of the probable volume of the extracted water is carried out based on the old data and oral calculations. Apart from this, the correct distribution of water is not regulated. For example, one of the serious problems of Georgia is excessive extraction of water from headstreams (chiefly for electricity generation and water supply purposes), which reduces the volume of available water for the consumers down the stream (agriculture, fishery).²⁷ Water accounting is done only on the basis of information provided by consumers and is imprecise.

3.4 Water Protection

The framework directive on water aims to reach a good quality of water resources by 2015. To this end, this and other related directives envisage concrete, time-specific measures. The framework directive on water requires from member states to develop the plan and action programs of basin management, with maintenance of water quality, protection from pollution, and sustainable consumption of water taken into account. Also the plan of actions should be renewed periodically. Member states should also develop a program of river monitoring in the confines of each basin. A list is provided of priority substances that pose a serious danger to the water environment and which must be gradually reduced and eliminated. Renewable quality requirements and physical, chemical and microbiological parameters are periodically set for potable surface waters and recreational waters. The minimum frequency of sample-taking and analysis is strictly determined too.

In Georgia the problems related to water protection measures, namely the problems of monitoring, analysis, information processing, periodical updates, etc., stem not only from the absence of a material-technical base, but also from vaguely defined procedures and obligations of the legislation. In particular, the obligations regarding regular monitoring are not clearly defined. The frequency and terms of monitoring are not envisaged either.

Aside from this the current Georgian legislation cannot provide an appropriate regulation for the release of harmful substances into bodies of water. Likewise, no mechanisms exist to facilitate reduction of pollution. Taxes on pollution of the environment with harmful substances have been removed from the 2004 Tax Code, namely the Tax on Harmful Substances Released into Bodies of Water from Stationary Sources (among them, communal sewage and wastewater collectors) envisaged by the 1997 Tax Code (Chapter XI). Any alternative mechanism to the principle of "the polluter pays" has not been devised yet. At present regulation of the release of harmful substances into bodies of water is exercised only at the stage of granting the permit. According to the acting rules on permits, presentation of the ministry-approved permissible norms of polluting substances to be released by enterprise into a surface body of water are required only as an additional provision for permit²⁸. As was already mentioned, however, the new Draft Law on Water places this provision among obligatory provisions for permit.

3.5 Reporting

The EU legislation place a particular importance on preparation of regular reports. They represent strictly time-specific reports on implementation of the legislation.

The Georgian legislation does not envisage preparation of such a type of reports. As for the preparation of extant mandatory reports, it bears quite a formal character. Analysis and evaluation of prepared reports are not carried out. The obligation (responsible body) and frequency of report preparation are not clearly defined. In general, reports do not have due importance and no measures are taken if they are not prepared.

²⁶ Global Water Partnership, Integrated Water Resources Management Toolbox, 2003

²⁷ Status and plans of EECCA countries in fulfilling the WSSD (World Summit for Sustainable Development) target on IWRM (Integrated Water Resources Management) plans by 2005

²⁸ Resolution #137 of 11 August 2005 of the government of Georgia on Approving the Statute on Rules and Terms of Issuance of Permits for Water Extraction from Bodies of Water and for Water Release into Bodies of Water

4. Conclusion and Recommendations

At present the acting Georgian legislation on water or proposed concepts do not contain tangible changes towards harmonization with the EU legislation or implementation of integrated management of water resources.

The only innovation the new water concepts offer is the imitative to implement water basin management. The introduction of this term per se, however, does not mean harmonization with EU principles. Basin management on its part constitutes just a management unit and an instrument of integrated management of water resources. Integrated management of water resources should not be conducted in a river basin, as proposed by the concept of water document, but instead integrated management should be conducted through choosing a river basin as a unit of management.

In the governmental document of water concept an emphasis is diverted onto economic profit. Involvement of the private sector is considered an easy solution to some extent – when the state frees itself of the obligation to “take care for” water and delegates this task to the private sector. It has been overlooked, however, that involvement of the private sector does not alleviate the regulatory function of the state, but instead strengthens it even more.

Apart from this, the procedures necessary for the transition to the basin management of water, perception of the necessity of analyzing water resources, and mechanisms of their implementation are not discernible as of yet. As was mentioned, according to EU directives water management is related to a quite complicated system of regulation, which is accompanied by a sound system of monitoring and implementation. Water management, in EU’s understanding, is a dynamic, result-oriented process, and not something like a mechanical implementation of the legislation. So far the Georgian water policy does not give an impression of possessing concrete objectives and setting the ways for their implementation. The legislation frequently leaves the room for maneuvering and non-implementation. In many cases, on the one hand this or that principle is mentioned, while on the other its implementation is not provided with strict obligations. In such cases, measures envisaged by the law might not be enforced because of various reasons, for example, the absence of financial-technical base, as was the case before. Elaboration of a functioning plan implies the very development of clearly defined and implementable procedures that takes into account existing situation, including financial limits.

Therefore the main objective is to understand the need for water protection and correct management of water resource, and not just a formal implementation of the commitments concerning harmonization. Otherwise, EU’s principles will remain in the Georgian legislation as general concepts like many others whose implementation is good but non-implementation is not a problem either.

Thus the Georgian legislation on water requires important amendments for harmonization with the EU law. The same applies to the implementation of the principles of integrated management of water resources. At the same time, it is important that the processes are comprehended in depth and the changes do not acquire a superficial character.

For implementation of the principles of integrated management of water first of all it is indispensable to obtain the necessary information on the physical-chemical characteristics of water as well as social and economic aspects.

For the Georgian legislation to become more active, it is necessary to clearly define the bodies that are responsible for a particular action and to ensure accountability. It is also necessary that the legislation is dynamic, oriented towards concrete measures, and renewable.

It is also necessary to periodically review and renew the quality norms and the permissible concentration of polluting substances. This should become a dynamic process that is oriented towards achieving a concrete goal (protection of the quality of water), and not towards mechanic implementation of the legislation.

For the legislation to perform properly it is necessary to develop an appropriate, functioning system of monitoring. It is also necessary to ensure reporting and to take the preparation of reports with due seriousness. Relevant institutions should be established in order to implement the basin management system of water.

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