



**AGGRESSIVE STATE PROPERTY  
PRIVATIZATION POLICY  
OR  
“GEORGIAN-STYLE PRIVATIZATION”-2**

Tbilisi, 2010

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Association Green Alternative is a non-governmental, non-commercial organization that was founded in 2000. The mission of Association Green Alternative is to protect the environment, biological and cultural heritage of Georgia through promoting economically sound and socially acceptable alternatives, establishing the principles of environmental and social justice and public involvement in the decision making process.

Since the day of its foundation, the organisation has monitored the activities of the international financial institutions in Georgia; moreover, the organisation works on particular issues, such as: the improvement of environmental policy and instruments; the conservation of biodiversity; energy/climate change and poverty reduction; the protection of environmental, social and economic rights of the local population in the state property privatisation process; the eradication of illegal wood cutting and illegal trade in fauna species; the promotion of the availability of environmental information and full public involvement in the process of making important decisions.

Association Green Alternative cooperates with non-governmental organisations both in Georgia and outside Georgia. In 2001 Green Alternative, along with other local and international non-governmental organisations, founded a network of observers devoted to developing a poverty reduction strategy in Georgia. Since 2002 Green Alternative has been monitoring the Baku-Tbilisi-Ceyhan oil pipeline project implementation, its compliance with the policies and guidelines of the International Finance Corporation and the European Bank for Reconstruction and Development, the project's impact on the local population and the environment. Since 2005 the organisation has been a member of the Monitoring Coalition of the ENP (European Neighborhood Policy) Action Plan. In 2006 Green Alternative founded an independent forest monitoring network. Green Alternative is a member of CEE Bankwatch Network; it closely cooperates with Friends of the Earth International, an international network of environmental organisations, as well as Central and Eastern European Network of Climate Change, International Network for Sustainable Energy, and various international and national organisations working on environmental, social and human rights issues; Green Alternative is a member of the Coalition Transparent Foreign Aid to Georgia, which was founded in 2008. In 2009 Green Alternative started setting up the Georgian Advocacy Network for Environmental and Social Justice.

In 2004 Green Alternative was awarded with the Goldman Environmental Prize for successful activities conducted for environmental protection, social justice and equality related to the Baku-Tbilisi-Ceyhan oil pipeline campaign.

## SUMMARY

State property privatization process in Georgia started in 1992. More than 15 000 of enterprises were privatized before 2003. The process was taking place at the backdrops of extremely hard and unstable social, economic and political events creating favorable conditions for corruptive deals and money laundering. Interestingly, obscure and non-transparent privatization process was one of the most important accusations new government blamed the old government for. Respectively, one of their promises was to make privatization sphere transparent and fair. Georgian population received this promise in 2004 simultaneously to starting a new “aggressive” wave of privatization.

Privatization process launched in 2004, i.e. after the Rose Revolution had to last only 18 months, as claimed by new reformists. It had to be “unbiased and transparent”, however, similar to many other promises of this government, reality turned to be completely opposite. Renewed privatization process has not completed even after 6 years. Quality of transparency slightly improved compared to previous years, but situation is still unsatisfactory, which obviously affected the efficiency of the privatization process and delays in time.

Since 2005, Green Alternative has been actively observing privatization of large objects in Georgia and “shape-up” of legislation for provision of transparency in the sphere. Unfortunately, our experience (our readers will see the evidence) clearly demonstrates completely opposite, the whole cycle of decision-making, starting from decision to privatize ending with imposing obligations to the buyer – is completely blocked for public.

In 2007, Green Alternative published the first report – Aggressive State Property Privatization Policy, or “Georgian-style Privatization”, which described infringements revealed by the organization through monitoring of privatization process in 2005-2007. This publication is some kind of continuation of 2007 report. In the first part, the publication describes a number of important legislative changes between 2004 and April, 2010. Subsequent chapters provide information on monitoring results of obligations undertaken by privatization contract of some enterprises (Tbilisi Water, Saktskalkanali and Rustavtskalkanali). It also contains information about fulfillment of obligations by several privatized enterprises (Vartsikhe HPP Cascade, Chiatura mining-concentrating mill, Madneuli and Kvartsiti).

Based on analysis of legislation, cases discussed in this publication and practice of last years, following conclusions can be derived:

1. Many significant amendments were made to the privatization regulatory legislation in recent years, although, none of these changes ensured transparency of privatization process; Their majority were directed to increase of number of privatization objects, which is not surprising if the desire of Georgian government to boost the budget, is taken into account. Of course, we can't exclude interests of some powerful authorities to get large objects for a cheaper price. In any case, it is important to admit that legislative change is not a product of unified and public consensus-based state privatization policy, which is proved by multiplicity of amendments in such a short period of time.

2. Public access to privatization-related information is still an issue and no efforts have been made to address this problem. Cases described in this publication prove that state agencies not promote availability of information for public, on the contrary, they are creating all possible barriers to block public information for interested people.

It should also be mentioned that Green Alternative's efforts to obtain copy of privatization documents of this or that object was not always unsuccessful. There were cases when state structures disclosed privatization-related documentation, for instance, in reply to Green Alternative's request, ministry of economy sent a copy of privatization contract made in 2007 between the ministry and JSC Energy-Pro on procurement of assets of 8 Energy Plants. At the same time, Green Alternative failed to get privatization contracts of JSC HydroEnergoMontazh, JSC Sakhydroenergomsheni, JSC Tbilisi Jewelry Plant, LTD Batnavtobimpex, LTD Batumi Oil terminal, LTD Batumi Marine-trade harbout, JSC Tkibulnakhshiri, JSC Rustavi Metalurgy Mill, Rustavi Cement Factory and Kaspitsemi.

Such “selective openness” gives us ground to think that confidential privatization contracts include some illegal obligations or/and obligations which are against public interests. Presumably, disclosure of secret contracts will cause public protest, it will “affect” interests of “honest investors” and might even become the ground for bringing some top officials (former or current) to responsibility. Green Alternative cannot find any other explanation to “selective openness” approach and recent practice of hiding the whole text of the contract (described in this publication in more details).

3. Analysis of cases provided in this publication clearly shows one important factor that, in future, will cause serious problems not only for population of Georgia (especially communities affected by operations of privatized industrial enterprises having significant social and environment impact), but also the State. Readers probably noticed that quite often it is almost impossible (or extremely time-consuming) to identify the owner of a privatized enterprise. This problem might not be acute today, but it will become apparent if operations of such enterprise cause damage. The problem is also of utmost importance in view of protection of rights of privatized object staff (or/and dismissed after the privatization).

Amendment made to the law On Public Registry can be regarded as one of the attempts to resolve the above-mentioned problem. The law came in force in January, 2010 and made it obligatory to indicate the data of founders of the company registered in public registry. Unfortunately, public registry data are far from being ideal, quite often, it is impossible to find information about different businesses or contact details are out of date.

4. Unfortunately, confidentiality of public information is also a concern in relation to fulfillment of obligations considered by privatization contracts and Georgian legislation. Cases described in the report clearly demonstrate that information about the performance of privatized object owners is not accessible (or hardly accessible) for public. In this respect, quite interesting trends have been revealed: if the contract is a commercial secret from the beginning, state agencies also try to conceal information about fulfillment of contract obligations (if they have such information). However, there are cases when the contract is open for public, but information on performance is inaccessible (or hardly accessible). We faced this problem in case of Madneuli and Kvartsiti. Situation is also weird in privatization of Tbilisi, Mtskheta and Rustavi Water Supply systems: Decree of the Georgian President about imposing obligations (deed on purchase) for buyer is disclosed for public, but the contract (which includes conditions set by President of Georgia) itself is inaccessible. Information on fulfillment of these obligations is also concealed.

5. The situation is also unfavorable in the sphere of implementation of environmental obligations. As mentioned in this report, environmental obligations were included in privatization terms and conditions of some objects which is very good (if we forget competency and fairness of these requirements). However, the system of state monitoring and control of fulfillment of obligations defined by contracts as well as Georgian legislation is very poor in terms of legislative control and capacities of control agencies.

Based on above-mentioned conclusions following recommendations were developed:

1. It is recommended and vital State Chamber of Control began investigation of legacy of privatization process in relation to many state-owned objects. Due to the huge number of such objects, Chamber of Control can start with "large-scale" productions. Scope of production impact on environment and human health shall be taken as a sampling indicator.
2. It is necessary Parliament of Georgia strengthened the control on fulfillment of legislative requirements by state governmental structures in the sphere of secrecy of public information.
3. It is extremely important to study the legacy of classification of privatization contracts as a commercial secret (defined by these contracts themselves).
4. It is necessary to implement programs focusing on strengthening the capacities of control agencies. These programs shall promote development of human and technical resources and empowerment of these agencies with relevant authorities.

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## INTRODUCTION

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Privatization process launched in 2004, i.e. after the Rose Revolution had to last only 18 months, as claimed by new reformists. It had to be “unbiased and transparent”, however, similar to many other promises of this government, reality turned to be completely opposite. Renewed privatization process has not completed even after 6 years. Quality of transparency slightly improved compared to previous years, but situation is still unsatisfactory, which obviously affected the efficiency of the privatization process and delays in time.

This view has many opponents in the governmental as well as non-governmental structures; they are claiming the privatization process to be maximally transparent. Their argument is that any interested person can get information about the privatization objects on the web-site of Ministry of Economic Development or television/press. For instance, when making comments about public polling results related to the transparency of privatization of the newspaper *Commersant* (56.8% of interviewees declared that privatization is not transparent), head of the privatization department of the ministry of economic development declared that readers’ skepticism is caused by their low informational level.

Green Alternative belongs to the group of organizations/individuals who think that privatization process neither starts nor ends with press advertisements. Since 2005, Green Alternative has been actively observing privatization of large objects in Georgia and “shape-up” of legislation for provision of transparency in the sphere. Unfortunately, our experience (our readers will see the evidence) clearly demonstrates completely opposite, the whole cycle of decision-making, starting from decision to privatize ending with imposing obligations to the buyer – is completely blocked for public.

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Green Alternative hopes the publication will be interesting and useful for state authorities, non-state actors and ordinary citizens. Green Alternative encourages readers to provide feedback and comments.

## 1. IMPORTANT AMENDMENTS TO THE LAW „ON PRIVATIZATION OF STATE PROPERTY“

As mentioned in the introduction part, most of the amendments to the Georgian law “On Privatization of State Property” were made after the Rose Revolution. The first amendment<sup>1</sup>, made in post-revolution period, 2004, didn’t seem to be especially important and was only meant to “revise” the objective of direct sale of state property. Before the amendment, accordingly to the law, the aim of the direct sale of state property was to “attract investment based on the business plan in view of the specifics of the property on sale”. After the amendment „the aim of direct sale is to give right of ownership on property to the buyer who will fully and honestly fulfill conditions set for privatization of state property with direct sale”, i.e. if before 2004, a new owner was selected on the basis of business plan, the new government made accent on the honesty of the buyer, however, it is still unclear, in the decision-making process, how can a Georgian President<sup>2</sup> know in advance, how honest and fair potential buyer will be in meeting privatization terms.

One of the important changes made to the law in 2005 is related to the price of property which was put up on sale but was not sold. Before the change, based on the law, if the state property was not privatized on auction twice, it was sold at a half price (50%) at the third auction. This rule had often become an issue of disputes, opponents use to claim that it created favorable conditions for corruptive deals aiming at selling State Property at the cost of the “straw”. The new amendment aimed to eliminate this practice. According to the amendment made in 2005<sup>3</sup>, cost of the property may (but not obligatory) reduce to 50% even after the first attempt to sell it, if the property is not sold at a reduced price, the cost can be dropped further (this time, the limit is not set).

In the same year, probably due to the increased altruist aspirations of the Georgian population and frequency of “voluntary transfer” of state property, the government saw the necessity to make amendment<sup>4</sup> to the definition of the State Property. The following was added to the definition of the law “houses and apartments voluntarily granted to the state ownership; Non-owned property transferred to the state ownership pursuant to the Civil Code of Georgia (residential houses and flats).”

Another amendment<sup>5</sup> to the law in 2005 made frontier zones eligible for privatization. Before the change, frontier zone was under state property and was not subject to privatization.

Another important change to the law was made in 2006<sup>6</sup>. On the basis of this amendment, in agreement with Ministry of Culture, Monument Protection and Sport and pursuant to the conditions prior set by this ministry, monuments of historical-cultural and artistic values and art buildings became eligible for privatization. Before the change, religious and hieratical buildings, historic and cultural state archives, state fund of cinema, photo and photo documentations, museum collections, funds, house-museums of national importance were exceptions among the properties subject to privatization. The initiators gave these arguments to justify the necessity of making legislative change: “Since the State doesn’t have relevant budgetary resources to look after all monuments on the territory of Georgia and the owner (who is not a proprietor) doesn’t have enough interest to look after and protect the monument under his/her proprietorship, many monuments face the risk of being damaged or in most of the cases, being totally ruined”<sup>7</sup>.

Subsequently<sup>8</sup>, based on the agreement with the Ministry of Culture, Monument Protection and Sport and pursuant to the conditionality defined by this ministry, land plots located in the archeological protection zone also became subject to privatization. At the same time, monuments included in the list of cultural heritages of the world were added to the list of properties, which are not subject to privatization.

At the background of almost daily promises to eliminate poverty-related problems for Georgian population, on May 11, 2007, amendment made to the law “On State Property Privatization” canceled the most important requirements in this respect. Particularly, before the change, in accordance to the law, by the moment, the enterprise was formed into the joint stock company, almost 10% of the total charter capital (but no more than hundred as much as minimum

<sup>1</sup> Georgian law “On making amendment to the State Law on State Property Privatization”, August 13, 2004, №371-QR.

<sup>2</sup> In compliance with the law, the decision on direct sale of state property is made by the President of Georgia and relevant conditions are also set by Georgian President.

<sup>3</sup> Georgian law “On making amendment to the State Law on State Property Privatization”, March 22, 2005, №1133-IR.IS

<sup>4</sup> Georgian law “On making amendment to the State Law on State Property Privatization”, June 30, 2005, №1849-QR.

<sup>5</sup> Georgian Law “On making amendment to the State Law on State Property Privatization”, July 8, 2005, №1897-QR

<sup>6</sup> Georgian law “On making amendment to the State Law on State Property Privatization”, December 8, 2006, №3937-QR

<sup>7</sup> Explanatory note to the draft bill.

<sup>8</sup> Georgian law “On making amendment to the State Law on State Property Privatization”, May 8, №3937-QR.

salary in Georgia) was granted its workforce. The referred benefit was given to workers for whom this enterprise was the main place of work; for people who were allowed by the Georgian legislation to return to this enterprise; pensioners who retired after working for the company for no less than 5 years and people who were dismissed from this enterprise a year earlier and were registered as unemployed. Furthermore, the old law considered the obligation of concluding contracts with workforce of the privatized enterprise in three-month time after registering the right on ownership. The contracts included obligations related to labour organization, reimbursement and protection. All these requirements were canceled due to the amendments made on May 11, 2007.

One more important and big change was made to the law in exactly two months after the previous change, i.e. on July 11, 2007. The change concerned the regulation subject (sphere) of the law; Eventually, as of now, the law is regulating not only the state property, but also privatization of local self-government units and the process of granting the right of use. Change of the regulation subject resulted in the change of law title and today, the law has the following title: Georgian Law “On Privatization of State Property and Property of Local Self-government Units and Granting the Right of Use”.

The abovementioned legislative change extended the list of state properties which are eligible to privatization. So, today, the following types of properties can be alienated:

- Special economic zone;
- Mobilization reserve, state reserve, reserve of precious metals;
- Railway of state importance;
- State mail communications, radio-television broadcasting, international-intercity telephone communications, governmental communication means;
- State cemeteries;
- United system of state water-supply and sewage system;
- State medical institutions of vital importance;
- Administrative buildings of state agencies.

New amendment to the law has obliged the government of Georgia to approve “the list of properties of special importance”, i.e. the list of properties which cannot become subject to privatization. However, neither this law nor any other regulation defined when and how and based on which criteria, the properties of special importance were selected. Respectively, almost a year after making this legislative change, due to the lack of clear criteria and the vagueness of legislative requirement, Georgian Government issued a regulation on approving the list of properties of special importance. It included total five objects:

1. Runway of Senaki aerodrome;
2. Runway of Marneuli aerodrome;
3. New (military) Poti port (dock, hydro-technical buildings, light signals, defined water zone);
4. Lighthouse, light signals and defined water zone of Poti marine port;
5. Lighthouse, light signals and defined water zone of Batumi marine port.

Interestingly, current norms of the law come into conflict with the constitution of Georgia. For instance, article 4 of this law where properties not subject to privatization are enlisted doesn't include “frontier zone” any more, which makes frontier zones eligible for privatization. On the other hand, in compliance with the article 3 of constitution, management and protection of state frontiers is only under the responsibility of highest state agencies. According to the constitution, protection of economic zone, communications, general-state airports, railway of state importance and motorways are also only under the responsibility of highest state authorities. Pursuant to the law, all of the enlisted objects can be privatized.

New amendment made on July 11, 2007 annulled “the remaining requirements” in the law related to social guarantees and benefits for privatized enterprise workers. Before the change, for the purpose of protecting ownership rights of enterprise workers, after submitting the application on privatization and obtaining the right of ownership by the buyer, it was not allowed to change personnel arrangements or the number of workers (either increase or decrease) without prior agreement with the Ministry of State Property Management. Moreover, it was also considered to provide once-off assistance for workers dismissed by the initiative of a new owner. These requirements were canceled as a result of July 11 (2007) amendment.

The same legislative changes canceled competition and leasing-redemption forms of state property privatization. Inefficiency of these forms became the ground for their cancelation, as claimed by the initiators<sup>9</sup>. In the conditions of economic crisis, lots of arguments can be provided in favor of leasing-redemption, but when efficiency is measured in a

<sup>9</sup> Explanatory note of draft bill

short-term perspective (which, as a rule, is defined by the election term), this form of privatization will truly turn to be ineffective. As for the form of privatization competition, it was substituted by direct sale rule which is based on competitive selection, i.e. a kind of mixture of competition and direct sale form.

2009 Amendment<sup>10</sup> to the law is not much compatible with the abovementioned understanding of legislators on “economic efficiency”. In accordance with this amendment, when buying the property of state or local self-government unit through direct sale procedure, the buyer has to pay the cost of the property within the period set by the President. This term shall not exceed one year. At the same time, the law makes one exception, if privatization is important for avoiding possible damage to the state/self-government unit or for avoiding the court/arbitrage case processing or/and termination of the case, Georgian President has right to appoint 5 years for the buyer to pay the property cost.

As of today, the last important change<sup>11</sup> releases buyers of state property from penalties/sanctions charged before April 1, 2010 for not fulfilling the obligation to periodically report to the Ministry of Economic Development of Georgia about meeting the privatization agreement conditions and/or obligation of the property insurance. Moreover, buyers of the state property were given right to apply to the Ministry of Economic Development with request to change/review conditions of the agreement.

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<sup>10</sup> Georgian law “On making amendment to the State Law on State Property Privatization”, November 3, 2009, #1932-IIR

<sup>11</sup> On making changes and amendments to the Georgian law on privatization of state property and property of local self-government units and granting the right of use”. 2010, 26 March, N 2878 – IR

## 2. PRIVATIZATION OF TBILISI, MTSKHETA AND RUSTAVI WATER SUPPLY AND SEWAGE SYSTEMS

Georgia is considered to be rich in water resources, although the problem of pollution of surface waters including trans-boundary pollution remains a serious threat in Georgia. The quality of surface waters as well as the quality of drinking water is unsatisfactory in most of the cases. Drinking water supply and poor condition or in most cases, absence of the sewage infrastructure is also problematic.

According to “2007 National Report on Health Condition of Population of Georgia”<sup>12</sup>, “laboratory examination tests revealed that high indicator of drinking water pollution is a serious problem in the country. Water is polluted in the water supply distribution network as well as in head-works. As of now, technical exploitation of the water supply system cannot provide drinking water which would be safe in terms of chemical constituency and organoleptic qualities. Therewith, the problem is actual in all cities and districts regardless of the natural richness of water supply sources in Georgia”.

### 2.1 LOAN FOR IMPROVEMENT OF WATER SUPPLY SYSTEM IN TBILISI

In April, 2007, LTD Tbilisi Water<sup>13</sup>, under the ownership of Tbilisi Government submitted a 25-million Euro project to European Reconstruction and Development Bank. The project aimed to tackle the problems related to Tbilisi water supply through rehabilitation of drinking water supply systems, re-equipment of chemical laboratory, installation of communal meters in multi-flat houses and development of Public Private Partnership for the company (LTD Tbilisi Water).

In accordance with project annotation, before the approval of the project, they had to prepare technical-economic analysis which would describe financial, economic, technical, environmental aspects of the company operation, as well as planned investments. Detailed audit of the company reports was also required. On July 10, 2007, EBRD approved the project without conducting any technical-economic analysis or audit of company reports. The only document reviewed by the bank before the project approval was preliminary technical-economic description of the project. Project components were not publicly discussed and project-related documentation was not accessible for people. Preliminary technical-economic description of the project became available for wider audience only after the project was approved.

In consideration of the fact that Tbilisi Water Supply System Improvement Project was a plan which would definitely affect the environment and health condition of people, the bank neglected the rights of Georgian citizens (defined by national as well as international legislation) in the decision-making process on project funding, particularly:

1. Pursuant to the Georgian law “On Environment Protection”<sup>14</sup>, citizens of Georgia have right to participate in discussions of decisions to be made in the environment protection sphere;
2. In accordance with Aarhus Convention “On Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters”<sup>15</sup>, Georgian government is obliged to take all relevant measures to involve public in environment-related plans and program development within transparent and legal frames. The government also has an obligation to provide people with necessary information;
3. In compliance with International Covenant<sup>16</sup> on Economic, Social and Cultural Rights, any person has right to get safe, physically and financially affordable water in sufficient amount for personal as well as family consumption. Moreover, any individual or a group has right to take part in the process of making decisions which might affect realization of human rights on water accessibility. Besides, this right (participation in decision-making) shall definitely be taken into consideration when making important (policy, program, strategy or specific plan) water-related decision. State as well as private company is obliged to ensure availability of information about the condition of environment of/related to water supply and water.

As we have mentioned above, EBRD project planned to install joint (so called communal) meters for water consumers. We would also like to remind our readers that people had rather negative attitudes towards using common meters. Their discontent was so sharp due to installation of communal meters and charging the consumers with unfair arrears that their complaints were discussed at the plenary session of the Parliament in June, 2006. In January, 2007, Constitution Court of

<sup>12</sup> Prepared by Ministry of Health, Labour and Social Affairs in 2007.

<sup>13</sup> Sphere of occupation: drinking/household water consumption in Tbilisi and its surrounding rayons, provision of obtaining fresh water, biological testing, water inflows through sewage pipes.

<sup>14</sup> Georgian law “On Environment Protection”, article 6, paragraph “f”, December 10, 1996, №519

<sup>15</sup> Article 7, public participation in developing environment-related, programs and policy

<sup>16</sup> Enforced on August 3, 1994 in Georgia.

Georgia reviewed<sup>17</sup> the constitutionality of the regulation issued by Georgian National Energy and Water Supply Regulatory Commission. On the basis of this regulation, the commission was designating the temporary rule for identifying the amount of electricity consumed by subscribers (who have common meters) JSC United Distribution Energy Company of Georgia consumed without individual meters.

Therefore, in consideration of public interests and for avoiding the possible conflict between the population and Tbilisi Water (not speaking of meeting the legal requirements), the project should have become the matter of public discussion. Unfortunately, public feelings and legislative requirements didn't turn to be important factors for Georgian Government and European Bank for Reconstruction and Development when they were making decision about the project.

At the background of abovementioned events and in two weeks after the project approval, Tbilisi Government announced the decision about privatization of LTD Tbilisi Water out of the blue. As mentioned above, the amendment made to the Georgian law "On State Property Privatization" on May 11, 2007 allowed privatization of state water supply and sewage system. If we look at the recent practice of making legislative changes, we can assume that water supply and sewage systems were deleted from the list of non-privatized properties deliberately in order to sell them later to a particular company. If this assumption is correct, we can appreciate government's efforts for not making the water supply system privatization plan in two weeks and for starting work much earlier, but on the other hand, does it mean that LTD Tbilisi Water and Tbilisi Government were trying to get a loan for a new (yet unknown) owner?! Tbilisi Government was probably hoping that EBRD would not withdraw the disbursed loan back even if the company was sold, they were sure that the right of use on loan would transfer to a new owner. This is proved by the reply<sup>18</sup> of Tbilisi Water to Green Alternative's letter, where the general director of the company is stating: "If the company is privatized, the investor will be responsible for use and service of EBRD loan".

Finally, it appeared that due to the decision on privatization of the enterprise, Tbilisi Government said no to EBRD loan, because the bank disbursed this loan to the state-owned company under the guarantee of Tbilisi government and not to its potential owner, a private company. The bank didn't want to transfer loan to an unknown company and canceled the agreement on loan disbursement.

## 2.2 INFRINGEMENTS IN THE ANNOUNCEMENT "ON EXPRESSION OF INTERESTS"

On July 25, 2007, Ministry of Economic Development of Georgia and Tbilisi Mayor jointly announced "Expression of Interests" on privatization of state-owned Zhinvali HPP, Tbilisi (LTD Tbilisi Water) and Mtskheta (LTD Mtskhetatskalkanalali) Water Supply systems, Gardabani waste water treatment plant (LTD Saktskalkanalali). According to the announcement, interested applicants had to submit applications before September 20, 2007 and propose their prices, indicating the enterprise development plan, volume and periods of possible investments.

The announcement on "Expression of Interests" being too general, on August 8, 2007, Green Alternative applied to the General Director of LTD Tbilisi Water and asked information about the owner of advertised objects, scope of necessary investments and their selling value. Accordingly to the information provided by LTD Tbilisi Water, Zhinvali HPP was under the ownership of Tbilisi Water, while the latter was owned by Tbilisi Municipality. With regard to the cost of the enterprise and amount of investments, Tbilisi Water director stated that potential investors would present initial costs, as well as long-term plan. Minimum amount of sufficient investments for company functioning varied between 40-50 million lari annually.

Interestingly, according to the Georgian law on "State Property Privatization", Ministry of Economic Development of Georgia is authorized by the State to own and manage state property as a state property proprietor; As for the right to own the property of the local self-government unit or the right to privatize/to give right of use, it is granted by the executive authority local self-government unit. Respectively, decision on "expression of interests" for privatization of LTD Saktskalkanalali and Mtskhetatskalkanalali should have been made by the Ministry of Economic Development and the decision about Tbilisi Water – by Tbilisi Municipality.

It should also be mentioned that by the time the announcement on Expression of Interests was made, Tbilisi Sakrebulo<sup>19</sup> had not made an official decision on privatization of property owned by Tbilisi Municipality. Green Alternative sent a letter to the Chairman of Tbilisi Sakrebulo and requested the copy of Sakrebulo's decree which entitled Tbilisi Municipality to announce

<sup>17</sup> Suit of Georgian citizens, Shalva Natelashvili and Akaki Mikadze against National Energy and Water Supply Regulatory Commission of Georgia

<sup>18</sup> №3673/1-19 Letter of Gegi Kelbakiani, general director of LTD Tbilisi water, September 12, 2007 addressed to Green Alternative.

<sup>19</sup> representative body in the city government

Expression of Interests on privatization of municipality-owned Zhinvali HPP and Tbilisi water supply system. Tbilisi Sakrebulo office replied Green Alternative by sending copies of the #8-14 decision of Tbilisi Sakrebulo (August 1, 2001) and #61 Decree (August 10, 2004) “On the state of Zhinvali Hydro-complex” and “On the State of Zhinvali Hydro-electric Complex and on fulfillment of obligations set by the leasing agreement with LTD Zhineri”. As the readers might guess, none of these documents had any relation with privatization plan of LTD Tbilisi Water.

Interestingly, pursuant to the information placed on the web-sites of the Ministry of Economic Development and Tbilisi Municipality<sup>20</sup>, the abovementioned announcement was made jointly by these two agencies, but final decision was made only by the Ministry of Economic Development. The announcement text said: “Publication of this announcement or receipt of any expression of the interest do not constitute any obligation of, or undertaking by the Ministry of Economic Development of Georgia to sell any shares, stockholdings or assets to any of the parties interested in the acquisition, nor shall it give rise to any claim or right of action by such parties for the performance of any action by the same Ministry, on any ground whatsoever. The Ministry of Economic Development of Georgia reserves the right, at its sole discretion and at any time to: (i) withdraw from the sale procedure, or (ii) to interrupt or modify it, or (iii) to exclude any interesting party from the sale procedure without giving rise to any claim for compensation or damages whatsoever by the interested parties against the Ministry of Economic Development of Georgia”.

In relation to Expression of Interests, it is important to admit that before July 2007, Expression of Interests as a part of property privatization procedure was considered not by the law On State Property Privatization, but by the law On State Support for Investments. Article 8 of the latter states:

- Direct sale of property is allowed only on the basis of competitive selection;
- Only State Property is subject to privatization through direct sale procedure on the basis of competitive selection;
- Direct sale is allowed by specially defined conditions and only in cases where the necessity of applying this rule is thoroughly justified and its publicity provided;
- Decision of the Government of Georgia on privatization plan of state property on the basis of competitive selection had to be published in general state and/or international informational sources. The same sources had to publish all applications presented as a result of Expression of Interests.

On July 11, 2007, two weeks earlier prior to making announcement on Expression of Interests on Zhinvali HPP, Tbilisi and Mtskheta Water supply systems and Gardabani waste water treatment plant, the change was made to the Law of Georgia “On State Support for Investments”, based on which the abovementioned article was canceled, but new amendments were added to the Georgian law “On State property Privatization” on the same day. Consequently, Article 6<sup>1</sup> “Direct sale of properties owned by the state or/and local self-government unit on the basis of competitive selection process was added to the law”. It states:

- Not only State Property, but also the property of local self-government unit will be subject to privatization through competitive direct sale;
- Competitive direct sale of properties of state and local self-government unit shall be made by the decision of President of Georgia on the basis of Georgian Government’s recommendation. But the issue shall be prepared by relevant authorized agency, including the executive agency of local self-government unit, where the property of local self-government unit is concerned;
- Instead of providing justifications for application of direct sale procedure and ensuring publicity, multiple investments and wide choice of alternative conditions proposed by interested persons were defined as necessary conditions for selling state or local self-government unit-owned properties;
- Proposals of interested persons shall be reviewed by the Government of Georgia which has to make decision on conducting relevant activities for the purpose of competitive selection;
- With a view to competitive selection, Georgian government shall publish the decision on property and relevant conditions in informational sources of state and/or international importance;
- Upon completion of deadline for Expression of Interests, Government of Georgia shall review submitted applications and present reasoned recommendations on competitive direct sale of the property to the President of Georgia. Ultimately, the decision on direct sale of the particular property is made by the President of Georgia.

The procedure of announcing the Expression of Interests on Zhinvali HPP, Tbilisi and Mtskheta Water supply systems and Gardabani waste water treatment plant didn’t correspond to the procedures stipulated in the former article (canceled) of Georgian law “On State Support for Investments“, neither did it comply with the law “On State Property privatization”.

<sup>20</sup> [www.economy.ge](http://www.economy.ge) – news archive, 25.07.2007; <http://www.tbilisi.gov.ge> - tenders, 23.07.2007.

Therefore, Green Alternative sent a letter<sup>21</sup> to the Minister of Economic Development (Giorgi Arveladze<sup>22</sup>) and asked to explain what forms of privatization were planned for privatization of Tbilisi and Mtskheta Water supply systems and Gardabani waste water treatment plant. In the same letter, Green Alternative asked the Minister to provide a copy of the decree on the basis of which Expression of Interests was announced on these properties.

Green Alternative received reply<sup>23</sup> from the Deputy Minister of Economic Development Kakha Damenia<sup>24</sup>, where he writes that Expression of Interests was announced in compliance with the Georgian Law “On State Support of Investments”, while the privatization would be conducted by direct sale on the basis of competitive selection. Deputy minister’s letter didn’t enclose the copy of the minister’s decree, neither did it explain the reason for not providing the requested information.

Green Alternative addressed<sup>25</sup> the Minister of Economic Development of Georgia once again and asked him to specify the particular article of the Georgian Law “On State Support of Investments” and the copy of the Minister’s decree, which entitled the ministry to announce Expression of Interests on privatization of the referred objects.

Unfortunately, Green Alternative’s letter had no follow-up from the Ministry and the organization had to sent the Ministry of Economic Development the same letter<sup>26</sup> for the third time. After the third attempt, Green Alternative made a telephone call to one of the public servants from the privatization department of the Ministry of Economy who was tasked with responding to Green Alternative’s letters. The mentioned public servant gave different explanations for non-responsiveness: there were ongoing structural changes in the ministry, deputy minister was absent, visa for delayed, etc.

In about 4 months after sending the third letter (and in almost 8 months after the second letter), Green Alternative received a reply from Beka Okrostsvardize<sup>27</sup>, deputy minister of economic development, which said: „We would like to inform you that 100% state-owned shares of Ltd Saktskalkanali, Ltd Mtskhetatskalkanali, Ltd Rustavtskalkanali are in the regime of privatization. Herewith, currently, the ministry is actively working on the conditions of privatization process and legal aspects“.

Required information was not provided to Green Alternative again without any further explanation. Interestingly, the letter was dated May 14, 2008, i.e. the same day when privatization contract was signed between the Government of Georgia, Ministry of Economic Development, Tbilisi Government and LTD Multiplex Energy Limited on deed of purchase of 100% of shares in LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water. The contract was signed without usual grandiosity which is normally so characteristic to our government.

### 2.2.1 ADMINISTRATIVE COMPLAINT OF GREEN ALTERNATIVE

After a year of unsuccessful communications of Green Alternative to obtain legal ground for Expression of Interests, announced on July 25, 2007 and copy of the decree issued by the Minister of Economic Development in relation to announcing Expression of Interests, on June 12, 2008, Green Alternative filed an administrative complaint to Ekaterine Sharashidze<sup>28</sup>, Minister of Economic Development. Green Alternative requested: provide reference to the circumstances due to which public information was not advertised; take measures against the person/persons responsible for not disclosing the public information pursuant to the Georgian Law On Public Service; provide public information requested multiple times and copies of privatization-related documents kept for all concerned objects in the Ministry of Economic Development;

<sup>21</sup> Letter №04/03-78. August 7, 2007.

<sup>22</sup> Before taking over the Ministry of Economic Development, Giorgi Arveladze was a member of the Parliament, general secretary of “United National Movement and head of President’s administration. In 2008, Giorgi Arveladze resigned from the Minister’s position and moved to private business. Currently, Giorgi Arveladze is a general director of the Media Holding which unites TV Company Imedi and Radio Imedi. There are still court disputes around the ownership of these companies taking place in national and international courts.

<sup>23</sup> Letter №16/2136/9-7, September 19, 2007.

<sup>24</sup> Deputy Minister of Economic Development of Georgia in years of 2005-2008. He was in charge of property management and privatization-related affairs; Currently, he is a deputy chairman of the consulting company Nogaideli Consulting ([www.nconsulting.ge](http://www.nconsulting.ge)), owned by the former Prime-minister Zurab Nogaideli. He is also a co-owner of the consulting company Gutidze, Damenia, Chantladze Solutions ([www.solution.ge](http://www.solution.ge)), clients of which are number of enterprises sold during his occupation in the Ministry of Economic Development.

<sup>25</sup> Letter №’04/03-86, October 10, 2007.

<sup>26</sup> Letter №04/03-94, January 18, 2008.

<sup>27</sup> Letter №16/112/9-8, May 14, 2008.

<sup>28</sup> Head of president’s administration in 2006-08. She occupied the post of economic development from January 2008 till December of the same year. She is currently the personal adviser of Georgian President in economic affairs.

Ministry of Economic Development received the complaint of Green Alternative in proceeding. On July 9, 2008, verbal hearing of suit was held in the building of Ministry of Economic Development. Verbal hearing was chaired by the chief of legal division Tea Gvaramia. After listening to the content of Green Alternative representatives, the chairman expressed interest in two issues: (1) why did the organization think that announcement of Expression of Interests needed the Minister's Decree in order to be placed on the web-site ... she also added that she had placed this information on the web-site herself and it didn't require the minister's order; and (2) whether Green Alternative received grants for demands to arrest people (she meant Green Alternative's demand to punish the person responsible for the publicity of information). In fact, one of the deputy ministers involved in the correspondence with Green Alternative was really "arrested", but not due to Green Alternative, for much more serious accusation<sup>29</sup>.

In two weeks after verbal discussion, association Green Alternative's administrative complaint<sup>30</sup> was refused due to "lack of grounds". Moreover, it took the Ministry 20 days to deliver the copy of this order to Green Alternative. The order didn't comply with the requirements of Administrative Code of Georgia; particularly, it didn't contain justification for the decision made. Pursuant to the article 53 of General Administrative Code of Georgia, justification should be preceding the resolution part.

Obviously, Green Alternative demanded written justification for rejecting their administrative suit and for regarding it "groundless". This time, the association received a reply from Nana Gogsadze, head of legal department of the Ministry of Economic Development. It was an explanatory note issued on July 21, 2008, where a very interesting "interpretation" of Georgian legislation was provided. It also concerned the facts which became ground for rejecting Green Alternative's administrative suit. For instance, accordingly to the explanatory note "Complainant's demand to provide the reasons for not publicizing the public information is not public information, since the required information in its essence cannot be regarded as an official document which would be maintained in the ministry or by the public servant as information obtained, processed, created and sent for work purposes". Green Alternative didn't have illusion that the Ministry controls the quality of its staff performance or honesty and such information exists in the ministry in the form of document. The organization applied to the Minister with administrative complaint to start investigation and identify the person or/and reason responsible for not disclosing public information during 8 months – unfortunately, this didn't happen (it is interesting why Ekaterine Sharashidze didn't transfer this issue to general inspection department, since the direct competence of the letter is to "reveal/avoid/prevent irresponsibility of staff").

Nana Gogsadze gives also the following explanation: "*It is also worth mentioning that the fact of not disclosing the public information by the Ministry has never taken place, because, as the second party admits they received relevant information later*"?! Green Alternative is not aware of the reasons for this conclusion; none of the organization's representative has ever made this kind of statement.

It seems requesting one and the same information is illegal, as Nana Gogsadze states besides, the organization had already received requested information, "*General Administrative Code of Georgia doesn't recognize disclosure of the same information additionally*". In accordance with Administrative Code, public information can be provided to any person who submits written statement. It is not necessary to indicate motive or reason of requesting the public information, it can be required for obtaining an additional document after losing the previous one or collecting the copies of one and the same public information or hope to finally receive desired information. Herewith, when a written request for public information is sent, article 40 of General Administrative Code of Georgia obliges the "public institution to disclose public information immediately or within 10-days period as a response to any written request... where disclosure of public information requires 10 days, public institution is obliged to notify the applicant about this<sup>31</sup>"; According to the article 41 of the same Code, where the public institution refuses to disclose information, the applicant shall be notified about this decision as soon as possible. Besides, "if the applicant's request is rejected, public institution shall explain the applicant about his rights and rule

<sup>29</sup> On July 30, 2008, deputy minister of economic development, Beka Okrostsvavidze and Lasha Moistrashvili, deputy head of privatization department in the same ministry were arrested by the Constitutional Security Department of the Ministry of Internal Affairs for taking a bribe (in the amount of 350 000 USD). One more person was arrested in relation to this case, he was accused of making corruptive deal with the abovementioned people. The deal concerned purchase of state-owned land (with buildings on it) on the 17<sup>th</sup> kilometer of Tbilisi-Rustavi Motorway at a very cheap price. Source: Top officials of the Ministry of Economy arrested", news on the website of constitutional security department, available on <http://kud.security.gov.ge>.

<sup>30</sup> Order №1-1/1534 of the Minister of Economic Development, July 21, 2008,

<sup>31</sup> It should also be mentioned that during its 10-year operation, Green Alternative had never had a case when public organ informed the organization about 10-day period for disclosing the public information. Green Alternative had received only a few notifications in more than 10 days.

of appeal in no later than 3 days". It is also obligatory to indicate the structural division or public institution which provided consultation in the decision-making<sup>32</sup>.

The most "interesting interpretation" in the explanatory note was related to methods of disclosing the public information. Particularly, the note said: "according to the second section of the article 177 of General Administrative Code of Georgia<sup>33</sup>, even non-responsiveness within the set period is regarded as a response, i.e. refusal on disclosure of public information<sup>34</sup>".

First of all, it is noteworthy that article 177 of the General Administrative Code of Georgia is the first article of the chapter XIII of the Code related to administrative proceeding of the administrative complaint and not freedom and availability of public information. The Code has a whole separate chapter on freedom of information, which is not even mentioned in the explanatory note. Even if it was not the case, what does the second part of article 177 of Administrative Code has to do with non-disclosure of public information for Green Alternative? The latter has two assumptions in relation to this issue:

(1) Head of legal department and presumably the minister who agreed with the conclusions of this note do not have a fluent knowledge of Georgian language. Because, the referred clause of the Administrative Code says: "The failure of an administrative agency to issue an administrative act within a fixed term shall be considered as a refusal to issue the act and will constitute the ground for filing a complaint pursuant to this Chapter". It is worth mentioning that Green Alternative had never asked the ministry to issue the administrative-legal act, it only requested provision of the copy of the act which should have already been issued.

(2) Presumably, Ministry thinks that any kind of letter (including response of the authorized person to request on disclosure of public information is an individual administrative-legal act. If we follow this logic, by not replying the letter (in this case, request for public information), the ministry is violating the term for issuing the administrative act. And according to the second part of the article 177 of General Administrative Code, breach of term for issuing any kind of administrative-legal act is regarded as refuse on issuing administrative-legal act.

## 2.3 RESULTS OF EXPRESSION OF INTERESTS

On September 20, 2007, this announcement was placed on the web-site of the Ministry of Economic Development of Georgia:

*„Packages of proposals presented by 10 companies who expressed interest in purchase of Zhinvali HPP, Tbilisi and Mtskheta water supply systems and Gardabani waste water treatment plant were opened in the ministry building. These companies proposed their prices and enterprise development plan indicating the scope and timeline of investments. These are the applicant companies: 1. Megawatt; 2. Bond Group; 3. Penta Investments; 4. Tahal Group; 5. Green Lights Georgia; 6. Multiplex Georgia; 7. Aquatia; 8. Cascad + Bank of Georgia; 9. Veolia; 10. HIG. Each of the proposals will be reviewed by the joint commission of the Ministry of Economic Development and Tbilisi Municipality. The winner company will be announced in a few days“.*

"Few days" turned to be months; It seems presented information was not enough for decision-making and applicants were asked to provide more detailed proposals. On October 22, 2007, Ministry of Economic Development held the second tour of Expression of Interests where 6 companies presented additional, more detailed proposals and tariff plans indicating the scope and timeline of investments. These are the following companies: 1. Bond Group; 2. Penta Investments; 3. Multiplex Georgia; 4. Aquatia; 5. Cascad; 6. Veolia.

Final results of Expression of interests were published on October 22, 2007 which named Swiss Company Multiplex Solutions as a winner. Official announcement on the winning company stated that Swiss Company would pay USD 85 662 000 to privatize the objects, it would make USD 350 million investment and would maintain water tariffs in 2008-2009. Besides, Multiplex Solutions took responsibility to provide 24-hour water supply for Tbilisi population, low tariff of and high quality of water.

<sup>32</sup> Green Alternative has rich experience of not receiving public information from state structures, but non of these cases had been carried out through this kind of procedures.

<sup>33</sup> Article 177. Right to appeal the administrative-legal act; (2) Breach of term defined for issuing the administrative-legal act will be regarded as refuse to issue administrative-legal act and it will be appealed by established rule.

<sup>34</sup> Interestingly, many public organs use this kind of absurd interpretation to refuse access to public information.

Accordingly to the publicized information, these were the following proposals of candidates for the second stage of selection:

№	Company	Price (USD)	Tariffs in Georgian lari					
			2008	2009	2010	2011	2012	2013
1.	<u>Multiplex – Switzerland</u>	<u>85 662 000</u>	<u>2.40</u>	<u>2.40</u>	<u>2.95</u>	<u>2.95</u>	<u>2.95</u>	<u>2.95</u>
2.	Bond – Czech Republic	80 000 000	2.40	3.60	3.60	3.60	4.70	4.70
3.	Aqulia <sup>35</sup> 1 –Spain	107 635 710	2.40	3.50	5.13	5.13	5.13	5.13
	Aqulia 2	91 806 928	2.40	3.33	4.60	4.60	4.60	4.60
	Aqulia 3	61 186 287	2.40	2.89	3.47	3.47	3.47	3.47
4.	Cascal <sup>36</sup> and Bank of Georgia – Great Britain	72 532 844	2.40	3.80	3.80	3.80	3.80	3.80
5.	Penta Investments – Czech Republic	91 200 000	2.40	5.02	10.08	10.08	11.11	11.66
6.	Veolia <sup>37</sup> -France	75 562 080	2.70	3.00	3.20	3.42	3.78	3.79

Statement on the final decision said: “Group of experts under the ministry of economic development and Tbilisi Mayor’s office were guiding with the following criteria when selecting the buyer company: maintenance of a low tariff, high selling price and big investment. Some of the companies offered much higher price for Tbilisi Water, but their proposals considered significant increase of tariffs, which became reason for rejecting these companies. Respectively, the company which meant all criteria became the winner. It had proposed the lowest tariff on water, high purchase cost and big investment”.

As you might have noticed, experience of the company was not a criterion for selection. Interestingly, they had indicated the amount of investments only in case of Multiplex Solutions, while prices and tariffs were specified for other participants. Therefore, regardless of the multiplicity of public announcements on the selling process, wider audience was still unaware how fairly the winning company was selected.

Fairness of decision became an issue for doubts when the representatives of Ministry of Economic Development and Tbilisi government had to answer journalists’ questions about the winner company, all they could say about the Multiplex Solutions is that it is a Swiss Company. Respondents admitted the lack of information about the company business openly.

In about a week after announcing the winner, press conference was held for public. The director of Multiplex Solutions, someone called Andro Basilaia had to answer journalists’ questions. In was incredible but the director himself had very little information about the company. He promised to present investment plan in the nearest future. The plan would reveal future plans of the company as well as the identity of the founders of Multiplex Solutions. Mr. Basilaia gave such explanation to one of Georgian media sources: „Multiplex Solutions is an investment company which has not invested in water yet. It is mainly oriented in making investments in the energy sphere. The company has not had any business in Georgia yet, its local representation just studied the market. As for future consortium British company Unitrade Group will be the financial partner of Multiplex Solutions. Georgia is a new market for this company”<sup>38</sup>.

Interestingly, this promise of the director of the company representation in Georgia has not been fulfilled yet. Investment plan of the company is still not available for the wider audience, not speaking of the identity of company founders. British partner of the company has also disappeared without trace.

### INSERTION 1. ABOUT MULTIPLEX SOLUTIONS

In 2007, Geneva Commercial Registry<sup>39</sup> was the only source of information about this company. Accordingly to it, the company Multiplex Solutions AG was registered on August 23, 2005; By registration period, the company’s charter capital amounted to 100 000 Swiss francs, which is about 90 000 US dollars (The company cannot have less than 100 000 Swiss francs to establish a joint stock company in Switzerland). On the basis of registry record, the company’s charter capital

<sup>35</sup> Aqulia – Spain, foster company of the Spanish company Fomento de Construcciones y Contratas, provides service for 23 million consumers in Spain, Algeria, Czech Republic, Italy, Portugal, China, Poland and Mexico.

<sup>36</sup> Cascal – Britain, the company was founded in 2000, it serves to more than 4,7 million consumers in countries like: Britain, China, Chile, South Africa, Indonesia, Panama, Antigua and Philippines.

<sup>37</sup> Veolia – France, one of the largest private companies worldwide, its operation history counts more than 150 years. It provides water supply and sewage system services for more than 139 million people in 64 countries.

<sup>38</sup> Tbilisi Water to be bought by Multiplex Solution, October 29, 2007, Interpressnews

<sup>39</sup> <http://ge.ch/ecohrcmatic/>

increased up to 200 000 Swiss francs in December, 2007. By registration documentation, someone called Beat Spoerri is the sole founder of the company. His name and surname is mentioned in the registration documentation of 87 companies<sup>40</sup>.

There were different versions provided in media with regard to the identity of the company owner. Reportedly, the company owner had Russian origin. Suspicions got even more intense when the records appeared in the Civil Registry about the company's new director and his origin, particularly, accordingly to the Civil Registry record, the enterprise was managed by Yuri Less (place of residence: Russia, Moscow) – former chairman of Moldavian Thermal Power Station under the ownership of Russian Inter Rao UES. Besides, someone called Aleksey Serebriakov (place of residence Russia, Moscow) was mentioned among the persons authorized on company representation. Serebriakov's name is also referred in quarterly reports<sup>41</sup> of Gazprom (since 2003) as a member of directors' board in one of its subsidiary companies Giprospetsgas.

According to the data of Public Registry of Georgia<sup>42</sup>, Tbilisi representation of JSC Multiplex Solutions (branch) was registered in Georgia on December 7, 2005. The representation is founded by JSC Multiplex Solutions, registered in Geneva Commercial Registry on August 23, 2005. On the basis of registry documentation<sup>43</sup>, in two months after company registration, board of directors of JSC Multiplex Solutions made decision (October 26, 2005) on establishing representation of JSC Multiplex Solutions in Tbilisi. The board of directors approved statute of the representation and appointed representation managers, they are:

Davit Shengelia – born on August 10, 1972 in Tbilisi, profession a lawyer, residing in Tbilisi, #4 Zhvania str.;

Levan Kacharava – born on July 15, 1968 in Tbilisi, profession – a businessman, residing in Tbilisi, Mtskheta str. #2, apartment 35.

In accordance with the information placed by Davit Shengelia on LinkedIn<sup>44</sup>, Davit Shengelia is a owner of Geneva-based consulting company De Novo Alliance SA operating in the sphere of energy, logistics and infrastructure; he is also a member of the board of directors in Gamma Petroleum SA, a company registered in British Virgin Islands; Partner of American-Georgian legal company Amirashvili, Gogishvili & Shengelia, G.P.; Member of board of directors and co-founder of Multiplex Solutions SA, between September, 2005 – March, 2006; member of board of directors and co-founder of Geneva-registered Silk Road Group SA between February, 2001 and May, 2005.

Data on Levan Kacharava are available in different media sources<sup>45</sup>, where he is referred as a member of so called “Vera Mates” under the nickname Tilika; he is also referred as a co-founder of Silk Road Group, owner of company Axis, and childhood friend of Nika Gvaramia, former minister of education and science.

By the decision of board of directors of JSC Multiplex Solutions on September 27, 2007, Davit Shengelia and Levan Kacharava were dismissed from their position and Giorgi Gachechiladze (born on January 22, 1968, residing in Tbilisi, Kipshidze str. #9, apart. 39; minister of economy, industry and trade in 2001-2003) was appointed as a sole director of the company.

On July 9, 2009, Giorgi Gachechiladze was discharged from the director's position too and Shalva Pipia was appointed on it. By the decision of December 3, 2009, Shalva Pipia was replaced by Giorgi Kopaleishvili (born on April 22, 1976, residing in Tbilisi, Agmashenebeli str. #970).

## 2.4 PRESIDENT'S DECREES

As we have mentioned earlier, Expression of Interests (in October, 2007) revealed a new owner of Zhinvali HPP, Tbilisi and Mtskheta Water Supply Systems and Gardabani waste water treatment plant – JSC Multiplex Solutions. It was intended to sell the referred enterprises through direct sale procedure. Final decision had to be made by the President of Georgia who also set conditions if needed. President signed relevant decrees<sup>46</sup> a day earlier before his resignation caused by the political crisis and ongoing protest actions<sup>47</sup> in November, 2007.

<sup>40</sup> [http://www.moneyhouse.ch/en/p/spoerri\\_beat-2967115/index.htm](http://www.moneyhouse.ch/en/p/spoerri_beat-2967115/index.htm)

<sup>41</sup> [http://www.gazprom.ru/f/posts/59/948424/repiv\\_2008.doc](http://www.gazprom.ru/f/posts/59/948424/repiv_2008.doc)

<sup>42</sup> It is worth mentioning that information about company founder-shareholders became accessible to public only after changes were made to the law on Public Registry on January 1, 2010.

<sup>43</sup> Regulation №06/5c-8-15 “On registration of Representations”, December 7, 2007, issued by Davit Gibradze, a judge of Tribunal of Civil cases under the Tbilisi Municipal Court.

<sup>44</sup> Source: LinkedIn – worldwide network of professionals <http://ch.linkedin.com/in/davidshengelia>

<sup>45</sup> “Axis denying the arrest of its staff”, newspaper Comersant, December 8, 2008; “Successor of Mxkhedroni”, internet edition PRESA.GE, December 10, 2008; “Why did they arrest Tilika?! Drugs or political grounds?“, Newspaper Kviris Palitra, December, 2008. “Will Nika Rurua be arrested?“, newspaper Akhali Taoba, December 12, 2008; “Mysterious Russian investor“; internet edition PRESA.GE, 30 July, 2009

<sup>46</sup> November 27, 2007, Decree #685 of the Georgian President “On Privatization of 100% state-owned shares of LTD Saktskalkanali, 100% state-owned shares of LTD Mtskhetatskalkanali, 100% state-owned shares of LTD Rustavtskalkanali through direct sale form;

In accordance with the President's Decree issued on November 23, 2007, the company Multiplex Energy Limited received 100% of shares of state-owned LTD Saktskalkanali, 100% of shares in state-owned LTD Mtskhetatskalkanali and 100% of shares in state-owned LTD Rustavtskalkanali. We would like our readers to pay attention to two circumstances: during Expression of Interests, Swiss Company Multiplex Solutions was announced as a winner, while the President's Decree names Multiplex Energy Limited (a company registered in British Virgin Islands) as a new owner of these enterprises. It is also interesting that Ltd Rustavtskalkanali was not mentioned in the Expression of Interests at all, besides the buyer's proposed conditions or privatization plan of this company was never disclosed for public. In accordance with President's Decree, the enterprise was sold for USD 15 million with sole condition, the price had to be paid till the end of 2008. The same Decree transfers 100% of state-owned shares of LTD Saktskalkanali and LTD Mtskhetatskalkanali to Multiplex Energy Limited for 662 000 USD dollars.

The Decree defined annual tariffs for consumers who have electricity meters. Tariffs were set for 2008-2018 (tariffs in the investor's proposal were written off till 2013). Incidentally, the price was increasing from 2009 notwithstanding the fact that one of the major criteria for selecting the winner in the process of Expression of Interest was maintenance of tariffs in the first two years. The Decree also tasked the buyer to complete installation of individual meters by 2015, even though the tariffs were set for population without individual meters till 2018.

The buyer had to rehabilitate and modernize Gardabani waste water treatment plant in 10 years time. The buyer was also obliged to rehabilitate Gardabani sewage network and create new collection system in 5 years. The same Decree tasked the Ministry of Environmental Protection and Natural Resources to develop an environment protection action plan with the assistance of investor and within its competence "in order not to charge the investor with responsibility of historic pollution".

For the sake of above-mentioned obligations, the buyer had to provide bank guarantee for USD 25 million in the contract-concluding process. Interestingly, in compliance with the law<sup>48</sup>, *"where direct sale takes place on the basis of competitive selection, an interested person is obliged to provide bank guarantee or place 5% of the total privatization property cost on relevant deposit in order to ensure the implementation of privatization conditions. Where the proposed amount of the investment exceeds the price of privatization property, this bank guarantee or deposited amount shall make 5% of the investment volume. If contract conditions are breached, deposit is transferred to a) State Budget – where state property is privatized; b) local self-government unit budget – where property of local self-government unit is privatized"*.

Presumably, the amount of bank guarantee was calculated from investments (5% of total investment), since the cost of privatization property (USD 662 000) was much lower than the bank guarantee. Respectively, the buyer was probably making USD 500 million investment in the development of Mtskhetatskalkanali and Saktskalkanali.

In compliance with November 24, 2007 decree of Georgian President, 100% of state-owned shares of LTD Tbilisi Water under the ownership of Tbilisi self-government unit were transferred to Multiplex Energy Limited through direct sale procedure. The decree also regulated tariffs for Tbilisi population with or without individual meters (and tariff increase in 2009) till 2018, but installation of meters in houses had to be completed by 2012 and in case of multi-storey houses till 2015. The buyer was also tasked to eliminate flow of sewage waters in the river Mtkvari (on the territory of Tbilisi).

The buyer had to present USD 25 million bank guarantee for ensuring the fulfillment of obligations. Guarantee amount had to be 4.25 million if it was calculated from the cost of the privatized company (USD 85 million), however, again, it seems they calculated it from the total investment amount, which must be 500 million dollars if we follow this logic.

Similar to the previous case, Ministry of Environmental Protection and Natural Resources had to develop an environment protection action plan "in order not to charge the investor with responsibility of historic pollution".

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And November 24, 2007, Decree #702 of the Georgian President "On privatization of 100% Tbilisi municipality-owned shares of LTD Tbilisi Water through direct sale form".

<sup>47</sup> In November, 2007, protest rallies started against the President of Georgia, protestors were demanding the resignation of the President. Consequently, protest actions was forcefully broken up by police and state of emergency was announced in the country. To tackle political crisis, President Saakashvili appointed early elections, which were held in January, 2008.

<sup>48</sup> Paragraph 9, article 6<sup>1</sup> of the Georgian law on privatization of state property, privatization of the property of local self-government unit and transfer of right of use.

Simultaneously to issuing the abovementioned decrees of the President, it would be sensible to start procedures of concluding relevant contracts with buyer, however, in four months, a “new wave” of decrees started: on April 8, 2008, decree<sup>49</sup> of the Georgian Government approved the joint proposals of the Ministry of Economic Development and Tbilisi Government and the decree project of the Georgian President “On 24-hour water supply of Tbilisi, Rustavi and Mtskheta”. By this decree, the government requested Georgian President “to make decision on transferring 100% of state-owned shares of LTD Rustavtskalkanali, 100% of state-owned shares of LTD Saktskalkanali, 100% of Tbilisi municipality-owned shares of LTD Tbilisi Water to LLC Multiplex Energy Limited through direct sale form”.

The President satisfied the Government’s request and issued a decree #245 (April 10, 2008) after only two days. The decree “On Measures to improve Tbilisi, Rustavi and Mtskheta drinking water supply” which canceled the acts issued in November 2007 (President’s #685 Decree (November 23, 2007) on privatization of LTD Saktskalkanali, LTD Mtskhetatskalkanali and LTD Rustavtskalkanali through direct sale and #702 Decree (November 24, 2007) on privatization of Tbilisi Water through direct sale). By President’s decree, Multiplex Energy Limited received the following objects through direct sale:

1. 100% of state-owned shares in LTD Rustavtskalkanali for USD 10 million without any special conditions (15 million in the previous decree);
2. 100% of state-owned shares in LTD Saktskalkanali and 100% of state-owned shares in LTD Mtskhetatskalkanali for USD 662 thousand with the same conditions as specified in the President’s former decree, but with one difference, the buyer was obliged to install collective meters<sup>50</sup> for Mtskheta population. Besides, the amount of bank guarantee was also changed and the buyer had to present uncalled bank guarantee for USD 5 million. Based on the amount of bank guarantee, we can assume that the volume of investments is USD 100 million (pursuant to the law, bank guarantee shall be 5% of investment volume). As you probably remember, volume of investments was much higher (500 million) in the annulled decree.
3. 100% of Tbilisi self-government owned shares in LTD Tbilisi Water were transferred by the same conditions for the price of USD 85 million. Similar to previous deals, the amount of bank guarantee and respectively, the amount of investments has significantly been reduced, respectively, bank guarantee made USD 10 million and amount of investments USD 200 million (300 million by the previous decree).

Interestingly, in total, amount of investments equaled to 300 million dollars, which is less by 700 million dollars compared to the canceled decrees of the president (and presumably agreed with the client) and by 50 million dollars compared to the amount proposed by Multiplex Solutions during Express of Interests.

## 2.5 CONTRACT

On May 14, 2008, in about a month after issuing the President’s decree (described in the previous sub-chapter), Georgian Government issued decree #325 “On concluding contracts between the Government of Georgia, Ministry of Economic Development, Tbilisi Government and LTD Multiplex Energy Limited on deed of purchase of 100% shares of LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water”. The Government’s decree approved the contract project on purchase of 100% shares of LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water between, on the one side, the Government of Georgia, Ministry of Economic Development, Tbilisi Government and on the other side, LTD Multiplex Energy limited; Ekaterine Sharashidze, minister of Economic Development of Georgia was authorized to sign the contract on behalf of the Government of Georgia.

<sup>49</sup> April 8, 2008, Decree #200 of the Georgian Government “On discussion of the decree of the President of Georgia “On 24-hour drinking water supply of Tbilisi, Rustavi and Mtskheta” and on submitting the relevant recommendations to the President of Georgia”.

<sup>50</sup> A bit later, the President himself was criticizing the civil servants for forcing the investors to install collective meters: “At the meeting with the governors and heads of administrations the President of Georgia Mikheil Saakashvili stated that there is catastrophic situation regarding the individual meters. He said that the situation in this direction had to be sharply improved, because there is a social injustice in the villages and people there are on the edge of fighting. Mikheil Saakashvili said that the contract with “Energopro” was signed incorrectly from the very start. “We have to create all possible conditions for the investors not to deal with problems now, they are not to be blamed if unqualified people worked on those contracts”, the President noted. The Ministry of Justice must study the work of those people who participate in such contracts and who couldn’t foresee the necessity of equipping the villages with individual meters. “I specially task the Ministry of Justice to take care of this case and I hope that the Prosecutor’s Office will adequately study it”, noted the President”. Official website of the President of Georgia, release, 30 March, 2009.

### 2.5.1 EFFORTS TO OBTAIN THE COPY OF THE CONTRACT FROM PUBLIC STRUCTURES

On May 28, 2008, Green Alternative sent a letter to Kakha Bendukidze<sup>51</sup>, head of the Chancellery of Georgian government to request a copy of the contract project approved by the governmental decree #325 on May 14, 2008. As a reply, Green Alternative received Davit Kereselidze's (deputy head of the Chancellery of Georgian government) letter notifying that their letter was forwarded to the Ministry of Economic Development for further follow-up. Green Alternative requested a copy of the document approved by the Government of Georgia, so it was completely unclear why the Chancellery of Georgian Government didn't have it and why they forwarded the letter on request of public information to the Ministry of Economic Development for "further follow-up".

A bit later, On June 19, 2008, Green Alternative received a letter from the deputy minister of Economic Development where the deputy minister, in compliance with the "article 14.1 of contract (already signed) on deed of purchase", was asking the Georgian Government, Ministry of Economic Development, Tbilisi Government and Multiplex Energy Limited to give consent to send copy of the contract concluded on May 14, 2008 to Green Alternative.

Letter of the deputy minister of economic development shows that the contract was signed on the same day when the act on authorizing Ekaterine Sharashidze was issued. Interestingly, Georgian government usually likes holding of grand ceremonies for signing such important projects, but this time, contract signing with Multiplex Energy limited wasn't followed by noisy PR actions.

It should also be considered that Ministry of Economic Development changed Green Alternative's request at their discretion. Particularly, the organization requested the contract project which probably was not commercially classified, however the Ministry asked other parties to give consent on granting the copy of already classified document. Consequently, Green Alternative received neither the copy of the contract from the Ministry of economic development nor any explanation from any of the referred structures.

On July 22, Green Alternative applied to the Minister of Economic Development and requested the parts of the contract which didn't include confidential information (in compliance with the article 33 of General Administrative Code<sup>52</sup>). Green Alternative never received reply to its letter.

On November 25, 2008, Green Alternative addressed the head of Chancellery of Georgian Government and requested the copy of contract concluded between Georgian Government, Ministry of Economic Development, Tbilisi Government and LTD Multiplex Energy Limited on May 14, 2008. Even if the document included confidential information, Green Alternative was asking for only those parts of the document which were not confidential (in compliance with the article 33 of General Administrative Code). Organization asked to explain why this information was classified as confidential information and when it was made confidential.

As a reply to November 25, 2008 letter, Green Alternative received another letter from Davit Kereselidze, deputy head of State Chancellery of Georgian Government. In his letter, Davit Kereselidze explained that requested information (which is a document signed on behalf of the Georgian Government) is not kept in the State Chancellery of Georgian Government and respectively, Green Alternative's letter was sent to the Ministry of Economic Development for further follow-up.

On December 24, 2008, Green Alternative was contacted by the Ministry of Economic Development on the telephone. The organization was informed about the contract copy being prepared and could be picked up at the ministry (it was impossible to post due to the big volume of the document). We believe readers will not be surprised to hear that things got even worse next day. Regardless of the promise, it turned out that the cover letter which had to be signed by the deputy minister was not prepared, because the new deputy minister was not officially appointed. After New Year celebrations, Green Alternative

<sup>51</sup> Member of Georgian government from June 2004 – minister of economy and later, the minister of economic development. 2004 - State Minister of Georgia in reform coordination affairs; he has directly participated in reform implementation process in the spheres of healthcare, finance, natural resources, licensing-permission systems, energy and public service spheres, liberalization of labour markets and tax system, renewed privatization process. He was a head of Chancellery of Georgian government between February, 2008 and 2009.

<sup>52</sup> Article 33. The procedure for publicizing secret information - After classified information is declassified, any part of classified public information or protocol of the closed session of a corporate public agency that can be separated on reasonable grounds shall be publicized. In such case the agency shall also indicate the name of the person who classified the information, the grounds for classifying, and the term for keeping the information classified.

tried to find the person responsible “for the fate of prepared documentation” but without any success. Another telephone call to Green Alternative on January 16, 2009 exceeded all expectations. It turned out that according to one of the articles of the contract, its whole text is confidential and currently, the ministry is holding negotiations with Multiplex Energy Limited to receive permit on delivery of the contract copy to Green Alternative. Besides, the company needs detailed information about the occupation of Green Alternative (!).

Of course the abovementioned raises many questions: What was the legal ground for the Ministry to provide contract copy to Green Alternative in December, 2008 if they had no consent from the company? Or if the company’s permission wasn’t required, how did this need come up in January? Green Alternative has still not received answers to these questions (as well as requested information) from the Ministry of Economic Development.

### 2.5.2 VIOLATIONS RELATED TO CONFIDENTIALITY OF CONTRACT CONTENTS

By making information confidential about the contract concluded between the Government of Georgia, Ministry of Economic Development, Tbilisi Government and LTD Multiplex Energy limited on deed of purchase of 100% shares of LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water, Ministry of Economic Development of Georgia violated the requirements of Georgian Constitution, General Administrative Code of Georgia and Aarhus Convention (international agreement) which is proved by the following circumstances:

- Contract includes information that cannot be confidential:

(1) The contract includes environmental information.

Privatization of 100% shares of LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water was carried out on the basis of competitive selection through direct sale rule. In compliance with the paragraphs 5 and 6 of the article 6 of Georgian Law on “Privatization of state and local self-government unit owned property and transfer of right of use”, the decision was made and conditions were set by President’s #245 decree “On Measures to improve Tbilisi, Rustavi and Mtskheta drinking water supply” (April 10, 2008).

According to this decree, 100% of state-owned companies: LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water were transferred to the buyer with a number of conditions directly related to environment and human health. For instance, the Decree states:

- Water quality in Mtskheta shall always be compliant with technical standards of the World Health Organization but shall never be worse than its current state;
- Rehabilitation and modernization of Gardabani waste water treatment plant shall be implemented in 10 years after signing the contract;
- Rehabilitation of Gardabani sewage network and creation of the new collection system shall be provided in 5-years time after signing the contract;
- Water quality in Tbilisi shall always be compliant with technical standards of the World Health Organization but shall never be worse than its current state;
- Water supply of the city within old boundary (by the condition as of 26.12.06) from 2011 and then 24-hour supply, but it shall not be worse than current supply before 2011 (in Tbilisi);
- Water supply of the city within new boundary from 2015 and then 24-hour supply, but it shall not be worse than current supply before 2015 (in Tbilisi);
- Elimination of inflows of waste waters to the river Mtkvari within the administrative borders of the city of Tbilisi no later than by 2012.

By the decree of Georgian President “On improvement of Tbilisi, Rustavi and Mtskheta drinking water supply”, Ministry of Environment Protection and Natural Resources was tasked to develop an environment protection action plan with investors’ help and within the limits of its competence in order to avoid investors the responsibility of “historic pollution”. In compliance with the regulation<sup>53</sup> “On state property privatization with direct sale rule” (if president sets special conditions on direct sale of the state property, they shall be reflected in the deed on purchase), this obligation of the Ministry of Environment Protection and Natural Resources as well as the abovementioned

<sup>53</sup> Approved by the Decree 1–1/1415 of the minister of economic development, September 20, 2007.

obligations of the buyer on further utilization of the property shall be stipulated in the contract made on the one side, between Government of Georgia, Ministry of Economic Development of Georgia, Tbilisi Government and on the other side, LTD Multiplex Limited.

In accordance with the article 42 of General Administrative Code of Georgia, any person has right to hold information about the state of the environment, also data on risks related to human health and life. According to the second article of Aarhus Convention, “Environmental information” means any information in written, visual, aural, electronic or any other material form on:

- (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
- (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

Contract on transferring 100% of shares of “Ltd Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water to LTD Multiplex Energy Limited and the decision on privatization is a plan which will definitely effect the environment and human health. By Aarhus Convention, this document includes environmental information. Respectively, public agency didn’t have any right to hide privatization contract, on the contrary, it was the agency’s direct obligation (pursuant to Aarhus Convention<sup>54</sup> and Law on Environment Protection<sup>55</sup>) to deliver all necessary information to people and to ensure public involvement in the decision-making on privatization of these enterprises.

## (2) The Contract includes information on administrative agency

Like we have already mentioned shares of these facilities were privatized through direct sale rule. Thus, in accordance with the “Regulation<sup>56</sup> on State property Privatization through direct sale rule”, the contract shall include data on the seller and information about obligations of parties on further utilization of privatized objects. Respectively, agreement on privatization of 100% of shares in LTD Rustavtskalkanali, LTD Mtskhetatskalkanali and LTD Tbilisi Water should definitely include data about the Government of Georgia, Economic Development of Georgia and Tbilisi Government and their obligations as of signatory parties in terms of future utilization of these properties. Like we have already mentioned, the contract includes information about the ministry of environment protection and natural resources. Particularly, its obligation “*to develop an environmental action plan with the help of investor and within the limits of its competence in order not to charge the investor with responsibility for historic pollution*”.

- By keeping this contract in secret, they broke the rule of classification of public information as a commercial secret.

Ministry of Economic Development didn’t provide Green Alternative with the copy of the contract on procurement of LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water for the reason that the document included commercial secret defined by the contract article 14.1. Pursuant to the General Administrative Code<sup>57</sup> of Georgia, when submitting particular information, a person shall indicate whether it constitutes commercial secret. Public agency shall within 10 days make decision on the secrecy of presented information (to regard/not to regard it as a commercial secret). In this particular case, the rule of classification of public information as a commercial secret does not seem to be followed since the Ministry of Economic Development didn’t send the copy of the statutory act which gave legal ground for classifying public information as a commercial secret. On the basis of verbal explanations given to Green Alternative, the decision is reflected in the contract text itself, particularly, in its article 14.1. The letter of the deputy minister of economy (issued on May 16, 2008) points to the same article, particularly, she asks Tbilisi Government and LTD Multiplex Energy limited opinion about giving the copy of the contract to Green Alternative.

<sup>54</sup> Article 7

<sup>55</sup> Paragraph “f” of the article 6

<sup>56</sup> Paragraph 4 of the article 3

<sup>57</sup> Paragraph 3 of the article 27<sup>2</sup> of General Administrative Code of Georgia.

In accordance with General Administrative Code of Georgia<sup>58</sup>, commercial secret is information on any plan, formula, process, means which carries a commercial value; any other kind of information used for production, preparation, processing of goods or providing service, or/an information which is not an important result of the novelty or technical work; also other information which might affect the competitiveness of the person. It is very difficult to imagine that deed on purchase includes such valuable information or the full text of the contract is of commercial value. Besides, like we have already mentioned, the contract includes the whole set of data, which cannot be confidential, for instance, procurement conditions defined by April 10, 2008 #245 decree of the Georgian President “On Measures to improve Tbilisi, Rustavi and Mtskheta drinking water supply” are subject to disclosure for public.

Besides, not publicizing the document on the basis of the contract article comes into conflict with General Administrative Code, because even if the contract really includes the article which regards the contract as a commercial secret, there were no legal grounds for hiding this particular article (as a part of the whole document).

In accordance with the article 30 of General Administrative Code of Georgia, “*Decision on classifying the public information into a commercial secret shall be made only in cases where the law stipulates direct requirement of its confidentiality or defines specific confidentiality criteria and provides the exhaustive list of types of information which should be kept in secret*”. With regard to this contract, the law not only didn’t set the direct requirement of confidentiality, on the contrary, it clearly pointed the need for publicity of this contract. Particularly, pursuant to the Law on Environment Protection<sup>59</sup> and Aarhus Convention<sup>60</sup>, Georgian Government was obliged to deliver all necessary information to the public and to ensure public involvement in the decision making-process (privatization and contracting).

Moreover, article 14.1 of the Contract (if such exists), which made the whole document a commercial secret shall be regarded as annulled in compliance with Civil Code of Georgia<sup>61</sup>, since it violates the rule and prohibitions of the law.

### 2.5.3 ADMINISTRATIVE COMPLAINT OF GREEN ALTERNATIVE

As clarified in the previous sub-chapter, deed on purchase of 100% of shares of LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water concluded between the Georgian Government, Ministry of Economic Development, Tbilisi Government and LTD Multiplex Energy Limited includes information which is not subject to confidentiality, namely, information about the administrative authority and environment. Besides, the rule of classifying the public information into a commercial secret was also violated.

General Administrative Code of Georgia gives right to any person to appeal the issue of classifying the public information into a commercial secret in any upper administrative agency. Therefore, on March 16, 2009, Green Alternative applied to Nika Gilauri, prime minister of Georgia with an administrative complaint and asked to study the legacy of declaring the contract as a commercial secret and to ensure publicity of the contract document.

On April 2, Green Alternative’s complaint was rejected. This is how Zaza Nanobashvili, head of legal department of State Chancellery of Georgia explained their decision: „*Your administrative complaint cannot be discussed, since the decision of administrative authority on admitting the contract as a commercial secret (in compliance of the article 27<sup>2</sup> of the General Administrative Code of Georgia ) is not included in the documentation presented by your association. The suit says that article 14.1 of the contract defines the issue of considering the contract as a commercial secret. Besides, we think that solution of disputes related to contract relations shall be resolved by an authorized institution, i.e. court*”. Thus, Green Alternative’s suit was not discussed because the organization didn’t present the document absence of which was one of the main grounds of filing the referred suit (!).

### 2.5.4 COURT DISPUTE

After being refused, Green Alternative filed a suit to Chamber of Administrative Cases of Tbilisi City Court and asked to study the legacy of decision about confidentiality of the contract document. The preparation session of the court was postponed 7 times in ten months, reason being - inability to involve the third party – Multiplex Energy Limited in the process. It turned

<sup>58</sup> Paragraph 1 of the article 27<sup>2</sup> of General Administrative Code of Georgia.

<sup>59</sup> Paragraph “f” of the article 6 of the Georgian law “On Environment Protection”: “Any citizen has right to participate in discussions and decisions made in the sphere of environment protection”.

<sup>60</sup> Article 7 of Aarhus Convention: Each Party has responsibility to take relevant and practical measures for ensuring public involvement within transparent and fair frames in the process of developing environmental plans and programs and provide people with necessary information“;

<sup>61</sup> Article 54

out that Ministry of Economic Development didn't hold information about the location of the company or any its representatives. The only contact information the Ministry had was the address where the company was temporarily based during the privatization period.

Hunting for the company address revealed a very interesting detail, it turned out that during monitoring process of meeting contract obligations, monitoring department of contract obligations under the Ministry of Economic Development was relating with the company Georgian Water and Power (former LTD Tbilisi Water), i.e. managing company of one of the privatized objects and didn't have any information about Multiplex Energy Limited.

On the court hearing in December 2009, the judge declared that the court had applied to LTD Tbilisi Water with request to send information on the company founders, however, they never replied back. At the same session, the judge made decision to apply to the public registry once the change in the law On Public Registry (according to which, the identity of the company founders shall be indicated in the Public Registry) would come in force. The court would request information about the owners of enterprises purchased by Multiplex Energy Limited.

We would also like our readers to have a look at the process taking place simultaneously to the court hearing. Particularly, on December 22, 2009, Government of Georgia issued a decree<sup>62</sup>, which approved the agreement project on "Making changes and additional definitions to the Contract on deed of purchase of 100% of shares in LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali, LTD Tbilisi Water". The decree authorized the Minister of Economic Development of Georgia Zurab Pololikashvili to sign the agreement on behalf of the Georgian Government. In consideration of this decree, it would be logical to assume that Georgian Government was negotiating with Multiplex Energy Limited in the same period when the ministry was unable to "provide" the court with information about the identity of company representatives and the company address. What's more, at the court session in February, 2010 (i.e. after the Minister of Economic Development signed an additional agreement with Multiplex Energy Limited), representative of the ministry of economic development declared that the ministry could not get any kind of information about the company apart from what had already been presented (i.e. an address where the company stopped functioning long time ago).

The same session revealed that the court had not applied to the Public Registry too; Only Green Alternative had investigated relevant information, particularly, the association presented an extract from the Commercial Registry about LTD Mtskhetatskalkanali and LTD Rustavtskalkanali, according to which, "Foreign Company Georgian Global Utility Limited, British Virgin Islands" is founder of these enterprises. Most likely, Multiplex Energy Limited had changed the name but Green Alternative could not find any evidence of that. Besides, Public Registry had no address indicated in relation to Georgian Global Utility Limited. Therefore, Green Alternative asked the court to request information from the Ministry of Economic Development about making changes and additional definitions to the Contract on deed of purchase of 100% of shares in LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali, LTD Tbilisi Water.

The next court session was appointed on March 10, 2010, but before that Green Alternative found some additional information about Multiplex Energy Limited, particularly, Public Registry web-site advertised minutes of partner meetings of LTD Mtskheta Water (former Mtskhetatskalkanali) and LTD Rustavi Water (former Rustavtskalkanali), accordingly to which, current title of LTD Multiplex Energy Limited is Georgian Global Utility Limited. Registry web-site also included information about the company address in British Virgin Islands, identity of directors' board members and identity/address of representatives in Georgia. On February 22, 2010, Green Alternative presented this information to the court.

At the next session on March 10, 2010, someone called Giorgi Kopaleishvili came on behalf of one of the directors of Georgian Global Utility Limited. Mr. Kopaleishvili<sup>63</sup> told the court that he had no relations with the company, he was just a friend of one of the directors Nerijus Veiksa who asked him to sign a few "formal" documents as a friend. Kopaleishvili promised the court to inform his friend about the court dispute. Interestingly, Mr. Kopaleishvili is a director of Tbilisi Branch since September (See the Insertion 2. About Multiplex Solution).

At the same session, Ministry of Economic Development declared that according to the agreement on "making changes and additional definitions to the Contract on deed of purchase of 100% of shares in LTD Rustavtskalkanali, LTD

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<sup>62</sup> Decree #1025 of Georgian Government, December 22, 2009 "On approving the N1 agreement project and authorization of Zurab Pololikashvili to sign the agreement "On making changes and additional definitions to the Contract on deed of purchase of 100% of shares in LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali, LTD Tbilisi Water".

<sup>63</sup> Interestingly, Giorgi Kopaleishvili is a sole director of Tbilisi representation of JSC Multiplex Solutions, see the insertion 2, "About Multiplex Solutions.

Mtskhetatskalkanali, LTD Saktskalkanali, LTD Tbilisi Water”, legal address of Georgian Global Utility Limited is the following: first turn of M. Kostava street #33, Tbilisi, Georgia (head office of Georgian Water and Powers). On the basis of this information, the court sent notification about involving Georgian Global Utility Limited as a third party to the referred address. The court also made public notification.

At the court session on March 10, 2010, Green Alternative referred to the court with intermediation to increase the claims of the suit due to the following circumstance: On December 22, 2009, Georgian Government issued a decree<sup>64</sup>, which approved the agreement project on making changes and additional definitions to the Contract on deed of purchase of 100% of shares in LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali, LTD Tbilisi Water. The decree authorized the Minister of Economic Development of Georgia Zurab Pololikashvili to sign the agreement on behalf of the Georgian Government.

On January 27, 2010, Green Alternative addressed the person responsible for public information in the Ministry of Economic Development and asked for the copy of the referred agreement. The association received an ordinary reply – Ministry of Economic Development of Georgia will disclose this information only after receiving the written consent of Multiplex Energy limited.

On February 8, 2010, Green Alternative sent one more letter to the Ministry of Economic Development and requested the information about legal documents and/or legislative acts on the basis of which, Ministry of Economic Development refused to disclose public information without the consent of Multiplex Energy limited. If requested information was a commercial secret of LTD Multiplex Energy limited, then Green Alternative also asked for the decision of an administrative agency which became ground for the Ministry to classify public information into a commercial secret. The association also asked for the copy of the letter sent to LTD Multiplex Energy Limited to get their written consent. Green Alternative never received any reply to these requests.

Even though the Ministry of Economic Development didn't specify the reasons for not disclosing the agreement content, our experience with this ministry allows us assume that document is regarded as a commercial secret again, the rule of General Administrative Code of Georgia about classification of public information as a commercial secret is violated. This assumption is made based on these circumstances: (1) the ground for asking buyer the permission about information disclosure can only be the information which has the status of commercial secret; (2) Ministry didn't provide decision of the administrative agency which made this information a commercial secret (required by the General Administrative Code of Georgia).

Agreement on making changes to the contract and the contract itself contains information about the administrative agency as well as environmental information. Hence, keeping an agreement document in secret violates people's rights on access to information guaranteed by Georgian Constitution, General Administrative Code of Georgia and Aarhus Convention.

On the basis of the abovementioned and in consideration of the agreement being an inseparable part of the contract, Green Alternative referred to the court with request to oblige the Ministry of Economy Development of Georgia to annul the status of a commercial secret and give the copy of the agreement to Green Alternative.

At the court session on April 1, 2010, a representative of Georgian Water and Powers appeared. He declared that he would defend the rights of Georgian Global Utility Limited. Since the company representative didn't have a letter of attorney, the parties agreed to postpone the court session for May 3, 2010.

The story of the court dispute in relation to annulment of the status of a commercial secret ends here.... interested readers can read more information about the future developments on the web-site<sup>65</sup> of Green Alternative.

## INSERTION 2. ABOUT MULTIPLEX ENERGY LIMITED

Regardless of the fact that LTD Multiplex Solutions was nominated as a winner of Expression of Interests announced for the privatization of state-owned Zhinvali HPP, Tbilisi and Mtskheta water supply systems and Gardabani waste water treatment plant, final contract was concluded with Multiplex Energy Limited without giving any explanation about this change. Similar to Multiplex Solutions, Multiplex Energy Limited doesn't have a web-site or a web-page where the company would be

<sup>64</sup> Decree #1025 of Georgian Government, December 22, 2009 “On approving the N1 agreement project and authorization of Zurab Pololikashvili to sign the agreement “On making changes and additional definitions to the Contract on deed of purchase of 100% of shares in LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali, LTD Tbilisi Water”.

<sup>65</sup> www.greenalt.org

referred. Unlike Multiplex Solutions, Multiplex Energy Limited doesn't have a representation in Georgia. If we follow one of the documents recently placed in the registration materials of Public Registry, Multiplex Solutions (registered in Switzerland) and Multiplex Energy Limited (British registration) must be one and the same company. Particularly, registration materials of LTD Rustavi Tskali include the document which is printed on the letterhead of Multiplex Solutions, but it is a letter of Andria Basilaia, representative of Multiplex Energy Limited to the Ministry of Economic Development (December 28, 2007) to inform about conducting audit and detailed assessment of financial, legal and tax risks related to LTD Rustavtskalkanali, LTD Saktskalkanali and LTD Mtskhetatskalkanali.

According to the minutes of partner meetings of LTD Multiplex Energy Limited enclosed in the registration materials of LTD Rustavi Water (former Rustavtskalkanali) and LTD Mtskheta Water (former Mtskhetatskalkanali), the company has a new name Georgian Global Utility Limited. This is the company address: Sea Meadow House, Blackburn Highway, PO Box 116, Road Town, Tortola, British Virgin Islands. Besides, according to the notary acts included in the materials, members of the board of directors are Nerijus Veiksa, a citizen of Latvia (attorney – Giorgi Batlidze) and Gocha Megrelidze (attorney – Giorgi Kopaleishvili).

## 2.6 INFORMATION ABOUT FULFILLMENT OF CONTRACT CONDITIONS IS CONFIDENTIAL

As mentioned many times in previous chapters, the decision about direct sale of 100% of shares of LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water to Multiplex Energy Limited was made by the President of Georgia and relevant conditions were also set by him with a decree #245 "On measures to improve Tbilisi, Rustavi and Mtskheta drinking water supply" issued on April 10, 2008.

In accordance with this Decree, 100% of state-owned shares were transferred to the buyer with a lot of conditions directly related to environment and human health. We have mentioned these conditions in the sub-chapter 2.5.2, but would be good to remind them to our readers again:

- Water quality in Mtskheta shall always be compliant with technical standards of the World Health Organization but shall never be worse than its current state;
- Rehabilitation and modernization of Gardabani waste water treatment plant shall be implemented in 10 years after signing the contract;
- Rehabilitation of Gardabani sewage network and creation of the new collection system shall be provided in 5-years time after signing the contract;
- Water quality in Tbilisi shall always be compliant with technical standards of the World Health Organization but shall never be worse than its current state;
- Water supply of the city within old boundary (by the condition as of 26.12.06) from 2011 and then 24-hour supply, but it shall not be worse than current supply before 2011 (in Tbilisi);
- Water supply of the city within new boundary from 2015 and then 24-hour supply, but it shall not be worse than current supply before 2015 (in Tbilisi);
- Elimination of inflows of waste waters to the river Mtkvari within the administrative borders of the city of Tbilisi no later than by 2012.

The above-listed conditions set by the decree #245 on April 10, 2008 and, any document related to their implementation, in accordance with Aarhus Convention, shall be regarded as environmental<sup>66</sup> information and shall be accessible<sup>67</sup> for public. This information will definitely affect human life and health and pursuant to General Administrative Code<sup>68</sup> of Georgia, it is inadmissible to keep it in secret. What's more, in accordance with Constitution<sup>69</sup> of Georgia, this type of information shall be accessible to any citizen.

On May 13, 2009, after a year from concluding a contract between the Government of Georgia, Ministry of Economic Development, Tbilisi Government and LTD Multiplex Energy Limited, Green Alternative sent a letter to the Ministry of Economic Development and requested evidence of fulfillment of conditions set by #245 decree of the President of Georgia.

<sup>66</sup> Article 2

<sup>67</sup> Article 4

<sup>68</sup> Paragraph (a) of article 42

<sup>69</sup> Paragraph 5, article 37

Green Alternative was replied by a person responsible for public information in the Ministry, notifying that Multiplex Energy Limited had not provided information about the implementation of contract obligations, for which, the company was fined and a special letter was sent to the enterprise with demand to pay the fine and present documentation on fulfillment of obligations.

On November 10, 2009 (after six months), Green Alternative referred to the Ministry of Economic Development with the same request. This time, Green Alternative received a copy of the letter sent to Multiplex Energy Limited by the Ministry. In the letter, the person responsible for public information in the ministry of economy was asking LTD Multiplex Energy Limited approval to “give out the contract copy”. It is also worth mentioning that the letter to LTD Multiplex Energy Limited was sent to the address Erekle Meore str. #4/10, i.e. an old address of the company<sup>70</sup>.

Green Alternative’s request was completely different (the organization didn’t ask for the copy of the contract, they requested the evidence of fulfillment of contract obligations), hence, to avoid any misinterpretation, Green Alternative sent additional explanation to the person responsible for public information in the ministry. However, Green Alternative’s request was not responded and respectively, no information was sent. This time, On January 27, 2010, Green Alternative sent the same request to the Minister of Economic Development Zurab Pololikashvili. On February 4, 2010, Green Alternative received a reply from the same person, where she explained that decision on disclosure of requested information would be made only after receiving the approval of Multiplex Energy Limited. The author didn’t specify the reason of delayed approval.

In response to the abovementioned letter, On February 8, 2010, Green Alternative sent another correspondence to the Ministry. This time, the organization requested the name of the legal document based on which the Ministry was refusing to disclose public information without the written consent of Multiplex Energy Limited. For prevention purposes, Green Alternative also requested decision of the administrative agency by which the public information was classified as a commercial secret (if it was a commercial secret of Multiplex Energy Limited). Green Alternative didn’t receive any information from the Ministry of Economic Development.

After two weeks of silence, on February 22, 2010, Green Alternative filed an administrative complaint to the Prime Minister of Georgia. Administrative suit included detailed description of unsuccessful correspondence with the Ministry of Economic Development. The organization asked Prime-Minister of Georgia to assign the Ministry of Economic Development with provision of public information, disclosure of which is permitted by national legislation and international convention. On March 11, 2010, Green Alternative received a letter<sup>71</sup> from State Chancellery of Georgian Government notifying that the “letter” was forwarded to the Ministry of Economic Development “for further reaction”.

Interestingly, on the basis of General Administrative Code of Georgia<sup>72</sup>, if the claim needs authorization of other administrative agency, the addressee agency is obliged to forward the letter and other enclosed documentation to the authorized administrative agency in no later than 5 days. At the same time, written notification, with indication of relevant arguments, shall be sent to the author of the claim in two days after forwarding it to the authorized agency.

Green Alternative received a notification in a week after forwarding the association’s administrative complaint to the Ministry of Economic Development (only after the organization tried to identify the fate of its claim). The letter didn’t provide any justification, which is not surprising at all, because it is very difficult to find a reason why you are asking the “law infringer” (as the complaint claims) to react on law infringement (also claimed in the complaint).

This is how the Ministry of Economic Development “reacted” – head of legal department of the Ministry informed Green Alternative that *“in compliance with the first part of the article 47 of General Administrative Code of Georgia, decision of the public agency on refusing the disclosure of public information can be appealed in the court”*.

In the nearest future, Green Alternative will bring the case to the court with request to study the secrecy around the report on performance of Multiplex Energy Limited against contract obligations.

<sup>70</sup> The Ministry had to know this fact, because during court disputes between Green Alternative and Ministry of Economic Development, the court could not find the company on this address and asked the Ministry to provide correct address.

<sup>71</sup> №24/37 letter of Levan Erikashvili, head of the department of administrative proceeding of State Chancellery, March 5, 2010.

<sup>72</sup> Article 80. Authorized on sending the application to the administrative organ

## 2.7 ENVIRONMENTAL OBLIGATIONS

### 2.7.1 RESPONSIBILITY FOR HISTORIC POLLUTION

We have already mentioned the President's #245 decree<sup>73</sup>, "On measures to improve Tbilisi, Rustavi and Mtskheta drinking water supply" issued on April 10, 2008 and a task assigned for the Ministry of Environment Protection and Natural Resources to develop an environmental action plan within its competence and with the help of investor, "in order to avoid the investor the responsibility of historic pollution". Even though the Ministry's obligation is quite vague (on what grounds the Ministry had to prepare this plan, in what terms and resources), the aim is extremely clear - the investor shall not be charged with a responsibility of "historic pollution"<sup>74</sup>. If we take into account the mentioned goals, such plan should have been prepared before the privatization of these enterprises, otherwise, it is unclear from which point they will start evaluation of "current pollution".

As for the President's assignment for the Ministry of Environment Protection and Natural Resources, first of all, it should be mentioned that President's task comes into conflict with Georgian Law "On Environmental protection", according to which<sup>75</sup>, "*an owner of the privatized unit is obliged to fulfill all obligations, which were imposed on the former owner of the economic unit. Every new owner of a privatized unit shall be charged to pay for damage resulted from violation of Georgia's laws of the activity, before the unit having been privatized, if other cases are not specified by law*".

It is also interesting that Ministry of Environment Protection and Natural Resources was not participating in preparation of decree project of the President and was not even aware of such obligations, which is proved by the correspondence between Green Alternative and this ministry. Brief review of this correspondence is provided below:

On February 11, 2009, in 9 months after the enterprises were sold, Green Alternative sent a letter to Goga Khachidze, Minister of Environment Protection and Natural Resources and requested information about fulfillment of obligations assigned by the President's decree. If it was an ongoing process, the organization asked information about activities implemented and planned. In the same letter, the Minister was also informed about the requirements of Aarhus Convention which oblige the Government of Georgia to ensure public involvement in development of such an important plan.

Response letter of the ministry exceeded all expectations, particularly, it was evident from the letter of deputy minister Goga Mamatsashvili that the ministry was not aware of the obligations imposed by the President's decree at all. This is what he said:

*"We would like to inform you that Ministry of Environment Protection and Natural Resources is involved in the process of developing an action plan assigned by the President's #245 decree (April 10, 2008). At the first stage, in 2008, the ministry set limits for wastewaters (i.e. emission standards) flowing from Tbilisi-Rustavi Waste Disposal Plants into the river Mtkvari. Besides, in the referred document, under the recommendation of the Ministry, LTD Saktskalkanali elaborated an action plan on minimizing pollution of the river Mtkvari with water flows. The action plan is provided in the annex. ... The Ministry will be actively involved in this process. We do hope that ordinary citizens and non-governmental organizations will have close cooperation with the Ministry in order to fully achieve the goals and objectives defined in the decree. Besides, we believe that they will ensure monitoring of fulfillment of abovementioned activities".*

Since the deputy minister's letter didn't answer the concerns of Green Alternative at all, the organization referred to the Ministry once again and asked to provide more detailed explanation. Please find the extract from Green Alternative's letter:

*"This is to remind you that our request concerned the information about fulfillment of obligations imposed to the Ministry of Environment Protection and Natural Resources by article 5 of #245 decree of the President of Georgia (issued on April 10, 2008). Particularly, article 5 of the decree states: "Ministry of Environment Protection and Natural Resources shall develop an environment protection action plan with investors' help and within the limits of its competence". It is very clear from the decree that it is Ministry's obligation to prepare such plan. Respectively, Ministry shall not only be actively involved in this process (as you have mentioned), but it shall be the initiator of it.*

*As for the agreement on limits of pollutants as well as arrangement of public hearings on environmental impact assessment*

<sup>73</sup> This decree considered transfer of 100% state-owned shares of LTD Rustavtskalkanali, LTD Saktskalkanali, LTD Mtskhetatskalkanali and LTD Tbilisi Water with direct sale form and to set conditions for Multiplex Energy Limited.

<sup>74</sup> It is worth mentioning that the law doesn't provide the definition „historic pollution“.

<sup>75</sup> Law on Environmental Protection, #519, article 21, December 10, 1996. Environmental requirements in the privatization process.

by the permission seeker, they are legal requirements and not a new obligation. Respectively, these activities cannot be regarded as fulfillment of obligations imposed by the article 5 of Presidential decree #245, issued on April 10, 2008 (which requires a non-obligatory action from the Ministry).

Besides, by #245 decree of the Georgian President “On measures to improve Tbilisi, Rustavi and Mtskheta drinking water supply” (April 10, 2008), Multiplex Energy Limited received not only LTD Saktskalkanali, but also Rustavtskalkanali, Mtskhetatskalkanali and Tbilisi Water. Therefore, “Plan of implementation of environmental activities” shall cover all objects privatized by the President’s Decree”.

This time, Green Alternative received a very brief and concrete letter from Mamatsashvili: “Please be informed that plan on fulfillment of environmental activities for LTD „Multiplex Energy Limited” is not elaborated as of now”<sup>76</sup>.

Green Alternative’s assumption about Ministry of Environment Protection and Natural Resources not being involved in elaboration of President’s decree project on transferring the privatized objects to Multiplex Energy Limited was proved once again by another reply of the Ministry of Environment Protection and Natural Resources<sup>77</sup>. Particularly, the letter stated: “Ministry of Environment Protection and Natural Resources was not participating in discussions (or preparation of recommendations) of President’s decree project “On 24-hour drinking water supply of Tbilisi, Rustavi and Mtskheta”.

Green Alternative also tried to identify which agencies were involved in development of decree project of President on transferring enterprises to Multiplex Energy Limited. Green Alternative referred to the Ministry of Economic Development of Georgia with relevant question and received the following answer<sup>78</sup>:

“We are advising you that Contract on purchase of 100% of shares of LTD Rustavtskalkanali, LTD Mtskhetatskalkanali, LTD Saktskalkanali and LTD Tbilisi Water concluded between the Georgian Government, Ministry of Economic Development, Tbilisi Government and LTD Multiplex Energy Limited on May 14, 2008 is confidential. As for other kind of public information, Ministry of Economic Development doesn’t possess such information.

## 2.7.2 PERMIT FOR IMPACT ON ENVIRONMENT NECESSARY FOR OPERATION OF TBILISI AND RUSTAVI WASTE WATER TREATMENT PLANTS

Pursuant to the law of Georgia “On Permit for Impact on Environment”<sup>79</sup>, operation of wastewater treatment plant as a activity “which is related to unlimited circle of people and is characterized as risky for human life or health” is subject to permit for impact on the environment. Accordingly to the same law, LTD Saktskalkanali (owner of Tbilisi and Rustavi waste disposal plants), an enterprise which started operation before the law On Permit for impact on environment was enforced (i.e. before the environmental license was established) should have taken a permit on environment impact before January 1, 2010<sup>80</sup>. In compliance with the law, in cases like this “Report on environmental impact assessment required for receiving the permit shall reflect the analysis of current state of the environment (ecological audit) as well as the action plan for mitigation of this impact”.

### INSERTION 3. ENVIRONMENTAL IMPACT ASSESSMENT (EIA) IN GEORGIA

EIA is an auxiliary tool for making decision on whether to permit proposed activities. It is regulated by the law “On permit for Impact on Environment”. The specific of this law is that its regulatory sphere is activity or action related to unlimited circle of people and is characterized as risky for human life or health.

EIA system currently existing in Georgia is effective neither in terms of providing public with the information and ensuring public participation, nor in terms of helping decision-makers to take informed decisions on the activities that have adverse environmental effects, to say nothing of post decision-making monitoring and control.

The Ministry of Environmental Protection and Natural Resources is constantly claiming that the current EIA legislation is in

<sup>76</sup> №11/11-265, August 27, 2009

<sup>77</sup> №11/11-265 letter of the head of PR Department of Ministry of Environment Protection and Natural Resources, August 27, 2009 addressed to Green Alternative.

<sup>78</sup> №18/2616/9-9 letter of the person responsible for public information under the Ministry of Environment Protection and Natural Resources, June 1, 2009.

<sup>79</sup> N 5602 – QR, December 14, 2007

<sup>80</sup> Law validity period was defined till January 1, 2009. By N 1174 amendment made to the law on 12.06.2009 extended the period for one year.

compliance with the Aarhus Convention and relevant EU directives (without providing any substantiation), while NGO analysis and practice show that the Georgian EIA system is in absolute in compliance.

The most frequently disputed provisions are those related to public participation in the decision-making. With the current setting the Ministry is neither obliged nor entitled to ensure public participation in the decision-making on granting the permit for impact on the environment. The law obliges the project developers to inform and consult public on the draft EIA report, i.e. before application to the ministry – before starting the actual decision-making procedure. Ministry is also not obliged to inform public on the decisions on granting the permits.

As Netherlands Commission on Environmental Impact Assessment noted in its advisory report<sup>81</sup> of 2006, commission is not aware of any country in which the project developer is responsible for organizing the public hearing and for considering of the comments made by the public as well as for informing the public what has been done with their comments. Commission underlines that usually these are responsibilities of the competent authorities.

### 2.7.2.1 CURRENT STATE<sup>82</sup>

Design of Tbilisi and Rustavi waste-water disposal plants and main collectors was made on the basis of Georgian Government's resolution issued on June 8, 1972. Project of the object construction considered mechanical and biological cleaning of household and industrial wastewaters of Tbilisi, Rustavi, Gardabani, Marneuli, Mtskheta, Dusheti and Zhinvali settlements. Exploitation of objects was carried out in stages; besides, delivery of each stage was accompanied by defects and incomplete works.

Project capacity of wastewater disposal plant equals to 1 million cube meters for 24 hours, but the building has still not reached the project capacity to date, because wastewaters of Marneuli, Gardabani, Mtskheta and Dusheti raions and 55-60% of Tbilisi waters do not flow in it.

Biological and mechanical cleaning of wastewaters used to be carried out till 1992. Today, wastewater disposal plants provide only mechanical filtration of wastewaters and its working capacity makes up to 51% of suspended particles and 47% of bio-chemical demands on oxygen.

Technical condition of wastewater disposal plants and collectors is not satisfactory; electric-mechanical machinery is dampened and requires re-equipment. It should be noted that, ecological condition of the river Mtkvari as well as the Caspian Sea basin greatly depends on the working capacity of disposal plants of the sewage system.

### 2.7.2.2 ADMINISTRATIVE PROCEEDING ON ISSUANCE OF PERMIT FOR IMPACT ON ENVIRONMENT

On June 1, 2009, LTD Saktskalkanali, applied to the Ministry of Environment Protection and Natural Resources with the purpose to obtain permit for impact on environment and presented EIA report on functioning of regional wastewater disposal plants of Tbilisi and Rustavi. Like we have already mentioned, Saktskalkanali had to present the document which would reflect analysis of current state of the environment (ecological audit) and an action plan on mitigation of environmental impact of its activities. Brief review of the referred report is provided below:

- **Environmental policy and legislation of Georgia** – it is unclear why this chapter of 109-page document reviews state policy and legislative base in the sphere of environmental protection on the twenty-second page.
- **Technological regime waste disposal plants** – technological regime is described without any assessment. Description of the current state is provided on two pages, out of them, one page is only photos.
- **Brief economic and geographical review of the enterprise location territory** – this part provides information about the region. Some information is absolutely useless, for instance, “river-bed section of the river from Tbilisi to Azerbaijani border is moderately curved and branched. River branches create small islands, width of which varies between 50-100 meters and the length – 300-500 meters. Width of the branches is mainly between 20-80 m. and the depth changes from 0,5 to 2,0 meters. Average speed of water flow is 1-1,5 m/s”.
- **Social-economic matters** – Sup-chapter - Assessment of Social Impact - doesn't refer to the enterprise at all and Georgia is mentioned only once. It gives definition of “sustainable development” and reviews the principles of sustainable development in detail; an example from the sub-chapter: “Peace, development and environment protect are interrelated and inseparable concepts”.

<sup>81</sup> Available on the web-site: [http://www.commissiener.nl/ncea/pdfs/adv\\_scr/2006-04.pdf](http://www.commissiener.nl/ncea/pdfs/adv_scr/2006-04.pdf)

<sup>82</sup> Source: web-site of LTD Saktskalkanali <http://geowater.ge/> and report on Environmental Impact Assessment of LTD Saktskalkanali: [http://aarhus.ge/uploaded\\_files/287d607773f3451abe3086d123eeddb3b03dced56aceaf09b5bca89b94f49bb.doc](http://aarhus.ge/uploaded_files/287d607773f3451abe3086d123eeddb3b03dced56aceaf09b5bca89b94f49bb.doc)

- **Noise** – the fact of conducting some kind of research is mentioned on the page 62 for the first time: “Assessment of harmful impact was carried out in relation of noise caused by industrial process”; nothing is said about the outcomes. It just describes how the survey should be carried out.
- **Quality of atmospheric air** - accordingly to the document, the plant is located in the gorge of the river Mtkvari, on an open territory where stationary sources of pollution are not presented at all. Hence, taking into consideration environmental legislation, it is not necessary to conduct inventory of sources of harmful substances emissions and to elaborate limits for atmospheric emissions (?!).
- **Waste management** – It is worth mentioning that flows of wastewaters of Tbilisi Water and Rustavi to Gardabani waste water treatment plant has caused accumulation of 150 tones of sediments which is increasing by 10-15 tones of new masses annually, causing a serious threat to the region. EIA document provides the following information: *“Most part of the waste of the plant is dried silt on silty areas. Large amount of dried silt is piled on the wastewater treatment plant area and is waiting for consumers. Reasonability of utilizing sediments received from Gardabani of household and industrial wastewaters treatment regional plant was studied by scientists who recommended to use it for production of organic fertilizers. Detailed information around this matter is provided in the annex 9”*, particularly, views of food industry scientist concerning the possibility of using sediments received from Gardabani household and industrial wastewater treatment plants. He thinks sediments accumulated in Gardabani waste water treatment plant are the best organic fertilizers, however, they are seriously polluted with harmful micro flora. Special disinfection liquids or any other substances can clean the silt, after which, the best quality, cheap and bio organic fertilizers can be produced. Interestingly, the document doesn’t provide the problem solution way or any other obligation.
- **Protection of water resources** – This section provides methodology of calculating the limits for particular pollutants emission.
- **Measures to prevent accidents** - this issue is allocated by one third of page.
- **Environmental management plan** - Under this title, schedule of rehabilitation works is provided on one page. Interestingly, we received this plan from the Ministry of Environment Protection and Natural Resources, they wanted to show that they are fulfilling obligations of the president’s decree (see the upper sub-chapter 2.7.1)
- **Recommended activities** – information about construction of small hydro electric station using the waters generated by Tbilisresi and wastewaters flowing to Tbilisi-Rustavi treatment plant; Processing of silt and rendering it harmless to use for agricultural-household purposes. Besides, it is unclear who provides recommendations for whom, because the document cover page says that it was prepared by the enterprise.
- **Mitigation measures** - was not actually presented.
- **Enterprise liquidation** - information was not provided.

To sum up, regardless of the huge size of this document, it doesn’t include an analysis of current state of environment, results of ecological audit and an action plan of measures for mitigating impact on environment caused by ongoing activities.

As we have mentioned in the insertion 4, in compliance with Georgian legislation, permit for impact on environment is issued by a simple rule of administrative proceeding. Administrative agency is not obliged to publish materials and terms of administrative proceeding. However, in accordance with General Administrative Code of Georgia, administrative agency is obliged to involve an interested party based on the written request of the latter. Green Alternative didn’t miss this opportunity and applied to the Ministry of Environment Protection and Natural Resources as an interested party and demanded involvement of the organization in administrative proceeding. This was an exception when Ministry of Environment Protection and Natural Resources involved Green Alternative in administrative proceeding on a timely manner.<sup>83</sup> After studying the EIA report, Green Alternative prepared comments in relation to the content of the document and permit-issuance process for the department of licensing and permits.

Particularly, Green Alternative reminded the Ministry that the report of LTD Saktskalkanali should be providing environmental audit and action plan for mitigation of environmental impact of its activities. In accordance with the law on Environment Protection<sup>84</sup>, ecological/environmental audit is *“the analysis of process by which an entity observes the requirements of the environmental legislation and standards (including ones established by the entity itself) and efficiency of management of the natural resources use system by entity. This analysis covers whole production and technological cycles. It aims to provide ecological assessment of the activity and to reveal ways and means for minimization of negative impact on environment, losses of consumed natural resources and waste”*.

<sup>83</sup> Green Alternative has referred to the Ministry of Environment Protection and Natural Resources many times due to not involve organization in administrative proceeding about issuance of permit for impact on environment for different companies.

<sup>84</sup> Article 20

LTD Saktskalkanali presented a “traditional” EIA report to the Ministry (which was not even meeting the requirements of EIA report). It has nothing to do with general environmental audit. Respectively, in compliance with the law<sup>85</sup>, the Ministry had full grounds to refuse issuance of the permit. Green Alternative asked the department of licensing and permits to obey law and not to give LTD Saktskalkanali permit for impact on environment on the basis of the presented documentation (EIA report).

Besides, Green Alternative asked the department of licensing and permits to lead this process in compliance with the obligations of Aarhus Convention. Particularly, Convention entitled the Georgian Government and in this case, Ministry of Environment Protection and Natural Resources to take all necessary measures for public involvement in the process of issuing permit for impact on environment for LTD Saktskalkanali.

Green Alternative received a reply letter from Gocha Mamatsashvili, a deputy ministry of Environment Protection and Natural Resources, where he wrote: *„We are advising you that in accordance with the third paragraph of article 22 of Georgian law on Permits for Impact on Environment, EIA report submitted for permit for impact on environment shall reflect analysis of current state of the environment (ecological audit) and a plan for mitigation of environmental impact of current activities. This article doesn't consider an obligation of providing an ecological audit as a separate document. As for this document, the project includes some of the issues related to environmental audit”. With regard to issuance of permit, deputy minister informs: “Department of Licensing and Permits under the Ministry of Environment Protection and Natural Resources is guiding with the law of Georgia on Permits for Impact on Environment as well as Aarhus Convention”*.

It is difficult to identify what exactly the deputy minister means under “some of the issues” or “issues related to environmental audit”, but it is even more confusing how the department of licensing and permits is guiding with law On Permits for Impact on Environment and Aarhus Convention simultaneously, when the law on Permits for Impact on Environment doesn't consider public participation in the decision-making at all, while the Convention obliges the government to involve public in the decision-making process.

At the background of this letter, it is interesting that conditions of permit for impact on environment issued on the basis of EIA report (presented by Saktskalkanali) ecological expertise<sup>86</sup> obliged LTD Saktskalkanali to present self-monitoring plan, action plan of measures for mitigating negative impacts during plant development and exploitation process and waste management and emergency plans to the ministry. In fact, after issuing the permit for impact on environment, the ministry asked the company to provide information which had to be presented before obtaining the permit. Therefore, it is unclear, what was the basis for the Ministry of Environment Protection and Natural Resources to issue permit.

### 2.7.2.3. FULFILLMENT OF CONDITIONS OF PERMIT FOR IMPACT ON ENVIRONMENT

Like we have previously mentioned, Ministry of Environment Protection and Natural Resources issued permit for impact on environment for Saktskalkanali in June, 2009. The permit assigned special conditions for the company; particularly, the company management had to present a plan of mitigation of impact on environment during the plant development and exploitation process. In accordance with the permit conditionality, the plan had to be presented in a month after issuing the permit. In August, 2009, Green Alternative referred to the Ministry of Environment Protection and Natural Resources and requested a copy of the plan presented by LTD Saktskalkanali. The organization was replied with two-page document, which had nothing to do with the mitigation plan<sup>87</sup>. Green Alternative still hoped that the Ministry would not approve the plan in this form and asked the ministry to present a copy of approved plan and copy of correspondence between the Ministry and the company in relation to this issue. Ministry's answer seemed to be promising, they had no copy of the approval. However, on the other hand, there was no correspondence between the parties on this topic, which makes us think that the plan was regarded as approved (Saktskalkanali presented “plan” on July 15, 2009 and the ministry informed Green Alternative about the absence of correspondence at the end of August).

Unfortunately, our assumptions turned to be true, in January, 2010 (7 months after issuance of permit), Green Alternative sent another letter to the Ministry and requested a copy of the approved plan on mitigation of impact on environment during the plant development and exploitation process. The organization also asked for the copies of plans of self-

<sup>85</sup> Paragraph(a), article 13 of the Georgian Law on Permit for impact on environment

<sup>86</sup> Conclusion of ecological expertise #65, June 19, 2009

<sup>87</sup> The document consisted of three paragraphs from EIA: (1) paragraph claimed that water cleaned in the disposal plan flows in the river Mtkvari by special scheme; (2) the paragraph mentioned that the company plans to equip the laboratory and to move to the measurement methods recommended by EU guidelines and (3) the paragraph described obligations of water user established by law.

monitoring, waste management and emergency plans agreed with the ministry (these plans had to be agreed with the ministry in 6-months time, i.e. in December 2009). In response to this request, the Ministry disclosed a copy of the plan which was agreed with the Ministry but it was submitted 5 months before.

We are not aware of reasons why the Ministry of Environment Protection and Natural Resources issued permit for impact on environment on the basis of “poor quality” EIA document or why they approved the document which can hardly be called a “plan”. In our opinion, the reason of this approval is either only “incompetency” or job indifference (if we exclude the practice of so called “giving directives from above”, which is officially deemed to be eliminated in Georgia).

We should also like to underline the circumstance which was not actual only in case of issuing permit for impact on environment for Saktskalkanali. They often provide the following argument to justify the decision on issuing permit for impact on environment on the basis of “poor quality” EIA document: not issuing the permit often results in suspension/closure of the object operation, for instance, conclusions of experts participating in ecological expertise of EIA report of Saktskalkanali say that: *“regardless of the above-given remarks, permit for impact on environment shall be granted to LTD Saktskalkanali, in order for the company to continue functioning, conduct rehabilitation works and provide flowing of clean water to the river Mtkvari. Company which is subject to permit is committed to environment protection with its full or incomplete technological cycle anyway”*. We can read similar type of record in the conclusion of another expert *“suspension of this object will have worse effect on the ecology of Georgia. Besides, it will cause negative reaction and diplomatic protest of the neighbor country Azerbaijan. Therefore, if mitigation measures stipulated in EIA report are taken and some of the obligatory conditions are met, EIA report shall be assessed as positive and relevant permit shall be issued to the Company”*.

It is unknown who gives<sup>88</sup> experts participating in the ecological expertise information about possibility of suspending the enterprise operation if permit is not issued, this kind of argument is only speculation and has nothing to do with truth. If LTD Saktskalkanali was refused permit for impact on environment, the company had five months (before January 1, 2010) to prepare a good quality EIA document and to reapply for the permit. Besides, even if the enterprise would not be able to get permit before the agreed date, it would only be fined<sup>89</sup> without termination of its exploitation.

<sup>88</sup> This seems to be systematic, because the risk of suspension of company exploitation is mentioned in a number of conclusions.

<sup>89</sup> Article 79<sup>1</sup> of Georgian Code of Administrative Legal Infringements: “implementation of work without environmental permit is subject to penalty in the amount of 7 000 lari”.

### 3. CASCADE OF VARTSIKHE HYDRO-ELECTRIC STATION

#### 3.1 GENERAL INFORMATION ON ENTERPRISE<sup>90</sup>

Vartsikhe Hydro Power Plants (HPPs) Cascade unites four hydropower plants – Vartsikhe-1, put in operation in 1976; Vartsikhe-2, put in operation in 1978; Vartsikhe -3, put in operation in 1980; and Vartsikhe-4, put in operation in 1987. They represent derivation type unified power plants with identical capacity and generation. Design installed capacity of each plant is 64 (2x32) MW and generation 250 million kWh. 27 km section of the river Rioni from village Vartsikhe to the source of river Gubistskali was used in the construction process. The dam of common reservoir is located near the outfall of rivers Rioni, Kvirila and Khanistskali. Currently the reservoir is almost full of sediments and regulation terms are violated. Due to the improper drain system of Vartsikhe HPP cascade the village of Bashi and its surroundings are flooded at least twice a year for almost 10 years and the people as well as their rural economy get seriously damaged.

Currently, the water reservoir is almost fully silted and the regulation conditions are deteriorated. Even islands covered with plants are created. Mechanical removal of silt from the reservoir does not take place and periodical hydraulic cleaning is not sufficient. According to the staff the silt brought by the river are not taken away. Sometimes shields are opened and the silt moves to the lower BF. The dam has no fish pass that negatively impacts ichthyofauna of the river Rioni. In the upper BF of the dam the fish migration is practically impossible. In the end part of the reservoir, nearby the railway bridge and gas pipeline crossing the right bank is rinsed. Hence, the flood damages coast-protecting structure and the surrounding villages and land plots are flooded. In previous years the coast-protecting activities were carried out but the concrete coverage of protecting structure is damaged on a particular section and the risk of another flood still emerges.

It is worth-noting that in 1970s the construction of Vartsikhe HPP began without any prior biological survey. The HPP occupied the breeding area for sturgeons and as the derivation system gets the main flow of river Rioni 23 km section of the river-bed often remains with a small amount of flow. Water scarcity coincides with the breeding period of sturgeons.

In a result of the construction of Vartsikhe HPP cascade and to compensate ecological and economic damage inflicted on natural resources the state financed the construction of a plant for sturgeons breeding. The construction was completed in 1982 and in 1983 it began functioning. The plant area with infrastructure covered 72 hectare. The designed capacity of the plant was breeding of 2,5 million young fish. Vartsikhe HPP provided free electricity for the plant. It is note-worthy that the incubation activities were carried out only several times and now the enterprise does not operate.

Rehabilitation activities are required on almost all facilities of Vartsikhe HPP cascade infrastructure including the activities that precondition the ecological reliability of the cascade and prevention of possible accidents. Under the credit agreement signed between KfW and Georgian government the sum was allocated within “the rehabilitation program of Vartsikhe HPP cascade” and certain rehabilitation work was carried out. At the end of 2004 Georgian government made a decision on the privatization of cascade assets. In this regard KfW suspended to finance rehabilitation work.

#### 3.2 PRIVATIZATION OF THE CASCADE OF VARTSIKHE HPP

In December 2004 Georgian Ministry of Economic Development announced a tender on procurement of Chiatura Manganese concentration plant and Vartsikhe HPP cascade assets. In the competition with various violations<sup>91</sup> Russian company Eurazholding won. In June 2005, a month before the company had to pay the portion of price Eurazholding disrupted the deal. Later the government decided to avoid competitions and legal procedures and sell Chiatura manganese concentration plant and Vartsikhe HPP separately.

On October 26, 2006 the decree #642 of Georgian President was issued under which<sup>92</sup>, 100% of LTD Vartsikhe 2005 in state ownership would be directly sold to Stemcor UK Limited<sup>93</sup> at USD 57 million. In several days the amendment was made to the decree according to which the enterprise was handed to the subsidiary of British company Stemcor UK Limited. The president’s decree was issued on the basis of part 11, article 8 of the law “on the state support of investments.” According

<sup>90</sup> The main source of information provided in this sub-chapter is EIA report on Vartsikhe HPP Cascade operation, prepared by the scientific-research company Gama in 2009.

<sup>91</sup> For detailed information, please see the report of Green Alternative issued in 2007: Aggressive State Property Privatization policy or “Georgian-Style Privatization”. Available on the web-site [www.greenalt.org](http://www.greenalt.org)

<sup>92</sup> In accordance with paragraph 5 of the article 6 of the law on State Property Privatization and paragraph 11 of the article 8 of State Law On Support of Investments.

<sup>93</sup> [www.stemcor.com](http://www.stemcor.com)

to this article Georgian president was eligible to make a decision on direct sales without the procedures<sup>94</sup> envisaged by items 7-8 of article 8. With this right and the above-mentioned decree the process was completely closed to the society.

In a result of the undisclosed process the society could not identify: why was the enterprise sold with the only condition of covering payment in a month and maintaining a profile for a year? Was the new owner ordered to carry out rehabilitation activities and compensate the damage, including the harm caused on local population and environment? Why was not the sturgeon breeding enterprise envisaged to compensate the environment impact handed to the new owner and why was not it instructed to provide the plant functioning?<sup>95</sup>

On January 5, 2007 the ministry of Economic Development disseminated information<sup>96</sup> according to which *“the minister of economic development (Giorgi Arveladze) handed a certificate on ownership to the head of LTD Georgian Manganese Holding Limited. In accordance with this certificate the British company became the owner of JSC G.Nikoladze Zestaponi ferro-alloy plant, Chiaturmanganese and LTD Vartsikhe 2005. After 3-year work the agreement was signed. Giorgi Arveladze from Georgian side and Alexander Zilberman from the British company signed the document”*.

### 3.3 EFFORT TO OBTAIN CONTRACT FROM PUBLIC AGENCY

Green Alternative referred to the Ministry of Economic Development on December 25, 2006 for the purpose of obtaining information about the company obligations and requested a copy of contract on transfer of state-owned shares in LTD Vartsikhe 2005 to G.M. Georgian Manganese Holding Limited.

Instead of requested document, On January 8, 2007, Green Alternative received the following answer - *“The contract is a commercial secret and its copy can only be disclosed on the basis of written consent of the “buyer”. For this purpose, we have sent a written notification to G.M. Georgian Manganese Holding Limited”*. On January 18, 2007, Green Alternative sent another letter to the Ministry of Economic Development. This time, on the basis of article 33 of General Administrative Code of Georgia and Aarhus Convention, the organization requested the copies of sections of the contract between the ministry and G.M. Georgian Manganese Holding Limited, which were not commercial secret. Green Alternative also asked to name the person who classified this information as a commercial secret, what was the legal basis for such decision and what was the period of confidentiality.

Unfortunately, the ministry considered neither Georgian General Administrative Code nor International Convention, they refused to disclosed requested information. By such action, the ministry violated the rights of the non-governmental organization guaranteed by the Constitution of Georgia, Aarhus Convention and General Administrative Code of Georgia. Particularly, by keeping the contract in secret, Ministry of Economic Development violated the requirements of Georgian legislation due to the following:

1. Commercial secret means information which is provided by the information provider person to the state agency indicating that it is a commercial secret of the company. Privatization contract in its essence cannot be a commercial secret. It is difficult to imagine how the commercial secret of the investor could appear in the contract text. Even if the contract contains some valuable commercial plan, it is inadmissible to keep the whole text confidential.

2. In accordance with General Administrative Code of Georgia<sup>97</sup>, *“decision on keeping public information confidential can be made if the law defines direct requirements of keeping it confidential, sets particular criteria for protection of information from disclosure or contains the list of types of information which shall be kept confidential”*. However, in relation of this privatization contract, the law was not specifying any direct requirements of confidentiality; on the contrary, it was clearly stating the need for this contract to be publicized. Particularly, privatization of 100% of state-owned shares in LTD Vartsikhe 2005 was carried out with direct sale form. And in compliance with the law On State Support of Investments<sup>98</sup>, *“direct sale is admissible with certain conditions and in cases where application of direct sale rule is justified and its publicity is insured”*. When privatization contract is declared to be a commercial secret, there is

<sup>94</sup> In compliance with these paragraphs, investment proposals were discussed by Government of Georgia and the decision was made on conducting relevant measures for competitive selection. Besides, for the purpose of competitive selection, Georgian Government published information about the property and related-conditions in state and/or international media sources, where deadlines for expression of interests was specified too. The period for submission of interests was one month.

<sup>97</sup> Article 30

<sup>98</sup> Paragraph 3, article 8

no way that the requirement of publicity will be met.

3. The Contract and the decision on privatization is a plan which will definitely effect the environment and human health. By Aarhus Convention, this document includes environmental information. Respectively, public agency didn't have any right to hide privatization contract, on the contrary, it was the agency's direct obligation (pursuant to Aarhus Convention<sup>99</sup> and Law on Environment Protection<sup>100</sup>) to deliver all necessary information to people and to ensure public involvement in the decision-making on privatization of this enterprise.

4. In compliance with Georgian law on State Property Privatization<sup>101</sup>, the contract concluded between the Ministry of Economic Development and G.M. Georgian Manganese Holding Limited should have regulated *"the obligation of the buyer about future use of privatized property"*. Thus, the contract should have defined the party responsible for future rehabilitation and environmental impact as well as actions /duties/obligations of parties. Implementation/failure of rehabilitation works and elimination of adverse affects on the environment is vital for safety of local population and environment in the locality of Vartsikhe HPP. Eventually, secrecy of such information is illegal and intolerable.

Green Alternative has strong evidence to prove that contract contains environmental information. Particularly, in response to the Green Alternative's letter about confidentiality of the contract, Ministry of Economic Development declared<sup>102</sup>, *"that State has conducted privatization of its shares, therefore, this contract doesn't contain data on threats to human health and life. Regardless of the mentioned, the contract considers protection of environmental legislation of Georgia by the buyer"*. By this reply, Ministry of Economic Development actually confirmed that the secret contract is environmental information.

Besides, Ministry of Environment Protection and Natural Resources provides the following explanation<sup>103</sup>, *"Staff members of our ministry participated in the consultation meetings organized by the Ministry of Economic Development. The consultations were related to compliance of future environmental activities of newly established Manganum Georgia (which unites Zestaponi Ferro-alloy Plant, JSC Chiaturmanganese and LTD Vartsikhe 2005) with environmental legislation"*.

Thus, the fact that consultations were held with the Ministry of Environment Protection and Natural Resources on compliance of activities of future owner of Vartsikhe 2005 with environmental legislation proves that the contract contains future plans (activities, actions) in relation to impact on environment; And the reply of the Ministry of Economic Development proves that the contract considers obligations of protection of environmental legislation, which means – the contract is environmental information.

All the above-mentioned proves that there is no legal ground for declaring the contract on transferring 100% of state-owned shares to G.M. Georgian Manganese Holding Limited a commercial secret, therefore such action is illegal.

### 3.4 DISCUSSION OF GREEN ALTERNATIVE'S SUIT IN CITY COURT

On April 13, 2007, Green Alternative applied to Tbilisi City Court with request to study the legacy of not disclosing the contract contents and to ensure publicity of the referred document. The Court received the organization's suit in proceeding and made decision to involve G.M. Georgian Manganese Holding Limited as a third party *"since it is a party to legal relations and joint decision should be made on these relations"*<sup>104</sup>. The court sent the judicial decision to the company's address in Zestaponi (Sakarkhno str.#9) which was provided by the Ministry of Economic Development. It turned out that the office of LTD Georgian Manganese was located on this address. Company management refused to accept the judicial decision with a motive that it was only managing LTD Vartsikhe 2005 and didn't represent a party to the dispute.

Finally, the judicial decision was sent to the address of G.M. Georgian Manganese Holding Limited indicated in the contract (interestingly, this address became known only after the court solicited the copy of the contract from the Ministry of Economic Development), i.e. an address in Cyprus. On the basis of judicial decision, the company was given 12-day period for appealing the decision on involvement as a third party. Besides, the same decision informed the company that on

<sup>99</sup> Article 7

<sup>100</sup> Paragraph "f" of article 6

<sup>101</sup> Paragraph 2 of the article 10

<sup>102</sup> №21/633/9-7 letter of the Ministry of Economic Development to the Association Green Alternative, issued March 15, 2007

<sup>103</sup> №11/11-60 letter of the Ministry of Environment Protection and Natural Resources to Association Green Alternative issued on March 19, 2007

<sup>104</sup> Judicial decision of Inga Kvachantiradze, a judge of Administrative Tribunal of Tbilisi City Court, May 16, 2007, about involving G.M. Georgian Manganese Holding Limited as a third party in the case.

October 19, 2007, closed court session would be held without attendance of the parties. The session would be conducted in the building of Chamber of Administrative Cases of Tbilisi City Court.

G.M. Georgian Manganese Holding Limited didn't appeal the judicial decision on involvement as a third party, it didn't send any reply or attend the court session.

On October 19, 2007, a closed session of Chamber of Administrative Cases of Tbilisi City Court was held. The court satisfied the suit of Green Alternative and Ministry of Economic Development was charged with responsibility to cancel the status of commercial secret and disclose the contract concluded between the Ministry of Economic Development and G.M. Georgian Manganese Holding Limited about transfer of 100% of shares of LTD Vartsikhe 2005 and to give a copy of the contract to Green Alternative. Court decision also said: *“as a result analysis of evidence and assessment of legal norms, the court shares explanation of the plaintiff and regards that requested information cannot be a commercial secret of some person, the contract contains environmental information which is inadmissible to keep in secret”.*

### 3.5 APPEAL CASE OF THE MINISTRY OF ECONOMIC DEVELOPMENT

On December 28, 2007, Ministry of Economic Development filed a suit<sup>105</sup> to Tbilisi Appeal Court and asked to cancel October 9 (2009) decision of the Chamber of Administrative Cases of Tbilisi City Court.

#### INSERTION 4. EFFORT TO INCLUDE THE THIRD PARTY IN APPEAL COURT

In May, 2008, in compliance with the Law, Tbilisi Appeal Court sent a copy of the suit of the Ministry of Economic Development and response of Green Alternative to parties. As a preliminary court session revealed, the court had sent materials of G.M. Georgian Manganese Holding Limited to the address in Zestaponi (Saqarkhno str. #9). The court received this address from the Ministry of Economic Development. In June, 2008, Green Alternative received a copy of the letter sent to appeal court by the director of LTD Georgian Manganese, Mr. O. Zilberman<sup>106</sup> (the same copy was sent to Vakhtang Lezhava, deputy minister of economic development).

It is also interesting that On January 5, 2007, Giorgi Arveladze, Minister of Economic Development handed the certificate of ownership of LTD Vartsikhe 2005 to Mr. Zilberman, director of Georgian Manganese Holding Limited. However, this time, Mr. Zilberman wrote as a director of LTD Georgian Manganese: *“Once again, we are declaring that the Court dispute is related to the secrecy of the contract concluded between the Ministry of Economic Development and Company GM Georgian Manganese Holding Limited through direct sale rule. We have never seen this contract, GM Georgian Manganese Holding Limited is the third party in this case, their legal address is registered in Cyprus, Nicosia, #10 Egypt str., post code 1097. As for us, we are LTD Georgian Manganese, registered in Georgia and our legal address is Zestaponi, Sakarkhno str. #9. We don't have any desire or right and legal obligation to replace some other party and involve in this case... Please send the case materials to the real legal address of the addressee, we do believe, it is not a problem for the court”.*

The court didn't think it reasonable to send a notification to Cyprus and discussed the case without the third party.

The author of the appeal suit of the Ministry thinks that there are circumstances which can be sufficient grounds for the court to cancel the decision of the Tbilisi City Court. Particularly, the suit says: *“there are two ways of classifying information as a commercial secret: when a person asks to consider the presented information as a commercial secret or the law requires admitting it as a commercial secret. In this particular case, paragraph 9.3 of the contract specifies that the contract is a commercial secret of the buyer and seller doesn't have right to disclose it or give out its copy without a written consent of the buyer. Disclosure of this information might affect the competitiveness of the person. The Court neglected the referred paragraph of the contract and canceled its status of a commercial secret.”.* Even though the Ministry provided an adequate description of rules how information should be classified as a commercial secret, it is still unclear which of them corresponds to the referred paragraph of the contract.

Accordingly to the suit, although the *“contract considers protection of standards defined by the environmental legislation of Georgia”*, the court made a wrong decision about the contract being environmental information, respectively, the court had no grounds to guide with article 42 of General Administrative Code and Aarhus Convention.

<sup>105</sup> Signed by Vakhtang Lezhava, first deputy minister

<sup>106</sup> №879 letter, June 30, 2008

Finally, Ministry of Economic Development named one circumstance for which the court decision was subject to cancellation, particularly, decision was made without attendance of the Ministry of Economic Development. The suit said that City Court didn't send a notification to the Ministry of Economic Development about the date of session, "*which proves that the court lacks the skills of making unbiased assessments*".

With regard to attendance of parties, it should be mentioned that in compliance with legal requirements, the court hearing on the legacy of classification of information as a commercial secret took place at a closed session. Respectively, this session would not be conducted in presence of parties. Besides, before closing the session, session secretary announced that she informed the ministry about case hearing with a telephone call (which is permitted by the law). However, in the court materials, appeal court could not find any evidence of the Ministry of Economic Development being informed about the date of the session. Therefore, appeal court partially satisfied<sup>107</sup> the suit, previous decision was canceled and the case was sent back to the City Court for further discussion.

### 3.6. REPEATED HEARING OF THE SUIT IN CITY COURT

On May 4, 2009, repeated hearing of Green Alternative's suit started in Tbilisi City Court. This time, Ministry of Economic Development received a notification about the date of the session in compliance with the rule established by Georgian legislation. Respectively, the defendant had time to prepare for the session and defend its rights fully. However, representative of the defendant party didn't present any additional evidence of explanation. The judge<sup>108</sup> didn't regard it necessary to involve LTD G.M. Georgian Manganese Holding Limited in the case and made a decision<sup>109</sup> on May 29, 2009, after holding a quick hearing. By this decision, Green Alternative was refused to satisfy the suit.

Decision of the Chamber of Administrative Cases of Tbilisi City Court (May 29, 2009) was literally the same as the appeal case of the Ministry of Economic Development. Particularly, the decision said: "*in this particular case, the contract contains commercial secret of the buyer and the Ministry of Economic Development doesn't have any right to disclose the content of the contract without obtaining a prior written consent of the buyer. Based on the abovementioned, as soon as the contract was signed, G.M. Georgian Manganese Holding Limited specified that the contract included commercial secret of the company. This very contract became ground for the Ministry to make decision and take responsibility for keeping the contract confidential. Therefore, the court doesn't see any evidence to doubt that requirements of the third part of article 27<sup>2</sup> of General Administrative Code are protected*".

If we share this conclusion of the court, we should believe that G.M. Georgian Manganese Holding Limited prepared the agreement text itself, presented it to the Ministry of Economic Development on the day of concluding contract and asked the ministry to keep it as a commercial secret. And the Minister of Economic Development decided to categorize the contract as a commercial secret quickly after learning the agreement content, classified the contract along with own decision (which is a part of the contract) and signed it together with the contract. It is obvious that such an absurd situation could not have taken place and the buyer would not be able to present a full text of agreement, but the court didn't ask the ministry to provide any additional information or evidence in relation to this fact.

The story about G.M. Georgian Manganese Holding Limited indicating in the moment of signing the contract that information of the contract was a commercial secret and the Minister of Economic Development making decision on keeping this information in secret is a conclusion of the court, which it is not supported by any evidence.

Apart from the abovementioned, the court made a wrong interpretation of the paragraph (a) of the article 42 of General Administrative Code of Georgia and stated "*contract doesn't include any information which would cause risk to human health and life. Therefore, the court doesn't consider that requirements of General Administrative Code were violated by keeping this contract in secret*". In particular, the paragraph "a" of the article 42 of General Administrative Code of Georgia: "*information about environment, also data about the threat to human life or health*" - the court defined it as "environmental information which is dangerous for human health and life.

Court's definition is clearly vague – it is difficult to guess what "information which is dangerous for life and health" means; We can assume that the court meant information about the environment, which contains clear threat to human health or life; even such definition is wrong, because General Administrative Code clearly explains, that it is inadmissible to keep environmental information and also data about possible threats confidential, if it threatens human life or health". This

<sup>107</sup> №3b/238-08 Decision, September 17, 2008

<sup>108</sup> Giorgi Tkavadze, judge at Tribunal of Administrative cases in Tbilisi City Court

<sup>109</sup> №3/2669-08 decision of the Chamber of Administrative cases in Tbilisi City Court , May 29, 2009

means that this information can concern environment condition as well as plans and/or activities risky for human life or health.

Besides, the suit brought up by Green Alternative clearly stated that “buyer’s obligation on future utilization of privatized property<sup>110</sup>” defined by Vartsikhe 2005 privatization contract, i.e. impose obligation on the new owner to rehabilitate the enterprise and take relevant measures to mitigate adverse affects of enterprise business on environment or release the enterprise from such obligation –is information which will clearly have affect on natural environment. The fact that such information has environmental value is declared in the article 2 of Aarhus Convention. Interestingly, the court has not guided with Aarhus Convention principles at all (as was absolutely illegally demanded by Ministry of Economic Development in its appeal case).

### 3.7. APPEAL SUIT OF GREEN ALTERNATIVE

On August 10, 2009 Green Alternative referred to Tbilisi Appeal Court to appeal decision of May 29, 2009 based on which Green Alternative’s suit was not satisfied. Green Alternative asked repeated hearing of the suit subject.

Except for circumstances presented in the chapter, Green Alternative claims that conclusions of the court decision includes a number of inconsistencies with the rule of classification of information as a commercial secret defined in the General Administrative Code of Georgia, particularly, article 27 thereof, states (as lawfully mentioned in the court decision) that “a person who presents information is obliged to specify whether it is a commercial secret and a public entity – Ministry of Economic Development is obliged to make decision on classifying this information (considered by the first part of the abovementioned article) as a commercial secret in ten days.

In consideration of the above-mentioned, LTD G.M. Georgian Manganese Holding Limited had right to request and Minister of Economic Development had right to classify as a commercial secret only the information bearing the commercial value (of the provider LTD), but not the whole text which contains public information. The latter is not presented by the enterprise and respectively, cannot be classified as a commercial secret. We mean the following types of information:

- Information about administrative agency – which, in accordance with Regulation on Privatization of State Property with Direct Sale Rule, shall be presented in the contract; And in accordance with General Administrative Code cannot be classified as a commercial secret;
- Conditions of privatization of state-owned shares in LTD Vartsikhe 2005 set by the decree of Georgian President which, in compliance with Regulation on Privatization of State Property with Direct Sale Rule shall be included in the contract and which, as mentioned in the court decision – is public information;
- Buyer’s obligations in relation to environmental legislation - accordingly to the Ministry of Economic Development, this information is presented in the contract and cannot be a commercial secret of any organization. It is an environmental information and shall be disclosed to public;
- Information about the future operational plans of the buyer (actions, activities) which might affect environment;
- Condition of the contract accordingly to which, its full text is a commercial secret – even if such article exists in the contract, there was no legal ground for considering one particular article (as a part of the whole document) as a commercial secret.

Notwithstanding its own conclusions about inadmissibility of classifying a public information as a commercial secret in cases where “publicity of information is established by the law”, the court neglected the fact that privatization of 100% of state-owned shares in LTD Vartsikhe was carried out with direct sale rule. By that time, in compliance with the Georgian law on State Support of Investments, direct sale was acceptable with certain conditions and in cases where the necessity of this rule was justified and its publicity was insured. Registration of results of a deal between the Ministry of Economic Development and G.M. Georgian Manganese Holding Limited was a part of direct sale process and the registered contract was the sole document fully describing the agreement on privatization of state property through direct sale rule and in compliance with the abovementioned requirement of Georgian Law on State Support of Investments, the contract had to be publicized.

Court decision didn’t include any explanation about the ground for classifying the whole contents of the contract as a commercial secret. It is clear from the court decision that the judge was satisfied with the article of the contract which entitled the Minister of Economic Development to classify the contract as a commercial secret. The court didn’t consider whether the contract content can be regarded as a commercial secret of the buyer, i.e. whether it was legal to keep the

<sup>110</sup> It had to be included in the contract in accordance with the second paragraph of article 10 of Georgian Law on State Property Privatization

whole text of the contract in secret, even if the rule of keeping a commercial secret was followed and the contract didn't include environmental information. Even the judge could not deny that some of the data, particularly, "price of the contract, payment conditions, period for maintaining the current profile, etc." is public information. However, this fact has not become the ground for the court to doubt the legacy of not-disclosing the public information.

Green Alternative applied to the Appellation Court in August, 2009, although the first preparation session was held in December, 2009. Besides, it turned out that case materials and judicial decision could not be sent to G.M. Georgian Manganese Holding Limited, because the company didn't operate even on the address indicated by LTD Georgian Manganese (in Cyprus). Therefore, Ministry of Economic Development was tasked to find a new address of the company and the session was postponed for an indefinite period.

We would like to remind you that Green Alternative referred to the court about canceling the status of a commercial secret on the contract concluded between G.M. Georgian Manganese Holding Limited and Ministry of Economic Development three years ago, on April 13, 2007.

## 4. CHIATURMANGANESE JOINT STOCK CO. UNCONDITIONALLY SOLD

2007 publication of Green Alternative “Aggressive State Property Privatization policy or “Georgian-Style Privatization”” gives detailed information about the issues like: history of Chiaturmanganese Joint Stock Co. , environmental impact of its business, impact on the local population and environment and lots of efforts to privatize the enterprise. The referred publication also covers information on privatization of the company as well as post -privatization period.

### 4.1 HOW DID THEY SELL CHIATURMANGANESE?

Attempts to sell Chiatura Manganese mining and processing complex involved lots of scandals, but the developments after Rose Revolution period have turned to be the most mysterious.

As mentioned above, in December, 2004, Ministry of Economic Development of Georgia announced competition on procurement of assets of Chiaturmanganese Joint Stock Co. and JSC Vartsikhe HPPs Cascade. After conducting different types of violated bargains<sup>111</sup>, Russian company EurazHolding was announced as a winner. In June, 2005, a month earlier prior to the deadline for making the payment, EurazHolding wrecked the bargain. After this failure, the government, with the purpose of avoiding the competition battles and public procedures, decided to sell Vartsikhe HPPs and Chiaturmanganese separately .

In 2005, Vartsikhe HPPs Cascade was sold to the British Company Stemcor by direct sale rule. Meanwhile, the same company managed to buy the shares of Zestaphoni Ferro-alloy plant (96,3%), so all the government could do was to sell Chiaturmanganese to the same company, because these enterprises are kind of parts of a chain (Zestaphoni Ferro was using Chiaturmanganese raw materials, Vartsikhe HPPs Cascade was providing the other two productions with electricity. Besides, the government recalled the nearest past when they were blamed for not publicising their decisions and making some behind-the-scenes deals and decided to bring to the auction held by the Ministry of Environment Protection and Natural Resources for the license on use of natural resources at the manganese deposits of Chiatura the assets of the enterprise as well.

Interestingly, from January 13, 2005, Chiaturmanganese was operating in the bankruptcy regime. On August 22, 2006, Davit Kakabadze, bankruptcy manager of Chiaturmanganese Joint Stock Co. sent an official letter to the Ministry of Environment Protection and Natural Resources with request to help and sell the enterprise shares. The extract from the letter: *„Long time has passed, but we are still unable to realize bankruptcy mass, because it is impossible as well we unreasonable to sell property in units, since the majority of units are located under the ground. Respectively, the bankruptcy mass must be realized as a whole, one lot. However, in consideration of the specifics of the property and its location, it is recommended to realize the property and simultaneously issue the license on extracting fossil minerals, this will increase the price... Taking the abovementioned into account, in full compliance with the law, we ask you to consider our request and realize bankruptcy mass within the frames of the auction on licensing”*. In the same letter, bankruptcy manager asked to announce auction as an obligatory condition and to conclude sale-and-purchase contract on bankruptcy mass with winner company during one month after approval of the auction results.

Ministry of Environment Protection and Natural Resources followed up the proposal of the bankruptcy manager pretty soon and submitted the issue for the government’s review in only a few days. Consequently, on August 26, 2006, Georgian Government issued a decree #404 “On granting the license for extracting fossil minerals in Chiatura Manganese mines and Actions to sell Chiaturmanganese Joint Stock Co. assets”. Accordingly to the decree, for the purpose of selling the licence on use of natural resources at the manganese deposits of Chiatura and Chiaturmanganese asstes at an optimal price and supporting the investor, recommendation of the Ministry of Environment and Chiaturmanganese bankruptcy manager on joint realization of Chiaturmanganese assets and right of usage of Chiatura manganese mine was approved by the decree. Ministry of Environment Protection and Natural Resources was tasked with implementation of relevant actions. The decree also defined starting price of the license on right of usage of Chiaturmanganese mine (equivalent of USD 5.500 in Georgian lari) and the starting price for ChiaturManganese assets (equivalent of USD 14.015 thousand in Georgian Lari). On the basis of the same decree, in the process of developing auction terms and conditions, the Ministry of Environment Protection and Natural Resources had to consider the fact that increase of licensing price at the auction bargain would also cause rise of starting price on assets, i.e. USD 10 000 in Georgian lari.

<sup>111</sup> For detailed information, please see the report of Green Alternative issued in 2007: Aggressive State Property Privatization policy or “Georgian-Style Privatization”. Available on the web-site [www.greenalt.org](http://www.greenalt.org)

Ministry of Environment Protection and Natural Resources had a very strange understanding of “relevant actions” and instead of selling the production assets under the condition of privatization of license, the ministry put up enterprise assets on the auction and set conditions on procurement of these assets. In 2006, Ministry of Environment Protection and Natural Resources issued a statement “On Conducting auction on license of usage of Chiatura manganese mine for extracting fossil minerals”. Unfortunately, only the headline included information about holding an auction for licensing extraction of fossil minerals and the statement text itself was quite confusing: together with starting price of license, starting cost of Chiaturmanganese Joint Stock Co. assets was also presented without any explanation as well as the condition that the price rise would also cause additional increase of starting price on assets by USD 10 000 lari. The strangest thing of all was that the licensing conditions included the following requirement: “*Auction winner shall ensure that it holds permission for impact on environment in compliance with Georgian Legislation*”.

In compliance with Georgian legislation, extraction of fossil minerals doesn't require permission *for impact on environment*. Presumably, this obligation was related to Chiatura Manganese mining and processing complex, assets of which, as of the statement, were bargained by the Ministry of Environment Protection and Natural Resources in a very strange form. Besides, it was weird to set this condition in relation to the enterprise, since the law required it anyway.

On November 11, 2006, the only participant company, Georgian Manganese Limited, won the auction which was held at the Ministry of Environment Protection and Natural Resources of Georgia.

## 4.2 ATTEMPTS TO OBTAIN THE CONTRACT

In accordance with auction conditions, deed on purchase had to be signed in 30 calendar days after registering the minutes of auction results. When this period expired, Green Alternative tried to get a copy of the contract, however, this turned to be almost impossible.

In fact, neither Green Alternative nor any other party knew that during the auction period, the assets of Chiaturmanganese were managed by bankruptcy manager<sup>112</sup>. Respectively, news about deed of purchase being signed between the bankruptcy manager and the buyer became known later. Green Alternative referred to the Ministry of Economic Development (it is a state agency which owns and manages state property) and asked for a copy of the contract concluded between Chiaturmanganese Joint Stock Co. and Georgian Manganese Limited about transfer of shares. In response to this letter, Green Alternative received a letter from Kakha Damenia, deputy minister of Economic Development: “*Chiaturmanganese Joint Stock Co. was not sold by the Ministry of Economic Development*”, no further explanations.

Such a brief notice from the deputy minister was completely opposite to what the Ministry of Economic Development announced<sup>113</sup> a few days earlier, particularly “*Minister of Economic Development [Giorgi Arveladze] granted LTD Georgian Manganese Holding Limited a certificate of ownership, according to which, British Company became the owner of JSC G.Nikoladze Zestaphoni Ferro-alloy Factory, Chiaturmanganese Joint Stock Co. and LTD Vartsikhe 2005. After three-year work, finally, the contract was signed by Giorgi Arveladze on behalf of the Georgian side and Aleksandr Zilberman, on behalf of a British Company .... “By signing this document, Ministry completed three-year work. Conclusion of this process and signing the contract will save ChiaturManganese and Zestaphoni Ferro-alloy Factories from ruining, economic potential of the region will develop and we will have additional 1000 workplaces in Imereti in the nearest two years. Besides, workers will have better working conditions and their safety will be ensured. We did our best to save the production capacities, which were almost at the edge of collapse. Overall, the State received 123 million as planned in privatization marathon announced two years ago” –declared Giorgi Arveladze after completion of official contract signing ceremony*”.

There was a clear discrepancy between the minister's public announcement and his deputy's notice, so Green Alternative tried to find out the truth and sent another letter to the Ministry on January 17, 2007. This time, Green Alternative wanted to specify the deputy minister's explanation. With not much hope to get an exhaustive and clear response, the organization requested the ministry to disclose the form of privatization applied in privatization of ChiaturManganese and to name agency which was responsible for privatization of Chiaturmanganese assets. Unfortunately, response was the same again.

Green Alternative had enough grounds to reckon that Ministry of Economic Development simply didn't bother to give clear and exhaustive reply to public entities, by which the ministry violated people's right on public information. Therefore, Green

<sup>112</sup>Bankruptcy process started and suspended many times in Chiaturmanganese.

<sup>113</sup>[www.economy.ge](http://www.economy.ge), Web-site of Ministry of Economic Development, news

Alternative brought the case to the court on March 6, 2007.

It was only at the court, where Ministry of Economic Development declared about the enterprise being sold by the bankruptcy manager and presented the above-mentioned letter of the bankruptcy manager. As for the web-announcement of the Minister of Economic Development regarding the privatization of ChiaturManaganumi being initiated by this ministry, the representative of the ministry declared that it was a mistake of the person who placed this information on the web-site; Later, when Green Alternative showed a video-clip as an evidence (Minister was making an announcement on privatization of ChiaturManganese), the representative of the ministry could not make any comment.

Regardless of TV announcements or newspaper interviews of the minister, the court decided the contract was not concluded between the Ministry of Economic Development and the buyer. Respectively, Green Alternative's suit was rejected. Refusal of the court was the result of the fact, that the organization believed what the Minister of Economic Development said and requested the document which didn't exist at all. And deputy minister, who knew the truth, instead of referring the organization to relevant agency or giving a clear response, tried to save time and give indirect answer. Herewith, we would like to remind our readers that the first attempt of Green Alternative to get the contract copy was made on December 25, 2006. It is incredible, but after so many attempts, court disputes, letters, etc., the organization learnt that Chiaturmanganese was not sold by the Ministry on June 5, 2007. The latter was not a signatory to the contract and respectively, it was not a legal defendant in the court dispute.

### 4.3 MEMORANDUM

The process of obtaining the copy of Chiaturmanganese contract didn't end with the above-described tragicomic events.

On August 21, 2007, Zurab Nogaideli, Prime-Minister of Georgia made a visit in Imereti. This is what press-center of the Georgian Government's Chancellery wrote on an official web-site of Georgian Government: *"Zurab Nogaideli visited several places, particularly, #9 public school in Chiatura, a swimming pool, wood processing mill, rehabilitation sites of water-supply system and pumping stations and Chiaturmanganese complex. There are more than 3000 people employed in Chiaturmanganese mill, its production capacity is more than 350 thousand tones. It is planned to increase production capacity up to 450 thousand by 2008. After Chiatura, Zurab Nogaideli traveled to Zestaponi, where he had meetings in Ecometal and LTD Georgian Manganese (former Ferro-alloy factory). "We have signed an agreement with investors which considers making of 75 million dollar investment in nearest two years and 150-200 million-dollar investment later. During the last period, workers are stably employed in Georgian Manganese as well as in Chiaturmanganese. In the first quarter of the next year, 7<sup>th</sup> oven will start operating in Georgian Manganese, which will increase the working capacity of the mill, revenues of the company and respectively, the salaries of staff" – declared Zurab Nogaideli"*.

In consideration of this information, Green Alternative sent a letter to Prime-Minister and asked him to explain which agreement with investor he meant during the interview in Imereti. In the same letter, Green Alternative asked Prime Minister to provide a copy of this document. State Chancellery (to identify what Prime Minister was talking about in Imereti) forwarded Green Alternative's letter to the Ministry of Economic Development for further reaction. Deputy Ministry of Economic Development (Kakha Damenia) responded to State Chancellery<sup>114</sup>: *"This is to inform you that Georgian Government is a signatory party of the memorandum indicated in your letter and as far as we know, it is a confidential memorandum"*.

Green Alternative referred to Prime Minister once again and in compliance with article 33 of General Administrative Code, requested him to provide parts of the document which didn't contain confidential information. Green Alternative also asked information about the person who classified this information, what was the legal ground for keeping this information secret and what was the period of secrecy. In response to this letter, Green Alternative received another letter from Kakha Damenia, deputy minister of economy. He wrote: *"The referred memorandum is deemed confidential by this memorandum. Hence, we are unable to provide you requested documents"*.

Green Alternative made another attempt to obtain the mentioned document after a few years, in February, 2010. This time, the organization sent a complaint letter to Nika Gilauri, Prime Minister of Georgia. In the complaint letter, Green Alternative explained reasons why publicity of memorandum is important:

<sup>114</sup> №21/1159/1-7 letter of Kakha Damenia, deputy minister of Economic Development, September 26, 2007

*“As you probably know, Chiaturmanganese plants were subject to periodic re-equipment throughout a long period of its exploitation, but serious reconstruction works have not taken place for ages; Consequently, there are numerous environmental problems accumulated and privatization of enterprise assets was seen as the only possibility to tackle these problems.*

*In consideration of the fact that Chiaturmanganese Joint Stock Co. assets were sold without any conditions at the auction held by the bankruptcy manager together with the Ministry of Economic Development, the above mentioned memorandum is the only document which obliges the new owner of the enterprise to make investment in reconstruction and respectively, to improve current poor condition of the plant.*

*Besides, according to the №21/1374/1-7 letter of deputy minister of economy (November 6, 2007), General Administrative Code was not considered in the process of classifying the document into a commercial secret; Particularly, in compliance with the third paragraph of article 27<sup>2</sup> of General Administrative Code of Georgia, a person presenting the information is obliged to specify whether it is a commercial secret or not and a public agency is responsible to make decision on keeping this information in secret (consider/not consider it as a commercial secret). This rule was not taken into account when they made the memorandum a commercial secret, which is proved by the deputy minister’s letter: memorandum text is confidential on the basis of the memorandum itself”*

Taking into consideration the above-mentioned, Green Alternative asked Prime Minister to study the legacy of keeping memorandum text in secret and to publicize the document.

It might sound paradoxical, but State Chancellery of Georgian Government redirected the complaint to Ministry of Economic Development again. An answer of the Ministry of Economic Development was not much different from the reply letter sent few years before – *“Ministry of Economic Development reviewed your concerns, but Georgian Government is a signatory party to this memorandum and they have deemed it confidential, therefore, Ministry is unable to carry out requested actions”*.

#### **4.4 WHO IS THE OWNER OF CHIATURMANGANESE?**

We should remind our readers that by President’s decree issued on October 26, 2006, LTD Vartsikhe 2005 was granted to Stemcor UK Limited (the company was founded in 1951 and currently, it is one of the leaders in steel trade worldwide). In a few days after, amendments made to President’s decree named a new owner of the enterprise - G.M. Georgian Manganese Holding Limited. People received the following explanation: G.M. Georgian Manganese Holding Limited is a foster company of British Stemcor UK Limited. The government tried to neutralize public concerns about granting the enterprise to a newly-established company. The only suspicious thing left was that Stemcor had more than a half century experience in steel trading, but it didn’t own any mining companies<sup>115</sup>.

Information about the real owner of Georgian Manganese Holding Limited being an Ukrainian Group “Private” occurred in the Ukrainian press<sup>116</sup> after a year and in the Georgian press, after two years. This group is the owner of Tao-Privat-Bank in Georgia since 2007. In accordance with Ukrainian press, the group Private is one of the most closed and non-transparent companies in the Ukraine. Igor Kolomoisky and Genadi Bogoliubov (the founders) are in the list of top five millionnaires of Ukraine.

Information about connections of the Group Private with Chiaturmanganese first appeared in Georgian press in 2008; one of the articles published on the web-site of Georgian Business Consulting<sup>117</sup> reported that Genadi Bogoliubov, co-founder of the Group Private was planning to create an international holding on the base of Australian Manganese Extraction Company - Consolidated Minerals. Georgian Chiaturmanganese might join this holding. The article also admitted: *“Ukrainian businessman Bogoliubov declared in the interview with local media that (source [www.ukrudprom.com](http://www.ukrudprom.com)), at this stage, the holding will only unite foreign assets. Initially, Consolidated Minerals will join assets in Ghana Manganese. Later, the holding might unite with Georgian Chiaturmanganese, American Ferro-alloy mill - Highlanders Alloys and Romanian Feral CA.*

<sup>115</sup> Our vision: Stemcor is the world’s largest independent steel trader. We are not owned by, nor do we own, any steel producers. We aim to be the partner of choice for producers and purchasers of steel in every part of the world. We achieve this by nurturing strong business relationships, by continuously improving our processes and by adding value at every step in the steel supply chain. [www.stemcor.com](http://www.stemcor.com)

<sup>116</sup> “Ukrainian bankers crossing the borders”, 11.10.2007, <http://forum.finance.ua/>; 24.10.2007 <http://www.denga.com.ua>

<sup>117</sup> Co-owner of the group Private, Genadi Bogoliubov plans to unite Chiaturmanganese under the umbrella of an international holding, [gbc.ge](http://gbc.ge), 2008.01.23

*Bogoliubov claims that his company Palmary Enterprises Ltd bought the largest Australian manganese company- Consolidated Minerals for 1,3 billion Australian Dollars (USD 1,2 billion), which enabled them control 30% of the world Ferro-alloy market“.*

#### **4.5 LICENSE ON EXTRACTION OF ORE MINERALS**

Like we have already mentioned, On November 11, 2006, Ministry of Environment Protection and Natural Resources announced Georgian Manganese Holding Limited as a winner of auction held for obtaining the license on extraction of ore minerals on Chiatura Manganese mines. The winner company paid USD 6.050 thousand (equivalent in lari) for the license. It turned out later, the auction participant was not a British company Georgian Manganese Holding Limited, but its foster company LTD Georgian Manganese, which is registered in Georgia. Respectively, the license was issued for the Georgian company.

In accordance with license issued by the Ministry of Environment Protection and Natural Resources on December 25, 2006, Georgian Manganese had to provide production of 350 000 tones of ore concentrates in 2007 and increase this volume up to 400 000 tones in upcoming years. Minimum 200 000 tones of ore concentrate shall be processed on the territory of Georgia. The license was granted for 40 years. Volume of produce and extracted resources countrywide was the sole condition of the lisenca. Ministry of Environment Protection and Natural Resources didn't even bother to include mining production (open, underground, etc) rule in relevant columns of the license document.

##### **4.5.1 MINE ALLOTMENT**

Mine allotment of Chiaturmanganese Joint Stock Co., by license before 2006, was defined by 3 566,16 hectare. Its surrounding territories: Gora-tkis Veli, Naguti, Pasieti and Sareki reserves were registered on State Balance. In accordance with license issued in 2006, area of mine allotment of Chiaturmanganese Joint Stock Co. increased and covered 16 430 hectares of land. As of now, mine allotment covers three unused mines. What's more important mine allotment of the new license also included many settlements. Lisenca holder has right to extract minerals in town Chiatura too.

In April, 2009, Green Alternative learnt about problems occurring in Chiatura and Sachkhere rayons in relation to land use. Reportedly, there was disagreement between LTD Georgian Manganese and local government in connection with land use within the areas of mine allotment of the lisenca on extraction of ore minerals. Green Alternative sent a letter to the Goga Khachidze<sup>118</sup>, minister of Environment Protection and Natural Resources and requested the copies of all dispute-related documents received/sent in or from the ministry. In response to this letter, Green Alternative received a letter from Gocha Mamatsashvili, deputy minister. He had sent a copy of the Minister's Decree on issuance of lisenca for LTD Georgian Manganese and a copy of auction minutes. It was evident that the ministry was trying to hide this problem. Hence, Green Alternative sent another letter to the Ministry and asked for the copy of the letter which was sent by local self-government staff (based on organization's information source) to the Ministry of Environment protection and Natural Resources.

This time, Ministry provided Tengiz Motsradze's (Head of Chiatura Municipality) letter addressed to the Minister of Environment Protection and Natural Resources. Please find the full text of Gotsadze's letter below:

*„As you probably know, in compliance with our current legislation, for land management purposes (on the municipality territory), local self-government units need permits of relevant ministries, including the consent of the Ministry of Environment Protection and Natural Resources in order land plots not to be subject for planning natural resource management and extraction of minerals.*

*It appears that 16430 hectare of land area in Chiatura municipality covering Chiatura settlement and big part of nearby village is included in the licensing conture of LTD Georgian Manganese and therefore, local self-government unit cannot allocate land even for the construction of auto parking. However, the Ministry of Economic Development is engaged in privatization process of thousands of hectares of agricultural land areas in the same conture.*

*Due to above-mentioned, please consider the issue of approval for local self-government municipality to manage land areas within the administrative borders of the city (where Manganese is not extracted).“*

This time, Green Alternative requested the reply letter, which was sent by the ministry to Chiatura Municipality; the organization also asked whether this letter was redirected to other agencies and if it was, Green Alternated asked the copies

<sup>118</sup> № 04/09-68 letter, March 4, 2009

of forwarded letters. It turned out that the letter was never forwarded to other agencies for further reaction, there was not any kind of correspondence at all, because “the ministry is negotiating with interested parties”.

Final information received from the Ministry stated that the dispute between Chiatura Municipality and LTD Georgian Manganese moved to the Ministry of Regional Development and Infrastructure.

In relation to Chiaturmanganese business, one factor attracts our attention, on April 22, 2005, an amendment was made to the Georgian “Law on the rule of expropriation of property for public needs”, according to this change, expropriation of property for public needs can be implemented for the extraction of ore minerals. Interestingly, this amendment was made to the law during the government’s efforts to sell ChiaturManganese to EurasHolding. In 2005, agreement with Eurasholding broke and more than 3000 families were prevented from leaving their places of residence, however, only temporarily.... Sooner or later, Georgian Manganese will start using the mines which are under its ownership and we will probably be witnessing another wave of protest actions and strikes.

#### 4.5.2 REPORTS ON FULFILLMENT OF LISENCE CONDITIONS

In May, 2009, Green Alternative referred<sup>119</sup> to the Ministry of Environment Protection and Natural Resources and requested the reports on fulfillment of license conditions by Georgian Manganese. In reply to this letter, Ministry sent<sup>120</sup> the completed forms for sectoral statistical observation approved by the Minister of Environment and Natural Resources.

Green Alternative referred to PR person of the Ministry again and explained that the organization asked performance reports of license conditions. The enterprise is obliged by paragraph 3 of the article 21 of Georgian Law on Licensing and Permits to submit reports on fulfillment of license conditions. Ministry answered that the rule and forms of submission of reports considered in the Law on Licensing and Permits have not been developed yet (Law on Licensing and Permits was adopted on June 24, 2005), therefore, license holders will submit reports in accordance with №46 regulation of the Minister of Environment Protection and Natural Resources (May 1, 2003) – “Rule of preparing information (report) on usage of mineral mines and submission of reports for annual registration of license validity”. By this decree, information on usage of ore minerals shall be provided in sectoral statistical observation forms approved by the same decree.

This explanation would be acceptable if not one important circumstance, together with statistical observation forms, the above mentioned decree also considers informational reports which should include “text together with analytical and graphic materials, in the face of an explanatory note. The Decree also includes a wide list of issues which should be reviewed in analytical materials. Accordingly to the Ministry’s letter, LTD Georgian Manganese has not submitted such document and it seems, the ministry doesn’t think it necessary to require this report from the license holder.

#### 4.6 PERMIT FOR IMPACT ON ENVIRONMENT

The enterprise was operating for dozens of years without permit for impact on environment, because the law on Environmental Permits was adopted much later. Chiaturmanganese Joint Stock Co. only had a license on usage of ore minerals. The license was periodically amended in accordance with fulfillment of conditions and on the basis of the decision made by the licensing council of interagency experts under the Ministry of Environment Protection and Natural Resources. Monitoring of conformity of Chiaturmanganese Joint Stock Co. business with environmental legislation bore a formal character for years, which has clearly reflected on the environmental state of Chiatura.

In accordance with Georgian Law<sup>121</sup> on Permit for impact on environment adopted in 2007, ChiaturManganese, as an entity which is subject to ecological expertise and which started operation much earlier than Georgian Law on Permit for impact on environment had to obtain Permit for impact on environment before January 1, 2009. For this purpose, the company had to present EIA report where analysis of current state of the environment (ecological audit) and action plan for mitigation of environmental impact would be included.

##### 4.6.1 PUBLIC DISCUSSION HELD BY GEORGIAN MANGANESE

According to Georgian Law on Permit for impact on environment, business operator is obliged to hold public discussion before submitting the EIA report to permitting authority and starting the administrative procedure of issuing the permit.

<sup>119</sup> №04/09-79, May 18, 2009

<sup>120</sup> №11/11 -145 letter, May 28, 2009

<sup>121</sup> Article 22

Besides, in compliance with the law and for the purpose of holding public discussion on EIA report, business operator is obliged to publish information about planned activities. Unlike Aarhus Convention, which states that “interested people shall be adequately, timely and efficiently be informed through public and individual messages“, Georgian legislation assigns minimal requirements in this respect and hence, information announcement in central and local periodical printed media is enough. This fact can be regarded as one of the serious gaps in the regulatory legislation of EIA system.

First of all, it is important to consider that printed media is not the most effective way of spreading information in Georgia, especially in regions. In order to be informed about public discussions, people who are affected by the business/project shall be regularly reading (buying) the newspapers, which is almost a “luxury” and unaffordable thing for regional residents. It is already an established practice in Georgia normally, local population is not aware of public discussions.

Public discussions by Georgian Manganese are not an exception from this practice. Minutes of public discussion on January 16, 2009 says that 20 people attended the discussion, among them 4 were the representatives of LTD Georgian Manganese. Chiatura mining-concentrating complex was represented by 7 people. The discussion was also attended by three representatives of the author of EIA report, i.e. consultation firm Gamma; two representatives of the author of EIA report, i.e. Grigol Tsulukidze Mining Institute; one person from the Ministry of Environment and Natural Resources, two people from Chiatura Municipality and one representative of trade union. As you probably noticed, there was not a single person from local population.

In compliance with the law, public discussion of EIA report shall be arranged in the administrative center of self-government unit of the rayon where the company plans its business operations. Instead, Georgian Manganese held public discussion in company building.

In accordance with meeting minutes, Alexander Zilberman, general director of LTD Georgian Manganese made the welcome speech and declared: *“We all know that the investor comes to the region to make money, however, it also plans to address current problems of the enterprise, including the ecological problems. It is important to admit that these problems are historic problems and they are not related to current operations of Georgian Manganese. However, actions of EIA report will be carried out step by step. I assume, in consideration of the current situation, it is necessary to make some corrections to work fulfillment term. LTD Georgian Manganese makes serious investments in maintaing the factories in working condition and in tackling environmental problems. It is also vital to keep workplaces and improve social-economic state of our personnel. Due to the abovementioned, we cannot start serious investments in the environmental sphere till 2010. As for 2009, we will only perform works considered in our running costs”.*

#### **4.6.2. EFFORTS OF GREEN ALTERNATIVE TO INVOLVE IN ADMINISTRATIVE PROCEEDING**

Decision on granting permit on environment impact is made by the rule of simple administrative proceeding defined in Chapter VI of General Administrative Code. This rule doesn't consider making a public announcement about the launch of administrative proceeding, if the administrative agency doesn't regard that individual administrative-legal act might worsen the legal state of the interested party.

Due to the above-mentioned circumstances, on September 25, 2007, Green Alternative referred to the head of Licences and Permits department (Giorgi Tskhakaia) under the Ministry of Enviroment Protection and demanded organization's involvement in administrative proceeding of any applications submitted to the minister for obtaining permit for impact on environment or/and ecological expertise in compliance with article 95 of General Administrative Code and articles 2 and 6 of Aarhus Convention. However, the referred department didn't involve the organization in general administrative proceedings. Consequently, Green Alternative sent an administrative complaint to the ministry many times. Unfortunately, the ministry didn't do anything to resolve this problem apart from formally warning the particular civil workers.

In consideration of the above-mentioned experience, even though two letters had already been submitted to the ministry about involvement of the organization, Green Alternative sent an additional letter to Nikoloz Chakhnakia, head of Licences and Permits department and asked to involve the organization in the administrative proceeding of Georgian Manganese case, as soon as the company would submit EIA report and apply for permit for impact on environment. Green Alternative also requested the copies of all documentations and indication of administrative proceeding period.

In reply to its letter, Green Alternative received the copy of the documentation submitted by Georgian Manganese on February 11, 2009 for permit for impact on environment. Green Alternative received the documentation pack on February

24, 2009. It included the letter of deputy minister Vladimer Gegelashvili where the deadline for returning the feedback and comments was defined by February 24.

Interestingly, in the same period, Green Alternative's attempt to involve in administrative proceeding of granting permit for impact on environment to JSD Madneuli and LTD Kvartsiti had identical consequences. Green Alternative believes that it was in the best interests of the Licences and Permits department not to involve the organization in these cases. Therefore, Green Alternative sent an administrative complaining to the Minister. This time, minister responded by imposing disciplinary responsibility on civil workers, however, it was not a solution.

#### 4.6.3 CONCLUSION OF ECOLOGICAL EXPERTISE

On February 26, 2009, environmental conclusion was prepared on the basis of ecological expertise conducted for EIA report on current operations of Chiatura mining-concentrating complex. The report was submitted to the Ministry of Environment Protection and Natural Resources to obtain permit for impact on environment. In accordance with this conclusion, permit for impact on environment could be issued only if obligations stipulated in ecological expertise would be undertaken by the company. Later, Ministry Environment Protection and Natural Resources granted Georgian Manganese with permit on environment impact and tasked the company management with unconditional fulfillment of different activities.

In the paragraph below, readers will find conditions set by referred ecological conclusion (and respectively, by permit for impact on environment) and they will have a general idea how disastrous is the state of Chiaturmanganese today:

*Company management is must provide unconditional fulfillment of activities considered in EIA recommendations (conclusions and recommendations), particularly:*

1. *Develop safety, healthcare and environment protection management plans and agree them with state agencies authorized by Georgian legislation;*
2. *Develop perspective plans for mitigation of environmental impact in the operation process for the years of 2009 and 2009-2015;*
3. *Prepare environmental monitoring plan and agree it with state agencies authorized by Georgian legislation;*
4. *Develop waste management plan and agree it with state agencies authorized by Georgian legislation;*
5. *Introduce separated method of waste collection on the area of the mill, for which each object shall be equipped with sufficient number of encapsulated containers of identical labels and color.*
6. *Allocate special storage for collecting oil product remains, used oils and any greasy remains or other hazardous materials. Collection of hazardous waste and permanent placement shall be made by the contractor who holds relevant license;*
7. *Provide control of polychlorinated biphenyls in oils of power convertors which are registered on the balance of the enterprise and to inform Ministry of Environment Protection and Natural Resources;*
8. *Arrange facilities for collection and filtration of vehicular waste-waters;*
9. *Prepare and implement project documentation for local silt areas of waste waters from the concentrating mills;*
10. *Prepare and implement project documentation for prevention of pollution of the river Kvirila through waste treatment facility and silt channel in the nearest two years;*
11. *Organize ecological laboratory for monitoring of the quality of discharged and surface waters and equip the laboratory with necessary machinery.*
12. *Build water channels on the perimeter of the waste dump to prevent flow of agglomerate (from the landfill of agglomerate) in the river Kvirila and to arrange protective wall from the river.*
13. *Provide monitoring of suspended particles and manganese in discharged/surface waters;*
14. *Conduct repairing works of household storages of the personnel on all production sites, provide relevant equipments;*
15. *Supply service personnel with special uniforms and means of individual protection for three shifts;*
16. *Conduct staff trainings and testing in professional safety and environmental matters once in 6 months;*
17. *Place safety signs in all work places;*
18. *Provide systematic supervision on usage of special uniforms and individual protection means by personnel;*
19. *Organization preliminary and periodic medical examination of the service personnel;*
20. *Conduct rehabilitation works of production buildings in order to ensure relevant micro-climate on operational sites; install air-conditioning systems;*
21. *Provide fencing of rotating equipments in the production buildings and place safety signs;*
22. *Rendering the automated manganese concentrate meter harmless and taking it out of the territory of complex in accordance with agreed plan/conditions with Ministry of Environment Protection and Natural Resources.*

23. *To develop liquidation project for the factory 25 and to agree it with the Ministry of Environment Protection and Natural Resources;*
24. *To provide cleaning of silt areas on the water supply mining buildings and to agree the placement of silt with Ministry of Environment Production and Natural Resources;*
25. *To prepare re-cultivation projects in all particular cases of carrier processing works and to provide fulfillment of planned activities;*
26. All the above-mentioned plans shall be presented to the Ministry of Environment Protection and Natural Resources before the end of 2009.

It is also worth mentioning that all above-listed obligations (conditions) were stipulated in EIA report presented by Georgian Manganese to the ministry, namely, EIA report included the “Plan of mitigation and prevention of negative impact on environment and human health”. These obligations were moved to the experts’ conclusion document and respectively, they were added to necessary requirements of environmental impact. Interestingly, EIA report considered the obligation of mitigation activities for negative environmental impact, for example, dissemination of harmful substances in atmosphere (combustion products, non-organic dust), spread of noise and vibration, risks of oil spill, potential risks related to public safety, disturbance of local wild nature and archeological monuments. For some reason mitigation activities of these issues (even though they were reflected in EIA report) were not considered in the permit requirements.

It is also unclear why the term for obligatory activities is not considered in permit conditions (apart from obligation of preparing plans) even in cases, where the investor had set terms in EIA report. For instance, *“building of water channels on the perimeter of landfill to prevent flow of agglomerate (from the landfill of agglomerate) in the river Kvirila and to arrange protective wall from the river”* had to be carried out with the following schedule: project design - 2010., construction- 2011-2014; Or another requirement – *“Organize ecological laboratory for monitoring of the quality of wastewaters and surface waters and equip the laboratory with necessary machinery”* was scheduled for the third quarter of 2009.

The above-mentioned problem (not defining the term for permit conditions) is not familiar only to this particular permit; there are many such cases in the practice of Department of Licenses and Permits of Ministry of Environment Protection and Natural Resources, when difficulties occur in control of permit conditions implementation. This issue and other concerns raised in this publication bear a systematic character and in order to address them, it is important to change the practice as well as legislative regulations.

#### **4.6.4. Fulfillment of conditions stipulated in the permit**

As we have mentioned in the previous chapter, by the permit issued on February 26, 2009 based on ecological conclusion “Georgian Manganese” was assigned to work out a number of plans before the end of 2009. In January 2010 Green Alternative addressed the Ministry of Environment Protection and Natural Resources and requested to provide copies of plans conforming with the conditions of the permit. By the same letter the organization demanded information about activities performed by the Ministry in connection with violation of terms stipulated in the permit, if such occurred.

In response the person responsible for public information of the Ministry of Environment Protection and Natural Resources provided Green Alternative with the following documents: (1) the letter of the head of integrated management of the ministry which said that “Georgian Manganese” had submitted to the Ministry only the plan for reducing impact on the environment caused by the current activities of the enterprise and the plan for treatment of residuals (the letter contained attached copy of relevant plans); (2) in response Green Alternative received the reply prepared by the Inspectorate for Environmental Protection, according to which the plans were not received in the inspectorate, and activities imposed by the current legislation were not carried out by the inspectorate, the reasons were not explained in the letter.

#### **4.7 Labour safety**

Labor safety was a pressing problem during the whole history of “Chiaturmanganumi” operation and remains such up to now.

According to the data of Georgian State Inspection for Technical Supervision<sup>122</sup>: On June 1, 2007 in the underground zone N#2 of Stalin mine of Chiatura ore-dressing enterprise one worker was injured to death; on April 3, 2008 in Tsereteli mine of Chiatura a tunnel builder was badly wounded; on April 23, 2008 on Darkveti mine a electro-craftsman died from current rush; on March 11, 2009 a tunnel builder of underground zone N#2 of Stalin mine of Chiatura ore-dressing enterprise P.

<sup>122</sup> L.E.P.L.-report on activities performed by Georgian State Inspection for Technical Supervision in 2007, 2008 and 2009.

Asanidze received serious bodily injuries; on March 28, 2009 in the underground zone N# of Z. Pataridze while blowing up of the quarry head of shift B. Tsimakuridze and exploder V. Kobiashvili were injured to death; on June 13, 2009 in the underground zone N#2 of Stalin mine of Chiatura ore-dressing enterprise a cobble-stone which fell from the pile of mountain mass on the head of shift of the sector Z. Asanidze which caused a serious injury on his leg.

Having made the analysis of the revealed violations on the facilities of Chiatura ore-dressing enterprise of “Georgian Manganese” Georgian state inspection for technical supervision found out that in most cases the passports demands of strengthening of refining and preparing quarries is not carried out, ventilation is not sufficient, violations in the electro-mechanic area as well as in the mine and machines used in mining are frequent<sup>123</sup>.

It should be mentioned here that according to the report on Environmental Impact Assessment of Chiatura ore-dressing enterprise, it does not have a treatment plan for professional safety, health and environment protection. Issues of health protection of operating staff of the enterprise are carried out by one doctor and middle medical staff. Medical posts are operating in all mines, where middle medical staff is watching. Medical posts are not found in any ore-dressing factory. In the period of audit undertaken for preparation of the report enough quantity of medicine and means of first aid were not stored in the factory. As was established in the process of audit, on workplaces of ore-dressing factories rules and standards of labor safety are violated in most cases:

- there are not enough warning signs at the workplaces, and existing ones are old and need replacement;
- part of turning machines is not protected by special fence;
- artificial light of workplaces is not sufficient;
- due to bad technical status of enterprise buildings it is impossible to create relevant microclimate on the workplaces;
- part of the staff did not use means of individual safety;

According to the same report issues of professional safety are looked after by security service of the enterprise which records, investigates and works out prevention activities of accidents. According to the information of the service during past three years the evolution of accidents is as follows:

- In 2009, 19 cases were recorded, with 3 cases of fatal outcome;
- In 2007, 13 cases were recorded, with 4 cases of fatal outcome;
- During 9 months of 2008, 8 cases were recorded, with 2 cases of fatal outcome;

According to investigations performed by the service all recorded cases were connected with violation of labor safety rules - the victim was to be blamed (?!).

It is worth to mention that till 2007 compensation of damage caused by performing labor service was carried out in compliance with regulation of February 9, 1999 approved by order of the President of Georgia. Considering the mentioned regulation about 900 workers of “Chiaturmanganumi” and/or their families injured at different times received monthly subsistence which was the only source of income for many families during many years.

On March 24, 2007 Prime minister of Georgia Mr. Zurab Noghaideli signed resolution N53 of Georgian government about “the regulation on compensating damage caused by labor service of the worker” according to which in case of liquidation or bankruptcy of the employer (Ministry, institutions, structural units or legal entity of public law), the commitment “monthly subsistence” payment is ceased. So, according to new rule LTD “Georgian manganese” which purchased assets of “Chiaturmanganumi” was released from the commitment which the enterprise had towards the injured.

During the years protest actions of local population affected by “Chiaturmanganumi” operation became a regular event in Chiatura. In 2007 workers injured while performing labor service joined them. From time to time they apply to more active measures of protest-block the roads, go to the capital and starve in front of different international and governmental organizations<sup>124</sup>, but still can't find justice.... During one action, the participants addressed the president for the help and on December 18, 2007 received the following reply:

*“First of all, I would like to wish you a happy New Year and Merry Christmas.*

123 L.E.P.L.-report on activities performed by Georgian technical supervision state inspection in 2009.

<sup>124</sup> Creditors of “Chiaturmanganumi” are planning to block railway; 17.11.2009; <http://medianews.ge/>; 15 inhabitants of Chiatura, have been claiming meeting with saakashvili during 72 hours, if the claim is not satisfied they are threatening with self-liquidation., 17.11.2009, [www.pirveli.com.ge](http://www.pirveli.com.ge)

*I have thoroughly considered the application about the status of your limited abilities. I think justice demands that the Ministry of labor, health and social protection reviews the list of deceases which are the basis for determining the status of disability and take a justified decision in connection with your position. In case of being elected a president of Georgia for the second term I will personally control the resolving the issues of this area.*

*With best wishes,*

*Presidential candidate*

*Mikheil Saakashvili”*

On January 2008 Mikheil Saakashvili was elected President of Georgia for the second term. The injured workers of Chiatura are still waiting for the issue to be “personally controlled by the President<sup>125</sup>”.

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<sup>125</sup> “Chiatura miners are in Misha’s tongs”; 19.09.2009; newspaper resonance [www.resonancedaily.com](http://www.resonancedaily.com)

## 5. MADNEULI

Madneuli gold-copper-barite-complex ore mine is located in Bolnisi region, 80 km to the south-east away from Tbilisi. Exploration of Madneuli mine began in the forties of the last century. In 1956 the mine was approved and construction of Madneuli - one of the largest non-ferrous metals plant in Georgia began in 1959. In connection with construction of the complex, a large industrial settlement was founded on the unpopulated territory-Kazreti borough. In 1975 the enterprise brought into operation started mining quartzite and complex ore deposits containing copper, barite, gold, and silver, their initial processing, enrichment and selling the obtained products. In 1990 mining of barite was ceased. "Quartzite" which was founded in 1994 started to process (heap leaching) auriferous "quartzite" ore that had been stockpiled at the Madneuli copper mine. An enterprise "Ecologist" has been functioning together with "Madneuli" complex since 1996, it performs collection and processing of open pit drainage waters with the aim of extracting copper from them.

### 5.1. SHORT REVIEW OF PRIVATIZATION OF THE ENTERPRISES

In September 2005 "Stanton Equities corporation"<sup>126</sup>, a subsidiary of Russian finance-industrial group "Promishlennie investori"<sup>127</sup> won the competition<sup>128</sup> conducted by the Ministry of Economic development with the purpose of selling JSC "Madneuli" and LTD "Trans Georgian resource". Here we would like to remind the reader that since October 2004 till the date of announcing privatization of JSC "Madneuli" the position of the General Director of the enterprise was occupied by the former vice-president of "Promishlennie investori"-Koba Nakopia<sup>129</sup>.

In November 2005 an agreement between the Ministry of Economic development and "Stanton Equities corporation" was signed, according to which: LTD "Trans Georgian resource"<sup>130</sup> (50%), JSC "Madneuli" (97,25%), and its companies: LTD "Quartzite" (50%), LTD "Mining company"(100%), LTD "Belazakavkaztransservis" (100%), LTD "Guard" (100%), LTD "Transpetqmid" (100%), LTD "Ecologist" (51%), LTD "Football club Sioni" (50%) were transferred to the company for USD 36.010 thousand.

The agreement also defined commitments which the buyer had to meet "completely, duly, conscientiously and within indicated terms". Namely, according to commitments stated in the agreement the company had to maintain JSC "Madneuli" business profile during three years and could not reduce the number of workers and the salary fund. With the objective of compliance with licence and projected characteristics of ore extraction, their redressing and eradicating violations, avoiding and reducing negative environmental impact the company had to provide unconditional fulfilment<sup>131</sup> of requirements of the legislation on environment protection and ore extraction. Within 3 months after making complete payment (December 15, 2005) on the basis of the consultations with the Ministry of Environment Protection and Natural Resource the company was to prepare environmental safety programme which included protection of atmosphere, waste water treatment, managing and processing of residuals, avoiding incidents and measures necessary to introduce environment protection management systems. The programme was to be approved by the Ministry of Environment Protection and Natural Resources; and after approval the programme was to be implemented within 21 months; the company also undertook a commitment to pay USD 16 million "to cover payment indebtedness balance".

It should be mentioned that the agreement signed between the Ministry of Economic Development and "Stanton Equities Corporation" is a rare exception from the point of view of publicity of privatization agreement document and existence of environmental protection requirements in it. Though, as it cleared up later on, neither publicity of the agreement became a sufficient guarantee for the representatives of the public to freely receive information on meeting of the commitments

<sup>126</sup>The company is registered in Virgin Islands in Britain. In December 2007 according to the information disseminated by "Promishlenniy investori" the main owner of the group, Sergey Generalov sold his shares of mineral resource industry assets ("Madneuli" and "Quartzite" among them). According to the agreement GeoPro-Mining, whose owner is the chairman of the board of directors and co-owner of "Promishlennie investori" Siman Povarenkin became the owner of shares.

<sup>127</sup> <http://www.prominvestors.com/>, the owner and president of the company is the former minister of Fuel and Energy of Russia Sergey Generalov.

<sup>128</sup> For detailed information, please see the report of Green Alternative issued in 2007: Aggressive State Property Privatization policy or "Georgian-Style Privatization". Available on the web-site [www.greenalt.org](http://www.greenalt.org)

<sup>129</sup> After selling the plant Mr. Nakopia returned to his position. In 2008 in connection with participating in parliamentary elections in the lists of "United national movement" he resigned again. At present Mr. Koba Nakopia is the member of the 7<sup>th</sup> call parliament of Georgia, parliamentary fraction "United National movement", parliamentary committee of sport and youths affairs, parliamentary committee of education, science and culture and member of temporary parliamentary commission on issues of restoring territorial integrity.

<sup>130</sup> The company owned permit for mining minerals in Sakdrisi deposit.

<sup>131</sup> Actually, this commitment was not connected with implementation of any specific action and meant meeting the requirements of the legislation, which was required from the company by itself.

undertaken by the agreement, nor the commitments defined by the agreement became an important step, if we take into account the circumstance that the company was released from liability for past environmental contamination (so called “Historic Pollution”) by the agreement.

### INSERTION 5. “HISTORIC POLLUTION“

The term “historical pollution” is established in Georgia since 2004 in course of state property privatization and is connected with the release of the investor from liability for past environmental contamination.

It’s worth to mention here, that the practice on the basis of which this term (informal, but frequently used by officials) contradicts to Georgian legislation, namely, the law on “Environment protection”, according to which<sup>132</sup>, “the owner of the privatized industrial facility is not released from meeting the commitments on environment protection which were undertaken by the former owner of the industrial facility. Compensating the damage caused by activities violating the Georgian legislation on environment protection, prior to the privatization of the industrial facility, is the obligation of each new owner of the industrial facility, if not otherwise stated by the legislation”.

If we take into account the fact that “otherwise is not stated by the legislation” the Ministry of Economic development has committed a serious breach of the law, while including the following paragraph into the agreement signed with “Stanton Equities corporation”: *“the Vendor undertakes the commitment that “the Vendee” is not responsible and will not be obliged to clean or otherwise redress or pay any fee for cleaning or otherwise redressing “till the end date”<sup>133</sup> “of any harmful material emitted on the territory of the “company groups” or any other pollution of environment on the land and premises owned by the “company groups”.*

Besides the fact that the Ministry of economic development concluded an illegal agreement, by releasing “Stanton Equities corporation” from responsibility for past damage to the environment , the Ministry added one more violation to the tender which was conducted with lots of other violations<sup>134</sup>.

The point is that the responsibility for damage made to the environment in the past by “Madneuli” and “Quartzite” is connected with solid expenses<sup>135</sup>, and the conditions of the tender did not imply possibility of release from the commitment. So the participants of the tender were to present their offers taking into consideration these expenses. It is unknown whether the offer presented by “Stanton Equities corporation” implied undertaking commitment for damage to the environment in the past. One thing is obvious-the action of the Ministry of Economic development is in any case illegal, as: if the company allowed for these expenses when participating in the tender and the Ministry of Economic development released it from undertaking the responsibility for past pollution when signing the agreement, the ministry caused an unjustified loss to the state budget. But if the company did not allow for this commitment from the beginning, then while identifying the winner the Ministry of Economic Development put “Stanton Equities corporation” into unequal conditions with those participants of the tender who provided for these expenses in their offers. Besides, in this case the offer of “Stanton Equities corporation” should not be reviewed in the tender because it did not meet the conditions of the tender.

In the process of state property privatization, the practice of releasing the new owner from the responsibility for past damage made to the environment by operating the enterprises, is exercised in many countries and is justified by the circumstance that often by undertaking responsibility for this damage the enterprises become so unprofitable that selling them becomes impossible. If this is the case the environment protection audit evaluates the damage to the environment and strict differentiation of commitments between the owner and the state occurs. Such practice, on the one hand, simplifies state control of the current pollution of the enterprise and, on the other hand, enables timely planning of measures necessary for redressing of environment condition.

As a result of wrong practice established in Georgia we face situation where no one (neither the state, not the owners of the private property) undertakes a commitment to redress and compensate the damage made by the factories to the environment prior to privatization. Such practice causes other problems as well, due to the fact that damage and pollution are not evaluated prior to privatization, the owner of already privatized enterprise is given a possibility to ascribe “the

<sup>132</sup> Paragraph 21. Environment protection requirements in the process of privatization.

<sup>133</sup> According to the agreement “end date” means the date of payment and transfer the property to the owner.

<sup>134</sup> For detailed information, please see the report of Green Alternative issued in 2007: Aggressive State Property Privatization policy or “Georgian-Style Privatization”. Available on the web-site: [www.greenalt.org](http://www.greenalt.org)

<sup>135</sup> In spite of the fact that calculations have never been done due to that simple reason that the government has never thought of solving this problem, taking into account the scale and duration we can presume that the amount will be significant.

current pollution” to the “past pollution” and thus escape the commitment imposed by the legislation to avoid, decrease or moderate “current pollution”.

As already mentioned above, after privatization of the enterprises the state does not consider itself responsible for redressing and compensating the damage to the environment caused by operating the enterprise; accordingly the government authorities do/plan nothing to redress damage made to the environment. The clear example of it is the selling of “Madneuli” and “Quartzite”, when the state, after selling the factories did not start looking for funds to redress damage made to the local environment and population by the operations of the enterprise, but, on the contrary, demanded concentrating to the central budget of those funds which “Stanton Equities corporation” owed to the local budget.

According to the conclusion<sup>136</sup> made by the Chamber of Control about inspection of planning-performing local budget in Bolnisi region local administration, liability towards local budget covered by “Stanton Equities corporation” (GEL 5 million) the local administration “granted as financial aid to the state budget”. It is indicated in the report that: “*The funds were granted to the state budget on the basis of the letter from the Ministry of Finance of March 6, 2006 N 04-03/1972, by which the Ministry informs the Bolnisi region authorities that according to the agreement signed between the Ministry of Economic Development and “Stanton Equities corporation” (by which full package of JSC “Madneuli” shares and “TGR” authorized capital were purchased) the latter should cover liabilities before December 3, 2006 part of which will be transferred to the local budget. According to the main principle of implementing local self-government –general-unity of state concerns and paragraph 6 of organic law on “local self-governance and governance” the Ministry requested the local administration to transfer funds received as liabilities to the local budget to consolidated receipts account of state budget of Georgia*”.

## 5.2 STATUS OF MEETING COMMITMENTS UNDERTAKEN BY THE AGREEMENT

### 5.2.1 PROGRAMME OF ENVIRONMENTAL SAFETY

As mentioned above, according to the agreement signed between the Ministry of Economic Development and “Stanton Equities Corporation” after complete payment of the funds (from December 15, 2005) during a 3 months period, based on consultations with the Ministry of Environment Protection and Natural Resources the company was to prepare an environment protection security programme which included necessary measures for protection of atmosphere, waste water treatment, management-procession of residues, avoiding incidents and introduction of environmental management systems.

Detailed information about the process of preparation of the plan is available in report<sup>137</sup> of Green Alternative (year 2007). It is worth to mention here that JSC “Madneuli” presented the final version of Environmental Safety programme to the Ministry of Environment Protection and Natural Resources only in December 2006. The programme presents a three page document where the actions to be implemented are listed in 17 sentences. The mentioned programme was approved by the Ministry of Environment Protection and Natural Resources and in February 10, 2007 (with 11 months delay), a memorandum with “Stanton Equities corporations” on plans of implementation the programme was signed.

Based on the text of memorandum the document between the Ministry of Environment Protection and Natural Resources and “Stanton Equities Corporation” was signed with the aim of meeting the requirements of paragraph 2 of article 15 of the regulation on “rule and conditions of issuing permit for impact on environment” (according to the plan agreed with the Ministry the enterprise was to receive the permit before January 1, 2009).

Green Alternative wrote in the report of 2007, that according to the opinion of the organization the Ministry did not timely exercise its right provided by the privatization agreement signed between the Ministry of Economic Development and “Stanton Equities Corporation” on November 11, 2005. The Ministry did not respond to meeting that condition of the agreement which was within the scope of its competence. At the same time, signing the memorandum with the company was absolutely incomprehensible, because it was not connected with undertaking of any new commitments by the parties. It

<sup>136</sup> Inspection-control act N1/47, of January 5, 2009 of Georgian chamber of control about complex inspection of planning-performing local (regional) budget of Bolnisi region local administration and financial service for the period from October 1, 2005 till January 1, 2007.

<sup>137</sup> For detailed information, please see the report of Green Alternative issued in 2007: Aggressive State Property Privatization policy or “Georgian-Style Privatization”. Available on the web-site: [www.greenalt.org](http://www.greenalt.org)

is probable that signing the memorandum was a measure fully oriented at “PR”, which had to show non-fulfilment of the commitments undertaken by the Ministry and company to the public, as a result of good performance of the Ministry and expression of the company goodwill.

Unfortunately assumption of Green Alternative justified itself. According to the response<sup>138</sup> (to Green Alternative letter) of the head of integrated management and biodiversity department of the Ministry of environment protection and natural recourses, “*the memorandum does not present a legal document and signing of the mentioned memorandum aimed at expression of goodwill of both parties, so that by mutual assistance timely fulfilment of already assigned commitments could be reached. Based on the above, analyses of the actions mentioned in the memorandum are not performed at the Ministry*”.

### 5.2.2 ECOLOGICAL AUDIT

The first action stipulated in the memorandum, implementation of which was already commenced by the date of signing the memorandum was, in accordance with international requirements, conducting ecological audit. It should be noted that the text of the memorandum was worked out on the basis of preliminary conclusions of that audit. Also, according to the regulation on “rule and conditions of issuing permits for impact on environment” to obtain a permit, the enterprise was to present a report of environmental impact assessment, which had to reflect analysis of current situation (ecological audit), it was expected that the audit would be used for this purpose as well.

In November 2006 JSC “Madneuli” announced an international tender for conducting environmental audit in the enterprise. Six consultation companies<sup>139</sup> participated<sup>140</sup> in the tender; the winner was British organization Golder Associates (UK) Limited<sup>141</sup>, which was to prepare the document within 10 weeks period. At the same time the audit was to be based on the existing information; investigations and laboratory analysis were not stipulated. In spite of the fact that the audit was performed within short time, as it is mentioned in the audit report itself, the audit company spent only one week on-site for study of the enterprises (January 17-24, 2007) and a whole number of documents required to study the company were missing – still the report presented quite a horrific picture<sup>142</sup>.

It is worth to mention that in the process of preparing the audit Golder Associates (UK) Limited, together with other interested parties, had consultations with non-governmental organizations (among them Green Alternative) as well. At the meeting in JSC “Madneuli” office on January 17, 2007 the representative of the company declared to the representatives of the civic society that the whole text of the environment audit will be available for the public as is the requirement of Aarhus convention. In June 2007 Green Alternative tried to obtain the audit document, but the organization managed to get only the English version of the document and it was only after applying two times to the Ministry of environment protection and natural recourses and once to the authorities of JSC “Madneuli”.

It should be noted, that on demand of Green Alternative of the full text of audit report, the General Director of JSC “Madneuli” Koba Nakopia replied<sup>143</sup> that only final recommendation letter of the report in which “*eco-social measures to be taken in the enterprise would be listed*” will be available for the public. At the same time Mr. Nakopia mentioned that the public part of the document will be translated into Georgian and will be placed on JSC “Madneuli” updated web-site (Georgian version of “Madneuli” web-site does not function even nowadays) which will be the proof of the fact that “*the company strives for implementing its activities according to high standards and the existing environmental situation is not veiled from the public*”. It is incomprehensible how the public could obtain information on current environment protection situation from the list of measures to be taken, but Mr. Nakopia’s promise remained only a promise and even the final part of the report was not available for the public.

<sup>138</sup> Letter N06-13/265 of April 15, 2008 of the head of integrated management of the environment and biodiversity department of the Ministry of environment protection and natural recourses

<sup>139</sup> Royal Haskoning (Holland), Golder Associates (Great Britain), Bereau Veritas (France (Ukrainian buerau)), Fugro/IABG (Federal Republic of Germany), Prime Resources (South Africa) and ACTA (Switzerland /Georgia). The latter joined non-governmental organization “Caucasus environment non-governmental network” in 2006, CENN; see CENN 2006 annual report: [http://www.cenn.org/wssl/uploads/files/CENN\\_Annual\\_Report\\_2006.pdf](http://www.cenn.org/wssl/uploads/files/CENN_Annual_Report_2006.pdf)

<sup>140</sup> “JSC “Madneuli” report on environment protection measures, 2007”

<sup>141</sup> URL: <http://www.golder.com/>

<sup>142</sup> For example, according to the report, rules on keeping/treating chemical materials (cyanide among them) in the enterprise were not observed. Control tests for disclosure of free cyanide to detect its leak, were not performed. Drums where cyanides was kept were open manually with the help of an axe. Empty containers that could possibly still contain cyanide, were located on the adjoining territory. Ventilation system was not fixed in the cyanide store. Measuring of the quantity of hydrocyanic in the air was not performed. The containers did not have labells, pointing out that a dangerous material was kept in them.

<sup>143</sup> Letter N412/2-1 of June 22, 2007 from General Director of JSC “Madneuli” Koba Nakopia to Green Alternative

It is worth to mention that JSC “Madneuli” was to present the environmental audit to the Ministry according to the environmental safety plan approved by the memorandum. That’s why in September 2007 Green Alternative (hoping that the Ministry of Environment Protection and Natural Resources would at least here display adherence to its principles and demand presentation of the document in Georgian language in public authority) again requested the Ministry of Environment Protection and Natural Resources to provide Georgian version of audit report. The Ministry sent the letter for review to JSC “Madneuli” and later sent Mr. Koba Nakopia’s explanation<sup>144</sup> to Green Alternative saying that: *JSC “Madneuli” observed the term of presenting audit report to the Ministry of Environment Protection and Natural Resources and the original version of the document was presented, in English, not to lose any important information while translating it, all the more, the Ministry did not requested the Georgian version of audit report. Kindly inform you, that JSC “Madneuli” belongs to the number of those enterprises which according to resolution N#234 of December 20, 2006 of Georgian government, must obtain a permit for impact on environment before January 1, 2009, for receiving which the necessary documentation (eco-audit report as well) will be presented to the Ministry in Georgian*. It is worth to mention that Mr. Nakopia did not keep his promise this time as well - the enterprise did not present the environment protection audit while getting permit for impact on environment.

### 5.2.3 REPORT ON MEETING THE REQUIREMENTS

On February 2, 2009 Green Alternative applied to the Minister of Economic Development Mr. Lasha Zhvania for the copy of report on the fulfilment of the conditions stipulated in the agreement between the Ministry of Economic development and “Stanton Equities Corporation”. Only in two months after sending the letter Green alternative received already “traditional” reply, which stated, that according to the signed agreement for transfer of information the written consent of the buyer was required, that’s why the Ministry of Economic development, would make the decision about transferring required information to Green Alternative only after written consent received from “Stanton Equity Corporation”.

Only one paragraph “6.16 public declarations” of agreement signed between the Ministry of Economic development and “Stanton Equities Corporation” applies to disseminating information. The paragraph says: *““The parties” will agree on the nature, time, form and content of making any public declaration or disseminating information connected to existence of the present agreement, its content and terms, except those declarations which are required from the “the party” or its affiliates by the law”*. As the mentioned paragraph had nothing to do with information requested by Green Alternative the organization applied to the Ministry again and defined that information on *“existence of the agreement, its content and terms”* together with the copy of the agreement was provided by the Ministry in June 2006. This time the organization was requesting information which was *“required by the law”* from the Ministry. This definition made by Green Alternative was not convincing for the Ministry of Economic development and the organization received the same reply - the Ministry would make decision only after written consent received from the company.

Taking in view the fact that more than one month had passed since sending the note to the company and Green Alternative received neither requested information nor refusal for providing the information, on April 28, 2009 the organization addressed the Ministry of Economic Development once more and asked to define what measures the Ministry had taken to receive reply from the company. As the organization did not receive a reply to this demand either, on May 7, 2009 Green Alternative addressed the Ministry again and together with the definition requested the copy of the note sent to the company.

In response Green Alternative received a letter N#18/655/9-9, of June 3, 2009 according to which the Ministry reviewed the letter from the organization and in connection to the question informed the organization that a written consent of the company was required after which the Ministry would make a decision. The letter sent to JSC “Madneuli” (and not to “Stanton Equity Corporation”) was also provided to Green Alternative, which as it appeared was sent to the addressee two months later (March 24, 2009) after the demand of Green Alternative.

In September 2009, when it was already clear that the company did not intend to agree to provide Green Alternative with the information either, Green Alternative applied in writing to the head of agreement commitments monitoring department of the Ministry of Economic development Mr. David Chelidze. In the letter Green Alternative defined that one of the paragraphs in the agreement signed between the Ministry of Economic development and “Stanton Equities Corporation” on November 11, 2005 stipulates fulfilment of a number of Environment protection commitments. So the report demanded by the organization which reflected status of fulfilment of commitments stipulated in the agreement must include

<sup>144</sup> Letter N156/1-2 of October 4, 2007 from the General Director of JSC “ Madneuli” Mr. Koba Nakopia addressed to deputy Minister of the environment protection and natural resources Mr. Gocha Mamatsashvili.

environmental information veiling of which is inadmissible and provision of which to the interested party should not be agreed with anybody, all the more with the interested private company.

Taking the mentioned into consideration Green Alternative asked the head of agreement commitments monitoring of the Ministry to study the case in details and provide the organization with information which it had the right to receive according to national legislation as well as requirements of international convention.

On October 1, 2009 Green Alternative received a letter<sup>145</sup> from the deputy minister of economic development Mr. Sulxan Sisauri with attached letter of the General Director of JSC “Madneuli” Giorgi Devadze sent to the Ministry. It was obvious that the Ministry of economic development did not perform monitoring of commitments stipulated by the agreement and JSC “Madneuli” (probably based on the demand of Green Alternative) was requested to provide information only in May 2009 (letter N20/2313/6-9 of May 25, 2009 of the minister of economic development). Thus this time the expectations of Green Alternative were not justified either-instead of the report the organization received only Mr. Devadze’s letter in which the General Director of “Madneuli” was proving that all commitments stipulated in the agreement are met in a timely manner.

In this case, the objective of this publication is not discussion of quality of “Madneuli” fulfilment the conditions, but we would like to show one example of “timely fulfilment” of commitments: when JSC “Madneuli” and JSC “Quartzite” obtained the permit on environmental impact with one month delay unlike stipulated in the law, Mr. Devadze says in his letter: *“within the indicated period JSC “Madneuli” managed to fulfil planned activities, obtained permit for impact on environment in conformity to the current legislation and despite so called “historical pollutions” on its territory for which based on paragraph 5.2.4. of the agreement the company is not responsible and has no commitments, it manages to take such environment protection measures which enable to improve the whole situation”*.

At first glance the companies had to pay fine for slight breaches, firstly for breach of term stipulated by the law and secondly for breach of condition stipulated by the privatization agreement. Based on the information which Green Alternative had, public authorities did not respond to these facts.

### 5.3 “MADNEULI” AND “QUARTZITE” PERMIT ON ENVIRONMENTAL IMPACT

As mentioned above, in conformity to the law JSC “Madneuli” and LTD “Quartzite” had to obtain the permit for impact on environment before January 1, 2009. Same as in all above-mentioned cases Green Alternative addressed the Ministry of Environment Protection and Natural Resources many times and requested to involve organization in administrative proceeding of applications submitted to the minister for obtaining permit for impact on environment or/and ecological expertise in the case of this enterprise<sup>146</sup> as well as any other<sup>147</sup>. And as in the case of issuing the permit for impact on environment for Chiatura ore-dressing enterprise, in spite of numerous demands, the Ministry did not inform the organization about commencing administrative proceeding of issuing the permit to JSC “Madneuli” and “Quartzite” and did not provide the documents for review in time.

Reports on Environmental Impact Assessment of JSC “Madneuli” and LTD “Quartzite” were transferred to Green Alternative only on January 27, 2008 with the following explanation of the head of public relations of the Ministry: *“Kindly informing you that JSC “Madneuli” and LTD “Quartzite” have submitted the documents for the permit to the Ministry of Environment Protection and Natural Resources on December 30. As a procedure of ecological expertise is in the process now, we are kindly asking you to provide the terms at the earliest possible date”*. Considering the fact that in conformity to the law the procedure should not exceed 20 days, it was clear, that Green Alternative was not given enough time to make observations. Hereby, participation of Green Alternative in current administrative proceeding connected with issuing the permit to JSC “Madneuli” and LTD “Quartzite” was limited (this right was conferred to the organization by Georgian general administrative code as well as by Aarhus convention).

<sup>145</sup> September 29, 2009 №20/4687/9-9

<sup>146</sup> By letter №04/09-55 of November 7, 2008 Green Alternative requested information on terms of administrative execution and full documentation on obtaining permit on environmental impact by JSC “Madneuli” upon presenting to the Ministry. By letter №04/09-58 of January 15, 2008, the organization requested information on terms of administrative execution and full documentation on obtaining permit on environmental impact by LTD “Quartzite” and once more requested taking part in administrative execution connected with issuing permit on environmental impact to JSC “Madneuli”.

<sup>147</sup> With the request of participating in the administrative execution of applications for obtaining permits on environmental impact and/or receiving opinion of ecological expertise in the case of this enterprise<sup>147</sup> as well as any other body Green Alternative addressed head of permits and licenses department of the Ministry (G. Tskhakaia). The letter (N#04/02-93) of April 16, 2008 contains the same request as it was for the first time on September 25, 2007, letter (N 04/02-77).

Due to all above-mentioned facts Green Alternative applied to the Minister of Environment Protection and Natural Resources, Mr. Goga Khachidze, by a letter and asked to find out reasons for providing Environmental Impact Assessment to Green Alternative with delay. Green Alternative stated in the letter that Service of Licences and Permits is supposed to be interested in involving public in the process of taking decisions on permits and receive as many comments as possible on applications presented for permits, which would enable the service to arrive at a sound decision. Due to such late submission of Environmental Impact Assessment reports, Green Alternative expressed opinion that the service was concerned with neither support which could come from public involvement nor with the sound decision from the point of view of environmental protection.

Despite the above-mentioned difficulties in obtaining EIA reports Green Alternative still presented its opinion on documents submitted by JSC “Madneuli” and LTD “Quartzite”, as well as on the process of issuing the permits. Namely, Green Alternative supposed that the Environmental Impact Assessments submitted for the review by JSC “Madneuli” and LTD “Quartzite” did not conform to the requirements stipulated by Georgian legislation on obtaining permit for impact on environment and that’s why the organization considered it impossible to issue permit and positive opinion of ecological expertise based on the submitted documents.

Green Alternative reminded the minister (also head of licensing service to whom the copy of the letter was sent) that according to paragraph 22 of the law JSC “Madneuli” and LTD “Quartzite” had to submit a report on assessment of environmental impact for obtaining the permit, which should contain analysis of current situation (ecological audit) as well as a plan of measures to mitigate environmental impact caused by current activities. Here reminding the reader that the General Director of “Madneuli” Koba Nakopia in his letter N156/1-2 wrote to Gocha Mamatsashvili, deputy Minister of Environment Protection and Natural Resources that Georgian version of audit presented by “Golder Associates LTD” would be submitted to the Ministry for obtaining the permit for impact on environment.

In Environmental Impact Assessment report submitted by JSC “Madneuli” to the Ministry it is only mentioned that the ecological audit was performed. Also without any explanations “measures to be taken according to the recommendation of ecological audit” are presented. As to the LTD “Quartzite” Environmental Impact Assessment report, here ecological audit was not even mentioned and could not be, because the document is a complete copy of the report prepared and submitted to the Ministry in 1999.

It can be said that the analysis of the current status of the environment is not presented in Environmental Impact Assessment reports of JSC “Madneuli” and LTD “Quartzite”. As it is mentioned in the reports and as the representative of the enterprise explained at the public hearing, so called “historic pollution” occurs on the territory of the enterprise and its adjoining premises, for which the company is not responsible according to the agreement. According to Green Alternative’s opinion discussion of the responsibility for “historic pollution” has no point, because the enterprises have a vague idea about the general status of the pollution.

Green alternative also reminded the minister that long before presentation of Environmental Impact Assessment reports two documents on ecological audit of JSC “Madneuli” and LTD “Quartzite” were submitted to the Ministry, namely the department of integrated environmental management: (1) “(audit) evaluation of current state of environment of Joint Stock Company “Madneuli”” prepared by LTD “Georgian geological service centre” in 2006; and (2) “Environmental and social audit of JSC Madneuli and Quartzite operations” performed in 2007 by “Golder Associates (UK) Limited”. Both documents contain recommendations for taking measures to reduce environmental impact by the current activities together with analysis of current status. The whole number of serious problems<sup>148</sup> which were not mentioned in the Environmental Impact Assessment report was described in the documents.

At the public hearing<sup>149</sup> the representative of the enterprise explained the above saying that the audit documents were already submitted by the enterprises and they did not consider themselves liable to submit them for the second time; the representatives of the Service of Licenses and Permits had to find the documents themselves in the ministry and review them together with the Environmental Impact Assessment reports. Also, according to the declaration of the representative

<sup>148</sup> Despite the above-mentioned, both these documents were kept at the Ministry without any response, except the letter (08.10.2007 №09-11/3041) sent by the deputy minister Gocha Mamatsashvili to the General Director of JSC “Madneuli” in which recommendations of the Ministry about eradicating problems revealed by the audit were listed.

<sup>149</sup> It is worth to mention that only two representatives of non-governmental organizations (one of them from Green Alternative), one journalist from local paper and several public agents attended the public hearing.

of the enterprises it was pointless to “copy” information from audit documents into the EIA reports. This argument could be convincing, but for one circumstance - as we have mentioned above, the EIA report submitted by LTD “Quartzite” to the Ministry is almost a full copy of “Quartzite leaching project” report prepared by LTD “Dzelqva” in 1999 by “Bolnisi Gold NL” request, and this report has been kept in the Ministry of Environment Protection and Natural Resources<sup>150</sup>. According to the same logic LTD “Quartzite” could refrain from submitting the EIA report, and could just indicate to the report submitted 10 years ago and claim issuing permit for impact on environment. The fact is that LTD “Quartzite” did not do this, but just preferred to “copy” reports.

Green Alternative thought that EIA of JSC “Madneuli” and LTD “Quartzite” operations was impossible without ecological audit. The same was required by Georgian law on “permit for impact on environment”, according to which the report of environmental impact assessment should contain analysis of current environment condition (ecological audit), as well as a plan of measures mitigating environmental impact of current activities.

Green Alternative called on the minister not to make a hasty decision about issuing a permit for impact on environment to one of the largest environment pollutant enterprise, because this process was the only mean for the Ministry which could make possible reducing of pollution caused by operating of the enterprises. Thus, it was important that the Ministry asked the company to submit documents in conformity with the requirements of the legislation and make the decision insuring adequate, timely and effective informing of the public and its participation as it is stipulated by Aarhus convention.

In the letter sent to the minister Green Alternative expressed a hope that the Ministry will not take into account the speculative assertion of the company that if the Ministry would not issue the permit the enterprise would cease operation and whole Bolnisi region would face danger (this idea sounded several times at the public hearing). The organization believed that actually Bolnisi region is already under negative influence of large enterprises and more danger would be expected if the permits for impact on environment were issued formally (as unfortunately is the fact in many cases) without analysing real danger and problems and reflecting them in the conditions of the permits. At the same time fines paid for delay in obtaining permits and expenses born for creation of qualitative documents, did not represent such expenses which could hinder operations at the enterprises.

Unfortunately the Ministry of Environment Protection and Natural Resources did not consider above-mentioned arguments of Green Alternative and on the basis of positive conclusions of the ecological expertise performed at the Ministry, issued permit for impact on environment.

At the end of this chapter, we would like to draw the reader’s attention towards two important aspects connected with the described process:

As was mentioned above in the chapter, Green Alternative received the EIA reports with delay and had to make remarks within very short time. We have also mentioned above that Green Alternative requested the Ministry of Environment Protection and Natural Resources to find out reasons for delay in timely submission of EIA reports, but did not receive any response for the request in the process of issuing permits for the enterprises, nor later.

Later, after issuing permit for impact on environment Green Alternative addressed<sup>151</sup> the head of Service of Licenses and Permits Mr. Nikoloz Chakhnokia and asked for the text of decision made as a result of performed administrative proceeding connected with issuing the permit for impact on environment of JSC “Madneuli” and “Quartzite” and documentation reflecting those reasons and opinions on which the decision was based (the right to demand this kind of information and corresponding commitment of the Ministry is provided in the Aarhus convention). The head of Service of Licenses and Permits did not respond to the letter.

Here we would like to remind the reader that in the same period the same happened in connection with Green Alternative involvement in administrative proceeding of issuing permit for impact on environment of Chiatara ore-dressing enterprise. So the organization addressed the Minister with administrative complaint. As a result a disciplinary responsibility was imposed upon the employees of Service of Licenses and Permits, but the requested documents were not submitted to Green

<sup>150</sup> Taking in view the fact that authorities of LTD “Quartzite” did not bother about preparing a new EIA report and presented to the Ministry a 10 year old documents, the declaration made at the beginning of the EIA report sounds less convincing: *“LTD ‘Quartzite’ undertook the commitment to work out the plan ISO 14001 for treatment of environmental issues with the objective of solving all issues systematically and methodically in future”.*

<sup>151</sup> Letter №04/09-62 of February 11,2009

Alternative this time as well. Only after repeated request Green Alternative managed to find documents reflecting those reasons and views on which the Ministry relied while taking a decision about issuing a permit for impact on environment of “Madneuli” and “Quartzite”.

And finally, it will not probably be strange for the reader, if we say, that the same as in the case of “Saktskalkanali”, for the experts participating in the preparation of conclusion of the ecological expertise of the Ministry, unimpeded operation of “Madneuli” and “Quartzite” is more important than the damage brought to the health of Georgian population and environment by the unimpeded functioning of these enterprises. In this case the reason of the experts’ excitement was socio-economic results caused by the probable cease of operations of the enterprises.

#### **5.4 STATUS OF FULFILMENT OF CONDITIONS STIPULATED BY THE PERMIT ON ENVIRONMENTAL IMPACT**

According to the conditions stipulated in the permit for impact on environment issued to JSC “Madneuli” and LTD “Quartzite” the enterprises were obliged to fulfil a number of measures before July 30, 2009. Namely, within six months period “Madneuli” had to work out and agree with the Ministry of environment protection and natural resources (1) monitoring (self-monitoring) and exact plan of mitigation measures, (2) waste management plan and (3) plan of responding to emergency situations. “Quartzite” was charged with working out the same kind of documents and presenting them to the Ministry in the same terms.

On November 10, 2009, after significant period from the term stipulated by the conditions of the permits had passed, Green Alternative addressed the Ministry of Environment Protection and Natural Resources and asked for a copy of plans for fulfilling conditions of permit by the enterprises. In response the person responsible for public information of the Ministry of Environment Protection and Natural Resources gave Green Alternative letters of two departments of the ministry: (1) letter of deputy head of Inspectorate of Environmental Protection in which it was stated that the inspectorate did not possess the information requested by Green Alternative and (2) letter from the head of Integrated Environmental Management Department which said that the department was reviewing documents presented by the enterprises: JSC “Madneuli” plans of self-monitoring set on quality of surface water objects and atmosphere quality and plan of mitigation measures, also waste management plan of LTD “Quartzite”, plan of self-monitoring and plan for responding to emergency situations. By an indefinite reason the letter was not supported by the copies of the specified plans.

The head of the department of Integrated Environmental Management stated in his letter that the plans were under discussion; so, Green Alternative (hoping that within two months the Ministry would finish reviewing the plans) turned to the Ministry once more claiming the copies of the plans only on January 29, 2010. By the same letter Green Alternative requested information about the measures taken by the ministry due to non-fulfilment of conditions stipulated by the permit (it was obvious from the first letter from the Ministry that the enterprises failed to submit part of the plans).

This time the person responsible for public information of the Ministry of Environment Protection and Natural Resources gave Green Alternative the letter from the deputy head of Inspectorate of Environment Protection. It was mentioned in the letter that plans for waste management, self-monitoring and reacting to emergency situations by LTD “Quartzite” were submitted to the inspectorate, which were not yet agreed with the Ministry. In connection to measures taken by the Ministry in case of non-fulfilment of conditions stipulated by the permit, the deputy head of Inspectorate noted in his letter: *“Status of fulfilment of conditions stipulated in the permit for impact on environment issued for LTD “Quartzite” and JSC “Madneuli” by the Inspectorate of environmental protection are not inspected as of today”*. It should be noted that by the same letter the deputy head of the inspection stated that plans of the enterprise were submitted on November 26, 2009 with four months delay.

Hoping to receive information requested on November 10, 2009 Green Alternative addressed the Ministry for the third time on February 16, 2010 and requested those plans which according to the information provided by the person responsible for the public information was submitted to the Ministry, but due to incomprehensible reasons were not submitted to the organization. In this case Green Alternative once more requested information, due to non-presenting of the plans, on measures taken by the Ministry.

On February 24, 2010 a person responsible for public information of the Ministry transferred copies of self-monitoring set on the quality of surface water objects, self-monitoring set on the quality of atmosphere and plans of mitigation measures to be taken by JSC “Madneuli”. We won’t dwell on the content of these documents; we will only mention that each plan has two pages and the quality does not give the opportunity to make comments. In connection to the plan of responding to emergency situations the Ministry made a strange comment this time - it appeared that the enterprise did have the

commitment to work out this plan, but did not have the commitment to present it to the Ministry. As to non-presenting the plan for waste management, according to the explanation of the Ministry, Inspectorate of Environment Protection has not performed inspection of meeting the conditions of the permits.

## 6. CONCLUSIONS AND RECOMMENDATIONS

First part of the report shows that many significant amendments were made to the privatization regulatory legislation in recent years, although, none of these changes ensured transparency of privatization process; Their majority were directed to increase of number of privatization objects, which is not surprising if the desire of Georgian government to boost the budget, is taken into account. Of course, we can't exclude interests of some powerful authorities to get large objects for a cheaper price. In any case, it is important to admit that legislative change is not a product of unified and public consensus-based state privatization policy, which is proved by multiplicity of amendments in such a short period of time.

Public access to privatization-related information is still an issue and no efforts have been made to address this problem. Cases described in this publication prove that state agencies not promote availability of information for public, on the contrary, they are creating all possible barriers to block public information for interested people.

It should also be mentioned that Green Alternative's efforts to obtain copy of privatization documents of this or that object was not always unsuccessful. There were cases when state structures disclosed privatization-related documentation, for instance, in reply to Green Alternative's request, ministry of economy sent a copy of privatization contract made in 2007 between the ministry and JSC Energy-Pro on procurement of assets of 8 Energy Plants. At the same time, Green Alternative failed to get privatization contracts of JSC HydroEnergoMontazh, JSC Sakhydroenergomsheni, JSC Tbilisi Jewelry Plant, LTD Batnavtobimpex, LTD Batumi Oil terminal, LTD Batumi Marine-trade harbout, JSC Tkibulnakhshiri, JSC Rustavi Metalurgy Mill, Rustavi Cement Factory and Kaspitsemi.

Such "selective openness" gives us ground to think that confidential privatization contracts include some illegal obligations or/and obligations which are against public interests. Presumably, disclosure of secret contracts will cause public protest, it will "affect" interests of "honest investors" and might even become the ground for bringing some top officials (former or current) to responsibility. Green Alternative cannot find any other explanation to "selective openness" approach and recent practice of hiding the whole text of the contract (described in this publication in more details).

Analysis of cases provided in this publication clearly shows one important factor that, in future, will cause serious problems not only for population of Georgia (especially communities affected by operations of privatized industrial enterprises having significant social and environment impact), but also the State. Readers probably noticed that quite often it is almost impossible (or extremely time-consuming) to identify the owner of a privatized enterprise. This problem might not be acute today, but it will become apparent if operations of such enterprise cause damage. The problem is also of utmost importance in view of protection of rights of privatized object staff (or/and dismissed after the privatization).

Amendment made to the law On Public Registry can be regarded as one of the attempts to resolve the above-mentioned problem. The law came in force in January, 2010 and made it obligatory to indicate the data of founders of the company registered in public registry. Unfortunately, public registry data are far from being ideal, quite often, it is impossible to find information about different businesses or contact details are out of date.

Unfortunately, confidentiality of public information is also a concern in relation to fulfillment of obligations considered by privatization contracts and Georgian legislation. Cases described in the report clearly demonstrate that information about the performance of privatized object owners is not accessible (or hardly accessible) for public. In this respect, quite interesting trends have been revealed: if the contract is a commercial secret from the beginning, state agencies also try to conceal information about fulfillment of contract obligations (if they have such information). However, there are cases when the contract is open for public, but information on performance is inaccessible (or hardly accessible). We faced this problem in case of Madneuli and Kvartsiti. Situation is also weird in privatization of Tbilisi, Mtskheta and Rustavi Water Supply systems: Decree of the Georgian President about imposing obligations (deed on purchase) for buyer is disclosed for public, but the contract (which includes conditions set by President of Georgia) itself is inaccessible. Information on fulfillment of these obligations is also concealed.

The situation is also unfavorable in the sphere of implementation of environmental obligations. As mentioned in this report, environmental obligations were included in privatization terms and conditions of some objects which is very good (if we forget competency and fairness of these requirements). However, the system of state monitoring and control of fulfillment of obligations defined by contracts as well as Georgian legislation is very poor in terms of legislative control and capacities of control agencies.

## RECOMMENDATIONS

It is recommended and vital State Chamber of Control began investigation of legacy of privatization process in relation to many state-owned objects. Due to the huge number of such objects, Chamber of Control can start with “large-scale” productions. Scope of production impact on environment and human health shall be taken as a sampling indicator.

It is necessary Parliament of Georgia strengthened the control on fulfillment of legislative requirements by state governmental structures in the sphere of secrecy of public information.

It is extremely important to study the legacy of classification of privatization contracts as a commercial secret (defined by these contracts themselves).

It is necessary to implement programs focusing on strengthening the capacities of control agencies. These programs shall promote development of human and technical resources and empowerment of these agencies with relevant authorities.