

## **The Government takes advantage of the state of emergency and restricts the public participation in the environmental decision-making on controversial projects**

*Green Alternative and Georgian Young Lawyers' Association (GYLA) call on the Government of Georgia to suspend the ongoing decision-making processes on planned projects during the period of the state of emergency.*

With a view to preventing the spread of the new coronavirus in Georgia, to ensure the safety and reduce the possible threat to life and health of the population, on [March 23, 2020, the Government of Georgia adopted a Resolution #181](#) that, among other measures, defines different rules for administrative proceedings and release of public information by the administrative bodies during the period of the state of emergency (Article 13). In three days, on March 26, [the Resolution was amended](#) and Article 13 was supplemented with a paragraph specifically addressing the rules for issuing environmental decisions. The amendment restricted the public's ability to participate in the two stages of environmental decision-making (adopting scoping opinion and environmental decision on the projects that are subject to Environmental Impact Assessment, EIA).

In particular, the amendment to the Government Resolution of March 26, 2020, defined that the ongoing administrative procedures for issuance of scoping opinions and environmental decisions in the Ministry of Environmental Protection and Agriculture will be completed without public consultation meetings; Public participation in the decision-making process and the possibility to submit opinions and remarks will be provided only in written and/or electronic form, as established by the Environmental Assessment Code.

Prior to the amendment to the Government Resolution on March 26, the Ministry of Environmental Protection and Agriculture made [a statement](#) on March 24, stating that it had been decided to postpone public consultation meetings on scoping and EIA reports until the state of emergency is lifted.

After adoption of the amendment to the Government Resolution on March 26, the Ministry released its statements for more than 20 planned projects. The Ministry referred to these projects as to the infrastructural projects and explained that it is necessary to continue without restrictions the administrative proceedings that have already been commenced; Thus, no public consultation meetings will take place during the administrative proceedings.

### **Three aspects are noteworthy concerning the situation described above:**

1. The Decree #1 of the President of Georgia of March 21, 2020 on the Measures to be taken in relation with the declaration of the state of emergency on the whole territory of Georgia restricted the following rights: human liberty (Article 13), freedom of movement (Article 14), rights to personal and family privacy, personal space and privacy of communication (Article 15), rights to fair administrative proceedings, access to public information, informational self-determination, and compensation for damage inflicted by public authority (Article 18), right to property (Article 19), freedom of assembly (Article 21) and freedom of labor and freedom of enterprise (Article 26).

The restriction does not apply to Article 29 of the Constitution of Georgia, which defines the right to environmental protection and stipulates that the right to participate in the decision-making related to the environment shall be ensured by law. Accordingly, the right to receive information on environmental matters and to participate in the decisions on such issues falls under the provisions of Article 29 of the Constitution, and the restriction of this right, in the event of the state of emergency, is prohibited by Article 71 (4) of the Constitution of Georgia.

2. None of the planned projects, applications for which are currently submitted to the Ministry, are of such urgency that it would be impossible to suspend the decision-making process until the end of the state of emergency. The Ministry's initial decision to postpone the obligatory public consultation meetings should have been followed by the suspension of the decision-making processes (for the reasons described below). However, the Ministry canceled public consultation meetings altogether and continued the decision-making process unimpeded.

It should also be noted that in the event of an emergency due to a state security or a force majeure situation, the Environmental Assessment Code entitles the Ministry and the Government to exempt planned activities from the EIA procedure; However, in such a case, a project proponent is required to substantiate the urgency of the project. None of the proponents of above-mentioned projects have requested the Ministry to initiate this procedure. From this, the question naturally arises as to why did the Government of Georgia and the Ministry of Environmental Protection and Agriculture need a temporary change in the procedures established by law in a way that decisions on the projects will be made with minimal public involvement. This question is answered by the projects themselves that are affected by the Resolution #181 of the Government of Georgia.

Among these projects, several are problematic (for example, projects planned by the RMG company), however, one project that has been the subject of heated discussions in recent months is particularly striking. This is [the project on the construction and operation of the Abastumani Bypass Road in Adigeni Municipality](#). The project has attracted attention due to the fact that the planned road crosses the Borjomi-Kharagauli Protected Areas and the Emerald Site (that should be protected due to commitments made under the Berne Convention on the Conservation of European Wildlife and Natural Habitats and the Association Agreement with the European Union); In addition to that, the road project is part of a larger project initiated by Bidzina Ivanishvili, which aims to renovate Abastumani and has the unconditional support from the state agencies.

The date of submission of the application (along with the EIA report) to the Ministry requesting an environmental decision for the project also requires attention. The project proponent - the Roads Department - has submitted the Ministry [an application](#) to issue an environmental decision on 24 March, 2020; That is, in a situation when a state of emergency has already been declared and special rules and restrictions have been introduced; Moreover, it was clear that the decision-making process by the Ministry could not be carried out in a standard manner, in accordance with the rules established by the Code. Nevertheless: the Ministry started proceedings; afterwards, on March 26, the Government amended the Resolution (abolished public consultation meetings); On March 27, the Ministry [published an EIA report](#) on its website and invited public to submit comments in written. On April 3, the Ministry [issued an additional statement](#) that no public consultation meeting of the project will take place.

There is also another important aspect to consider. The Ministry of Environmental Protection and Agriculture issued a decision at the preliminary stage of administrative proceedings - [a scoping opinion on this project - on March 6, 2020](#). On March 24, in 18 days after the scoping opinion was issued, the Roads Department submitted the EIA report to the Ministry and requested to issue a decision of a final stage - environmental decision. It turns out that, based on the scoping opinion, the Roads Department in just 18 days conducted an EIA - a type of survey that generally requires an average of 6 months, if basic data and research are available, and in the case of complex projects it takes several years. Interestingly, the Roads Department has hired a "Gamma Consulting" company to conduct an EIA research - a company that has often been criticized in recent years by both citizens and EIA experts for producing poor quality EIAs.

The above circumstances raise strong suspicions that emergency rules for administrative proceedings (decision-making without public consultation meetings) have been introduced to simplify the decision-making process and pave the way to controversial projects, including the Abastumani Bypass Road project.

3. The Ministry of Environmental Protection and Agriculture notes in its statements on the planned projects that public consultation meetings have been canceled to prevent the spread of coronavirus, however, another form of consultation – submission of opinions to the Ministry in written and electronic form – is still available. At the same time, the Ministry emphasizes that: “The change does not concern the forms and means of providing information to the public. Therefore, all stakeholders, in case of interest, will be provided with comprehensive information on the planned activities”.

This statement of the Ministry is wrong for a simple reason. Public participation in the decision-making process is impossible without informing the public. The forms for information provision as defined by the Code are inadequate in the state of emergency, including due to the restriction of movement.

In order to inform the public, the Environmental Assessment Code envisages the publication of the documents: (a) on the official website of the Ministry and (b) on the notice board of the executive body and/or representative body of a respective municipality. A significant part of the Georgian population, especially in the regions, does not have adequate access to the Internet (and even if they do, why would, for instance, residents of Abastumani or Borjomi check the Ministry’s website?..); Thus, the publication on the website of the Ministry cannot be considered as providing adequate access to information to the citizens affected by the projects. Neither the publication of the information on the notice board of the executive body and/or representative body of a respective municipality can be considered appropriate since the citizens have limited freedom of movement due to the state of emergency and are strongly required to stay home unless there is an urgent need to move.

Bearing in mind the shortcomings observed in fulfillment of the Ministry’s obligations to inform the public and ensure public participation in normal conditions as a routine practice, the inadequacy of the decisions of the Government and the Ministry to continue the decision-making procedures during the state of emergency becomes even clearer.

It should also be noted that, for the above reasons, it is also incorrect to continue the screening procedures provided by the Environmental Assessment Code (the first stage of administrative proceedings) – reviewing screening applications and granting screening decisions. The screening procedure, as well as its subsequent scoping and final - environmental decision making procedures, envisages the use of the same means for informing and consulting the public, but in more limited time and without public consultation meeting. Resolution #181 of the Government of Georgia of March 23, 2020, does not apply to this stage and therefore, the Ministry has continued to review screening applications, as usual.

**In view of all the above, we, the undersigned, call on the Government of Georgia to immediately amend the provision set out in paragraph 5, article 13 of the Resolution #181 of March 23, 2020, and suspend the administrative proceedings to issue screening, scoping and environmental decisions until the state of emergency is lifted.**

Green Alternative

Georgian Young Lawyers’ Association (GYLA)