

SPECIAL MANAGER AT THE GEORGIAN MANGANESE - ATTEMPTS FOR IMPROVEMENT OF THE ENTERPRISE OR DISTRIBUTION OF SHARES?

INTRODUCTION

The extraction of minerals is one of the most destructive human activities in terms of environmental and social impacts. Large-scale mining activities are usually associated with the destruction of forests over large areas and the devastation of fertile lands. This significantly changes the landscape and affects the biodiversity. The pollution of underground and surface water and soil occurs. The social environment changes. The changed social and natural environment affects the local population. Conflict situations emerge when, for example, mining activities are carried out over the lands that could be used for agriculture, or contamination of irrigation and drinking water, air pollution, property damage, etc. occurs.

Negative impacts of mining cannot be fully avoided; however, through the proper assessment of possible impacts (environmental impact assessment) and then the comprehensive control of fulfillment of license terms and legal requirements, the negative impacts could be minimized.

The management structure for use of minerals has changed several times over the last 20 years. Most of them envisaged a change in the permit-issuing agency. At different times a power to issue a license was entrusted with the Ministry of Environment and Natural Resources Protection (in 1996-2008 and 2013-2017), the Ministry of Economy and Sustainable Development (in 2008-2011 and from 2018 up to the present) and the LEPL Agency for Natural Resources under the Ministry of Energy (in 2011-2012). However, these changes had no substantial impact on the terms of issuance of the license and had not resulted in improvement or deterioration of the decision making process. The most important development took place after the adoption of the Law on Licenses and Permits in 2005, which had radically changed the rules for granting the right of use of minerals. In particular, according to the amendment, to obtain a right to use minerals became possible through bidding by auction, without any additional conditions. Moreover, the use of minerals did not require an environmental impact assessment any more, unlike the regulations that were in force previously. Environmental impact assessment of use of minerals has become mandatory only since January 1, 2018, upon the enactment of the Environmental Assessment Code. However, the Environmental Assessment Code does not envisage any regulation of the licenses issued in 2005-2017, including the license to use the fossil fuels of **Chiatura Manganese** for 40 years that was issued in 2006. Therefore, in the view of reducing the negative impact of the alarming scale on natural and

social environment of manganese extraction and enrichment in Chiatura we put our hopes on the special manager appointed by the State in 2017.

GEORGIAN MANGANESE - DAMAGE INFLICTED ON THE ENVIRONMENT

ENRICHMENT PLANT - ENVIRONMENTAL IMPACT PERMIT

The newest of its plants of the Chiatura Mining and Enriching Complex that are operating today was constructed in 1962 while the oldest one - in 1935. Thus, it could be said that all territories of the plant have experienced significant technological burden over the decades and the natural environment has been significantly altered.

Wastewater produced in ore washing process contains large amounts of weighted particles, manganese compounds and a small number of other microelements. For treatment of the wastewater, the plants are equipped with sedimentation tanks and tunnels where the weighted particles (sludge) were deposited, and then water was returned to the enrichment plants for recycling. In order to remove sludge from the plants, a sludge line (two parallel pipelines) was constructed through which the sludge was supplied to the central flotation plants where manganese concentrate was separated from sludge. The remaining sludge was pumped out to the so-called Ghurghumela reservoir. The sludge was deposited in the Ghurghumela reservoir after which the water was returned for recycling.

Currently, none of the enrichment plants of Chiatura mining and enriching complex has an operative treatment facility. The previously existing sludge lines are out of operation. Thus, the Ghurghumela sludge reservoir is inactive at present. In fact, most of the sedimentation tanks and tunnels are not functional, the pipeline no longer exists and the wastewater of the enrichment plant flows without the prior treatment into the river Kvirila that causes pollution of the river water with weighted particles and manganese compounds. An additional source for Kvirila pollution is the mine dump of the agglomerate, where the agglomerate after processing of intermediate products of various factories by the enrichment plant (central floatation plant) is deposited. This is an intermediate waste, which contains an average 15.4% manganese, and in case of improvement of enrichment technologies, it is possible to obtain a manganese concentration from it. The dump is located on the left bank of the river Kvirila. The area is not surrounded by fence.

Until 2009, Chiatura Manganese enrichment enterprise was functioning without the environmental impact assessment and appropriate permit. The conditions of the permit, issued in 2009, were first inspected in 2012. The company was fined 5000 GEL for violation of permit terms and conditions. To eliminate the violations, the Ministry set a reasonable time limit for the company. In 2014, the Environmental Supervision Department inspected the measures taken to eliminate the violations within the time limits. The inspection revealed that the obligations imposed due to violation of the permit conditions had still not been fulfilled. Therefore, Georgian Manganese was fined GEL 15,000 (triple amount of the fine for the repeated violation of the permit terms and conditions). In addition, the Ministry estimated the amount of the damages inflicted on the environment, which amounted to 30 659 550 GEL.

On 17 September 2014, the Ministry again set reasonable time limits and imposed respective obligations on the company. In particular, the company was requested to:

- immediately start and implement arrangements of the sedimentation tanks of local treatment for the industrial wastewater of the enrichment plants within 6 months;

- immediately start and ensure effective exploitation of all sludge thickening facilities of the enrichment plant within 6 months, in accordance with the Environmental Impact Assessment report;
- to complete the works of construction of an enterprise laboratory and ensure that it is in working condition within 3 months;
- with the purpose of preventing the intrusion of the agglomerate stored at the agglomerate dump into the river Kvirila, immediately start and complete the arrangement of the water flow channels on the perimeter and build a protective wall on the bank of the river Kvirila within 6 months;
- immediately start arrangement of an open ore enrichment technology line in the vicinity of the plant, according to the Environmental Impact Assessment report.

At the request of the company, the Ministry initially extended the abovementioned time limits until 31 December 2015, and later - until July 1, 2016. In June 2016, the company again applied for a one-year extension of the time limit, which the Ministry did not agree with. According to the Ministry, the company did not demonstrate any effort to eliminate violations and, thus, there were no objective grounds for the postponement.

On July 2, 2016, the Environmental Supervision Department again imposed a fine on the company upon the expiration of the time limits. Based on the protocol, at this time the company was fined 45 000 GEL - again a triple amount of the already tripled initial fine of 5000 GEL.

The Ministry has explained that, according to Paragraph 4 of Article 34 of the Law of Georgia on Licenses and Permits, "if the permit holder, despite the imposition of obligations under Paragraphs 1, 2 and 3 of this Article, has not fulfilled the conditions of the permit, the permit issuer shall take a decision to revoke the permit". However, the Ministry also pointed out that, in addition to Paragraph 12 of this Article, „if the revocation of the permit may cause more damage than the extension of the permit, or it is not possible to terminate the permit substantially, the permit issuer shall take a substantiated decision to authorize the permit holder to carry out the permit activity in compliance with the conditions set by it. In such a case, the permit holder is obliged to ensure fulfillment of additional permit conditions within a reasonable time limit defined by the permit issuer."

On July 5, 2016, the Minister of Environment and Natural Resources issued a decree on granting Georgian Manganese the right to carry out permit activity in compliance with the conditions set by the Ministry of Environment and Natural Resources Protection of Georgia." According to the decree, the Ministry presupposes that "the enterprise is the main source of employment of the population of the town of Chiatura and revoking the environmental impact permit would trigger a social crisis... It is also noteworthy that in the present case revoking the environmental impact and, thus, depriving the permit holder of the right to carry out an activity could not ensure improvement of difficult ecological situation, while imposing additional environmental measures on the permit holder and monitoring their enforcement provides more possibilities for improvement of existing conditions."

Taking into account the abovementioned, in accordance with the Order #334 of the Minister of Environment and Natural Resources Protection of 5 July 2016, Georgian Manganese LLC was granted the right to carry out a permit activity until December 31, 2017, based on a condition to fulfil the abovementioned obligations and construct a new enrichment plant.

Yet in November 2014, Georgian Manganese released the Environmental Impact Assessment report for the construction a new enrichment plant and exploitation of manganese ore in Chiatura. The main drawback of the

new project was the unresolved problem related to disposal of production waste – sludge. The Company discussed two alternatives for waste disposal for the new enterprise: 1. Ghurghumela sludge reservoir - which has long been out of order, and 2. Dalakhauri sludge reservoir - the construction of which was opposed by the local Gamgeoba and the population of Itkhvisi and Shukruti villages - mainly due to the threat of adverse impacts and the proximity to the villages. The company failed to submit the document that was presented for public discussion to the ecological examination.

In the beginning of 2016, Georgian Manganese again released documentation for public discussion; however, the problem of waste disposal remained unresolved. In February 2016, the company conducted “a public discussion” which the local population was not informed about. The announcement on the meeting was not even posted on the façade of the building.

On December 26, 2016, the company applied to the Ministry of Environmental and Natural Resources to obtain an ecological examination report. According to the submitted documents, “in line with the conceptual project of the new enrichment plant, it is planned to arrange a sludge reservoir in the vicinity of the project area, in a so called Dallakhauri Gorge, for which the project documents has been prepared as of today. The sludge reservoir will be constructed in parallel to the construction of the plant. Both of them will be put into operation simultaneously. The gorge selected for designing the sludge reservoir is located near the site of the project enrichment plant, in about 500-600 meters. Consequently, in case of arranging the sludge reservoir, the environmental and safety risks associated with transportation will be reduced significantly. Waste will be transported in the Dallakhauri sludge reservoir through the sludge pipelines and special vehicles.” Despite the fact that, according to the document, the project documentation for the sludge reservoir had been prepared, the information had not been reflected in the EIA report; nor had the assessment of the environmental and social impact of the sludge reservoir been presented. Based on it, the Green Alternative addressed the Ministry of Environment and Natural Resources Protection and urged not to issue a positive ecological examination report over the submitted documents, as the environmental impact assessment is required for the full production cycle, of which the sludge reservoir is an integral part. The Ministry of Environment and Natural Resources did not share the opinion of the Green Alternative and issued a positive [ecological examination report](#) on January 10, 2017. On March 23, 2017, the Ministry requested the company to submit alternative options for selecting the territory for sludge and solid waste disposal within 2 weeks, but the company failed to do so.

All of the above demonstrates clearly that a solid ground for the revocation of the environmental impact permit existed yet in 2017.

MINING OPERATIONS - LICENSE

Manganese production creates larger scale problems. The activation of landslide processes on the territory of Chiatura and Sachkhere districts is mainly related to processing of manganese ores. The development of dangerous geodynamic processes is caused both by the processing of quarries and failure to carry out recultivation after the completion of works. In addition to the dangerous geodynamic processes, extraction of manganese is associated with significant contamination of air, soil, water, noise and their harmful effects on human health. Besides the fact that the negative impact on people's livelihoods has reached a dangerous level, land plots, houses, crops and livestock are being permanently damaged.

The license for use of manganese ore owned by Georgian Manganese was issued in 2006 for 40 years. According to the terms of the license, 16 430 hectares has been allocated for the company for entrepreneurial

activities, including 13 068 hectares in Chiatura district (24% of the total area of the district) and 3 362 hectares in Sachkhere district.

Conditions of the license issued in 2006 was first inspected in 2013 and only a practice of processing mineral deposits in Perevi, Rgani, Itkhvisi and Upper Itkhvisi villages was examined partially. The inspection revealed that the conditions of the license, almost all the norms and regulations for the safeguard of environment and safety had been violated during the mineral production. The company was fined 500 GEL and a reasonable time limit was set to eliminate violations; the damage caused to the environment amounted to 2 079 582,34 GEL. As the case contained the signs of criminal offense, it was submitted to the Regional Prosecutor's Office for investigation. During the re-inspection in 2014, it become clear that the violations had not been eliminated within reasonable time limits. The company was fined 1500 GEL and was again given a reasonable time limit to eliminate violations. However, the inspection conducted in 2017 again revealed significant violations of law.

In 2014, the Rgani, Tsereteli and Shukruti mines and their terrestrial perimeter were inspected. As a result of the inspection, significant violations of regulations on environmental protection and safety were established. For example, works were conducted without a project on use of minerals, the company did not have an annual plan for the development of mine operations, the area was contaminated with household waste, accurate data for sustainability, dynamics, quantitative and qualitative changes and losses were not maintained. At this time, the company was fined with double amount of GEL 1,000 and the time limit was again defined to eliminate violations.

In 2014, due to significant violations of Shukruti, Mghvimevi and Upper Rgani quarries, Georgian Manganese LLC was again fined 1000 GEL. The damage caused to the environment was amounted to 324 328 434, 23 GEL. According to the protocol of the inspection of the Environmental Supervision Department, the following facts of violations of law have been found:

- All production works at the quarries were performed in violation of the deposit-processing project. The slope angle of every step was up to 90 degrees instead of 70 degrees that was envisaged;
- There were no protective bags;
- The fertile land was not removed and stored that caused a severe degradation of soil;
- Waste rocks fall into the gorge that caused the deterioration of the slopes.

As a result of examination launched in 2013, numerous facts of illegal forest use and timber destruction have been found.

- In 2013, illegal logging and burying 220,6 m³ timber was revealed; environmental damage amounted to 158 832 GEL.
- In 2015, it was established that the company destroyed 591,94 m³ trees in the area of 76 342 m²; the damage amounted to 403 504,2 GEL.
- In the course of the inspection conducted in 2016, destruction of timber 176,17 m³ was revealed; the damage amounted to 87 684,48 GEL.

As in the case of the permit, the above-mentioned clearly demonstrates that the Georgian Manganese deliberately violated the requirements of the Georgian legislation, and yet in 2013 there existed the grounds for the revocation of the license.

THE ZESTAFONI FERROALLOY PLANT

The Zestafoni Ferroalloy Factory plays an important role in Georgian manganese production cycle in addition to licensing use of Chiatura manganese enrichment plants and minerals. The factory was put into operation much earlier (1933) before the enactment of the Law of Georgia on Environmental Permits. According to the Law on Environmental Impact Permits, the enterprise should have obtain a permit until 1 January 2010, in accordance with the plan (program) agreed with the Ministry. However, as of today, the company does not hold a permit. Because of the negligent and gross violation of the law, the enterprise has been fined several times. The inspection materials were submitted to the Ministry of Internal Affairs as it contained the signs of criminal offense.

In 2015, during its third inspection, the Environmental Supervision Department found that the operation of the enterprise resulted in emission of harmful substances (dust, manganese (IV) (oxide), sulfur (IV) oxide, nitrogen (IV) oxide, carbon (III) oxide, carbon (IV) oxide) in the atmospheric air that exceeded the emission norms. Only the damage caused to the environment due to harmful anthropogenic impact on atmospheric air was estimated at 60 472 413,6 GEL.

RESULTS OF INSPECTION IN 2013-2017

According to the information of the Environmental Supervision Department under the Ministry of Environmental Protection and Agriculture of Georgia, in 2013-2017, due to the activities of Georgian Manganese LLC (as a result of use of minerals within the scope of the license, as well as operation of the enrichment enterprise and ferroalloys plant) the damage caused to the environment amounted to 416 110 418,51 GEL out of which:

- Non-fulfillment of the environmental permit conditions, including the failure to install local wastewater treatment equipment in the enrichment plant. The polluted waters are flooded into the river Kvirila - 30 799 860 GEL; - It is noteworthy that the pollution continues until now;
- Illegal cutting of timber at 2,3 hectares in the state forest fund in the contour of the license (the Rgani mine) - 158 832 GEL;
- Damage inflicted on the environment due to the land degradation-pollution within a period from 01.10.2010 to 01.04.2014 amounted to 324 328 434,23 GEL;
- Damage inflicted on the environmental due to the pollution of water (river Kvirila) within a period from 03.09.2013 to 01.01.2014 amounted to 30 659 550 GEL;
- Damage to inflicted on the environment due to the atmospheric air pollution within a period from 01.01.2012 to 16.04.2015 amounted to 60 472413,6 GEL;
- In 2013-2016, the damage inflicted on the environment due to illegal forest activities amounted to 650 020,68 GEL.

SPECIAL MANAGER

LEGISLATION

[The Law of Georgia on Licenses and Permits](#) regulates issues related not only to issuance of licenses and permits but also control of compliance with the conditions of licenses and permits as well as their revocation.

Article 22 of the Law establishes **responsibility for violation of license conditions**. According to it, failure of a license holder to comply with license conditions shall result in a fine to the license holder. At the same time, the license issuer shall establish a reasonable time limit to fulfill conditions and define conditions, which should be necessarily performed in order to implement specific activities. Failure to comply with the license conditions within the established time limit shall result in a penalty of three amount of the imposed fine. Again, a time limit and conditions for fulfillment of license shall be determined. The law provides for the possibility to triple the amount of the fine yet again. If, after all, the license holder fails to fulfill the conditions, the license issuer shall render a decision to revoke the license (Article 22, Paragraph 4).

According to the same Article of the Law, revocation of license, as a form of punishment, can only be applied if the imposition of the fine on the license holder fails to ensure fulfillment of the license conditions. Furthermore, in case if the revocation of license may cause more damage than the extension of license, or it is substantially impossible to suspend its validity, the license issuer shall render **a substantiated decision** on granting the license holder the right to continue licensed activities in accordance with the conditions set by the license issuer. If the license holder over again does not fulfill the license conditions, then the license issuer is authorized to ensure their fulfillment on its own or through the third persons on behalf of and at the expenses of the license holder. When it is impossible to fulfill the conditions in such form, the license issuer is entitled to apply to the court with a request to appoint **a special manager**.

Article 34 of the Law on Licenses and Permits establishes **responsibility for violation of permit conditions**. In this case as well, failure to comply with permit conditions shall result in a fine according to legislation. Irrespective of the imposition of a fine, failure to fulfill conditions within the established time limits shall also result in a penalty of three amount of a fine and failure to fulfill them over again shall result in a penalty of three amount of the previous fine. After that, the permit issuer is authorized to revoke the permit. If revocation of the permit may cause more damage than the extension of permit, or it is substantially impossible to suspend its validity, the permit issuer shall render **a substantiated decision** on granting the permit holder the right to continue permit activities in accordance with the conditions set by the permit issuer. In this case as well, the permit issuer is authorized to ensure fulfillment of the permit conditions on its own or through the third persons on behalf of and at the expenses of the permit holder. When it is impossible to fulfill the conditions in such form, on the basis of the motion of the permit issuer, the court shall render a decision to appoint a special manager to carry out permit activities and fulfill permit conditions.

Where delay would cause damage, in order to carry out permit activities and fulfill permit conditions, the permit issuer may appoint a special manager based on the substantiated decision and then submit to the court to render its decision.

Rules of appointment, authority and remuneration of a special manager

A Special Manager is authorized to carry out all measures related to license/permit activities in the shortest possible time at the expense of the license/permit holder in order to ensure the fulfillment of the license/permit conditions. The Court shall approve the monthly report of the activities undertaken by the Special Manager.

The Special Manager shall be appointed for a specified period of time. If the license/permit conditions are not fulfilled in the established time limit, the Court is authorized to extend this time limit.

The license/permit holder is required to immediately provide any information or material resources related to licensed activities at the request of the Special Manager.

In case if the Special Manager or a license holder ensures fulfillment of license conditions, the Court shall take a decision on the cancellation of the special management.

All activities directed towards ensuring fulfillment of license conditions, including the remuneration of the Special Manager, shall be carried out at the expenses of the license holder.

Issues related to the authority, activity and remuneration of the Special Manager considering specifics of the licensed activities, can be further regulated by a normative act of the license issuer or its supervising (overseeing) administrative body.

It is noteworthy that due to the non-fulfillment of license and/or permit conditions, the possibility of appointment of the special manager in the enterprise is envisaged by the law from the date of its adoption (24/06/2005). However, the practice of using this mechanism in the environmental field has been limited to one case only - the appointment of the manager at Georgian Manganese.

APPOINTMENT OF THE SPECIAL MANAGER AT GEORGIAN MANGANESE

On May 11, 2017, the Ministry of Environment and Natural Resources Protection issued a statement regarding the appointment of the special manager at Georgian Manganese. According to the [statement](#), “the company, which have obtained a license for manganese mining for many years and has been working on enrichment and processing of manganese ores, though has been fined for several times and was given reasonable time limits by the State in order to eliminate the violations, has continued its activities in severe breach of the environmental legislation that was ultimately confirmed through the inspection conducted in the current month. It was found out that the company not only failed to correct the situation in terms of the river and soil pollution and degradation, but rather hardened it, which, in fact, **creates a situation of the ecological catastrophe** on the spot.” In order to improve this situation, the Ministry applied to the court and requested the appointment of a special manager in the enterprise “which will be responsible for gradual improvement of the situation “.

In the request submitted to the Court, the Ministry pointed out that the imposed fines and additionally defined time limits could not force the company to carry out the license and permit conditions. “The implementation of conditions is of particular importance for the State and society in light of the fact that activities in breach of license/permit conditions cause irreparable harm to the environment, have a negative impact on the soil, water and air. The estimated environmental damage, based on the data given above, amounts to 416110418.51 GEL,

which continues to grow steadily. However, on the other hand, the termination of the right granted to the company based on the permit/license, creates a threat to terminate the production for an indefinite time as well as other economic problems, as the Georgian Manganese LLC at the moment is the only company being able to provide a complex process of extracting and processing manganese ore and is equipped with proper manufacturing equipment and facilities (on all objects) and other material and intangible assets, including appropriate human resources. However, it should be emphasized that, as noted above, the Georgian Manganese LLC had not met the permit/license conditions within either of the additional time limits granted to it numerous times in parallel to the imposed fines, even more, has not yet made any effective efforts for this purpose and until now continues to disregard the license conditions negligently. Taking into consideration the current situation, it is unlikely that the company will eliminate the above-mentioned problems in future because, as it has been noted, no effective measures to fulfill certain obligations have been taken yet and, **in fact, it is impossible to fulfill them in the nearest future.**"

Based on all this, in order to fulfill the license and permit conditions, the Ministry of Environment and Natural Resources Protection and the National Environmental Agency requested the enactment of a special management regime at Georgian Manganese LLC for not more than 3 years. They requested to carry out management by a special manager and appoint Nikoloz Chikovani to this position. The special manager would be granted the right not only to implement activities related to the fulfillment of the license and permit conditions but also the **right to run the enterprise completely independently and solely**. They requested the imposition of an obligation to the manager to submit a monthly report to the court and the Ministry, and his salary payment amounting to 8000 GEL.

It is noteworthy that the Minister of Environment and Natural Resources Protection of Georgia and the Head of the National Environmental Agency filed a request to the Tbilisi City Court on the appointment of a special manager at the Georgian Manganese LLC on May 10, 2017. The Judge Nino Buachidze discussed the request without an oral hearing and delivered its [decision](#) on 11 May 2017, the next day. It is worth mentioning that the request itself was presented in 23 pages while the evidence - in 1195 pages. On May 11, 2017, at 17:41 pm, the document was submitted to the Registry of Entrepreneurial and Non-Entrepreneurial Legal Entities for registration.

The Court fully accepted the position of the authors of the request and satisfied all the requirements.

According to the court ruling, "the Court believes that the request is based on Article 31 of the Administrative Procedure Code of Georgia and represents an interim measure. Pursuant to Article 31 of [the Administrative Procedure Code of Georgia](#), "on the basis of an application, a court may render an interlocutory ruling regarding a dispute, **prior to initiating proceedings**, if there is a risk that changing the existing situation may hinder or significantly complicate the exercise of the applicant's rights. A interlocutory ruling of a court may also be used for preliminary resolution of a disputed legal relationships, if such a resolution, first of all, in case of long-term legal relationships, is necessary due to significant damage, existing danger or any other reason."

According to the [assessment](#) of Transparency International - Georgia, the Court ruling regarding the appointment of the Special Manager at Georgian Manganese LLC is unsubstantiated. Temporary ruling represents one of the types of the interim measures. According to the law, while applying the interim measures, the court relies on the assumption that the claim may be satisfied. It is worth mentioning that the party may use the interim measures prior to submitting claim to the court, however in such case it is mandatory that the party shall submit the main claim to the court within 10-day from the date of issuance of the Ruling. In case of failure to

fulfill the mentioned obligation, the Ruling concerning the use of interim measures shall be annulled. In the conditions when there is no main claim in the case and the dispute is substantively resolved, it is unclear what should have been secured by the court by using the temporary ruling. From this perspective, the court's motivation is so vague that it creates grounds for legitimate doubts, which will definitely have negative impact on the court's reputation and lead to the proportional decrease of trust towards this institution."

It is noteworthy that the Court in its decisions refers to rules defined in Articles 22 and 34 of the Law on Licenses and Permits concerning the cancellation of a decision on appointment of a special manager - if the license/permit holder has fulfilled the license/permit conditions. However, it is unclear how the license/permit holder should fulfill the conditions considering the prohibition of participation in the enterprise management and representation.

Judge Nino Buachidze got acquainted with the information that was submitted in about 1218 pages, adopted a decision and delivered a 30-page decision in a maximum of 1,5 working days.

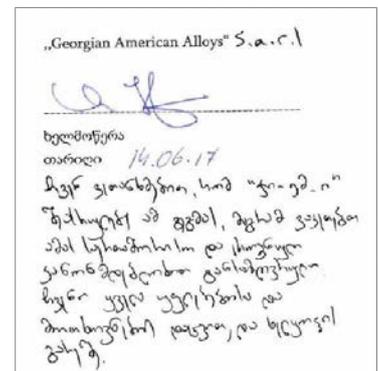
POSITION OF THE OWNER OF GEORGIAN MANGANESE ON THE APPOINTMENT OF THE SPECIAL MANAGER

On May 15, 2017, after four days from the appointment of the Special Manager, [Georgian American Alloys](#), the owner of Georgian Manganese, disseminated a special [statement](#) which said that "after seven days when Georgian Manganese publicly informed the Government of Georgia about the readiness of the organization to apply for international assistance in order to restore justice, in response to that, the Government took over the full control of activities of Georgian Manganese on May 11, 2017. The illegitimate and illegal activities carried out by the Government are as follows:

1. The expropriation of the property by the Government;
2. The Ministry of Environment Protection of Georgia obtained a unilateral order on dismissing the director of Georgian Manganese and replacing him with the director (special manager) selected by the Government;
3. Through ignoring Georgia's commitments under international law, the Court changed the director of Georgian Manganese and entrusted the new incumbent (special manager) with unlimited powers, who, based on its decision, also uses instead of the Supervisory Board of Georgian Manganese;
4. By completely ignoring the interests of foreign shareholders of the company (who own majority of shares), the Government has appointed a new director (Special Manager), **who is in close contact and has private interests with shareholders of the Georgian group that owns small share - 4% of GAA;**
5. The Georgian Court does not act independently and neglects the fair process;
6. In the recent period, Georgian Manganese has witnessed many unfair procedural considerations and resolutions on the merits that raises questions as to the independence of the Georgian Court.
7. The Government of Georgia has ignored the conditions of not only single bilateral or multilateral investment agreements that is a blatant violation of the European Convention on Human Rights.
8. Georgian Manganese was imposed to pay taxes, fines and duties of more than 82 million USD;

9. The imposed obligation is unfair and contradicts to Georgian legislation, international law, international financial accounting principles and standards of manufacturing practices;
10. The international audit company PwC (PricewaterhouseCoopers) holds the financial audit of the Georgian Manganese annually. In addition, they periodically prepare reports on the company's tax liabilities and transfer pricing;
11. The second international audit company E&Y (Ernest & Young) has studied and submitted its reports on the transfer pricing - E&Y (Australia) also thoroughly reviewed the mineral extractive processes.
12. Neither PwC nor E&Y have found any basis for what the company should have been fined;
13. The company was imposed a fine of 160 million USD for misapplication of environmental regulations and other manipulations;
14. Such prosecution is absolutely unreasonable and unfairly enforced;
15. A few years ago, Georgian Manganese requested the Government of Georgia to grant permit to invest 25 million USD in the construction of a new enrichment plant in Chiatura, which would completely eradicate harmful effects on environment;
16. The Government of Georgia has deliberately blocked the investment project initiated by the company for several years and thus preferred to use environmental violations in order to impose unfair fines."

On June 14, 2017, within one month from dissemination of this statement, Maia Bitadze, Deputy Minister of Environment and Natural Resources Protection, Uriel Laber, the shareholder and representative of Georgian American Alloys, and Nikoloz Chikovani, the Special Manager of Georgian Manganese, held a special [press conference](#). According to the press release, the representatives of the Ministry and Georgian American Alloys have reached an agreement. The company representatives shared the circumstances on the basis of which a special manager had been appointed at Georgian Manganese, and approved a special plan prepared to ensure fulfillment of the license and permit conditions and confirmed the commitment to implement the plan by signature.



WHO IS THE SPECIAL MANAGER AT GEORGIAN MANGANESE?

According to the [statement](#) of the Ministry of Environment and Natural Resources Protection made on May 11,

The only document kept in the Ministry regarding the selection of a special manager

პასუხისმგებელი ინფორმაცია										
გვარი, სახელი	ნიკოლოზ ჩიკოვანი									
მისამართი	თბილისი, ვაჟა-ფშაველას 51/8, პინა 42									
ტელეფონი										
ფელქტრონული ფოსტა										
შოქადაქტობა	საქართველო									
დაბადების თარიღი	10.03.1969									
სქესი	მამრობითი									
სადავრო გამოცდილება										
თარიღი	2008- ალუმინი									
თანამდებობა	დირექტორი									
ორგანიზაციის დასახელება	შს რბემა									
მისამართი	ბედლანის ქუჩა, 39									
თარიღი	2003-2008									
თანამდებობა	გენერალური დირექტორი									
ორგანიზაციის დასახელება	სს ფერო - ზესტაფონის ფეროშენადნობთა ქარხანა									
მისამართი	ზესტაფონი, საქონლის 9									
თარიღი	2000-2003									
თანამდებობა	სამეთვალყურეო საბჭოს წევრი									
ორგანიზაციის დასახელება	სადაზღვეო კომპანია ნაბათი									
თარიღი	1996-2000									
თანამდებობა	წარმომადგენელი საქართველოში									
ორგანიზაციის დასახელება	დერნანელი საკონსულტაციო კომპანია ICee									
თარიღი	1994-1996									
თანამდებობა	დასავლეთი ევროპის ენოფილდების ზღვამზღვეველი									
ორგანიზაციის დასახელება	საქართველოს საჯარო ურთიერთობათა კომიტეტი									
განათლება										
თარიღი	1993-1994									
საგანმანათლებლო დაწესებულება	საქართველოს ტექნიკური უნივერსიტეტი, საბანკო სამუშაო									
თარიღი	1991									
საგანმანათლებლო დაწესებულება	პეტრიწიშვილის სახელობის ვაჟა-ფშაველას ინსტიტუტი									
თარიღი	1989-1993									
საგანმანათლებლო დაწესებულება	საქართველოს ტექნიკური უნივერსიტეტი, გამოთვლითი ტექნიკის ფაკულტეტი									
თარიღი	1986-1988									
საგანმანათლებლო დაწესებულება	თბილისის სახელმწიფო უნივერსიტეტი, ფილოსოფიის ფაკულტეტი									
სადავლებული სამსახური	1988-1989									
მშობლიური ენა	ქართული									
უცხო ენები	<table border="1"> <tr> <td>ინგლისური</td> <td>საშუალო</td> <td>კარგად</td> </tr> <tr> <td>რუსული</td> <td>საშუალო</td> <td>კარგად</td> </tr> <tr> <td>საქართველო</td> <td>საშუალო</td> <td>კარგად</td> </tr> </table>	ინგლისური	საშუალო	კარგად	რუსული	საშუალო	კარგად	საქართველო	საშუალო	კარგად
ინგლისური	საშუალო	კარგად								
რუსული	საშუალო	კარგად								
საქართველო	საშუალო	კარგად								

2017, “Nikoloz Chikovani has been nominated and appointed as a Special Manager. He’s having **a big experience** of working at JSC Ferro Alloys Plant and is well aware of the problems existing in Georgian Manganese LLC. We believe that he will be able to gradually improve ecological situation in Chiatura and Zestafoni”.

Green Alternative requested the Ministry of Environment and Natural Resources Protection to release the whole set of documents concerning the selection of candidates of special manager at Georgian Manganese LLC. In response to that, the Ministry provided only a biography of Nikoloz Chikovani and explained that the legislation does not impose an obligation to hold administrative proceedings to appoint a special manager. Consequently, it is unknown how the candidate has been selected, who has nominated him and which selection criteria have been applied. According to the [explanation](#) of Maia Bitadze, Deputy Minister of Environment and Natural Resources Protection, Gigla Agulashvili, Minister of Environment and Natural Resources Protection, and Tamar Bagratia, Head of National Environmental Agency, made a decision on selection of candidates. His long-term experience of working at Zestaponi Ferro Alloys Plant played a decisive role in the nomination and selection of

Nikoloz Chikovani.

It is noteworthy that long-term working experience of the special manager at Zestaponi Alloys Plant had been emphasized in all the statements concerning the appointment of the manager.

In the autobiography submitted by Nikoloz Chikovani, it is, in fact, pointed out that he held the position of the Director General of JSC Zestaponi Alloys Plant in **2003-2008**. However, according to the data of the National Agency of Public Registry, Nikoloz Chikovani was dismissed from his position as the Director General of JSC Zestaponi Ferroalloys Plant on 27 November 2006 based on the Order #95 of the Large Taxpayers Inspection.

It is unlikely that Nikoloz Chikovani did not remember the date of his dismissal from his position as the Director General of the enterprise, as the information on dates of the employment and dismissal from the enterprise is available on the website of the National Agency of Public Registry and this information has been prepared at the request of Nikoloz Chikovani.

Thus, Nikoloz Chikovani has held the position of the Director General of JSC Zestaponi Ferroalloys Plant for three incomplete years in 2003-2006. The Ministry of Environment and Natural Resources Protection either has not examined the information submitted by Nikoloz Chikovani, or facilitated the dissemination of false information, which is a commensurate violation in the process of selection of candidates for such an important position. The selection of candidates irresponsibly and, supposedly, to satisfy interests of specific individuals is demonstrated by the fact that the experience of Nikoloz Chikovani at Ferroalloys Plant 12 years ago was presented to the society as a guarantee of knowledge of the problems and their solutions not only in Zestaponi, but also in Chiatura.

According to the National Agency of Public Registry, Nikoloz Chikovani is the Director of New Technology LLC (IC404441886). At the same time, together with Lasha Chkhenkeli¹ (40%), he is the shareholder of the enterprise (60%). Nikoloz Chikovani is also the owner of shares (100%) and director of the Trading Trust LLC (IC404480664). The working experience of Nicholoz Chikovani in these two enterprises is not mentioned in his autobiography.

In addition to these alleged “little lies”, the Ministry of Environment and Natural Resources Protection has hidden a very important detail from the biography of Nikoloz Chikovani. In 2005-2006, Nikoloz Chikovani was actively involved in one of the biggest scandals related to financial irregularities and distribution of shares. By the end of 2005, the financial police even initiated a criminal case against the management of the Ferroalloys Plant, especially on the facts of avoiding taxes and violating bookkeeping rules.

According to the investigation report of the Sector Economy and Economic Policy Committee of the Parliament of Georgia on the situation existing in Zestaponi Ferroalloys Plant that was published on 21 March 2006, “Director General **Nika Chikovani** and Executive Director **Korneli Kokaya** have been outside the State for more than two months. However, Nika Chikovani, Director General, which communicates with e-mail and other means of communication, is still signing the documents of economic and financial activities. From the end of 2005, the financial police of the Ministry of Finance of Georgia is carrying out an inspection of the financial activities of the enterprise. The budget impact of export-import operations carried out in 2004-2005 over tax deductions (mainly profit tax) in the budget was reflected in the interim report of the Financial Police as of 30 December 2005. The serious violations have been revealed in the plant. Based on the interim report prepared by the Financial Police on January 4, 2006, the Head of the Large Taxpayers Inspection of the Tax Department of the Ministry of Finance issued an order which imposed on JSC Ferroalloys Plant to pay 52,2 million GEL in favor of the budget. In the process of inspection, the additionally accrued amount increased again and, finally, reached 107.0 million GEL. According to the interim report, “Mr. Nikoloz Chikovani, the Director General of JSC Ferroalloys Plant has been informed about this fact on numerous occasions and was requested to nominate an authorized representative for the purpose of conducting a full investigation, which has not happened yet.” At that time Nikoloz Chikovani managed to escape and left the country.

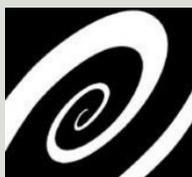
¹ Chkhenkeli brothers are not well known for the general public. However, according to the source of “Premieri”, Akaki, Roman and Lasha Chkhenkeli are very well known in the political and business communities. Out of three brothers, the first who assumed a high-level position after the new Government came into power, was Akaki Chkhenkeli who was appointed as the Head of the Department for Relations with Regions and Local Self-Governing Bodies at the Chancellery of the Government... In spring 2013, Roman, brother of Akaki Chkhenkeli, appeared within “Georgian Dream” as a Deputy Head of Adjara Audit Department and recently has become an Economic Advisor to the Prime Minister Irakli Garibashvili. Lasha, the eldest brother of Akaki and Roman Chkhenkeli, is the first Vice-President of the Georgian Chamber of Commerce and Industry and also one of the founders of the TV Company “TV 3” [Newspaper “Premieri”](#)

[How the plant accrued its debts?](#) The representative of the company Decometal, holder with majority interest (51%) of JSC Ferroalloys, made an explanation in an interview with the newspaper 24 Hours: “Do you know to whom the plant owes debt? - To **Giorgi Kapanadze and Iliia Kokaia**. The debt was accrued when Kokaia have monopolized the plant management. He took the profit of the Ferroalloys Plant to the company BetaContact. The BetaContact is owned by Kokaia who purchased the product from the Ferroalloys for 400 USD and sold for 1000 USD”. Apart from that, this company provided coke to the Ferroalloys for a double price. As a result, Ferroalloys accrued debt of 30 million USD towards the BetaContact. In this period, Kokaia has appointed his brother **Korneli Kokaia** as an executive director. Kokaia and his friends left the plant on the edge of bankruptcy in one year: only in 2004, when the plant was expected, by all estimates, to make a profit of 40 million USD, actually had losses of 13 million,”- says Giga Bedineishvili. The entire scheme had been revealed on February 14, 2006, when a financial police started inspection.”

It is noteworthy that Nikoloz Chikovani has appeared in Zestaponi after years, during the 2016 parliamentary elections and he [supported independent candidate Iliia Kokaia](#) (who was also considered as a candidate of “Georgian Dream”).

On the background of the above mentioned, presenting the experience of Nikoloz Chikovani gained at the JSC Ferroalloys Plant by the Ministry of Environment and Natural Resources Protection in the positive context, shows about the extreme incompetence in the best case, or the elite corruption, in the worst case.

The Green Alternative continues further study of this issue. It will present the assessment of consequences of special management regime to the interested civil society in its next publication on Georgian Manganese.



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