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Sustainable Management of Biodiversity, South Caucasus

System of Protected Areas in Georgia
Analysis and Recommendations

დაცული ტერიტორიების სისტემა საქართველოში

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Content

Introduction

The main focus of the present paper is on substantive flaws and lacunae of the Georgian law on Protected areas. In addition, attention is also being paid to formal aspects such as precise language and the distribution of matters on the level of the law or sublegal acts.

It is not the aim of the paper to describe every article. Instead, the approach is to address thematic areas of strategic importance.

The analysis is structured according to the following common scheme:

Step 1: Status quo of the respective issue in Georgian law,

Step 2: Comparative analysis of relevant provisions in the EU law and Member State laws,

Step 3: Identification of substantial problems,

Step 4: Recommendations for amendment/improvement of current regulations.

I. Overview of existing legislation

The main act regulating protected areas is the Law „On the System of Protected Territories" of 7th March 1996 (*in the following:* Protected Areas Law). The following issues are regulated by the law: Objectives (Art. 1), definitions (Art. 2), categories of protected areas (Art. 3-11), ownership of protected areas (Art. 12), designation of protected areas (Art. 14), issues of management (Art. 15, 18), regulation of prohibited and permitted activities (Art. 20), issues of cooperation and co-management (Art. 21, 22), funding and liability issues (Art. 19 and 23).

Of considerable importance are laws on the establishment of individual protected areas, such as, for instance:

- The Law „On Establishment and Management of Tusheti, Batsara-Babaneuri, Lagodekhi and Vashlovani Preserved Territories" of 22nd April 2003 (*in the following:* Tusheti/Batsara-Babaneuri Law);
- Law „On Establishment and Management of Borjomi Kharagauli Preserved Territories" of 11th July 2007 (*in the following:* Borjomi-Kharagauli Law);
- Law „On Establishment and Management of Kolkheti Preserved Territories" of 9th December 1998 (*in the following:* Kolkheti Law) etc.

In addition, the law „On the Status of Preserved Territories" of 22nd November 2007 prescribes the creation of a number of protected areas.

On the sublegal level, the following documents play a central role:

- Orders of the Minister of Environment Protection and Natural Resources on Approval of the Management Plan of individual Protected Territories;
- Order Nr. 96 of the Minister of Environment Protection and Natural Resources "On Approval of Regulations of the Agency of Protected Territories" of 28th January 2008 (*in the following:* Ministerial Order Nr. 96 on Agency of Protected Areas)
- Order Nr. 97 of the Minister of Environment Protection and Natural Resources "On Approval of Typical Regulations of Territorial Administrations of the Agency of Protected Territories" of 28th January 2008 (*in the following:* Ministerial Order Nr. 97 on Territorial Administrations).

When assessing the state of the Georgian legislation on protected areas international law such as the Conventions of Berne and Ramsar, the Convention on Biodiversity and the World Heritage Convention must be kept in mind as a background of obligations to be respected also by Georgia. In addition, and more concretely, EU law will be consulted. This is in order to facilitate the adoption of the acquis communautaire in the framework of the European Neighbourhood Policy (ENP) and justifies itself by the fact that EU law has adopted a progressive body of protected areas legislation of nature conservation.

A more specific reason for looking at EU law of protected areas is the ongoing construction of the Emerald network. This will be a network of protected areas extending the EU Natura 2000

concept to Eastern Europe. It is implemented by the Council of Europe in the framework of the Berne Convention on the Conservation of European Wildlife and Natural Habitats.[1] Georgia has committed itself to join this network. This implies that the main features of EU protected areas law will have to be adopted by Georgia as well.

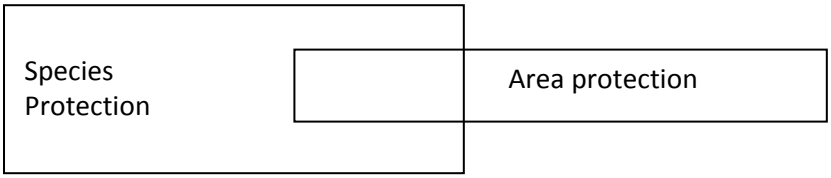
The following EC directives are of major interest in our context.

Council Directive 79/409/EEC on the conservation of wild birds (in the following: Birds Directive) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (in the following: Habitats Directive) are of crucial importance. They establish two pillars of nature protection:

(1) Area protection, i.e. the establishment of comprehensive protection regimes in areas hosting certain valuable species of habitats, and

(2) Species protection, i.e. restrictions of specific activities (such as the taking, killing, etc.) affecting certain valuable species.

Both regimes overlap because to a large extent they aim at protecting the same species. However, on the one side area protection although including also species protection reaches further because the ecosystem rather than only single specimen are protected, while on the other side species protection although applicable also in protected areas reaches further because it is applicable also outside such areas.



All in all the two directives protect over 500 birds, 1.000 animals and plant species and over 200 so called "habitat types" (e.g. special types of forests, meadows, wetlands, etc.), which are of European importance. While area protection will be discussed in the present analysis, species protection will be treated in a separate paper entirely devoted to this issue.

Area protection on the basis of the two directives aims at the establishment of a Pan – European network of areas called Natura 2000. The directives realise what is called minimum harmonisation, i.e. Member States can - and do - go much further by erecting protected areas of larger dimensions and for more species and habitat types than required by the directives. In

[1] Council of Europe / European Union joint programme: “Support for the implementation of the CBD’s Programme of Work on Protected Areas in Armenia, Azerbaijan, Belarus, Georgia, Moldova, the Russian Federation and the Ukraine FIRST PROGRESS REPORT Strasbourg 14 October 2009 (T-PVS/PA (2009) 14.

fact, the Natura 2000 network constitutes only a small percentage (appr. 5 to 10 %) of the whole territory of the EU.[2]

When considering the Birds and Habitats Directives, attention will be paid to the material principles of nature conservation, as they might be transferable to the Georgian legislation, rather than the procedural provisions of establishing protected areas because the latter are very much influenced by the complex interactions between the EC and the Member State level.

For comparison on national level, it should be noted that the variation among Member States is not very broad. All Member States have transformed the Bird and Habitat Directives into national law and introduced management and control systems. All of them go further than the two directives by designating more nature protection areas and protection regimes than those commanded by the two directives. The categories of protected sites are largely the same ranging from providing more or less protection and covering larger or smaller areas. Some variation can be found in relation to organisational and procedural matters concerning the designation, management and supervision of sites.

To the extent more detailed comparison is appropriate German and Polish law will be consulted. Polish law provides valuable insight because Poland like Georgia is a state in transition from state based to market economy. German law is of interest for Georgia because it has served as a model for Georgian law development also in other areas of sectoral administrative law, but also by the long history of nature protection in German law. Nature conservation legislation dates back to the 19th century, when first natural monuments were created. The first comprehensive regulation was provided with the Reichsnaturschutzgesetz in 1935. From 1976, issues of nature conservation were extensively regulated by the Federal Nature Conservation Act (Bundesnaturschutzgesetz (*in the following:* BNatSchG). The most recent and thoroughly revised version of the BNatSchG will enter into force on 1st March 2010. While the earlier versions were framework laws leaving the Bundeslaender space to enact their own nature protection laws, the new law widely exhausts the matter. Some space is nonetheless left to the Laender competence, including also the possibility of deviating from non-essential provisions of the federal law. As far as reference is made here to Laender laws we will include the Niedersächsisches Naturschutzgesetz (as amended 2007) (*in the following:* NNatG), the Bayerisches Gesetz über den Schutz der Natur, die Pflege der Landschaft und die Erholung in der freien Natur (as amended 2005) (*in the following:* BayNatSchG) and the Bremisches Naturschutzgesetz (as amended 2009) (*in the following* BremNatSchG).

One basic feature of German as well as European law in general is the possibility of establishing protected areas not only on publicly owned but also on private land. Moreover, protected areas are not in principle void of human uses. Depending on the degree of protection human use ranges from minimum to substantial. As a contrasting approach the US National

[2] For more information, consult the website of DG Environment under: http://ec.europa.eu/environment/nature/natura2000/index_en.htm.

Wilderness Preservation System shall also be included in the analysis. The approach is laid down in the US Wilderness Act. It provides that all protected land shall be national property and in principle be free of human use.

Polish law provides for the possibility to design protected areas in the interest of nature and landscape conservation both on lands belonging to the state and to private owners. Designed areas are also in principle not free from any human use. However the designation of protected area is linked with human activity limitations and restrictions. The degree of nuisance of the limits for landowners depends on the type and legal form of the protected area. There is no doubt about the fact that such a limit affects the constitutional fundamental right of ownership and therefore appropriate owner protection measures (e.g. a fair compensation in cash) can be required. As far as Polish law is concerned the relevant provisions can be found first and foremost in the Act on Nature Conservation (Dz.U. 2009 nr 151 poz. 1220) but also in many other acts.[3]

The following thematic areas will be discussed in more detail: Categorisation of protected areas, ownership issues, authority for designation of protected areas, management of protected areas, restrictions and permitted activities regarding resource use and issues of cooperation/co-management.

[3] Among the relevant polish law acts the following ones can be here noticed: The Act on Property Management (Dz.U. 2004 nr 261 poz. 2603), The Law on Environment Protection (Dz.U. 2008 nr 25 poz. 150), The Act on Access to Information on the Environment and Its Protection, Public Participation in the Environmental Protection and on Environmental Impact Assessments (Dz.U. 2008 nr 199 poz. 1227).

II. Protected area categories

1. Status quo Georgian Law

Categories of protected areas are described in Art. 3 of the Protected Areas Law. The article is divided in 2 parts. Art. 3.1 lists 6 existing national categories - State reserve, National park, Natural monument, the so-called Prohibited, Protected landscape, Territory of multi-purpose use.[4] Art. 3.2 mentions the possibility of existence of other protected area categories, included in the international network of protected areas[5] - the Biosphere reserve, World heritage site, and Ultra-humid territory of international importance[6] (or: Wetland of international importance). [7] It is likely, that this is an exclusive enumeration, as the Georgian version of the text does not contain a formulation "such as" before the enumeration of the categories like the English translation.

As for the Natura 2000 system, it has not been introduced in Georgia so far, though this issue is in consideration as one possible harmonisation measure with the EU legislation, especially in relation to the construction of the Emerald network.

Articles 4-11 provide criteria and protection goals of all listed categories, except the category of Wetland of international importance. Additionally, the part with definition of terms, which precedes the substantive provisions, contains definitions of the following categories: Prohibited, Natural monument, Protected landscape and National park. In fact these are no comprehensive definitions, but only references to the protected area categories as specified by IUCN.

Besides the instrument of categorisation the Georgian Protected Areas Law uses the instrument of zoning: Within some categories, subcategories or zones may be specified, namely for National parks (Art. 5.3) and Biosphere reserves (Art. 10.3). In addition, there is a possibility to establish zones within the following categories: Prohibited, Protected landscape and Territory of multi-purpose use. However, concrete zone types are not mentioned. Art. 16 contains the opportunity to establish so called Support (Buffer) zones "around the territories of State reserves, National parks, Natural monuments, the Prohibited and Protected landscapes." Their establishment is mandatory for Biosphere reserves (Art. 16.1).

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[4] Equivalents in Georgian: სახელმწიფო ნაკრძალი, ეროვნული პარკი, ბუნების ძეგლი, აღკვეთილი, დაცული ლანდშაფტი, მრავალმხრივი გამოყენების ტერიტორია.

[5] Somewhat misleading, the commonly used translated version of the Law speaks about the permission to recognize some additional categories.

[6] Equivalents in Georgian: ბიოსფერული რეზერვარტი, მსოფლიო მემკვიდრეობის უბანი, საერთაშორისო მნიშვნელობის ჭარბტენიანი ტერიტორია.

[7] The translation of the Law into English is of bad quality and the translated term is not in accordance with its international usage.

Both the categorisation and the zoning are important instruments to ensure that the specifics of different areas are better taken into account and challenges are addressed in a diversified way.

Further, attention should be paid to the overlaps between different categories. So, some categories can be part of others or one category can include several others (see Box 1 below).

Box 1. Overlaps between categories of protected areas

Protected Areas Law

Art. 4.3 State reserve
The state reserve may be contained in any protected territory (biosphere reserve, area of world heritage, ultra-humid territory of international importance) and/or consist of any of them (natural monument).

Art. 5.4 National park
The national park may cover different categories of protected territories (natural monument, prohibited, site of the world heritage) and/or be combined with a biosphere reserve, site of the world heritage or ultra-humid territory of international importance.

Art. 6.3 Natural monument
Natural monument may constitute an integral part of any protected territory.

Art. 7.3 Prohibited
The prohibited may form an integral part of a biosphere reserve, site of the world heritage, ultra-humid territory of international importance or other protected territory and may contain a natural monument.

Art. 8.3 Protected landscape
The protected landscape may form an integral part of any other protected territory (biosphere reserve, site of the world heritage) or contain a protected territory (natural monument).

Art. 10.4 Biosphere reserve
The territory of the biosphere reserve may contain one or more category of protected territory (state reserve, national park, natural monument, prohibited, protected, protected landscape, territory of multi-purpose use).

Special attention needs to be paid to the status of marine protected areas in the Protected Areas Law. The definition of the term “protected area” in the Protected areas law refers both to dry lands and waters. It is further specified, that State reserves, National parks, Prohibited can equally encompass dry lands, waters (the law uses the term “aquatoria”) or both. In fact, however, only one marine protected area in Georgia has been established: The National park of Kolkheti which consists of 15.743 ha of marine aquatoria (Art. 8.1 Kolkheti Law). Kolkheti National park however extends only to the coastal waters. So far, there are no protected areas

which would encompass the Georgian Exclusive Economic Zone and the continental shelf of the Black Sea.

2. International and Comparative Law

As outlined above, the concept of Habitat network plays a crucial role in the EU Birds and Habitat Directives. For a long-term survival of threatened species/habitats and conservation of biodiversity it is not enough to create isolated protected areas. This is due to the fact, that for many species not only the quality of their habitat is important, but equally their size, geographical extension and relation to one another, their quantity and concentration within a particular territory as well as the existence of connecting landscape elements (e.g. ecological corridors).[8]

The requirement of Art. 3.1 Habitats Directive to set up "a coherent European ecological network of special areas of conservation" - Natura 2000, where protected areas shall be functionally and spatially interconnected, is the reflection of this idea.

For the German territory § 20.1 of the BNatSchG also stipulates to establish a network of interconnected habitats and biotopes (Biotopverbund). It goes beyond, but includes the Natura 2000 network. The Biotopverbund shall encompass a minimum of 10% of the territory of each Land. The law defines the aims of the Biotopverbund (§ 21.1 BNatSchG) and describes its constituent parts to be core areas (*Kernflächen*), connecting areas (*Verbindungsflächen*) and connecting elements (*Verbindungselemente*) (§ 21.3 BNatSchG). The adherence to this model is further specified in Laender laws.

Protected area categories are ranged in accordance with the ambitiousness of goals, intensity and spatial extension of protection. § 20.2 BNatSchG contains a list of protected area categories – Nature reserve (*Naturschutzgebiet*), National park (*Nationalpark*), National nature monument (*nationales Naturmonument*), Biosphere reserve (*Biosphärenreservat*), Protected landscape (*Landschaftsschutzgebiet*), Nature park (*Naturpark*), Natural monument (*Naturdenkmal*) and Protected component of landscapes (*Geschützter Landschaftsbestandteil*). These categories are further specified by definitions/requirements in the BNatSchG and the Laender Laws.
Additionally, the German Law contains the concept of "biotopes protected by law" (§ 30 BNatSchG) (for more details consult the paper on species protection).

In Germany, protected areas have been established in coastal waters as well as within the Exclusive Economic Zones. For marine protected areas, the Law uses the existing protected area categories (§ 56 BNatSchG). However, in accordance with the UN Convention on the Law

[8] Gellermann, Natura 2000, 2001, p. 14.

of the Sea (UNCLOS) some restrictions of nature protection apply such as the obligation to respect the priority of status of shipping lanes (§ 57.3 Nr. 1 BNatSchG).

The present polish system of nature and landscape components' conservation consists of two main categories of nature preservation.
The first is being described under the name of the Territorial (territory-based) nature conservation. In this case the subject of protection is delimited by determination of the protected area's borders. The types of the first main category can be listed in the order of their appearance in the Act on Nature Conservation with in general corresponds to the degree of strictness of the protection regimes. They comprise: National park, Natural reserve, Landscape park, Area of preserved landscape and the subcategory of Natura 2000 areas. For the first three forms of legal nature preservation it is possible to design an outside buffer zone around area's borders. The buffer zone is mandatory only for the National park. Regarding the fact that hunting is principally not entirely forbidden in the protected areas Polish law provides for the possibility of designing so-called hunting free zones within the National park. Natura 2000 areas, National park and Natural reserve can be designated on land as well as on territorial waters of the State.

The second main category differs from the first by the fact, that the subject of protection can be only described by its characteristic object requiring protection or a special way of handling (e.g. a tree, a meadow, a cave, a site of scientific experiment, a group of such objects, etc.). This category is also simply called the object-based legal forms of nature conservation and comprises (in order of appearance in the act): Nature monument, Documentary site, Land of eco-use and Nature and landscape complex.

Overlapping of legal protection forms can occur within and between the first and the second category's types. For instance, Natura 2000 areas, which are regulated by Arts. 25 to 39 of the Act on Nature Conservation, can overlap with any other designated legal protected form of the first as well as of the second category. Also other nature conservation regimes can overlap with each other and it cannot be noted that this occurs seldomly. As the result a conflict between legal norms of the overlapping regimes may arise. It is being solved primarily by the rule that the stricter regulation takes precedence over less strict regimes.

In Polish law we cannot find an equivalent of the concept of interconnected habitats and biotops (*Biotopverbund*) employed by German law. Polish law however takes another approach which often achieves some of the goals aspired by the German Biotopverbund. Poland is a unitary state exercising the nature preservation tasks by formal and informal networking of authorities. Thanks to a planning system which connects binding and non-binding consultations between authorities responsible for management of categories and types of nature preservation as well as with some other authorities it is possible create consensus on conservation issues. The procedures affect central administrative bodies as well as local and regional self-government (e.g. communes, provinces). Many management bodies are connected with a network of co-ordinated or supervised governmental administration fostered by the presence of the common highest supervision body – the Ministry of Environmental Protection. The other relevant fact is

that many designated types of nature preservation are being managed by the same body or by bodies connected within the system co-ordinated by the same authority. In 2008 a specialized professional nature conservation management authority was created. The General Directorate of Protection of the Environment (*Generalna Dyrekcja Ochrony Środowiska*) exercises chiefly tasks of nature conservation and has local (province) as well as central offices. The Directorate assumed many tasks of managing and designing of types of nature conservation helping to counteract with diluted responsibility.

3. Problem identification

a) Protected area categories

Art. 3 of the Georgian Protected Areas Law leaves the relationship between the national categories of protected areas (para 1) and the international categories (para 2) somewhat unclear. It seems that the international categories do not involve a special regime but just provide a status superimposed on the national categories reflecting the fact that Georgia cannot alone attribute a territory the respective status of protection but has to apply for it to the authorized international institution. If this concept of additional status is intended by the law it should be made more explicit.

Concerning the definitions of national categories the law is rather precise as to the characteristics of the area that shall be protected. It does however not touch upon the intensity of protection. It might be considered to amend the categories in that respect.

Concerning the question whether the existing categories are sufficient or there might be a need for establishing new categories, wetland and marine protected areas could be candidates for new categories. However, following common practice in Western Europe it is suggested that the existing categories can also be applied to these areas. It is a matter for specification in the legal act designating the area to tailor the protection goals and measures to the wetland and marine environment.

There might be good reason for introducing a national category of biosphere reserve, following the German example which was also adopted by Poland. The characteristic feature of the Biosphere reserve as in German and Polish law is its focus on preservation, development or restoration of a landscape, affected by conventional multipurpose use and of species- and biotope variety, including wild- or earlier cultivated forms of economically used or useable animal and plant species. Hence, the rationale of the biosphere, i.e. to encourage and preserve traditional and alternative land-use in harmony with the ecosystem is not really covered by the other categories and should be realisable even without the prior consent of UNESCO. Therefore, it might be reasonable to introduce the biosphere as a category of national law.

In Georgia, stakeholders have discussed the necessity to establish the categories of private, church and communal reserves. It is suggested, that this is more a question of ownership rights (in case of a communal reserve also that of designation and management rights) and not that of

the creation of an independent protected area category. This issue will therefore be addressed in the section on ownership rights.

b) Emerald/ Natura 2000 network

The joining in of Georgia into the Council of Europe Emerald Network implies that Georgia will have to adopt legislation of the kind the EU Member States have to introduce following the EU Directives establishing the Natura 2000 Network. Similar to the World heritage site approved by UNESCO and Wetland of international importance of the Ramsar Convention, Natura 2000 is a label carrying with it certain protection requirements which do not necessitate the introduction of additional categories of protected areas. They can be implemented using the existing protected area categories (except for the weak ones such as Landscape protection area and the territory for multiple use). However, the specific protection requirements may go further than what is already established under national law. If so, national law must be amended accordingly. For instance, the Natura 2000 system is very strict as to the realisation of projects negatively impacting on a site (see e.g. Art. 6 (3) and (4) Habitats Directive). This protection level would have to be ensured in any case where one of the national protection categories involves an Emerald/Natura 2000-site.

c) Biotope connection

The Georgian Law does not contain a concept comparable to that of connecting biotopes (Biotopverbund) in German Law. Such network of areas could be provided by the introduction of the concept of connecting areas and connecting elements as used in German law. In Georgia, this concept is to a certain extent fulfilled by the category of the Territory of multi-purpose use. It is being employed as a flexible mechanism to build a connection/corridor between two isolated territories. Thus this category forms something what can be called the backbone of the network of protected areas. It should be considered if additional categories of connecting corridors should be introduced in addition.

d) Marine protected areas

The term used in the Protected Areas Law to define waters - “aquatoria” is unspecific. The relation to different marine zones in accordance with the UNCLOS is not clearly explained.

4. Improvement suggestions

a) Protected area categories

Art. 3 should be revised to clearly delineate the relationship between national categories and international status, which can be additionally assigned to areas designated as one of the national categories. The international status should not be implemented through separate regimes. In other words, an area must first possess the status of a national protected area

category and may additionally be recognized as an International biosphere reserve, Emerald/Natura 2000 site, World heritage site or Wetland of international importance.

In general, the existing categories provide for a sufficient coverage of possible nature conservation needs in the framework of protected areas.[9] It should however be considered to introduce as a new category the national biosphere reserve for areas hosting valuable nature and dedicated to traditional and modern ecological methods of land-use; such area could later on be submitted for approval as an international biosphere reserve

b) Emerald/ Natura 2000 network

The law should be amended in order to serve as a basis for the extension of the Emerald/ Natura 2000-network to Georgia. The appropriate protection categories should be the ones provided by the protected Areas Code, but with the exception of the weak categories for landscape protection and multi-purpose use. Suitable categories would be those of State reserve as a whole and the nucleus (strict protection) zones included within other protected area categories.

A protection regime similar to that of the Habitats Directive should apply to the areas, designated as Emerald/Natura 2000 sites.

c) Provisions on individual categories

The provisions on individual categories should be revised adding differentiated principles of use restrictions in accordance with the importance of protection of the relevant site.

d) Biotope connection

It is advisable to introduce an obligation to create a country-wide connection of protected areas. The Territory of multipurpose use, which is currently a de facto instrument of network creation, could be explicitly designated as one possible instrument to create corridors between individual areas. In addition, connecting corridors and connecting elements forming a network of habitats might be introduced as further tools.

Biotope protection outside protected areas and their networks should be regulated in the Wildlife Act, which might be transformed from a species protection act into an integrated species and biotope protection act.

e) Marine protected areas

It should be considered to further elaborate the concept of maritime protected areas. For instance, it would be reasonable to specify, in which zones protected areas can be created in

[9] Similar Mayer/Edwards, 2007, p. 2.

accordance with UNCLOS and to specify restrictions applicable to the establishment of protected areas in the Exclusive Economic Zone and Continental Shelf.

III. Ownership issues

1. Status quo Georgian law

Possible ownership forms (plus modes of possession, disposal and use of natural resources in the protected areas)[10] differ according to categories and zones and are described in Art. 12 of the Protected Areas Law. For some protected area categories, only state ownership is allowed: the State reserve, the National park, the Natural monument, the Prohibited (Art. 12.2), the territories of the nucleus, or strict protection zone and regulated protection zone of a Biosphere reserve (Art. 12.5). For Protected landscapes (Art. 12.3), Territories of multi-purpose use (12.4) and restoration and traditional/cultural landscape zones of a Biosphere reserve (12.5), other ownership types are also allowed. However, they are not specified, but shall be determined subject to the effective laws.

The second important content of Article 12 is its reference to the questions of allowable use. It shares this content with some other provisions contained in articles describing individual categories (compare e.g. description of allowable uses in different zones in Art. 5.3 or reference to exploitation of "individual renewable resources" in Art. 7.1 etc.). All these references are however very broad.[11]

As for compensation issues, resulting from the restrictions on the use of natural resources within a protected area, a general obligation to bear restrictions in the interest of nature protection can be justified on the ground of Art. 37.3 and 37.4 of the Constitution of Georgia. These articles impose obligations both on private persons and the state. Thus, according to Art. 37.3 „everyone shall be obliged to care for natural and cultural environment". Art. 37.4 in turn guarantees "… the protection of environment and the rational use of nature" by the state. Whether some very severe use restrictions nevertheless necessitate compensation will be discussed later on.

2. International and comparative law

As sketched out above the US Wilderness Act provides that the land of the National Wilderness Preservation System shall be owned by the Federation. This on the one hand simplifies the protection regime because no compensation must be paid to private owners. On the other hand it is difficult to introduce use restrictions and require sustainable management on private lands. The state can only provide incentives to this effect, or wait for self-regulatory initiatives of citizens.

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[10] In Georgian: ფლობის, განკარგვისა და სარგებლობის დაშვებული ფორმები.

[11] Ths isssue is more extensively covered in Section V below.

EU nature protection law leaves it to the Member States to determine ownership in nature protection areas. German nature protection law allows for private as well as public ownership in such areas. This means that protected areas can be designated on privately owned land, even without the consent (but of course after a hearing) of the owner. However, in practice the state will often be owner of those sites which are subject to the strictest regimes such as the category of nature protection area.

Of considerable interest is the issue of imposing restrictions on the land of non-state owners and their claims of compensation. The question, whether the establishment of protected areas and/or other limitation of use encroaches on the basic guarantee of private property, and whether there is an obligation to compensate for some kinds of encroachments has caused considerable debates throughout Western Europe. The debate has also reached the European Court of Human Rights which expressed itself in favour of a differentiated approach.[12] As a result, it is recognized, that property rights are socially bounded and that therefore protection of nature and landscape parts if imposed by law must in principle be stood by owners of land, with the possibility of exceptions in cases where a profitable use of the land is virtually impossible. This principle finds its reflection also in the new version of the German Federal Law on Nature Conservation (BNatSchG): According to § 2.1 BNatSchG, everybody bears a general obligation to contribute to the accomplishment of nature protection and landscape preservation goals. § 68 BNatSchG specifies exceptional conditions, which must be fulfilled in order for a compensation to become obligatory. The Laender Laws contain further clarifying provisions in this regard (See Box 2).

Box 2. Restrictions on property and compensation

BNatSchG 2010.
§ 68 Beschränkungen des Eigentums; Entschädigung und Ausgleich
(1) Führen Beschränkungen des Eigentums, die sich auf Grund von Vorschriften dieses Gesetzes, Rechtsvorschriften, die auf Grund dieses Gesetzes erlassen worden sind oder fortgelten, oder Naturschutzrecht der Länder ergeben, im Einzelfall zu einer unzumutbaren Belastung, der nicht durch andere Maßnahmen, insbesondere durch die Gewährung einer Ausnahme oder Befreiung, abgeholfen werden kann, ist eine angemessene Entschädigung zu leisten.
(2) Die Entschädigung ist in Geld zu leisten. Sie kann in wiederkehrenden Leistungen bestehen. Der Eigentümer kann die Übernahme eines Grundstücks verlangen, wenn ihm der weitere Verbleib in seinem Eigentum wirtschaftlich nicht zuzumuten ist. Das Nähere richtet sich nach Landesrecht.

NNatG

[12] Application no. 35785/03, judgement of 22nd July 2008. The relevant yardstick is Article 1 of Protocol 1 of the European Convention of Human Rights.

§ 50 Entschädigung für Nutzungsbeschränkungen
(1) Werden Eigentümern oder anderen Nutzungsberechtigten durch Verbote nach den §§ 28 a und 28 b oder durch Maßnahmen auf Grund dieses Gesetzes Beschränkungen ihrer Nutzungsrechte oder Pflichten in einem Ausmaß auferlegt, das über die Sozialbindung des Eigentums (Artikel 14 Abs. 2 des Grundgesetzes) hinausgeht, so haben sie Anspruch auf Entschädigung. Diese muß die Vermögensnachteile, die durch die Maßnahmen verursacht wurden, angemessen ausgleichen.
(2) Eine Entschädigung ist insbesondere zu gewähren, soweit infolge von Verboten oder Geboten nach den §§ 24 bis 29 und 41 Abs. 2
1. bisher rechtmäßige Grundstücksnutzungen aufgegeben oder eingeschränkt werden müssen,
2. Aufwendungen an Wert verlieren, die für beabsichtigte bisher rechtmäßige Grundstücksnutzungen in schutzwürdigem Vertrauen darauf gemacht wurden, daß diese rechtmäßig bleiben, oder
3. die Lasten und Bewirtschaftungskosten von Grundstücken auch in absehbarer Zukunft nicht durch deren Erträge und sonstige Vorteile ausgeglichen werden können und hierdurch die Betriebe oder sonstigen wirtschaftlichen Einheiten, zu denen die Grundstücke gehören, unvermeidlich und nicht nur unwesentlich beeinträchtigt werden.

As for Polish regulations on the issues of ownership the provisions of the Civil Code (Dz.U. 1964 nr 16 poz. 93 with amendments) are of primary relevance. The legal forms of property possession's right comprised in the Code are the right of ownership and the limited property rights. The limited rights can be described as less, more or even nearly similar to the right of ownership. According to Art. 64 of the Constitution of Republic of Poland (Dz.U. 1997 nr 78 poz. 483) property rights can be limited only by a legal act and only in the scope that does not encroach on its essence. One kind of such a limitation is according to Art. 130 of the Law on Environment Protection the designation of a nature conservation site (both categories).[13] It is here to mention that transfer of private ownership to the state is not required to designate the protected legal form. However, according to Art. 7 ust. 2 of the Act on Nature Conservation the designation of National park and Nature Reserve requires consent of private owners of the land located within territory of the planned measure. In the case of objection the right of ownership is to be transferred to the state against appropriate compensation. The transfer takes place in the administrative procedure of expropriation. The affected owner can file a legal remedy against the decision on expropriation, initiate an inner-administrative checking and then also complain to the administrative court. Considering the fact that designating of a nature protection site can imply limitations of exercise of ownership right (bans and limits of undertaking economic, production, building and reparation activities or even access to the property by local roads affecting its normal use), according to Art. 129 of the Law on Environment Protection land owners have two rights which are not touched upon by their previous approval for designation of the protected area. Firstly, they can demand from the State to buy the affected property.

[13] Jerzy Stelmasiak ed. al, Prawo ochrony środowiska, p. 71-74.

According to art. 113 ust. 3 of the Act on Property Management this is a civil-law-based claim and thus it launches a procedure before the civil court. Secondly, they can demand for an appropriate settlement in cash for actual and potential lost value of the property (*damnum emergens* and *lucrum cessans)*. The amount of compensation is being determined in mixed administration-civil procedure. The legal action against the issued administrative act can be filed to the civil court that has to take the final decision.

3. Problem identification

a) Ownership

Opponents of private ownership of protected areas have argued that the establishment of a protected area on private land considerably limits the allowed spectrum of natural resource use by the land owner. In principle, private owners would have to agree with use limitations, based on general constitutional obligations of nature protection, and would not have a claim to be compensated. However, if limitation of use would reach a considerable level, the State should be obliged to pay compensation.

On the other side, an NGO or a fund pursuing nature protection/ biodiversity conservation goals, could by itself be interested in the creation of a protected area. It is also likely, that the establishment of a protected area could have potential in rural communities, especially but not exclusively in the mountainous regions of Georgia, where the initiative to establish a protected area would come from certain families for religious or prestige reasons. NGOs and funds aiming at nature protection in the frame of their statutory goals, could be assigned management functions and obligations to conduct active protection measures as well. In this case, they would have to provide proof that they are able to properly fulfill all these functions. The state would retain the obligation to control the entity in charge.

Still another possibility would be the establishment of protected areas by private entities or a church with the background of gaining certain revenues from natural resource use, ecotourism, etc. An objection brought up against such scheme is that non-state entities would not possess adequate personal/financial capacities to manage the respective territories. However, this could be required as a precondition of authorising such schemes. Regulatory management functions should in any case rest with the State and could be used for supervising the private party.

An often mentioned concern is that by introduction of a private property category the door would be opened for massive privatisation, which could result in negative consequences for existing protected areas.

Additionally, there have been discussions about the possibility to establish communal protected areas. In case of a communal protected area, the following scenarios might be of relevance: A self-government deciding to create a protected area in order to increase the touristic value of the region, the wish to establish itself as a leader in nature conservation issues and so forth.

Similar to protected areas under the ownership of the private hand and the church, a communal protected area is not an independent category in itself. The issues which need to be covered here refer to the designation authority, implementation of the protection regime/management of the area and ownership by the communal self-government.

The separation of ownership and rights of use is not clearly defined. The description of allowable uses is too broad. This problem will be further discussed in the section about prohibited and permitted use of natural resources.

b) Compensation obligation

Imposing use restrictions on privately owned land for the reason of biodiversity protection does not automatically lead to a compensation obligation on the part of the State. As it was shown above, certain nature conservation obligations to be borne by land owners can be derived from the Georgian Constitution.

Compensation should only be due if restrictions have a considerable impact on the profit the owner earns from the use of the land, or if a restriction suspends lawful and essential types of land use.

4. Improvement suggestions

a) Ownership

The questions of ownership should be separated from those of protected area categories. It should be possible to establish protected areas on privately owned land.

The principle of state ownership for the first 4 categories (State reserve, National park, Natural monument, the Prohibited) should remain unchanged. However, a new provision should be added, providing for the possibility to establish protected areas on private land in exceptional cases, when specific preconditions are met. This would allow to eliminate the danger, that the possibility to establish protected areas on private lands could lead to privatisation of existing protected areas in state ownership. Additionally, the introduction of another “safety-belt” provision could be considered, which would stipulate an explicit prohibition to privatise state-owned protected areas.

When a protected area is established on the initiative of the land owner pursuing the goal of nature protection, there is no need to pay compensation. If such land owner possesses personal/financial facilities necessary to appropriately manage the territory in question, it should be considered to assign management functions and the obligation to conduct active preservation measures to this land owner. In this case, the state should provide adequate control mechanisms to control the situation in the protected area once it is created. Communal property should be introduced as a possible form of ownership for protected areas but only if it will be designated and managed by the municipality as well.

It is advisable to clearly separate rights of use/exploitation from those of ownership. For this purpose, one separate article should be created, where references to use/exploitation scattered across different articles shall be drawn together and clearly defined for each category/zone.

b) Compensation obligation

A general obligation to protect nature without compensation similar to the one in place in the Georgian Constitution should be incorporated in the Protected Areas Law.

In cases of considerable use restrictions leading to the unprofitability of the previous lawful land use, the payment of a reasonable compensation should be prescribed by the Protected Areas Law.

IV. Authority for the designation of protected areas

1. Status quo Georgian Law

In Georgia the authority for designation of protected areas rests with the Parliament of Georgia. It decides about establishment of a protected area, as well as the upgrading/downgrading of a category, its territorial reduction, suspension and abolishment. (Art. 14.1 and 2). Also the decision to determine a temporary category until relevant permanent category is fixed is made by Parliament (Art. 14.3).

Some examples of designation laws are: „On establishment and Management of Borjomi Kharagauli Preserved Territories“ of 11th July 2007 (Borjomi-Kharagauli Law), „on establishment and Management of Tusheti, Batsara-Babaneuri, Lagodekhi and Vashlovani Preserved Territories” of 22nd April 2003 (Tusheti/ Batsara-Babaneuri Law) and “on establishment and Management of Kolkheti Preserved Territories“ of 9th December 1998 (Kolkheti Law).

The Georgian law does not contain any provision regulating involvement/participation of the affected population in the process of designation.

2. International and comparative Law

On the EU level, the designation of a protected area occurs in a process of coordination between the Member State and the EU-Institutions. The final decision about attribution of a protection status rests with the Member State.

In contrast to Georgian law, in Germany the power to designate protected areas is shared between the legislative and executive branches. The general tendency in Germany is that larger protected areas are designated by the state parliaments (*Landtag*), whereas the designation of smaller ones lies within the competence of the executive government on the Land, district or even municipal level.

As far as Polish law is concerned the power to designate and exercise environmental protection within the protected areas (the territorial-based types of nature conservation) is shared between central governing authorities and legislatures of regional level local administration – the parliaments of province (*sejmik województwa*). Many designation procedures provide for the opportunity of nonbinding or in some cases binding statement of regional, local and governmental (central) authorities and administrative bodies. The designation of National Park and Nature Reserve is the competence of central governmental authorities. National Parks are being designed by the Council of Ministers in the form of ordinances. In the designation procedure also environmental-NGOs have the opportunity to express views and submit proposal. Nature Reserves are designated by the Regional Director of Protection of the Environment in the the form of bylaws. Landscape parks and Areas of preserved landscape are domains of local administration and are designated in the form of resolutions of the province parliament. The Natura 2000's SPA, SCI and SAC's are designated in the form of ordinances of the Ministry of Environment. The ordinances request an amendment every time a Natura 2000 area is to be designed, changed or declassified. The competent authority for the designation of object-based types of nature conservation is in all cases the legislature of local basic level self-administration units – the commune council (*rada gminy*).

3. Problem identification

It should be considered if each and any protected area shall be designated by the Parliament. As an alternative, at least for smaller protected areas the Government could be empowered to designate areas. One major consideration in the discussion about reasonability of power sharing is flexibility. On the one hand, assigning the power of designation to the Executive makes the process more flexible and makes it easier to create new protected areas. The local population could also better participate in the procedure of governmental decision-making than if the matter is decided on the high level of the parliament. On the other hand, governmental decision-making can be seen as a potential danger for the permanency of certain protected areas, because the barriers for revocation of a law are much higher than in case of an executive act. It has also been argued by some stakeholders that the likelihood of proper protection and granting of budgetary allowances is better guaranteed in the case when a protected area is established by Law. Though it is quite a political argument, its relevance should not be underestimated.

Further consideration criteria could be the relatively big size of the category in question and the relatively high degree of applicable restrictions (e.g. state reserve, national park). The political and strategic importance of a protected area usually rises with its size. Both factors – big size and strict protection regime account for increased restrictions on the surrounding population. In such cases, it might be more reasonable to leave the designation power to the Parliament.

Another issue which should be mentioned here concerns the designation of Emerald/ Natura 2000 areas, if they shall be introduced to Georgia. In particular, it shall be decided, which authority and under what conditions can designate a protected area as a Natura 2000 protected area.

4. Improvement suggestions

After having considered the question of designation authority from different perspectives, we suggest to leave designation authority for categories of the State reserve and the National park (plus Biosphere reserve) with the Parliament and to transfer the authority for designation of Natural monument, the Prohibited, and Protected landscapes (plus World heritage site and Wetland of international importance) to the Executive.
At least in cases when Parliament is the designation authority, a procedure should be introduced which gives the affected local population the right to be involved in the process of decision making.

As for Emerald/Natura 2000 protected areas, a procedure must be provided which requires the involvement of bodies of the European Council. Moreover, as according to EU law Member States do not have discretion but are obligated to designate areas qualifying for protection it must be considered that the Georgian protected Areas Law introduces such obligation also for Emerald/Natura 2000 sites in Georgia.

V. Management of protected areas

1. Status quo Georgian Law

Management issues are regulated in Art. 15 und 18 of the Protected Areas Law. Hereby, the concept of management plan is of big importance. Art. 15.1 prescribes the obligation to develop management plans for all protected areas. According to Art. 15.2, a management plan shall comprise the following elements:

- Precise boundaries;
- Zones;
- Territorial organization;
- Support zones (buffer zones);
- Integrated development program and budget on protection;
- Integrated development program and budget on scientific research and education;
- Integrated development program and budget on administration and monitoring;
- Integrated development program and budget on recreation and tourism; and
- Integrated development program and budget on other activities.

Art. 18 specifies competencies for the management of protected areas. The responsibility for the management of Protected areas is shared between the MOE, APA and territorial administrations. For a detailed description of management functions see Box 3 below.

Box 3. Management of protected areas

Protected Areas Law, Management of protected areas.

Competencies of MOE (Art. 18.1, 18.3, 15.4)

According to Art. 18.1, the MOE shall pursue the “State policy of establishing, functioning and

managing the System of Protected Areas, coordination and monitoring of activities related to such a policy". Further, it is the competence of MOE to:

- monitor, on behalf of the State, whether the statutory procedures of protected areas are observed and requirements of the national law and international agreements in respect of the environmental protection and the exploitation of natural resources are met;
- set out strategic measures of the development of the System of Protected Areas and organize discussions thereon;
- develop, coordinate and approve normative and methodological documentation in respect of the protected areas;
- issue licenses for the use of natural resources in those sections of protected areas, in which economic activities are permitted;
- coordinate environmental monitoring and scientific research activities;
- plan and coordinate activities related to the restoration of endemic, rare and disappearing species of flora and fauna;
- coordinate international cooperation on protected areas;
- establish territorial administrations upon suggestion of APA;
- approve the statutes of APA and territorial administrations.

Further, according to Art. 15.4 it is the competence of the Minister of Environment to approve the management plan.

Competencies of APA (Art. 18.4)

- to manage state reserves, national parks, natural monuments, the prohibited, biosphere reserves, world heritage sites and wetlands of international importance;
- to manage, together with other organizations, protected landscapes and, in exceptional cases, individual zones of the prohibited, biosphere reserves, world heritage sites and natural monuments;
- to monitor the territories of multi-purpose use;
- to take measures aimed at caring of, administration, preserving, restoring and protecting the protected areas;
- to develop management plans of the protected areas and submit them for approval to the MOE (see Art. 15.2);
- to develop respective laws and sublegal normative acts and submit them to MOE for approval in due course;
- to organize the monitoring and scientific research, process, keep and distribute the information collected as a consequence of observation;
- to improve management mechanisms and provide for the development of staff skills;
- to prepare reports on the status of protected areas on a regular basis;
- to administer protected areas and cooperate with international and local non-governmental foundations;
- to organize implementation of all construction and improvement works necessary for

the proper functioning of protected areas (tracks, walls, roads, shelters, guides, etc.);

- to conduct international cooperation in regards with protected areas and participate in appropriate programs;
- to cooperate with governmental agencies and non-governmental organizations with similar functions;
- to cooperate with the public;
- to specify tariffs for touristic services in protected areas;
- to carry out other activities in accordance with this law, Georgian legislation and its regulation.

Competencies of territorial administrations (Art. 18.5)

- to provide for the protection and restoration of protected areas and ecosystems, flora and fauna represented therein;
- to prevent the ruin, seizure or damage of animals and plants;
- to prevent distribution of alien species of flora and fauna;
- to cooperate with organs of local self-governments, governmental and non-governmental agencies, different interest groups of the population;
- to control the use of natural resources, interference of visitors and vehicles within the territory (protected area and buffer zone);
- to detain illegally intervened persons and land, air or marine vehicles.
- to stop, within their competence, administrative offences, protocol administrative offences and pass them to respective organs for reaction;
- to provide for the eco-touristic services for visitors within the protected area;
- to implement the management plant of the protected area;
- sustainable use of protected areas;
- to create protected areas infrastructure;
- to carry out other activities in accordance with this law, Georgian legislation and its regulation.

As it can be observed from the lists, management functions are more or less divided according to the following scheme: The MOE mostly has the overall coordination and control function. The APA has direct management functions. Some of these functions are however fulfilled indirectly, by means of territorial administrative substructures. Sometimes overlaps can be observed between functions of these entities.

On the sublegal level, the functioning of APA is further specified by the Ministerial Order Nr. 96 on Agency of Protected Areas and Ministerial Order Nr. 97 on Territorial Administrations.

2. International and comparative Law

The EU Habitat Directive establishes management obligations and obligations of active supervision by Member States. (Box 4). There are no provisions regarding the competencies for the management of protected areas on the EU level.

Box 4. Management/supervision obligations in the Habitats Directive

Habitats Directive, Article 6.1 and 6.2.

1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

In Germany, the functions of management and administration are allocated to the Laender level, where they are divided across different administrative authorities. For the federal state of Bavaria, these administrative authorities are the State Ministry of Environment, Health and Consumer Protection as the supreme nature conservation authority, governments as higher nature conservation authorities and local government authorities as lower nature conservation authorities (Art. 37.2 BayNatSchG)). For larger protected areas, sometimes separate administrative agencies were created and entrusted with the management of the site, e.g. for the Lower Saxon Wadden Sea National Park. In general, great importance is attached to active conservation and restoration measures. A characteristic feature in Germany is the decentralisation of management.

In Poland the tasks of management, administration and supervision of legal forms of nature conservation are exercised by a variety of general and special units and agencies of central (governmental), regional and local administration. The public administration bodies responsible for nature conservation are exhaustibly enumerated in Art. 91 of the Act on Nature Conservation. The list consists of three governmental (central) and three regional and local authorities. The supreme natural conservation authority is the Ministry of Environment. It supervises the General Director of Protection of the Environment (central administrative body) (GDPE) and province governors (regional level authority that represents the governmental administration). The GDPE supervises 16 Regional Directors (RDPEs), The province governors controls the legality of actions of sub-regional local self-administration's executive body (*starosta*) and local self-administration's executive one-man bodies of communes (*wójt, burmistrz, prezydent miasta*).

The actual management of nature conservation areas and objects is exercised by relatively independent managing units or by departments of the mentioned administrative bodies. For example the management of a National Park is the task of a state treasury's unit supervised directly by the Ministry of Environment. The management of Nature Reserve and Natura 2000 areas is the task of RDPEs and GDPE which also supervise other nature protection areas (except National Park) and co-ordinate the planning and exercising of conservation measures. Also the Ministry of Environment exercises important co-ordination and supervisory functions. At the local and regional level the agencies and units of the commune and provinces play a significant role. According to Art. 101 ust. 1 and Art. 105 ust. 1 of the Act on Nature Conservation each National Park and Landscape Park has its independent managing board. The managing system of Natural Reserve and Area of Protected Landscape can be modeled appropriate to managing policy of the administrative bodies (the Regional Directorates and the responsible province legislatures) that are responsible for designation of these legal forms of nature conservation. As already stated the management is planned and coordinated by the Directorates, the Ministry and also in territorially limited scope by local and regional authorities of self-administration. In general, it can be noted that the system of management of the protected areas in Poland is highly decentralized.

3. Problem identification

The list of management obligations/activities in the Georgian Protected Areas Act is very comprehensive. It is remarkable, that there is an obligation to prepare a management plan and that the list of individual obligations of MOE/APA/territorial administrations is quite precise and extensive.

For a proper management of protected areas, it is very important to conduct active conservation measures. In the current version of the law the stress is however on supervisory/control functions, whereas active physical conservation measures are scarce. Such measures would for example include irrigation measures, the cutting of certain tree species in order to facilitate survival/growth of other, more valuable species, the obligation to remove new intrusive dominant plant species from the invaded territory, etc. So far, they are somewhat underrated in the Protected Areas law, except for the prohibited, for which Art. 7.1 states that protection of natural conditions on the territory of Prohibited "requires special restoration and caring efforts by the humans".

Another issue is the question of whether the prescribed management tasks are obligations or mere authorizations with a discretionary power on the part of the authority in charge. It would be useful to explicitly define certain tasks as obligations to give them more weight and effectiveness.

In the section devoted to designation issues we mentioned the possibility to establish municipal protected areas. Should this be realized, the necessity to define management tasks for municipalities will arise respectively.

4. Improvement suggestions

Clear provisions about obligations of active management measures should be included in the Protected Areas Act.

Cases where certain management tasks are compulsory for the authority in charge shall be distinguished from those where the authority has a discretionary power.

Alongside clear criteria in which municipal protected areas can be established (see the section on designation powers above), we suggest including a provision regarding management by local self-governments.

Public interest organizations or organizations seeking integrated uses should be given the possibility to manage their sites by themselves, but under the supervision of the MOE.

VI. Restricted and permitted activities regarding resource use

1. Status quo Georgian Law

The central provision on controlling natural resource uses having an impact on protected areas is Art. 20 of the Protected Areas Law.

Activities within a category of protection can be divided into prohibited activities within a protected area, regulated activities within a protected area, controlled activities within a protected area and controlled activities outside of a protected area. For a detailed description of activities for every group, consult Box 5 below.

Box 5. Classification of activities in Protected Areas Law

Art. 20, Protected Areas Law.

Prohibited activities (within a protected area)
a) to ruin or modify natural ecosystems;
b) to destroy (exterminate), extract (seize), ruin, damage (injure) or scare any natural resource for the purpose of exploitation or for any other reason;
c) to damage natural ecosystems or species as a result of pollution;
d) to introduce and spread alien and exotic species of living organisms;
e) to import explosive and poisonous materials on the territory and any other activity forbidden by the management plan.

Regulated activities (within a protected area)
a) admitting visitors to certain areas;

b) hunting, fishing, camping, fire setting, trading and retailing, construction of buildings, roads and other structures and modifying their historical appearance, using land, air or water transport over or under it;
c) behavior of visitors 24 hours a day, in compliance with the requirements of the protection regime;
d) collecting, seizing or deporting animals or plants outside the territory;
e) driving away, isolating or killing abandoned domestic animals.

Controlled activities (within a protected area)
a) all sorts of permitted scientific activities;
b) all sorts of permitted educational activities;
c) all sorts of permitted economic activities;
d) touristic-recreational activities ensuring equal distribution of visitor flows on protected areas, preliminary registration of protected areas selected according to visitor interests, conformity of the time and duration of visitor intervention with protected area goals, conformity of the visitor limit established for each protected area with the actual number of visitors;
e) threat of natural calamity or catastrophe.

Controlled activities (outside of a protected area)
a) status of ecosystems and natural resources within the buffer zone;
b) development programs related to the buffer zones and single important economic and construction projects (to assess adverse influence on the environment);
c) preventive measures against adverse activities (imposing penalties);
d) compensation of losses from activities with adverse effects.

2. International and comparative Law

On the EU level, prescriptions regarding the use of natural resources exist only for the Natura 2000 network. They are quite precise. Art. 6 (1) – (4) Habitats Directive constitute the following protection standards for the Natura 2000 areas (see Box 6):

- the obligation to set up management plans and lay down statutory, administrative and contractual measures for the conservation of the site,
- the obligation to take steps to avoid the deterioration of the site,
- a requirement to conduct an impact assessment for plans/projects inside or outside of the protected areas, when a significant effect on the site is likely to emerge,
- the prohibition in principle of plans and projects if according to the impact assessment an adverse effect is to be expected,
- the exceptional admission of plans or projects if certain preconditions are met.

Box 6. Protection standards for Nature 2000

Habitats-Directive

Art. 6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

Art. 6.4 If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

The preconditions for exceptional admission are the following:

1) If a plan or project shall be realised within or outside a Natura 2000 site a preliminary checking must be done as to whether there might be a significant effect on the site.
2) If this is the case a Natura 2000 impact assessment must be elaborated.
3) If the assessment comes to the conclusion that there will be an adverse effect on the integrity of the site the plan or project cannot be authorised except if special conditions are given.
4) The exception can only be allowed if the goals pursued by the plan/project cannot be achieved with alternative means. If this is the case, the alternative solution shall be chosen.
5) There must be “imperative reasons of overriding public interest, including those of a social or economic nature”. The concepts of “imperative reason” and “overriding public interest” can hardly be clarified in abstract terms and are subject to case law. For instance, a private business would not qualify as public interest, except where the creation of numerous and regional employment places is foreseen.
6) If there is no acceptable alternative solution and the public interest is sufficiently substantiated, the project can be permitted, however subject to the obligation to take

compensatory measures. Compensation is only a last resort measure. Here the compensation in kind is meant, as opposed to monetary compensation.

7) If the project/plan concerns negatively affects particularly valuable, so-called priority natural habitats of species, the scope of public interests legitimating the plan/project is narrowed down to the improvement of environmental conditions and the protection of human health; other public interests can only be accepted if the EU-Commission renders a positive opinion on the case.

On the Member States level restrictions of use also apply in protected areas which are not at the same time Natura 2000 sites. The restriction regime varies with the protection category. In general, the use restrictions refer to the objective of protection, e.g. the kind of species or habitat giving rise to the establishment of the protected area. The level of protection is somewhat less strict than in the Natura 2000 scheme. For instance, in German law, there is no requirement to conduct a specific environmental assessment. If adverse effects are to be expected, the project is in principle prohibited, but a dispense may be granted. This is in the discretion of the authority the test of alternative solutions and public interest not being mandatory.

A protection regime of the native-polish forms of legal nature conservation can be, and very often is, stricter as than regime of Natura 2000 areas regulated by the EU provisions. The regime of National Park and Nature Reserve follows the ground rule of unconditional priority of territorial nature conservation (with tiny exemptions like e.g. national defense, protection of citizens against disasters, small scientific experiments) and consists of the rich number enumerated in Art. 15 ust. 1 of the Act on Nature Conservation and valid by law (*ex lege*) prohibitions limiting human activities to an essential degree. In contrast, the regimes of Landscape Parks and Areas of Protected Landscape are created individually by its designating authorities. They have to choose the prohibitions and limitations from the catalogue provided by Art. 17 and 24 individually according to protection goals of each designated area. The chosen limits are introduced as a part of the designation act. Also Polish law provides for the possibility to dispense from the prohibitions. But it must be seen strictly as an exception (especially when the exemption affects the regime of National park), and the competent authority must follow the restrictive approach of statutory interpretation of provisions providing the basis for dispense and an extensive approach for provisions consisting of prohibitions.

3. Problem identification

The distinction between prohibited, regulated and controlled activities is quite reasonable. What is however missing, is the inclusion into the control scheme of projects realised outside the protected areas and nevertheless having adverse effects on the protected site. This is a flaw, having in mind, that the practice currently knows many cases, where environmentally harmful activities (e.g. building a pit just next to the Protected area) are conducted without any restrictions. In the EU, this obligation is a core element of the Natura 2000 regime.

If the Emerald/Natura 2000 system shall be introduced in Georgia, the obligation to conduct a Emerald/Natura 2000 impact assessment should be incorporated into the law. Additionally, it should be considered to introduce such impact study also for projects conducted in areas with high of protection status not forming part of the Emerald/ Natura 2000 network.

In some cases, prohibitions and restrictions of use, contained in the law, are very far-reaching. For example, Art. 20.4 (a) prohibits “to ruin or modify natural ecosystems”. It might become necessary to have an exception from this general rule.

Again, for other activities certain impairment is allowed (such as fishing, constructing facilities and roads, etc.), but there are no criteria specifying under what preconditions such impairment is to be permitted. Here, the Natura 2000 criteria (procedural condition to conduct EIA and three material conditions – existence of an alternative, imperative reasons of overriding public interest and compensation) could be used. The same system of exceptions could be used in protected areas outside the Emerald/Natura 2000 protected areas.

The basis for differentiation between activities of Art. 20.5 and 20.6 is not quite clear. In general, clause 5 contains activities, which, due to their nature, are best regulated by means of a regulation. On the contrary, activities from clause 6 are subject to the regulation by granting an individual permit. However, sometimes overlaps can be observed. Thus, some regulation cases, such as construction will require an individual permit and, vice versa, not all cases of clause 6 might need issuance of an individual permit.

4. Improvement suggestions

Art. 20 should be modified to include exception rules. For Emerald/Natura 2000 areas, these are the criteria of Art. 6.3 and 6.4 Habitats Directive. These criteria should apply as well be introduced for areas with particularly strict protection level outside the Emerald/Natura 2000 network.

Lists of regulated and controlled activities should be revised and certain activities should be reordered, if necessary, to consistently fall under one of the two cases – regulation vs. individual permit.

VII. Issues of Cooperation and Co- Management

1. Status quo Georgian Law

The Protected Areas Law contains the requirement to ensure inter-agency cooperation, cooperation with organs of local self-government and non-governmental organizations (Art. 21) as well as cooperation with the public (Art. 22). A core structure in this regard is the scientific-advisory board, which aims at facilitating the involvement of the local population and other interested parties in the management of protected areas. Detailed provisions on the functioning

of the board can be found in Art. 8 of the Ministerial Order Nr. 97 on Territorial Administrations. A board shall be established for each individual protected area.

2. International and comparative Law

Provisions on inter-agency cooperation and cooperation with the public are described in § 3.5 and 3.6 of the German BNatSchG, respectively. According to the inter-agency clause, all federal and state authorities must inform nature conservation authorities about all plans and measures, which could affect the interests of nature protection and landscape conservation, already in the preparation phase and give them opportunity to comment, in the absence of other, farer-reaching participation provision. And vice versa, nature conservation authorities have a similar obligation with regards to other institutions, when their planned measures are likely to intervene with the jurisdiction of those institutions. According to § 3.6 BNatSchG, nature conservation authorities shall guarantee an early exchange with affected target groups and interested society members regarding their plans/measures.

An important instrument of nature conservation is contractual nature protection (*Vertraglicher Naturschutz*). Contracts are concluded between the nature conservation authority and a land owner or land user providing that certain uses shall be avoided or certain services shall be undertaken by the landowner or user, and that the authority shall pay a certain amount of financial compensation for the loss or effort. This instrument has often been used in practice. Its effects are however not easy to determine. Some clam that a considerable cost reduction effects can be achieved compared to other more intrusive top-down approaches. Others argue that land owners have sometimes succeeded in being paid for use restrictions they would normally be obliged to accept without compensation.

Another instrument of co-management, which can also be derived from §3.3 BNatSchG is contractual engagement of private persons or nature protection NGOs to carry out supervision of protected areas against a reasonable compensation.

For the relevant provisions on contractual nature protection see Box 7.

Box 7. Contractual nature protection

BNatSchG.
§ 3.3 Zuständigkeiten, Aufgaben und Befugnisse, vertragliche Vereinbarungen, Zusammenarbeit der Behörden
Bei Maßnahmen des Naturschutzes und der Landschaftspflege soll vorrangig geprüft werden, ob der Zweck mit angemessenem Aufwand auch durch vertragliche Vereinbarungen erreicht werden kann.

BayNatSchG
Art. 2a Aufgaben der Behörden; Beratung; Vereinbarungen
(3) [1] Die Naturschutzbehörden sollen zur Erreichung der Ziele und Grundsätze des Naturschutzes und der Landschaftspflege
die Formen der kooperativen Zusammenarbeit, insbesondere vertragliche Vereinbarungen und

Förderprogramme (Vertragsnaturschutz) nutzen.

BremNatSchG
§ 3a Vertragliche Vereinbarungen
Zur Durchführung von Maßnahmen nach diesem Gesetz oder nach auf Grund dieses Gesetzes erlassenen
oder fortgeltenden Rechtsvorschriften soll die oberste Naturschutzbehörde prüfen, ob der Schutzzweck auch
durch vertragliche Vereinbarungen der zuständigen Naturschutzbehörde erreicht werden kann.

Regulations on co-operation between central, regional and local authorities, different bodies and agencies are in Polish law quite well developed, especially when the issues of conservation measures' planning are considered. There is also present a broad framework for public participation in decision-making processes. The model of public participation, cooperation with NGO's and access to information on the protection of environment was modeled to a large degree on regulations of the Aarhus Convention (OJ EC L 124, 17.5.2005, p. 4–20). Polish provision are in some case (e.g. adoption of conservation measure's plans for National Park, Nature Reserve and Landscape Park, see Art. 19 ust. 1a of the Act on Nature Conservation) even more public-friendly than regulations of art. 7 of the Convention. The model does not however apply to every matter of nature conservation the complete way.

As for contractual partnership, in contrast to above mentioned German provisions there is in Polish nature conservation law no presence of obligation for authorities or management units to check for opportunities of co-operation with private actors or to give them a chance to establish a contract for exercising some authorities' tasks of nature conservation. It is however to notice that it is possible to make a business contract or to establish a public-private limited company modeled somewhat similar to a joint venture solution. However the partnership can only occur as a result of good will of responsible public body. Legal bases for such an action could be found e.g. in the act on public-private partnership (Dz.U. 2009 nr 19 poz. 100) and in acts that regulate the structure of regional-local self-administration. It is to underline that the communes play a very important role in the process of partnership building with farmers. They can make use of the legal instruments provided by the Act on Nature Conservation (the provisions on object-based legal forms of nature conservation) and by the Act on Commune Self-Administration (Dz.U. 2001 nr 142 poz. 1591 with amendments). Art. 9 ust. 1 of the latter act provides the possibility to make a civil law agreement (a contract) on the exercise of genuine tasks of the commune between the commune and another (also private) partner. According to Art. 7 ust. 1 pkt 1 one of the genuine tasks is nature conservation. On the basis of contracts concluded thanks to above mentioned provision it is possible to exercise by e.g. farmers or land-owners a contractual nature protection of any object-based legal form of nature conservation. However as a result of under-financing of nature protection in Poland and lack of above mentioned authorities' obligation the actual role of contractual nature protection partnership is still very weak, but it is growing.

3. Problem identification

Notwithstanding the fact, that the postulate of inter-agency cooperation is established by Law, it appears that the cooperation does not adequately work in practice. This is particularly true in cases of protected landscapes and territories of multipurpose use. These categories of protected areas are often under the management responsibility of multiple authorities such as APA, municipalities, Forestry Department etc.

The Georgian Law does not comprise the concepts of contractual nature protection (*Vertraglicher Naturschutz*) and contractual relationship with privates/NGOs supervising protected areas.

4. Improvement suggestions

The existing provisions on cooperation between administrative bodies appear adequate. Attention should however be paid to the implementation of the cooperation obligations. In the case of protected landscapes and multipurpose areas the competence distribution should be clarified and simplified.

The existing provisions for advisory boards appear to be adequate. Maybe more efforts could be made to improve their resources, for the boards should play an important role in the near-to-field management of protected areas.

It is recommended to introduce a provision allowing the use of nature protection contracts between public MOE and individual land owners or users. When applied wisely, this instrument can facilitate the implementation of nature conservation goals at reasonable expenses.

For similar reasons the contractual engagement of private persons/NGOs in the supervisory activities should be enabled.

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