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Sustainable Management of Biodiversity, South Caucasus

Species Protection in the Georgian Nature Protection Law

Analysis and Recommendations

ცხოველთა და მცენარეთა დაცვა საქართველოს გარემოსდაცვით კანონმდებლობაში

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Working Papers – 5/2010

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Introduction

The main focus of the present paper is on substantive flaws and lacunae of the Georgian legislation on species protection. 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 international, EU and selected national laws,

Step 3: Identification of substantial problems,

Step 4: Recommendations for amendment/improvement of the current law

I. Overview of existing legislation

The concept of species protection normally encompasses both fauna and flora, i.e. animal and plants species. There are substantial differences in the protection of species, depending on whether the species in question is endangered or not.

The general framework for species protection in Georgia is provided by the Law on Environmental Protection of 10th December 1996 (*in the following:* Environmental Protection Law). It is one of the main goals of the Environmental Protection Law to support the preservation of biodiversity of the country, the preservation of rare, endemic and endangered species, the protection of the marine environment, and the maintenance of the ecological balance (Art. 3.1 (d) Environmental Protection Law). The Law contains regulations on both wild animals and plants which are threatened by extinction and those which are not.

Two main legal acts regulating the issues of species protection in Georgia are the Law of Georgia on Wildlife of 26th December 1996 (*in the following*: Wildlife Act) and the Law of Georgia on the "Red List" and "Red Book" of 6th June 2003 (*in the following*: Red List Act).

The Wildlife Act deals with non-endangered wildlife. Wildlife in the sense of the law is "the unity of species of all wild animals which constantly or temporarily inhabit the territory of Georgia, its territorial waters, continental shelf and special economic zone and are found in the state of natural freedom" (Art. 2.1 Wildlife Act). Thus, the Act does not encompass plants.

The Red List Act regulates both wild animals and plants. However, its application scope is restricted to endangered species.

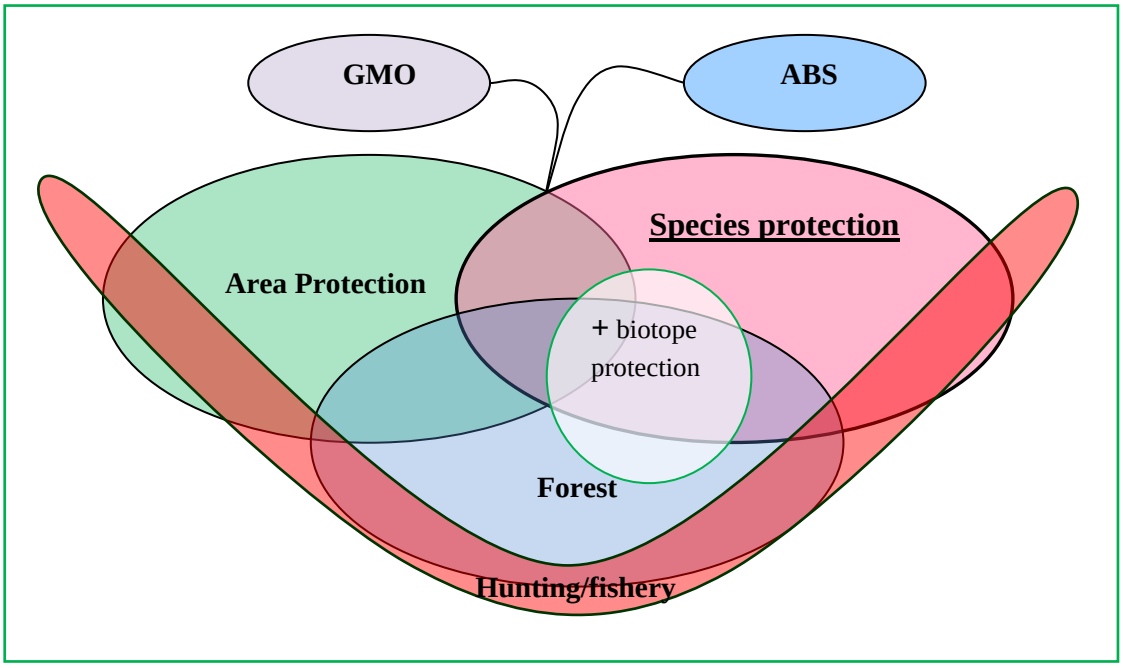
Drafts of amendments to both the Wildlife Act and the Red List Act have been elaborated by the Department on Biodiversity of the Ministry of Environment and Natural Resources (in the following: MOE) and submitted in February 2009. The draft concerning the Wildlife Act tries a fundamentally new approach for this law. Its focus is now on non-endangered animals while all provisions on endangered species have been deleted. Of the uses of animals the draft primarily regulates hunting and fisheries. The draft for amending the Red List Act introduces a new provision modifying the status of the Commission for Red List Species and specifying a clearer procedure for the compilation and amendment of the Red List as well as detailed provisions on the permission for the extraction from the natural environment of the Red List species of wild animals and plants or their parts.

Species protection is interconnected and to some extent overlaps with area protection (regulated by the Law „On the System of Protected Territories of 7th March 1996) and forest management (regulated by the Forest Code of Georgia of 22nd June 1999). The same applies to hunting and fisheries management which in Georgia is regulated on the sublegal level. In

addition, issues of deliberate or incidental release of genetically modified organisms (*in the following:* GMOs) into nature affect species and area protection, causing modern legislation controlling GMOs to also strive for the protection of biodiversity. Finally, legislation on access to genetic resources and the sharing of benefits drawn from them (*in the following:* ABS) overlaps with species and area protection because of environmental side-effects of the utilisation of genetic resources. Legal regulation of the issues regarding GMOs and ABS is still lacking in Georgia.

Box 1 below sketches out the relationships between different sectors of nature protection law, in the context of their importance for the field of species protection and mutual importance.

Box 1. Interconnections of the field of species protection with other areas of nature protection law



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

- Order # 70 of the Minister of Environment Protection and Natural Resources on approval of the "List of Bodies of Special Utilization (including those of local importance) of Environment" of 3rd June 1999,

- Order # 67 of the Minister of Environment Protection and Natural Resources on approval of the "Rule of Definition of the List of Bodies of Special Utilization of Environment" of 3rd June 1999,

- Order # 66 of the Minister of Environment Protection and Natural Resources on approval of the "List of Species of Wild Animals Subject to State Registration and Entering into the State Cadastre" of 30th May 2002,

- Order # 66 of the Minister of Environment Protection and Natural Resources on approval of the Regulations "On State Registration of Fauna and Utilization of the Bodies Thereof, Compilation of the State Cadastre of Fauna, Rules of Definition of the List of Groups of Species Subject to the State Registration and Entering into the State Cadastre, also, Rules of Presentation of Data, Required for Registration and Compilation of the Cadastre" of 30th May 2002,

- Order # 98 of the Minister of Environment Protection and Natural Resources on approval of the Regulations "On the Methods and Rule of Registration of the Fauna Bodies on the Defined Territory of the State Forest Fund" of 4th October 2002,

- Order # 76 of the Minister of Environment Protection and Natural Resources on approval of the List of Endangered Species (Red List) of 5th August 2003 (*in the following:* Order # 76 on Red List),

- Decree # 303 of the President of Georgia on approval of the "Red List" of Georgia of 2nd May 2006 (*in the following:* Decree # 303 on Red List),

- Order # 247 of the Minister of Environment Protection and Natural Resources on approval of Regulations "On the Rule of Wildlife Regulation".

There is also a number of hunting and fishing regulations such as the following:

- Order # 512 of the Minister of Environment Protection and Natural Resources on approval of Regulations "On Wildlife Objects, Rules of their obtaining according to the Species, Terms and the List of Weapons and Equipment permitted for their obtaining" of 7th December 2005,

- Order # 18 of the Minister of Environment Protection and Natural Resources "On Approval of the List of the Fauna Bodies, Referred to the Objects of Hunting" of 25th May 2009,

- Order # 97 of the Minister of Environment Protection and Natural Resources on approval of the "Dates of Beginning and Termination of Hunting and Fishing" of 4th October 2002.

In the EU there is a wide range of political and legal commitments aiming at the protection of biodiversity, with species conservation at the forefront. Similar to the field of area protection, 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 major interest also in issues of species protection.

The Birds Directive is the EU's oldest piece of nature legislation and creates a comprehensive scheme of protection for all wild bird species naturally occurring in the Union. Among them, it identifies 194 species and sub-species as particularly threatened and in need of special conservation measures. The Birds Directive bans activities that directly threaten birds, such as

the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds, with a few exceptions.

Up until now, most of the attention regarding the implementation of the Habitats Directive has focused on the establishment of the Natura 2000 network. However, next to this "1st pillar" of the Directive, which refers to the conservation of natural habitats and habitats of species, the Habitats Directive also comprises a "2nd pillar", which is related to the protection of species.[1] It ensures the conservation of a wide range of rare, threatened or endemic species, including around 450 animals and 500 plants.

International trade of wild fauna and flora has significant impact on species decline because of its demand pull. Therefore it is crucial to regulate trade for the sake of species protection. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (*in the following:* CITES), which was signed in 1973, assigns varying degrees of protection to more than 30.000 species of animals and plants. CITES works by making international trade in specimens of selected species subject to certain controls. CITES was transformed on the EU level by Council Regulation (EC) 338/97 of 9th December 1996 on the protection of species of wild fauna and flora (*in the following:* EC Species Protection Regulation 338/97). The Regulation imposes conditions on the importation, exportation or re-exportation of the species and on their movement within the European Union, in accordance with but going further than required by CITES.

Member States are bound to implement Directives 79/409 and 92/43 as well as Regulation 338/97. While the trade restrictions established by the Regulation are directly applicable, the protection requirements established by the Directives must be framed as national law. Both for the Regulation and the Directives Member States have to provide the administrative infrastructure enforcing the protection requirements. In this respect they differ in their national administrative traditions, especially in relation to the degree of centralisation of administrative functions. In addition, as the EU legislation on species protection only attains minimum harmonisation, the Member States can go further. They can add more species to the lists and extend the protective regimes to them. Most of the Member States have done so.

For comparison on the national level, we will focus on Poland and Germany: Poland because of its being a transition country and Germany, because German law is serving as a model for Georgian administrative law development also in other areas of sectoral administrative law. In Poland all issues of species protection are regulated by the comprehensive Nature Protection Act. There are no separate acts on a Red List or Animal Wildlife. There are however special laws on hunting and fisheries. This structure was adopted following the German example. In Germany the issues of species protection are regulated in § 39ff. of the revised Federal Nature Conservation Act (Gesetz über Naturschutz und Landschaftspflege or Bundesnaturschutzgesetz (*in the following:* BNatSchG)). Details are elaborated in the Regulation on the Protection of Wild Living Animal and Plant Species (Verordnung zum Schutz

[1] Cf. http://ec.europa.eu/environment/nature/conservation/species/guidance/index_en.htm.

wild lebender Tier- und Pflanzenarten - Bundesartenschutzverordnung (*in the following:* BArtSchV)) of 16th February 2005. Hunting and Fisheries are regulated by separate laws.

II. Regulation of non-endangered species

The first part is devoted to the issues of protection of non-endangered wildlife, as opposed to species threatened by extinction.

1. Introduction

The Environmental Protection Law contains a framework provision regulating the protection of wild animals and plants. According to Art. 46.1 Environmental Protection Law, the extraction of specimens of animals and plants from their living environment is strictly limited and subject to licensing. Art. 46.2 proceeds with stipulating, that every action, which could adversely impact wild plants and animals, their living environment, reproduction areas and migration ways, is prohibited. Regulation of details is left to special environmental legislation.

The main act regulating protection of non-endangered wildlife is the Wildlife Act. The act views wildlife as a unity of species of all wild animals which constantly or temporarily inhabit the territory of Georgia, its territorial waters, continental shelf and exclusive economic zone and are found in the state of natural freedom. It consists of four parts. While Part I is concerned with the scope of application, the objectives of the Code, competence division, and participation, Part II contains the core provisions on wildlife protection and use. Box 2 below shows the detailed structure of the Wildlife Act.

Box 2. Structure of the Wildlife Act

Wildlife Act.

I. General part
Chapter I. General statements
Chapter II. Division of Competencies in the field of protection of wildlife and use of its objects
II. Main part
Chapter III. Protection of wildlife
Chapter IV. Use of objects of wildlife
Chapter V. Economic regulation of the protection of wildlife and use of its objects
Chapter VI. State management of the protection of wildlife and use of its objects
Chapter VII. Responsibility for the violation of the Law on Wildlife
Chapter VIII. International agreements and treaties of Georgia in the field of the protection of wildlife
and use of its objects
III. Conclusions
Chapter IX. Concluding provisions
Chapter X. Putting into effect the Law of Georgia on Wildlife
IV. Transitional part

Chapter XI. Transitional provisions on putting into effect the Law of Georgia on Wildlife

The thrust of the Wildlife Act is on the regulation of non-endangered species. Some provisions however also address the protection of endangered species.

As mentioned earlier a draft for a new Wildlife Act has been produced by the MOE department on biodiversity. The language of the draft is more concise than that of the law in force. In comparison with the Wildlife Act in force which still breathes the Soviet tradition of optimal exploitation of wildlife, it rather stresses the need to preserve biodiversity. Its focus is on uses of wildlife by hunting and fisheries. Preconditions, contents, auctioning procedures, transfer etc. of use licenses are laid down with the necessary precision. However, the draft does not address other uses than hunting and fisheries. It also fails to regulate the protection of endangered species.

2. Status quo Georgian Law

a) Protection measures

Chapter III, and within it, Art. 16 and 18 of the Wildlife Act, contain comprehensive enumerations of measures the State must take in order to ensure the protection of wildlife, such as in-situ and ex-situ conservation of wildlife and the financing of scientific research aiming at developing and improving methods of the protection of wildlife.

b) Types of use

Art. 25 Wildlife Act foresees different types of use of non-endangered wildlife, such as:

a) hunting;
b) fishing, including the catching of water invertebrates and marine mammals;
c) the catching of those objects of animal world, which do not belong to hunting and fishing objects;
d) use of helpful features and products (honey, wax, etc.) of vital activity of wild animals (soil makers, plant pollinators, biofiltrators and others);
e) scientific investigation of wildlife and other type of use of the objects of animal kingdom for cultural, educational, recreational, aesthetic purposes with or without extraction of wild animals from habitats;
f) catching of wild animals for the purpose of their preservation, reproduction in captivity or semi-free conditions;
g) creation of zoological collections.

Additionally, other types of the use of objects of wildlife may be specified by Georgian legislation (Art. 25.2 Wildlife Act).

Each type of use listed above is further specified in individual articles.

Further, the Law distinguishes between common (Art. 26 Wildlife Act) and special use (Art. 27 Wildlife Act) of objects of wildlife (See Box 3 below). Most of the types of use listed above can

be subject to both common and special uses. Reference to this can be found in more specific articles.

Box 3. Common and special uses of objects of wildlife

Common use of the objects of wildlife	**Special use of the objects of wildlife**
- Addressees: Citizens of Georgia - Purpose: Satisfaction of personal (individual) consumption, aesthetic, recreational, health and other demands of Georgian citizens. - Free of charge and not subject to licensing (Art. 26.4). - There is no specification as to which species of non-endangered wildlife may be subject to common use. - The general rule is that extraction of wildlife from the natural environment is prohibited. However, extraction is allowed for scientific, cultural, educational, recreational, restoration, veterinary purposes (Art. 26.2), for the purpose of creation of amateur zoological collections (Art. 21.6, 26.2) and fishing (Art. 30.3). - There are no established procedures for the common use of objects of wildlife. Instead, Art. 26.3 establishes a general prohibition to kill wild animals, destruct their dwellings (burrows, houses, lairs, nests and others), disturb habitats and deteriorate conditions for their reproduction.	- Addressees: Physical and legal persons, owners and users of the land, whose plots are inhabited by objects of wildlife. - Purpose: Any use extending beyond the common use. - Subject to payment; requires a license (Art. 27.3. 31.2, 25.4). - Not all objects of non-endangered wildlife are subject to special use. The list of such objects of wildlife is established on the basis of the order of MOE. - Involves the extraction of objects of wildlife from natural environment. The use of such objects by getting the products of vital activity is permitted only in the conditions of their reproduction in captivity. - The MOE develops and approves a regulation, containing rules and terms of special use as well as weapons and techniques permitted for catching various species of wild animals.

As we have seen, most of the uses of wildlife can be both common and special. However, the Act lacks clear differentiation criteria when a use is common and when special, i.e. subject to licensing. Art. 26 Wildlife Act lists the following purposes as indication that the use is common use:

- personal (individual) consumption,

- aesthetic, recreational, health and other demands.

In addition, Art. 34.1 introduces the possibility of general and special permission for the use of the objects of wildlife for scientific, cultural, educational, recreational, aesthetic and veterinary purposes.

Further, common use shall usually take place without the extraction of the wildlife object from the environment. However, this principle also knows several exceptions and thus cannot serve as a clear differentiation criterion between the two forms of use.

c) Exclusion of plants

The Wildlife Act with its focus on animals does not include plants, neither non-endangered nor endangered ones. While endangered plants are captured by the Red List Act, no law exists that would regulate the protection of non-endangered plant species and thus provide a level of protection similar to that provided by Wildlife Act for wild animal species.

d) Species protection vs. animal welfare

There is a considerable difference between the fields of animal welfare protection and species protection. Animal welfare is devoted to the prevention of cruelty to individual animals, while species protection is concerned with biodiversity and the species as a whole. There is no separate law on animal welfare in Georgia which would regulate these issues; however the Wildlife Act contains some rudimentary provisions which can be interpreted as animal protection.

First of all, Art. 28.5 prohibits the causing of suffering to a wild animal in the course of hunting. This provision can be interpreted as granting an individual animal protection to be killed in a human way and not to be exposed to cruel treatment. Also, the Wildlife Act prescribes that measures of regulation in the number of individual species of wild animals must be implemented by human means (Art. 36.2). Furthermore, the right of private ownership on animals must cease in case of cruel treatment of wild animals (Art. 44.1(a)).

3. International and comparative Law

On the EU level, the Habitats Directive contains provisions regulating the protection of species, most of them of a prohibitive nature. However, they apply only to species which are in need of strict protection, i.e. they do not apply to non-endangered species.

By contrast, the Birds Directive does protect all bird species including non-endangered ones. Art. 5 of the Birds Directive contains as a general principle the prohibition of deliberate killing, capture, disturbance, etc. of birds (see Box 4). Art. 6.1 extends the general prohibition to trade in all bird species. This rather strict protection regime for birds however knows three kinds of exceptions:

- Hunting and trade in hunted specimen is allowed on a number of species listed in Annex II, if specific hunting rules are observed (Art. 7).

- Trade is allowed for a small number of species listed in Annex III, if they were legally obtained (Art. 6.2 and 6.3);
- The deliberate killing, capture, disturbance and trade is allowed if special reasons are given such as public health and safety, damage to crops, research, etc. (Art. 9).

Box 4. Species protection in the Birds Directive

Birds Directive.
Article 5

Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:
(a) deliberate killing or capture by any method;
(b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
(c) taking their eggs in the wild and keeping these eggs even if empty;
(d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;
(e) keeping birds of species the hunting and capture of which is prohibited.

As for German Law, the BNatSchG differentiates between the protection of regular, non-endangered species (§ 39 BNatSchG) and that of particularly protected species (§ 44 BNatSchG). Different rules apply to each category.

Box 5. Species protection in the BNatSchG

BNatSchG.
§ 39 Allgemeiner Schutz wild lebender Tiere und Pflanzen

(1) Es ist verboten,

1. wild lebende Tiere mutwillig zu beunruhigen oder ohne vernünftigen Grund zu fangen, zu verletzen oder zu töten,
2. wild lebende Pflanzen ohne vernünftigen Grund von ihrem Standort zu entnehmen oder zu nutzen oder ihre Bestände niederzuschlagen oder auf sonstige Weise zu verwüsten,
3. Lebensstätten wild lebender Tiere und Pflanzen ohne vernünftigen Grund zu beeinträchtigen oder zu zerstören.

...

(3) Jeder darf abweichend von Absatz 1 Nummer 2 wild lebende Blumen, Gräser, Farne, Moose, Flechten, Früchte, Pilze, Tee- und Heilkräuter sowie Zweige wild lebender Pflanzen aus der Natur an Stellen, die keinem Betretungsverbot unterliegen, in geringen Mengen für den persönlichen Bedarf pfleglich entnehmen und sich aneignen.

(4) Das gewerbsmäßige Entnehmen, Be- oder Verarbeiten wild lebender Pflanzen bedarf unbeschadet der Rechte der Eigentümer und sonstiger Nutzungsberechtigter der Genehmigung der für Naturschutz und Landschaftspflege zuständigen Behörde. Die Genehmigung ist zu

erteilen, wenn der Bestand der betreffenden Art am Ort der Entnahme nicht gefährdet und der Naturhaushalt nicht erheblich beeinträchtigt werden. Die Entnahme hat pfleglich zu erfolgen. Bei der Entscheidung über Entnahmen zu Zwecken der Produktion regionalen Saatguts sind die günstigen Auswirkungen auf die Ziele des Naturschutzes und der Landschaftspflege zu berücksichtigen.

§ 39 BNatSchG differentiates between the common use of wild plants, which is free, and commercial use, for which a permit is required. The possibility of free access to objects of non-endangered flora can be viewed as an important aspect of a free society. At the same time the Act contains clear criteria to ensure that such use is limited to personal needs and takes into account sustainability considerations.

With regards to animal protection, while Art. 8 Birds Directive and Art. 15 Habitats Directive do have some implications for animal protection, EU law does not tackle this issue in any detail. Thus, it is the Member States competence to regulate the matter. They tend to do this by separate animal protection laws detached from species protection legislation.

In Poland, wild living animals, plants and fungi are first of all incorporated as an element of “all substrates of the nature” into the term “environment” as defined by the Law on Environment Protection (Dz.U. 2008 nr 25 poz. 150). According to Art. 4 of the Law everyone is entitled to common use of the environment to fulfill his personal needs and needs of his household, like rest, sport etc. The right is specified by more detailed provisions.

Elements of living nature are also the subject of protection of the Act on Nature Conservation (Dz.U. 2009 nr 151 poz. 1220). Art. 125 of the Act stipulates the general rule devoted to stop human activities of unreasonable and unnecessary killing and destroying of plants, animals, fungi and its habitats. The provision contains a catalogue of 10 reasons that may be invoked to justify such activities, such as the necessities of nature conservation including science and education; the exercising of rational management; the withdrawal from nature for personal purposes (exclusively amateur fishing and collecting); and finally public safety. This provision applies both to normal and protected species as the Act does not entirely separate the protection of endangered species from general rules of handling with non-endangered specimens. Of course besides the general rule more strict provisions of species protection must be respected. The mentioned regulation is supported by corresponding penal sanctions which treat the violation as a petty offense.

Apart from environmental law the Law on Hunting (Dz.U. 2005 nr 127 poz. 1066) also applies. It forbids and sees as a crime any withdrawal, catching and keeping of wild living animals which were not taken during hunt and according to the hunting rules. Also other sectoral laws can be mentioned where some relevant provisions on general species protection can be found, e.g. the Law on Water, the Act on Fishery and the Law on Animals Protection.

As for regulation of plants the common regime of trees and bushes protection stated by Art. 83 to 90 of the Act on Nature Conservation applies. According to this regulation the removing of trees and bushes on the whole territory of the State outside forest areas requires generally a

permit issued by the executive body (*wójt, burmistrz, prezydent miasta)* of the commune. The permitting administrative act must fix the amount of payment for the removal or a legal justification of the liberation from this financial burden. Also the applicant can be obliged to plant an appropriate quantity of new trees and bushes as replacement for the removal. Very high administrative charges have been foreseen for illegal removal or deterioration of trees and bushes. It is also penalized and criminalized.

Besides the mentioned common protection there is also a more restricted regime of plants' protection. It applies to almost all plants of compact villages and cities as well as to trees and bushes alongside the roads. One of measures of the protection regime is to double the payments for tree and bushes removal as well as the violation fines.

In addition, non-endangered plants protection is also a matter of penal regulation which originates from the time of communism. It is devoted to protect the plants from being deteriorated. For example penalized as a petty offense is any human action that can directly result in damage of plants as well as trampling on lawn. While the rules must be observed within areas devoted to public use, the process of delimitation of these areas is dynamic, as a result of its ambiguous definition. Thus the scope of application can be virtually really huge encompassing private and public grounds; substantial and tiny misbehaves (like deviating from pavement or path) giving public officers a quite large discretion. Such regulation is in principle good and nature-friendly but because of the ambiguity the Polish particular solution cannot be recommended as it produces opportunities for abuse.

4. Problem identification

The Georgian law on the protection of non-endangered species goes further than the EU law because EU law only cares about birds in that regard. On the other hand, EU Member State laws do extend the protection of non-endangered species to other wild animals and even wild plants. This would mean that the Georgian law is flawed insofar as it does not include plants into its protection regime.

While the distinction between common use and special use is basically commendable, the delineation between the two is not clear enough. In terms of the objective of use, personal consumption appears to be an appropriate criterion (although family use should be included, see paper on Forest law). However, in terms of kinds of uses the distinction "extraction vs. non extraction of specimen" is not convincing. It should be replaced by a list of allowable activities resembling the (to be improved) list in Art. 88 of the Forest Code.

While it is useful to require a permit for special uses the law does not specify criteria the competent authority shall apply when deciding about applications.

The Wildlife Act contains many very detailed provisions on the conditions of special use (Arts. 31 to 48). It appears that some of them are superfluous or too strict or already contained in

more general legislation such as the General Administrative Code.[2] The whole regime of issuing licenses should also be harmonised with the regime on forest use contained in the Forest Code.

The provisions on hunting and fisheries are only very rudimentary leaving many important issues to the sublegal level. It appears that the basic principles of hunting and fisheries should be laid down on the level of the law. The new draft Wildlife Act is much more precise in this respect.

The provisions of Art. 20 establishing special protection for endangered species are incomplete. The matter is already regulated in the Red List Act.

5. Improvement suggestions

The Wildlife Act should be extended to the protection of plants against deliberate removal and destruction. Should this be done the Act might be renamed the Animal and Plant Kingdom Act.

The delimitation of common and special uses should be revised. Common uses should be enumerated. They should not be characterised as non-extraction of specimen, because this may well be the case e.g. if mushrooms are harvested on a small scale. Personal use should be extended to family use. The definition should be harmonised with the definition of common use in the Forest Code.

The law should thoroughly be scrutinised in order to remove repetitive, overregulatory or superfluous provisions and provisions not needed because of the applicability of the General Administrative Code.

The rules on hunting and fisheries should be made more elaborate. The new draft Wildlife Act is exemplary in that respect.

The provision establishing special protection for endangered species should be removed. The matter should be regulated by the Red List Act.

III. Regulation of disappearing species[3]

The main act regulating the protection of disappearing species in Georgia is the Red List Act. However, also the Wildlife Act contains provisions on disappearing species, as does the Forest Code. In case of overlaps between the Red List Act and the Forest Code preference must be given to provisions of the Red List Act, as a more special law. In absence of more stringent provisions of the Red List Act, provisions of the Wildlife Act and Forest Code apply.

Box 6 below contains an outline of the Red List Act.

[2] For instance, the conditions and procedure of revocation of a license is regulated by this Code.

[3] We use the term disappearing species in the following as a generic term covering various degrees of danger of extinction. This helps to avoid confusion with legally defined terms specifying degrees of fragility, such as endangered, vulnerable, rare, etc.

Box 6. Structure of the Red List Act

Red List Act.

I. General part
Chapter I. General Provisions
Chapter II. Division of competencies in the field of "Red List" and "Red Book" of Georgia
Chapter III. Rights and obligations of physical persons and legal entities in the field of "Red List" and "Red Book" of Georgia
II. Main part
Chapter IV. Protection of species threatened by extinction
Chapter V. The Status of species threatened by extinction
Chapter VI. Registration, monitoring system and rehabilitation measures for the species included into the Red List
Chapter VII. Acquisition of Red List wild animal and plant species (withdrawal from natural environment)
Chapter VIII. Protection and rehabilitation measures of species threatened by extinction
Chapter IX. State control and surveillance over protection of the Red List species
Chapter X. Compensation of damage
Chapter XI. Responsibility for violation of the Georgian Law on "Red List" and "Red Book" of Georgia
Chapter XII. International Agreements of Georgia in the field of "Red List" and "Red Book" of Georgia
III. Transitional Part
Chapter XIII. Transitional provisions
IV. Conclusions
Chapter XIV. Concluding provisions

As mentioned earlier a draft amendment to the Red List Act was submitted in February 2009. Besides many smaller changes it is worth to mention improved provisions on the Commission for Red List Species which is given a more formal status than the Commission for disappearing species of the Academy of Sciences of Georgia has in the current version of the act. It also proposes more detailed provisions on exemptions from the basic use restrictions concerning endangered species.

A. The Compilation of the Red List

1. Introduction

In Soviet times, wild animal and plant species were regulated by "The Red Book of Georgian SSR" of 1982. It included rare and threatened species of animals and plants as well as a register of single plants, significant in their size and/or age. In 2003 the Red List Act abolished former regulations attached to the Red Book and included the Red Book part in the Red List Act.

The Red List Act regulates legal aspects of development of the “Red List” and “Red Book” as well as issues of protection against taking and killing, uses, possession and trade. International trade in endangered wild animal and plant species is not addressed by the Red List Act but rather by the Wildlife Act.

The Red List and Red Book are two documents which are designed to complement each other. The Red List enumerates wild animal and plant species threatened by extinction which permanently or temporarily inhabit the Georgian territory. The Red Book contains detailed information on species listed in the Red List, such as the status, distribution area, location, quantity, places and conditions of reproduction, necessary protection measures and actions already taken, as well as risk-factors of different protection measures.

2. Status quo Georgian Law

a) Goals of listing

Art. 4 of the Red List Act lays down the following main goals:

- protection and use of the species included in the Red List of Georgia,
- protection and rehabilitation of the species threatened by extinction,
- conservation of the diversity of species and genetic resources.

b) Responsible body

The Red List Act attributes competencies in the Field of “Red List” and “Red Book” of Georgia to the Supreme State Authorities. No specific responsible body is however defined. These competencies are defined as follows:

a) development of state policy,
b) coordination of the activities of the state governmental authorities,
c) implementation of unified scientific-technical policy, elaboration and approval of normative-methodological documentation and organization and financing of fundamental and applied scientific- research works,
d) approval of the Red List of Georgia,
e) funding of the state program for protection, rehabilitation and preservation of the Red List Species,
f) conclusion of international agreements and treaties and provision of fulfillment of the obligations taken over under these international agreements and treaties.

The attribution of competencies is more differentiated in the draft amendment to the Red List Act.

c) Lists

Until 2006 the Red List was temporarily established on the basis of the Order # 76 on Red List of 2003. It was a compilation of different sources and included: Species from the Red Book of Georgian SSR of 1982, species from the Convention on the Conservation of Migratory Species of Wild Animals (CMS Convention), species from the Agreement on the Conservation of African-

Eurasian Migratory Waterbirds (AEWA), species from the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) and species from the Agreement on the Conservation of Populations of European Bats (EUROBATS).

In accordance with Art. 36 of the Red List Act and clause 3 of the Order # 76 on Red List of 2003, in 2006 this order was replaced by Decree # 303 on Red List. Currently, the Red List is being approved by the Decree of the President of Georgia and there is a renewal obligation once in 10 years (Art. 14.4 and 14.5 Red List Act).

d) Content

The currently approved Red List consists of two parts. The first part includes species of wild animals threatened by extinction and the second part species of wild plants threatened by extinction. The first part includes 33 species of mammals, 35 species of birds, 11 species of reptiles, 2 amphibian species, 11 species and 4 subspecies of fish, 35 species of insects etc. The list includes both sea water and fresh water fish species. The second part contains 56 plant species. It does however not include herbaceous vegetation.

The Red List includes the following information:

- scientific name in Georgian and Latin languages,
- categories defining the state and protection status,
- reasons for the inclusion of the species in the Red List.

e) List categories

Species included in the Red List of Georgia were identified on the basis of the categories and criteria defined by IUCN (IUCN Red List Categories and Criteria, Version 3.1, 2001) and according to IUCN recommendations for the assessment of species at regional and national levels (IUCN Guidelines for National and Regional Red Lists, 2003). According to Art. 16.1 Red List Act, the categories defining the state of the Red List Species and the criteria for determining them must be compliant with the Red List categories and determining criteria of IUCN. The categories represent the level of endangerment of the species in Georgia.

The Red List identifies 4 categories:

- **CR** (Critically Endangered),
- **EN** (Endangered),
- **VU** (Vulnerable),
- **RE** (Regionally extinct).

Art. 20.2 Wildlife Act also contains a list of categories. In contrast to the four categories of the current Red List, it specifies more categories, namely:

a) Extinct Taxon (Extinct - EX): A taxon is regarded as extinct, when the last individual is killed;
b) Taxon, Extinct in the Wild (Extinct in the Wild - EW): A taxon is regarded as extinct in the wild, when it is known, that individuals of this species remain only in captivity;
c) Critically Endangered Taxon (Critically Endangered - CR): A taxon is regarded as critically endangered, when by remaining in present conditions, it is exposed to the great danger of extinction in the nearest future;
d) Endangered Taxon (Endangered - EN): A taxon, which is not facing a great danger, but may become threatened by extinction in the nearest future;
e) Vulnerable Taxon (Vulnerable - VU): A taxon is not facing possible danger, but may be exposed to it in the nearest future.
f) Lower Risk Taxon (Lower Risk - LR): The taxon does not meet the criteria of endangered and vulnerable categories. This taxon may be divided into three subcategories:
Conservation Dependent Taxon - CD,
Near Threatened Taxon - NT: A taxon, which does not approximate the CD, but stands near to the Vulnerable,
Less Concern Taxon- LC: A taxon, which approximates neither the CD nor the NT taxon.
g) Data Deficient Taxon (Data Deficient - DD): Information on this taxon is not sufficient for direct or indirect evaluation of its extinction risk.
h) Not Evaluated Taxon (Not Evaluated - NE): A taxon belongs to this category in absence of applicable evaluation criteria.

f) Criteria for Listing

Art. 17 mentions the following criteria for including a certain species in the Red List:

- reduction of number and distribution area of species,
- deterioration of living conditions,
- other circumstances, indicating that emergency measures must necessarily be taken for their protection and reproduction.

g) Procedure

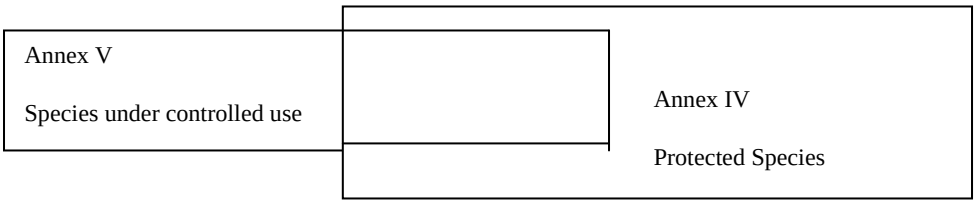
The procedure of composition of the Red List is described in Art. 15 of the Red List Act. The draft project of the Red List of Georgia is prepared by the Commission of Endangered Species of the Academy of Sciences of Georgia. The working plan for 10 years is approved by the Presidium of the Academy of Sciences.

The Presidium of the Academy of Sciences forwards the Draft Red List (plus conclusions of the problem committee and presidium) to the MOE, which, in turn, submits the draft to the President of Georgia for his approval or returns it to the Commission with grounded comments. The Commission has the right to use relevant information in the possession of the state authorities free of charge. No participation of the public is foreseen at this stage.

According to Art. 17.3 of the Red List Act, the following persons/entities can make a proposal to include a certain species in the Red List – a citizen, scientific-research, educational or other institution and organization (despite of their legal form). Such a proposal may be directly submitted to the Ministry or the Commission. The Commission shall develop conclusions on the appropriateness of including of respective species into the Red List of Georgia and submit them to the involved person within four months. If the decision is positive, it is possible to include the respective species in the Red List in accordance with the regular procedure.

3. International and comparative Law

Annex IV of the EU Habitats Directive enumerates those animal and plant species that are deemed endangered, vulnerable, rare or requiring attention[4] and therefore in need of strict protection. They are named species of Community interest. Annex V contains a positive list of animal and plant species of Community interest which may be taken or exploited (including hunting and fishing) while being subject to management measures preventing the deterioration of their status. Most of the species listed in Annex V are also listed in Annex IV which however is much more numerous. This means that the usable species are partly listed as endangered, vulnerable, rare or requiring attention, and partly not listed as such.



As for the Birds Directive it was already outlined that the approach of this directive is somewhat more radical because it provides strict protection for all bird species. It also establishes a positive list of species which may be hunted or otherwise exploited.

The ground for including a species in one of the relevant lists is their status of endangerment. In the context of the Habitat Directive (Art. 1 (g)), one of the following statuses of the species makes it subject to special protection rules.

- **endangered**, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palearctic region,
- **vulnerable**, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating,
- **rare**, i.e. with small populations that are not at present endangered or vulnerable, but are at risk. The species are located within restricted geographical areas or are thinly scattered over a more extensive range,
- **endemic** and **requiring particular attention** by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status.

[4] The term is used here as a generic term including as enumerated Art. 1 (g) Habitats Directive.

EU lists are amended by the normal legislatory procedure. There is no delegation to the executive (the Commission). The public is involved according to the general rules of legislatory procedures.

The Member States transformed the EU lists into national lists or refer to the EU lists. They also add more animals and plants to the lists which they deem to deserve special protection for regional or general reasons. In Germany the list is attached to the above mentioned Bundesartenschutzverordnung. The Laender are entitled to extend the protection even more species.

In Poland the legal frames for protection of endangered species are included into the Act on Nature Conservation. Those regulations complete the direct binding provisions of the Council Regulation 338/97 and transpose the provisions of the bird and habitat directives going in the scope of species protection wider than it is required by EU provisions. Three individual lists of endangered domestic and international protected species are contained in corresponding ordinances of the Ministry of Environment. Each of three ordinances is devoted individually to fungi, animals or plants that are different subjects of protection. Those acts are instruments used to specify protection measures stated in the Act on Nature Conservation. The Act stipulates for each subject of protection an individual gradation system of levels of endangerment. Each protected species is assigned to the corresponding level in one of three ordinances. By way of example there are presently five levels of animal endangerment scale. The first category includes endangered and protected animals that require active measures of conservation. The second category encompasses semi-protected animals. The third is a category of semi-protected animals that however can be withdrawn from nature by the methods described in the Ordinance. The fourth category encompasses birds that can be withdrawn, sold and halted for trade purposes when legally hunted. The fifth category includes endangered animals the protection of which requires the designation of a protected zone covering their rest, feeding and regular stay territories. The zones can be seen as somewhat similar to territorial legal forms of protection providing prohibitions in the interest of endangered species. Besides the classification the ordinances encompasses both rules and measures of active and passive conservation that applies to each category of protection and some regulations on trade. All selected measures must fit to corresponding level of endangerment.

4. Problem identification

The Red List Act does not contain a list of categories of endangerment. It thus does not make clear what degrees of disappearance of species it wishes to put under special protection. Instead, it stipulates that the categories shall be compliant with the IUCN categories referring further details to the sublegal level.

By contrast, the Wildlife Act contains a comprehensive list of categories together with definitions for each category. This is not only inconsistent with the Red List Act but also misplaced because the Wildlife Act does not tie any legal effect to the categories. To the extent it rules on protected species it - correctly - refers to the Red List.

The name of the Red List Act supposes that only highly endangered species are covered by this law. In fact, given the different categories of disappearance of species it might be advisable to change the name into “Act on Species Protection”.

Currently there is an obligation to renew the Red List once every 10 years. In view of the rapid deterioration of environmental conditions it must be questioned whether this time-frame is appropriate.

When comparing the Red Lists of Georgia of 2003 and 2006, certain inconsistencies can be observed. Whereas in the present Red List there is an increase in certain types of species, e.g. mammals and fish, the number of bird and plant species has suffered a considerable decrease. We could not find any reasons given for this.

The enrichment of the list by more species of seawater fish and inclusion of freshwater fish species constitutes a considerable improvement, in view of the pollution and overfishing in many Georgian waters.

The Red List does not include herbaceous plants. Thus, herbaceous vegetation remains unprotected although it may include rare and endangered species.

Although the Red List Act contains rudimentary provisions on public participation, no involvement of the public is foreseen for the elaboration and revision stages of the Red List. The Wildlife Law contains more comprehensive provisions in this regard.

5. Improvement suggestions

The Red List Act should define the protection categories and specify what categories shall be included in the list. The pertinent definitions in the Wildlife Act should be checked and removed to the Red List Act. The title of the act might be changed into Act on Species Protection thus indicating that it cares for more species than those which are extremely endangered.

In the case that new scientific information becomes available about seriously endangered species not yet included in the Red List, there should be an obligation and not just discretion to include it.

The Red List as it stands is in need of a serious revision considering earlier versions which were more extensive than the present one. It should be extended to herbaceous wild plant species.

The categorisation of status of endangerment contained in the Wildlife Act and Red List Act should be harmonised. It should be considered to include categories, accompanied by definitions, in the Red List Act and abolish the approach of mere reference to other Acts. The Wildlife Act does not need a list of categories in itself. A reference to the Red List Act should be sufficient.

The participation of the public in the listing of species should more clearly be prescribed.

B. Restrictions of Uses

1. Introduction

Similar to the use restrictions of non-endangered wild animals and plants, there are also restrictions concerning uses of disappearing species. Of course, the latter should be stricter than the former.

2. Status quo Georgian law

In Georgian Law, the issues of use and protection are regulated by several provisions of the Wildlife Act and the Red List Act. Within the Wildlife Act, Art. 20 and 21 are of major relevance.

1) Protection

Chapter IV of the Red List Act is entirely devoted to the regulation of protection measures.

According to the general rule of Art. 10.2 Red List Act, any action is prohibited that may result in the reduction of quantity of the Red List Species or the deterioration of their habitat and living conditions. Arts. 11 and 12 Red List Act are somewhat more specific here (see Box 7).

Box 7. Protection of endangered wild animals and plants

Red List Act.
Art. 11. Protection of wild animals threatened by extinction

1. Every action, which can result in killing, reduction in number, disturbance of living environment, reproduction area, survival stations, migratory and water-reaching ways and watering places of wild animals, is prohibited.
2. Legal aspects of protection of wild animals threatened by extinction are regulated according to this Law and the Wildlife Act.

Art. 12. Protection of wild plants threatened by extinction
1. Every action, which can lead to destruction, reduction in number and/or spreading area of wild plants threatened by extinction, is prohibited.
…
3. Legal aspects of protection of wild plans threatened by extinction are regulated according to this Law, Law on Environmental Protection of Georgia, Forest Code of Georgia and Georgian Legislation.

The Wildlife Act, in its Art. 20.4, contains provision of nearly the same content as the articles presented above.

2) Exemptions

Both the Red List Act (Chapter VII) and Wildlife Act (Arts. 20.5, 20.6) provide the possibility of exemptions from the basic prohibition.

Art. 22 Red List Act stipulates the possibility to withdraw animals and plants from their natural environment. According to it, the withdrawal of endangered wild animal and plant species or parts of them is allowed only in cases specified by the Georgian Law – for the purpose of rescue, treatment and rehabilitation and for scientific purposes.

Art. 23.1 Red List Act states that withdrawal of endangered wild animals is only allowed in cases described by the Wildlife Act. Art. 20.6 Wildlife Act, in turn, stipulates that the catching of endangered animal species is only permitted

- by ministerial license,
- for their reproduction in specially created conditions and subsequent release into the natural environment,
- for veterinary (treatment) purposes.

Art. 24 Red List Act regulates the withdrawal of wild plants threatened by extinction or their parts. It is allowed only in the following special cases:

- rehabilitation and reproduction in natural conditions,
- reproduction in dendrological and botanical gardens,
- commercial purposes, for reproduction in artificial conditions,
- scientific purposes.

The withdrawal from the natural environment of Red List wild plant species or their parts for commercial purposes is only admissible if the plant was reproduced artificially.

As for the possession of specimen, the Wildlife Act contains two provisions. Art. 21.2 requires a license for the creation and population of zoological collections (zoos, oceanariums etc.) and gene-pool reserves of endangered species based on the extraction of wild animals, except for amateur zoological collections. Further, 21.8 regulates the possibility for physical and legal persons to own exotic animals under certain conditions.

3) Planning of projects (e.g. road construction etc.)

Both the Red List and the Wildlife Act contain specific rules on the realisation of projects which may affect Red List species.

Art. 10 Red List Act makes it mandatory to take into account possible adverse anthropogenic impact on endangered species, when:

- preparing the conclusion of the State Ecological Expertise in the process of issuance of a permit in accordance with the Law of Georgia on Environmental Impact Permit,
- planning and implementing various forestry/timber production activities,
- using fertilizers and pesticides,
- planning and implementing any activity, which can directly or indirectly cause extinction, reduction in number, deterioration of living environment and conditions of the species threatened by extinction (Art. 10.3 Red List Act).

The draft amendment to the Red List Act lays down a number of provisions on exceptionally allowed adverse effects on protected species, the requirement of permission and the procedure of obtaining a permission (Arts. 20-29 of the draft of February 2009).

Art. 17.2, 17.3 Wildlife Act prescribes to take into account concerns of biotope protection in the course of activities such as, e.g. the construction of railways, highways and pipelines, electric power and communication lines, dams and other hydrotechnic buildings, allotting of pastures and arable lands and so on. This provision also applies to the protection of endangered species mainly by protecting their habitats.

3. International and comparative Law

EU law has developed an elaborate system of substantial commands, such as the prohibition of taking, killing, possession etc. In addition, the laws foresee exemptions which are constructed to require that good reasons are given, no alternative is available, and the stock of populations is not endangered.

Art. 16 Habitats Directive regulates exemptions from prohibitions of Art. 12 and 13, i.e. the prohibition to capture and kill endangered species of wild animals, or deliberately pick, collect, cut, uproot or destruct endangered wild plant species. In order to allow for an exemption it shall first of all be examined, whether there is a satisfactory alternative to such an exemption. Further, the derogation can only be allowed when it is not detrimental to the maintenance of the populations of the species concerned at a favorable conservation status in their natural range. If both conditions are fulfilled, it is possible to choose from a list of reasons. It is an exclusive list, i.e. the exception can only be allowed, if it falls under one of the reasons. In particular, an exception may take place:

- when it is in the interest of protecting wild fauna and flora and conserving natural habitats,
- to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,
- in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,
- for the purpose of research and education, of repopulating and reintroducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants,
- to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

4. Problem identification

With regard to the basic prohibition of taking, killing, possession etc. the Georgian law shows considerable similarities with the EU and German Law. No major problems could be identified.

However, with regards to the system of exemptions, the Georgian law is still rudimentary and unstructured. A provision clearly outlining the cases of exemptions is still missing. This is also not adequately solved by the new draft amendment.

There is an overlap between provisions of Art. 20.4 of the Wildlife Act and Arts. 11, 12 of the Red List Act, which both define prohibited activities.

5. Improvement suggestions

It should be considered to elaborate a more unified and clear system of exemptions from restrictions of use of endangered wild animals and plants. A number of allowable reasons for the use should be laid out that justify the exemption provided no alternative solution is available and the affected population of the species is not seriously diminished.

It should be considered to remove all provisions on endangered species from the Wildlife Act and shift them to the Red List Act. Alternatively the Red List Act could be confined to the procedures and content of the Red List and Red Book while all substantial provisions are moved to the Wildlife Act. The Wildlife Act would then have to be extended to wild plants and might be renamed Act on Species Protection.

IV. Licensing

1. Status quo Georgian Law

Licensing provisions are spread all over the Wildlife Act. According to Art. 10 (d) and (e) Wildlife Act, it is the competence of the supreme state authorities of Georgia, among others, to:

- establish the procedure on issuance of a license on the use of wildlife objects and the issue of license in accordance with this procedure,
- establish the procedure of wildlife protection, importing and exporting their derivatives and production obtained therefrom and issue license on these activities.

The following activities are subject to licensing according to the Wildlife Act:

For non-endangered species:

- capture and keeping in captivity of wild animals by physical and legal persons (Art. 21.9),
- the use of objects of wildlife in general, except for the cases specified by Art. 26 (Art. 25.4), namely:
    - Special use of objects of wildlife (Art. 27.3),
    - Special use of helpful features and products (honey, wax, etc.) of vital activity of wild animals (soil makers, plant pollinators, biofiltrators etc.) (Art. 32),
    - Special use of products of vital activity of wild animals (Art. 33.1),

- Special use of the objects of wildlife for scientific, cultural, educational. recreational, aesthetic and veterinary purposes (Art. 34.1).

Not all of these articles contain a specific reference to licensing; some of them only mention that certain features can be used also by special use, which can be viewed as implicit requirement of licensing because all special uses must be licensed.

For endangered species:

- taking (withdrawal) of endangered animal species for the purpose of their reproduction in specially created conditions and subsequent release into the natural environment and for veterinary (curing) purposes (Art. 20.6),
- creation and filling of zoological collections (zoos, oceanariums etc.) and gene-pool reserves of endangered species by extraction from environment (Art. 21.2)

The Red List Act also contains two provisions on licensing, one on licensing of endangered wild animal species and another on licensing of wild plants. However, they contain only general reference to the issuance of license and permit specified by Georgian legislation. It is not clear, in which cases a permit and when a license shall be issued; there is also no prescription on procedure and other terms. Art. 23 Red List Act entirely refers to the Wildlife Act for regulation of licensing issues of endangered wild animal species.

The following activities are not subject to licensing:

- common use of objects of wildlife (Art. 26 Wildlife Act),
- amateur zoological collections of certain species (Arts. 21.2 and 21.6 Wildlife Act).[5]

Arts. 46-49 Wildlife Act contain comprehensive regulations of license types, procedure (tender or auction), contents, terms of the license. According to the Wildlife Act, the license is issued by MOE.
However, the licensing provisions became obsolete when in 2005 the revised Law on Licenses and Permits (*in the following:* Law on Licensing) entered in force. The principle was established that all licensing requirements should be set aside except for those listed in the Law on Licensing. As of today, the Law on Licensing regulates three types of so called use licenses with environmental content – the general license on forest management (within it: special license for production of wood and special license for the setting up of a hunting farm), fishing license, and a very narrow license of use for export purposes of Caucasian fir-cones and tubers of snowdrops (Galantus Alpinus) or/and tubercles of cyclamens (Cyclamen vernum), stipulated by the CITES annex. The use of objects of wildlife is not among these topics. Strangely enough, this means that all related license requirements are abandoned. The legal effect is that all uses subject to licensing are free, but that the substantive requirements for exceptions are to be observed.

[5] At the same time, the Law prescribes that a list of species of wild animals shall be established by ministerial order that may not be extracted in order to be kept in a semi-free state or captivity (Art. 21.7 Wildlife Act).

As to formal aspects of the exceptional permitting of uses of protected species the draft amendment to the Red List Act brings about some improvement (Arts. 21-29 of the draft law). The procedure, content and modification of the permission are more clearly outlined. However, the draft brings new problems by suggesting that infrastructure projects do not need special permission in relation to their impact on protected species.

2. Comparative Law

EU law only requires that exemptions from the basic protection duties are based on certain compelling reasons. It leaves open if this is controlled by permission schemes or otherwise. The Member States differentiate between a number of activities which are only supervised and others which need prior permission because of being more intrusive.[6]

3. Problem identification

It appears that the Red List and Wildlife Act should thoroughly be revised as to what activities really need prior permission. The goal of licensing should first of all be made clear. There is a basic difference between a license required in order to allocate benefits of use and draw public income from it, and, on the other hand, a license required in order to check the observance of provisions of environmental protection. The two trigger different procedures (e.g. auctioning versus public participation) and different substantive yardsticks (e.g. efficiency of use versus environmental protection).

In addition, it should be distinguished between licenses granting freedom of use, and licenses which provide a dispensation from a basic duty. It is submitted that only the first kind of license is covered by the Law on Licensing. This implies that the MOE is entitled without violating the Law on Licensing to introduce a licensing requirement for exceptional uses, and that those licensing provisions of the Red List and Wildlife Act that can be interpreted as dispensations from basic prohibitions are not set aside by the Law on Licensing.

4. Improvement suggestions

The licensing requirements established by the Red List and Wildlife Act should be revised.

Licenses granting the exploitation of resources should be distinguished from licenses ensuring the observance of environmental protection provisions. Different procedures and material yardsticks should be formulated. Distinguishing between the two kinds would however not exclude their combination according to the one-windows-principle.

With the revision of licensing requirements the Law on Licensing should be amended accordingly. To the extent that dispensations from basic protection duties are at stake it is submitted that these can be introduced by law or sublegal act even without an amendment of the Law on Licensing.

[6] See for Germany § 45 BNatSchG.

As a more concrete suggestion it should be considered to establish a license for the extraction of endangered wild animal and plants species for the creation of a “farm” for their artificial breeding/cultivation for commercial purposes. An example would be the establishment of a fishing farm for a species of river/lake trout that is included in the Red List.

V. International trade in endangered species

1. Status quo Georgian Law

Art. 50 Wildlife Act is supposed to regulate the trade, import and export in wild animals, their derivatives and products of vital activity. Such trade shall be compliant with the Wildlife Act itself, CITES and the requirements, established by Georgian legislation on the basis of these two legal acts.

The Law explicitly touches upon the question of compliance with CITES, which entered into force on 12th December 1996.

There are no clear prescriptions regulating internal trade in wild animals, their derivatives and products of vital activity. The provision in the Law exclusively concerns export, import, re-export and transit of wild animals, their derivative and products of vital activity.

It refers to trade in wild animals in general and only in one case to trade in endangered wild animals. Art. 50 makes export, import, re-export and transit of wild animals and their derivatives dependent on licensing, which can be issued if the following conditions are fulfilled:

- the competent scientific body of the exporter and importer country comes to the conclusion, that such export does not threaten respective wild animal species,
- the competent administrative body of the exporter and importer country is convinced that the wild animal was not obtained or bought in violation of the law,
- the competent administrative body of the exporter and importer country is convinced, that any living wild animal will be prepared and sent in such a way, that the risk of harm, threat to health or cruel treatment is minimized,
- the competent administrative body of the country is convinced, that receiver of the living wild animal has necessary conditions for its preservation and care,
- the competent administrative body of the country is convinced, that a permit permission on the import of the wild animal has been issued;
- the permission of export, import, re-export and transit of endangered species is issued only if the competent administrative body of the country is convinced that the wild animal will not be used for commercial purposes.

In case of products of vital activity, a license is subject to the following conditions:

- obtaining of the product did not result in damage or death of a wild animal;

- the product had been obtained on the basis of a license.

The Red List Act does not contain any reference to trade, import and export in wild animal and plant species or CITES. As the Wildlife Act is only concerned with animals, this means that trade in endangered wild plants is not regulated at all in Georgian law.

2. International and comparative law

CITES works by subjecting international trade in specimen of selected species to certain controls. All import, export, re-export and introduction from the sea of species covered by CITES has to be authorized through a licensing system. Each Party to CITES must designate one or more Management Authorities in charge of administering that licensing system and one or more Scientific Authorities to advise them on the effects of trade on the status of the species.

The species covered by CITES are listed in three Appendices, according to the degree of protection they need:

- Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.
- Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.
- Appendix III contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade.

A specimen of a CITES-listed species may be imported into or exported (or re-exported) from a State party to CITES only if the appropriate document has been obtained and presented for clearance at the port of entry or exit.

On the EU Level, the Council Regulation (EC) 338/97 of 9th December 1996 on the protection of species of wild fauna and flora incorporates CITES into EU law. It goes further by treating some Annex II species like Annex I species thus applying the strictest requirements to them. Moreover, the regulation adds species to the list which are peculiar to Europe.

3. Problem identification

The regulation of international trade in wild animals as laid out in Art. 50 Wildlife Act covers both non-endangered and endangered species. It however introduces means of control which resound those required by CITES. This is on the one side over-restrictive in relation to non-endangered species and on the other side not specific enough to really implement the Convention for the endangered species. For instance, in the Convention, different requirements apply to the issuance of a permit, depending on whether the species in question belongs to Appendix I, II or III. The same differentiation should also be introduced by Georgian national law.

The Fact that the Red List Act does not contain any provisions on trade can be considered a considerable flaw. Because of this, compatibility with CITES is particularly lacking in relation to endangered plants.

A major problem is the incompatibility with the Law on Licensing, which currently foresees issuance of a license for export purpose only on 3 plant species (tubers of snowdrops (Galantus Alpinus, tubercles of cyclamens (Cyclamen vernum) and Caucasian fir-cones).

4. Improvement suggestions

The provision on international trade should be revised. Trade in non-endangered species should be facilitated. In the normal case no license should be required for specimen which were lawfully obtained. The trade regime for endangered species should be shifted to the Red List Act.

The Red List Act or the Wildlife Act should be revised to ensure greater compatibility with CITES. This concerns in particular the distinction between different categories of species - threatened by extinction, vulnerable, etc. – as different rules apply depending on the status of endangerment.

Endangered wild plants must be included into the scope of the trade regime.

The relevant law should lay down more precise provisions on the management and scientific authorities in charge of implementing the trade regime.

The Law on Licensing should be amended to ensure compliance with the requirements of CITES.

VI. Protection of biotopes

1. Introduction

While traditionally species protection has focused on the protection of certain species, since the nineteen seventies a rather different approach was developed. It has been recognized, that for a proper protection of various species it is crucial to preserve their habitats. In addition, a biotope as such may deserve protection even if it does not host disappearing species. The current trend, which was furthered by the Berne Convention (Art. 4) and the Convention on Biodiversity (Art. 6), is to introduce the protection of certain biotopes apart from the protection of species, and to do this not only by the establishment of protected areas but rather by general requirements that are applicable inside and outside protected areas. In Box 8 definitions of biotopes and the concept of biotope protection are proposed:

Box 8. Biotopes

Definition of biotopes.

Well-defined geographical area, characterized by specific ecological conditions (soil, climate, etc.), which physically supports the organisms that live there (biocenosis).

A region of relatively uniform environmental conditions, occupied by a given plant community and its associated animal community.[7]

Definition of biotope protection.

As for protection of biotopes, it is circumscribed by "measures taken to ensure that the biological and physical components of a biotope are in equilibrium by maintaining constant their relative numbers and features".[8]

2. Status quo Georgian Law

Art. 17 of the Wildlife Act contains a rather detailed regulation concerning the protection of biotopes, providing for protection of wildlife, habitats, reproduction areas, survival stations, migration and water-reaching ways and watering places of wild animals. However, the provision does not list different kinds of biotopes that may deserve protection.

Box 9. Regulation of biotope protection in Georgian law

Wildlife Act.
Art. 17. Protection of habitats, reproduction areas, survival stations, migration and water-reaching ways and watering places

1. Any activity, which has an effect upon the condition of wildlife, habitats, reproduction areas, survival stations, migration and water-reaching ways and watering places of wild animals, must be implemented in accordance with those requirements, which ensure their protection.

2. During the designing, arranging, constructing of populated areas, enterprises, buildings and other installations, the perfecting of existing ones and implementation of new technological processes, the getting of virgin lands, overhumid territories, coastal territories and territories, covered by bushes into economic circulation, land reclamation, use of forests, the fulfilling of geological research works, the mining of minerals, the determining of pastures and driving places of agricultural animals, the working out of tourist routes and arranging of recreational paragraphs the measures for preservation of habitats and reproduction areas, survival stations, migration and water-reaching ways, watering places of wild animals must be taken into account and implemented. Also, inviolability of parts of especial value for normal existence of wild

[7] http://glossary.eea.europa.eu/terminology/concept_html?term=biotope.
[8] http://www.eionet.europa.eu/gemet/concept?langcode=en&ns=1&cp=903.

animals must be ensured.

3. During the designing, arranging, also, constructing of railways, highways, pipelines and other transport mains, electric power and communication lines, also, channels, dams and other hydro-technical buildings, the allotting of pastures and arable lands, the measures, which ensure preservation of migration and water-reaching ways, reproduction areas, survival stations and watering places of wild animals must be worked out and implemented.

4. The Ministry, according to the procedure, set by the legislation, stops or prohibits activities of all types (including that, noted in paragraphs 1, 2 and 3 of this article), which may have an effect upon wildlife, habitats, reproduction areas, survival stations, migration and water-reaching ways and watering places of wild animals, and, which is fulfilled without environmental permission on activities, or is violating legislative rules on environmental protection.

3. International and comparative Law

EU law does not contain specific provisions of the protection of biotopes beyond its Natura 2000 approach. Thus, the matter is left to the Member State level. One example for biotope protection can be found in the German law. § 30 BNatSchG, entitled “biotopes protected by law” lays down the general principle of protection, i.e. that certain parts of nature and landscape, which have a particular importance as biotopes, are protected by law. Further, various types of protected biotopes are specified, alongside with the prohibition to conduct activities that can destroy these biotopes or result in their substantial deterioration. The Laender can specify further biotope types and extend the protection to them as well. On request, there is a possibility to grant a dispense from this general prohibition, provided that negative impacts can be balanced out.

In contrast to the protected areas regime, no designation of biotopes is necessary. The general protection principle and prohibition to alter the biotope applies automatically (directly) in all cases, where a biotope fulfills the characteristics specified by BNatSchG or Laender Laws. However, it is prescribed to register protected biotopes and make information about their registration available to the public in an appropriate way, which leads to enhanced protection.

Polish regulations on biotopes can be characterized as somewhat similar to the German however with a crucial deviation. The equivalent term of biotope can be found in Art. 5 pkt. 12 of the Act on Nature Conservation. The polish term "*ostoja*" can be translated as sanctuary or refugium. It is legally defined as *a place characterized by favorable conditions for presence of plants, animals and fungi that are endangered of extinction or rare*. The practical meaning of this measure seems to occur only in regard to the species placed within the last of the endanger-level categories in one of the three ordinances of the Ministry of Environment that encompass lists of protected species. The significant dissimilarity of the Polish regulations lies in the fact that the protection regime does not apply to the biotopes by law (ex lege) but the regulations of art. 60 ust. 3 to 7 apply only to a designated biotope’s protected zone. The designation takes place in administrative act issued by the Regional Director of Protection of the Environment who is also the authority responsible for maintain of the register of protected zones. After designation

the biotope must be appropriately sign-posted. Regarding the fact that the zones are generally free of human presence it is mandatory to include to the sign also the caption ‘Keep out’. Also other prohibitions are valid within the designated protected zone. Removing of any trees and bushes and any building and melioration activities are, as a rule, forbidden. Exemptions can be granted by the authority only in interest of protection of the biotope.

4. Problem identification

At present, the Wildlife Act focuses on the protection of individual species. The provision on habitat protection is a step in the wished direction but it lacks an enumeration of the kinds of Georgian biotopes deserving special protection even outside protected areas.

5. Improvement suggestions

Biotope protection should be included in the Wildlife Act, which should be transformed from a species protection act into an integrated biotope protection act.

VII. Final recommendations

There are 3 options of how to proceed with the improvement of the present laws on species protection.

1. The Red List Act could be made a comprehensive law on the protection of endangered species and biotopes. This would imply that the Wildlife Act is confined to matters of the protection of non-endangered wildlife. It should however be enlarged to also cover non-endangered wild plants. Its major thrust would be on regulating uses such as hunting and fisheries. As more species than seriously endangered ones should be entered into the Red List it should be considered to rename it and call it List of Protected Species. The Act would be renamed Act on the Protection of Endangered Species. It seems that the drafts of amendments of the two acts of February 2009 go into that direction. They however need to be revised because they leave out the protection of non-endangered plants and of trade in endangered species.

2. Alternatively, the Red List Act (or Act on Protected Species List) could be confined to only regulate the organisation, procedure and content of the Red List and Red Book. All provisions on the uses and use control would be removed and entered into the Wildlife Act. This act would have to be expanded to include also non-endangered wild plants and endangered animals and plants. It could then be renamed Act on the Protection of Species.

3. The two acts could be integrated into one Act which might be called Act on the Protection of Species. This act could be structured as follows.

    - General part, common to the issues of endangered and non-endangered wild animals and plants and biotope protection,

- Revised part of the Wildlife Act on non-endangered wild fauna,
- Newly developed part on non-endangered wild flora,
- Newly developed part on biotope protection,
- Revised part of the organisation, procedure and content of the List of Protected Species (and possibly lists of usable species),
- Revised part on the protection regime for endangered animals and plants,
- New part on international trade in endangered species,
- Part encompassing necessary amendments to other nature protection laws.

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