

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Will Appeal the Refusal of the Government to Consider the Administrative Complaint Regarding Sakdrisi-Kachagiani

On April 11, 2014, the administrative complaint of the citizens – Kakha Kozhoridze and Dali Mamulashvili was submitted to the Government of Georgia. In their complaint, the citizens requested to revoke the decision of the Ministry of Culture and Monument Protection of Georgia, which granted the right to the LLC “RMG Gold” to conduct

broad-scale works on the archeological site of Sakdrisi-Kachagiani. On May 7, 2014 the authors of the complaint received the notification from the office of the Government of Georgia, informing them that it was decided to refuse to consider the administrative complaint on the motive that “the complaint was submitted by the unauthorized persons.”

The Government indicated the following circumstances as the grounds for refusal to consider the complaint and to find the complainants to be unauthorized persons:

- The decision on conducting broad-scale works on Sakdrisi-Kachagiani does not affect the legal interests and rights of the complainants and does not inflict direct damage to them;
- The complainants do not have legal, legitimate and justifiable interest in relation to Sakdrisi-Kachagiani;
- Sakdrisi-Kachagiani does not have the status of an archeological site and does not represent a cultural heritage;
- There is no cultural layer in Sakdrisi-Kachagiani.

The above decision of the Government was made in violation of the law, specifically:

1. According to the Constitution of Georgia, every citizen of Georgia shall be obliged to care for the protection and preservation of the cultural heritage. In addition, the Constitution stipulates, that everyone shall have the right to live in healthy environment and enjoy natural and cultural surroundings. Everyone shall be obliged to care for natural and cultural environment. The mentioned norm grants each citizen (and not the limited circle of persons) the right to request the Government to protect both the cultural and natural environment, which are common for everyone.

2. On February 11, 2000, the Parliament of Georgia ratified the UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (so-called "Aarhus Convention"). According to this Convention, "Environmental information" includes the information on the state of cultural sites. Therefore, according to the Convention, the values, such as cultural heritage are related to everyone.

3. At the present time, Sakdrisi-Kachagiani has the status of an archeological site. Therefore, Sakdrisi-Kachagiani represents the cultural heritage; at the same time, the cultural heritage, its use and protection represent the right of each citizen of Georgia, and are not exclusive to any one state institution or private company. We would also like to note, that up to date, none of the decisions of the Ministry of Culture and Monument Protection of Georgia mention that Sakdrisi-Kachagiani is not an archeological site anymore. As for the decision, which presumably does not confirm the existence of the cultural layers in the Sakdrisi-Kachagiani, it was appealed and represents a disputable document.

If assumed, that Sakdrisi-Kachagiani might indeed, not represent an archeological site and that there is no cultural layer in it, then a logical question arises: why was it necessary for the Ministry to invite foreign experts, who, along with the Agency for Cultural Heritage, should monitor the mining works of "RMG Gold?"

It is notable, this decision of the Government will deprive the citizens of Georgia of the possibility to appeal such decisions through the administrative procedures in the future, in cases if a cultural heritage site will be stripped of the cultural heritage status or the danger of its destruction arises. This might become the precondition for establishment of the illegal and dangerous practice. Therefore, in case of an illegal decision by a Government, any cultural heritage site will be destined to be destroyed, because the citizens of Georgia and an interested society will no more have the possibility of applying legal mechanisms of argumentation and protection on this issue.

The refusal of the Government to consider the administrative complaint on Sakdrisi-Kachagiani will be appealed by GYLA at the court.