

## **OUTCOME OF THE PUBLIC OPINION STUDY AND INTERNATIONAL PRACTICE**

Regarding the draft law “concerning administrative oversight of the activities of self-government bodies”

**June, 2006**

### **1.1 FOCUS GROUP ANALYSIS<sup>1</sup>**

In June, 2006 Transparency International Georgia with the financial assistance of Swiss Agency for Development and Cooperation conducted focus groups on the draft law of Georgia “concerning administrative oversight of the activities of self-government bodies” in Kutaisi, Mtskheta, and Qvareli.

Sakrebulo members, Gamgebelis, staff of Gamgeobas and President’s Representative, local non-governmental organizations, lawyers, majoritarian MPs and the staff of their bureaus and other interested persons participated in the focus groups. From eight to twelve members attended each meeting.

Focus group participants were sent in advance the draft law, other legislative acts in related to it, and a letter that in detail explained the objectives of the meeting and an outline of possible issues to be addressed during the meeting. Thus, each participant was able to preliminarily familiarize himself/herself with the draft and formulate his/her own opinions on it.

#### **OPINIONS EXPRESSED BY FOCUS GROUP PARTICIPANTS:**

##### **POSITIVE SIDES**

The proposed draft presents innovations for the legislation in force and aims at implementing administrative oversight of the activities of self-government bodies in order to improve the effectiveness of their operation. In general, the draft law is conceptually justified and acceptable legally, though the methods and means anticipated by the draft raise questions that indicate the need to revise the draft.

It is important to begin creating a unified oversight system of the activities of the local self governance organs. At the same time, even the attempt to align the system of oversight with the provisions of the European Charter on Local Self-government is important.

Favoring the issue of administrative supervision over the activities of self-government bodies from the side of legislators represents a positive aspect that is reflected in the regulation of the mentioned sphere by a separate and independent law.

The issue of preliminary consultation of a local self-government body anticipated by the draft is of particular importance. In the opinion of focus group participants, the legal conclusion of an administrative supervisory body should only be valued as a recommendation.

The participants also had a positive attitude towards the right of an administrative oversight organ with legal supervision to address the court within a three-day period and request that a normative act of a local self-governance organ be declared illegitimate or be annulled and towards allowing discussion of the mentioned case by the court in the same timeframe.

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<sup>1</sup> Report on focus groups reflects the opinions of the participants only and do not represent the opinions of “Transparency International Georgia”.

## NEGATIVE SIDES

Focus group participants had some remarks with regard to the necessity of legal completion of the draft law. In their opinion, the draft includes sentences that are constructed rather complicatedly, which will be difficult to understand not only for the population but also for the staff of the self-government and will lead to multiple interpretations of its provisions.

The draft is not clear with respect to the status and functional value of the administrative oversight body, nor to the issue of separation of competencies with regard to state organs having identical or similar functions.

The draft includes contradictions, such as confusion of functions and overlap of competencies take place in the spheres of judiciary and the authority of public officials.

The draft does not prescribe the specifics of the work of local self-government bodies that lies in rather broad competency of an administrative oversight body to suspend and even entirely annul a decision of a local self-government body on number of issues. This may have a negative result and cause protraction or unsettlement of problems existing at a local level.

The draft law is not accompanied by a financial report that is necessary for this type of draft. Along with financial reports, the existence of so-called “further impact analysis” is also important. This would determine the possible results of implementation of the mentioned draft.

The draft law does not anticipate the present weakness or lack of experience of local self-governance that will create the danger of unjustified interference in their activities.

The draft law allows preventing decisions of local self-government organs for a two-week period. In the opinion of the participants, this will notably hinder the effective work of self-government organs. According to them, the mentioned term should be reduced to 5 -7 days.

Implementation of administrative oversight in the sphere of delegated competencies may become a prerequisite for the creation of a new bureaucratic mechanism.

The authority of an administrative oversight organ to annul a legal act of a self-government unit in the sphere of delegated competencies is unacceptable.

## ADDITIONAL QUESTIONS:

### ***1. What is vague/or difficult to understand in the draft law?***

- Which official or organ is meant under the term of administrative oversight body?
- The draft law speaks about the responsibility of an administrative organ in case of the violation of the rights of local self-government. In the opinion of the participants, this point is not complete and needs specification.
- It is absolutely unclear how the issue will be regulated in case of the existence of a court decision contrary to the decision adopted by the President or the government as the draft allows both organs to make decisions regarding this issue.

### ***2. Who or what organ should be meant under the administrative oversight body?***

- The attitude of participants towards this issue was not uniform. Several alternative versions were offered – the Ministry of Justice, the Legal Issues Committee of the Parliament, the Province, and the staff of the Governor. Also the creation of a totally new and exclusive organ is not excluded.

**3. *Should an oversight organ be empowered to abolish or suspend the acts of the self-government?***

- The right of an administrative oversight body to abolish an act adopted by the self-government organ is an attempt to fill the role of the judiciary. The competency of an oversight body should be in reality confined by the right of temporary suspension of the act until the adoption of a final decision by the court.

**4. *How will be implemented the checking/insurance of the conformity to the law of decisions adopted by self-government bodies?***

- Only in the form of a recommendation.
- The existence of competent legal service at local levels is important for the legal prevention of the decisions to be adopted and for the protection of self-government units from the adoption of contradictory acts.

**5. *How will the local self-government be protected from illegal interference from the side of an oversight body or a person?***

- The law should provide for the punishment of an oversight body in case of the infringement of the rights of self-government in the process of carrying out supervision.
- It is important to prescribe in detail the competencies of an administrative oversight organ in the law and adequately correlate its rights and obligations with the independent functioning of local self-government.

**6. *What kind of communication/collaboration should exist between the organs of local self-government and central government in order to ensure effective management at places?***

- A computer network and internet communication is the best means of effective communication.

**7. *By which ways is it possible to insure the common state and local interests?***

- By completion of legislation and agreement of the legislative basis of central and local governments.

**8. *In what issues should the local self-government be totally independent from the central government?***

- The sphere of competencies of local self-government bodies is already prescribed by the Law of Georgia “concerning local self-government.” The present draft law restricts these rights.

- Absolute independence is necessary in the sphere of exclusive and willful competencies that should be one-sidedly separated by means of legislative prescription of delegated competencies.

***9. What complications may arise in case of the adoption of the draft to be discussed? How difficult/simple will it be to implement?***

- The main problematic issue remains the non-existence of material-technical basis, the ambiguity of the types of communication, the short period provided for adapting to the law, and excessive rights conferred on the oversight body.

***10. What specific problems may a local self-government organ face with the adoption of this draft?***

- If the local self-government body will not be independent in the decision-making process and will be dependent on an oversight body in this form, it will lack the ability to quickly react in particular cases and will not be able to fulfill its functions. Consequently, local infrastructure will be abolished and the danger of migration increase will emerge.
- The adoption of the draft in the existing form creates a real danger to the idea of decentralization.

***11. In what way will the adoption of the mentioned draft assist the implementation of self-governance?***

- Responsibility of Sakrebulo is increased. Complete legal acts will be adopted locally.

## **1.2. CONFORMITY OF THE DRAFT LAW TO THE EUROPEAN CHARTER ON SELF-GOVERNMENT**

The European Charter on Self-government that was ratified by the Parliament of Georgia on October 26, 2004 (the Charter represents an international treaty and in accordance with article 19 of the “Law of Georgia on Normative Acts” has superior legal power with respect to other normative acts) independently regulates the issue of administrative oversight over the activities of local government organs by highest level state bodies in article 8. The Charter allows for the implementation of administrative oversight, but the aim of this supervision must only be the achievement of the conformity to law and constitutional principles. It is important that the Charter determines the implementation of administrative oversight on issues existing in the sphere of delegated competencies and specifies the institutions in charge of carrying out administrative oversight in the form of high level state bodies.

The Charter also determines the structure for implementing administrative oversight. In compliance with it, the interference of controlling state organs must be proportional to the importance of those interests that are supposed to be protected. This point aims at protecting local self-government from illegal interference of central government bodies and its effective realization.

As for the conformity of the draft to the European Charter, it should be mentioned that the draft gives the opportunity to administrative oversight body to carry out the control of local self-government within the auspices of legal oversight implementation. This is true even in the spheres of exclusive and willful competencies when article 7 obliges an administrative oversight organ to address the court with a request to declare a normative act illegitimate or annulled within three days its registration.

Non-conformity with the above-mentioned article of the Charter is particularly obvious in the aspect of carrying out supervision in the sphere of delegated authorities within the indefinite competency of an oversight body. In this case, an administrative oversight body enjoys authority not only to suspend an act of local self-government organ for a month, but to annul this act without any court decision after one month in accordance with point 3 of article 11. In this case, the local self-government organ stays unprotected and is obliged to obey the decision of the administrative oversight body in any case. It is natural that the principle of proportionality anticipated by the Charter is violated in this article.

### **1.3. INTERNATIONAL PRACTICE WITH REGARD TO CARRYING OUT ADMINISTRATIVE OVERSIGHT ON LOCAL SELF-GOVERNMENT BODIES**

In the viewpoint of international practice, it is important to analyze the types of administrative oversight in accordance with the practice of Eastern and Western European states. The models of administrative oversight on local self-government in Poland, Serbia, Croatia, Latvia, Sweden, France, and Germany are discussed below. It is important to mention that none of these countries has an independent law or legislative act regulating administrative oversight. The matter of administrative supervision, in most cases, is regulated within the legislation existing in the sphere of local self-government.

IN POLAND, the Prime-Minister of the state carries out common and administrative supervision on local self-government units by means of so-called “Voivods” (administrative units), but the issue of annulling an act adopted by a specific local self-government is only under the responsibility of a high administrative court. Local self-government units have the right to address not only local courts with a request to annul a decision of central government in the sphere of delegated competencies, but also they are entitled to directly bring the case to the constitutional court over the issue of constitutionality of a specific issue.

IN SERBIA, the municipal administration created on the basis of the law “concerning local self-government” of February 22, 2002 carries out the administrative supervision over local self-government. The mentioned organ carries out the administrative supervision in delegated competencies and insures the implementation of laws and regulations adopted by municipal assemblies by means of the departments of various directions created within its composition, as well. This organ does not have the right to abolish or suspend legal acts adopted by the municipal assemblies. Similar procedures are carried out by courts.

IN CROATIA, the legal status of local self-government is strictly protected and inviolable from the side of central government. The central government does not have any right to abolish legal acts adopted by local self-government. Despite the fact that central government bodies carry out legal oversight on local self-government units, they do not have the right to independently abolish the decisions of local self-government and are obliged to address the court. As for legal acts (decrees) of local self-government, only the constitutional court may abolish them and only for the non-conformity to the law.

IN LATVIA, the legislation differentiates two types of legal oversight on local self-government: legal oversight on local legislation in general and legal oversight on specific individual legal acts. The former is carried out by the Ministry of Special Tasks of State Reforms and the second type of oversight is carried out by different sector-specific ministries and agencies subordinate to them. The abolishment of local acts is under the competency of the court. Several issues are also decided at the constitutional court.

IN SWEDEN, there is no specific organ in charge of legal-administrative supervision over local self-government. Any citizen, including representatives of state, central, or local governments, has a right to appeal the decision and also any legal act adopted by local self-government at the court of administrative acts.

IN FRANCE, oversight of local self-government is carried out by a prefect sent by the Prime-Minister of the government. The court abolishes the legal acts of local self-government.

IN GERMANY, in accordance with the local self-government act of Bavaria, legal supervision is carried out by the offices of senior administrative inspectors (on local self-governments that belong to administrative districts) and by the Ministry of Internal Affairs (on local self-governments that are outside of administrative districts). If a local self-government act contradicts the legislation, the administrative supervisory bodies mentioned above have the right to address the Mayor and give him the authority to adopt a decision in compliance with the law. If the Mayor does not issue a respective act in the determined period, then they will address his deputies. If his deputies also refuse, the administrative supervisory bodies adopt a decision independently.

In Conclusion, based on the analysis of international experience of Eastern and Western states discussed above, it may be stated that in most cases, the decision on the abolishment or suspension of legal acts of local self-government is adopted by the court (either the court dealing with administrative cases, or the constitutional court). As for administrative oversight bodies, there is no uniform practice, but in accordance with the European Charter on Local Self-government, it should be carried out by high level governmental organs.