



**WATER – FROM PRESIDENTIAL RESIDENCE
TO OUR TAPS,
i.e “GEORGIAN-STYLE PRIVATIZATION”-3**

TBILISI, 2011

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Water – from Presidential Residence to our Taps

SUMMARY

Georgia is rich in water resources to meet the demand for water; however, unequal distribution of resources across the country, as well as poorly organized, and often even non-existent water supply system, limits significantly the availability of drinking water. One of the most acute problems of water supply in Georgia is the quality of drinking water.

In 2007-2008 Green Alternative followed privatization process of Tbilisi, Rustavi and Mtskheta water supply systems. Since 2008 to date the organization has been trying to monitor the compliance of new owner with pledges under the Contract with regard to improvement of water supply system. In this report you will find monitoring results, which give clear idea about availability of information on water supply systems and drinking water quality in the country.

Number of projects, aiming at improving water supply and drinking water quality are being implemented recently across the country. Despite the fact that often the works are carried out with large disturbances, the progress is there and the Government efforts to improve the situation are not limited only to promises.

Dramatically different is the situation with availability of information and inclusion of public in decision making processes. The right of public to participate in decision-making process is neglected at all stages; as for availability of information, this right cannot be exercised even through courts.

In first chapter of this report one can find the story of classifying the sales Contract on Tbilisi, Rustavi and Mtskheta water supply systems and Green Alternative's efforts to find the Contract. In chapter two the published and classified Presidential Decrees are discussed, concerning alienation or improvement of Tbilisi, Rustavi and Mtskheta water supply systems. Chapter three is about availability of information about how the pledges under the Contract are met, and in Chapter four the reader will learn how Georgian National Energy and Water Supply Regulatory Commission "pleases" water supply companies at the expense of neglecting its own obligations and the consumers' rights. Chapter five is about how the activities of Rustavi, Tbilisi and Mtskheta water-supply systems' owner company meet the requirements of law and of best operational practices. In the end, in chapter six one will find the conclusions and recommendations to the government on arrangements for protecting human right to water and to ensure transparent and accountable management in this area.

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INTRODUCTION

Water is a natural resource, necessary for human life and health and at the same time it is limited natural resource. So far there is enough clean water on the earth to meet people's personal and domestic needs. On the other hand unequal distribution of water, lack of systems of obtaining fresh water, groundwater contamination and poor work or non-existence of water supply systems limits access to safe water.

World Health Organization estimated that 1.1 billion persons did not have access to an improved water supply; 2.4 billion persons were estimated to be without sanitation. Further, 2.3 billion persons each year suffer from diseases linked to water. Given the above civilized world has agreed that access to safe drinking water and proper sanitation is one of the vital human rights today.

Human right to water has been recognized in many international documents, including treaties, declarations and other standards. Most detailed and comprehensive explanation of this right is given in general comment No.15 to the UN International Covenant "On Economic, Social and Cultural Rights"¹, adopted in 1966 at the UN General Assembly. The Comment provides, that "the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses".

According to this comment water, first of all is social and cultural good and not the source of economic revenue. The manner of realization of the right to water must be sustainable, ensuring that the right can be realized for present and future generations. While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

- Availability: the water supply for each person must be sufficient and continuous for personal and domestic uses.
- Quality: the water required for each personal or domestic use must be safe
- Accessibility: water and water facilities and services have to be accessible to everyone without discrimination. Accessibility has four different dimensions:
 - I. Physical accessibility;
 - II. Economic accessibility
 - III. Non-discrimination; and
 - IV. Information accessibility.

States parties to the Covenant must adopt national strategy and action plans to ensure the right to water and introduce appropriate changes to water-related legislation, strategy and policy documents to make them consistent with Covenant requirements. At the same time the right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, program or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.

Georgia is rich in water resources and there is no water shortage; however, unequal distribution of the resources throughout the country (they are mainly concentrated in West Georgia, whereas East Georgia is experiencing acute water shortage) and poor operation or, sometimes even nonexistence of water supply systems limit water availability notably.

¹ By 1 September 2011 160 countries had ratified the Covenant. Georgia joined the Covenant in 1994. The text is available at: https://www.matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=1483577&publication=0

Another acute problem is the quality of drinking water in Georgia. According to Ministry of Agriculture² *“laboratory tests of drinking water show that high degree of water contamination both, in distribution network and water supply headwork, remains serious problem. The situation is particularly unsatisfactory in Poti, Zugdidi, Martvili, Senaki, Akhalkikhe, Dmanisi, Lentekhi, Ambrolauri, Ozurgeti, Bagdati, Tskaltubo, Zestafoni regions. Hence, technical operation of the system does not supply epidemically safe and healthy, harmless in its chemical composition and acceptable in its organoleptic qualities drinking water. Against the background of plurality of natural water resources the problem remains topical in almost all cities and rural areas of Georgia”.*

It should be noted that number of projects, aiming at improving water supply and drinking water quality are being implemented recently across the country. Despite the fact that often the works are carried out with large disturbances, the progress is there and the Government efforts to improve the situation are not limited only to promises.

Dramatically different is the situation with availability of information and inclusion of public in decision making processes. The right of public to participate in decision-making process is neglected at all stages; as for availability of information, this right cannot be exercised even through courts.

In 2007-2008 Green Alternative followed privatization process of Tbilisi, Rustavi and Mtskheta water supply systems. Since 2008 to date the organization has been trying to monitor the compliance of new owner with pledges under the Contract with regard to improvement of water supply system. In this report you will find monitoring results, which give clear idea about availability of information on water supply systems and drinking water quality in the country.

² The information provided by National Service for Food Safety, Veterinary and Plant Protection for “National Report on State of Environment”. A letter of 7 January 2010 <http://soegeorgia.blogspot.com/p/blog-page.html>; 2009 “National Report on the Health Condition of Georgian Population” contains similar information

CHAPTER 1. THE AGREEMENT ON IMPROVEMENT OF WATER SUPPLY AND SEWERAGE IS CONFIDENTIAL

Privatization of state owned water supply and sewerage facilities was impermissible according to applicable until 2007 Georgian legislation. In compliance with 11 July 2007 amendments to Georgian law on “Privatization of State Property” privatization of water supply and sewerage systems, alongside with other, so called, “strategic objects”³, became possible. Two weeks after the above changes, 25 July 2007, Ministry of Economy and Sustainable Development of Georgia and Tbilisi Mayor’s office made a joint statement on “expression of interests” aimed at alienation of state owned “Zhinvalihesi” (Zhinvali Hydro Power Station), Tbilisi (Tbilisi Water Ltd.) and Mtskheta (“Mtskheta water and sewerage Ltd.”) water supply systems and Gardabani sewer treatment plant (“Georgia water and sewerage Ltd.”). As a result of “expression of interests”, which was made with gross violation of existing law⁴ the winner was announced on 22 October 2007 and it was “Multiplex Solutions” – a company registered in Switzerland.

The official statement on the winner reads, that “the Swiss company pays 85 662 000 US dollars for objects, will invest 350 million US dollars and will keep water tariff unchanged during 2008-2009”. Besides, Multiplex Solutions” pledged to ensure uninterrupted water supply to residents of the capital, low water tariff and high quality water.

Since the enterprises had to be alienated in the form of direct purchase, it was upon the President to take final decision on the transfer of the object to the winner and to set the terms, if necessary. Against the background of November 2007 political crisis and mass protests, the President signed respective resolutions⁵ one day prior to his resignation.

Since Presidential decrees were issued it would be logical to start the contracting procedure with the buyer. Still, four months later, 10 April 2008, the President passed Resolution No. 245 “On arrangements to improve Tbilisi, Rustavi and Mtskheta water supply”, according to which November 2007 resolutions⁶ were declared void (See details on Presidential resolutions on alienation of enterprises in chapter 2). In compliance with the same resolution the property listed below was transferred to Multiplex Energy Limited in the form of direct purchase:

1. 100% share of state owned “Rustavtskalkanali” Ltd at the cost of \$ 10 million US dollar unconditionally (it should be mentioned that “Rustavtskalkanali” has never been a subject of “expression of interests” process);
2. 100% share of state owned “Saqtskalkanali” Ltd. and 100% share of state owned “Mtskhetatskalkanali” Ltd. at the cost of \$662 thousand US dollar.

³ Under the same change it became possible to alienate such property, as: special economic zone, mobilization reserves, state reserves, the reserves of precious metals, railways of national importance, the means of postal service, radio and television, long distance and international telephone communications, government communication facilities, public cemeteries, public hospitals of vital importance, administrative buildings of public agencies

⁴ See more detailed information in 2010 report of Green Alternative “[AGGRESSIVE STATE PROPERTY PRIVATIZATION POLICY OR “GEORGIAN-STYLE PRIVATIZATION”-2](#)”

⁵ Presidential Resolution No. 685 of 23 November 2007 “on privatization in the form of direct procurement of 100% share of state owned “Saqtskalkanali” Ltd, 100% share of state owned “Mtskhetatskalkanali” Ltd. and 100% share of state owned “Rustavtskalkanali” Ltd.,; and Presidential Resolution No. 702 of 24 November 2007 on “Privatization in the form of direct procurement of 100% share of “Tbilisis tskali” Ltd. owned by Tbilisi self-governing unit.

⁶ Resolution No. 685 of 23 November 2007 of President of Georgia “On Privatization of “Saqtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd and “Rustavtskalkanali” Ltd in the form of direct procurement and Resolution No. 702 of 24 November 2007 of President of Georgia “On privatization of “Tbilisis tskali” Ltd. in the form of direct procurement

3. 100% share of “Tbilisis Tskali” Ltd, owned by Tbilisi self-governing unit at the cost of \$ 85 million US dollar;

Total investments under the Resolution are \$300 million US dollar; besides, a range of commitments have been set regarding each enterprise (except “Rustavtskalkanali”) to improve water supply and sewerage systems.

14 May 2008 Georgian Government Resolution No. 325 was passed “On drawing up the Contract between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” on procurement of 100% shares of “Rustavtskalkanali” Ltd., “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd. and “Tbilisis tskali” Ltd. Draft agreement between Georgian government, Ministry of Economy and Sustainable Development of Georgia and Tbilisi government on the one hand and “Multiplex Energy Limited” on the other hand on procurement of 100% shares of “Rustavtskalkanali” Ltd., “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd. and “Tbilisis tskali” Ltd. was approved by Government resolution; Ekaterine Sharashidze, Minister of Economic Development of Georgia was authorized to sign the agreement on behalf of Georgian Government.

28 May 2008 Green Alternative requested from Kakha Bendukidze, Head of Office of Georgian Government. a copy of draft Agreement, approved by Government resolution No. 325 of 14 May 2008. Green Alternative failed to obtain the requested document, but was able to learn that the Agreement was signed immediately after Resolution No. 325 had been passed and that full text of the agreement was considered the buyer’s commercial secret, as provided by one of its clauses.

1.1. LITIGATION IN TBILISI CITY COURT

After one year vain attempts to obtain a copy of the Contract from government office or Ministry of Economy and Sustainable Development⁷ Green Alternative, on 22 May 2009, filed a suit with Tbilisi City Court on legitimacy of considering the whole text of the Contract a commercial secret and classifying the Contract.

Nino Sharashidze, judge of the panel of administrative cases considered the case in Tbilisi City Court.

Preliminary hearing was adjourned seven times during 10 months due to failure to involve the third party – “Multiplex Energy Limited” – in the process. It turned out that Ministry of Economy and Sustainable Development had no information on whereabouts of the company or any of its representatives. And the Court failed to get relevant information from Public Register. Green Alternative, though, managed to find the information about the company and its address on Public Register web-page and passed it over to the Court. Finally, after three additional adjournments, the Court managed to engage the third party and the main proceedings in the Court began in May 2010 - a year after filing the lawsuit.

“Georgian Global Utilities Limited⁸” (it turned out that “Multiplex Energy Limited” had already changed the title) was represented in the Court by Besik Koberidze, “Georgian Water and Power (former “Tbilisis tskali”

⁷ For more detailed information see Green Alternative’s 2010 report “ AGGRESSIVE STATE PROPERTY PRIVATIZATION POLICY OR “GEORGIAN-STYLE PRIVATIZATION”-2 ”

⁸ According to documents on public register National Agency web page⁸ “Multiplex Energy Limited” was founded in the islands of the British Virginia 16 August 2007 and the company changed its title to “Georgian Global Utilities Limited” on 16 June 2009. Directors of the Company are: Gocha Megrelidze – since 1 February 2008; Oleg Sheyko – since 13 October 2009; Mikhail Tuzov – since 26 May 2010The company shareholders are: Multiplex Holdings Group Limited – 850 shares; Sirius Private Equity Fund – 150 shares.

(Tbilisi water)) representative. It is worth noting that all the year “Georgian Water and Power” denied having any contact information.

Prior to the trial on the merits, Green Alternative filed a request to increase the claim requirements. The thing was that while Green Alternative was looking for the information about the company representative, some amendments had been introduced to the required Contract. On 22 December 2009 Georgian Government passed the Resolution⁹, which authorized Zurab Pololikashvili, Minister of Economic development of Georgia to sign the agreement about the changes to the contract on behalf of Georgian government. It should be noted that in December 2009 a representative of Ministry of Economy and Sustainable Development argued in court that his agency had no information about representative of the buyer and his address, whereas the Head of the agency was engaged in agreeing new contract with the company.

Green Alternative attempted to get the new contract from Ministry of Economy and Sustainable Development, but the answer of responsible for public information person was the same – Ministry of Economy and Sustainable Development of Georgia will decide on the issuance of the requested information only after written consent of “Multiplex Energy Limited”.

Since the agreement is an integral part of the Contract, Green Alternative asked the Court to increase the requirements of the claim and alongside with examining legitimacy of classifying the contract, to examine legitimacy of security classification of the agreement on amendments.

On 17 May 2010, one year after the claim was filed; the Court started the trial on the merits.

1.1.1. THE POSITION OF GREEN ALTERNATIVE: WHY SHOULD THE CONTRACT BE ACCESSIBLE TO PUBLIC

Green Alternative’s position is that by classifying the contract between government of Georgia, Ministry of Economy and Sustainable Development, Tbilisi government and “Multiplex Energy Limited” on procurement of 100% shares of “Rustavtskalkanali” Ltd. “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd. Ministry of Economy and Sustainable Development violated the provisions of Georgian Constitution, General Administrative Code and the international agreement – Aarhus Convention. The following circumstances allow for such a conclusion:

1. The contract contains the information, which shall not be classified:

- **the contract contains environmental information**

Privatization of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd was carried out on a competition basis in the form of direct purchase. In compliance with p.p. 5 and 6 of article 6 of the Law of Georgia “On privatization and transfer of property rights of state property and the property of local self-government”, the decision on direct purchase was taken and appropriate terms were set by President of Georgia by his April 2008 Decree No. 245 “On arrangements to improve Tbilisi, Rustavi and Mtskheta water supply”.

According to the above Decree “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd state owned shares were transferred to the buyer under a range of certain conditions, which are directly linked to the environment and human health. E.g. according to the Decree:

⁹ Georgian government decree No.1025 “On additional clarification and amendments to assignment contract on 100% shares of “Rustavtskalkanali” Ltd. “Mtskhetatskalkanali” Ltd. “Saqtskalkanali” Ltd. “Tbilisis Tskali” Ltd” about approving No.1 draft agreement and authorizing Zurab Pololikashvili”.

- Water quality shall always comply with WHO (World Health Organization) technical regulations but shall not be worse than existing in Mtskheta;
- Rehabilitation and modernization of Gardabani sewage disposal plant shall be implemented within 10 years after signing the contract;
- Rehabilitation of Gardabani sewerage system shall be carried out and new collector array shall be created in 5 years after signing the contract;
- Water quality shall always comply with WHO (World Health Organization) technical regulations but shall not be worse than existing in Tbilisi;
- Water supply within city limits (as of 26.12.06) after 2011 shall be uninterrupted (24 hours), but until 2011 shall not be worse than the existing one;
- Tbilisi water supply within new city limits after 2015 shall be uninterrupted (24 hours) but until 2015 shall not be worse than the existing one;
- Flow of sewage waste into Mtkvari River shall be discontinued within Tbilisi administrative limits not later than 2012.

Besides, under Presidential Decree “On the arrangements for improving Tbilisi, Rustavi and Mtskheta water supply” Ministry of Environment was tasked with developing, within its competence and with the help of investor, of environmental action plan to that the investor not be made responsible for so called “historic pollution”. This liability of Ministry of Environment, as well as the buyer’s responsibilities with regard to further use of property, in compliance with the Regulations “On property privatization in the form of direct purchase”¹⁰ (if terms are set by the Presidential Decree they should be included in the contract) should be reflected in the contract between Georgian government, Ministry of Economy and Sustainable Development of Georgia and “Multiplex Energy Limited”.

In compliance with Article 42 of General Administrative Code of Georgia any individual has the right to have information on the state of environment as well as on the hazards threatening their lives and health. In compliance with Article 2 of Aarhus Convention Environmental information means “*any information in written, visual, aural, electronic or any other material form on:*

- a. *The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
- b. *Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;*
- c. *The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above”.*

The contract on transferring 100% shares of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd to “Multiplex Energy Limited”, as well as the decision about privatization are a plan, that influence the environment and human health. In compliance with Aarhus Convention this document is environmental information. So, public agency not only had no right to classify privatization contract, but, on the basis of Aarhus Convention¹¹ and the Law “On Environmental protection”¹²

¹⁰ Approved by Minister of Economic development by Order 1-1/1415 of 20 September 2007

¹¹ Article 7

¹² p.f of Article 6

was obliged to provide public with all appropriate information and ensure public participation in the process of decision-making.

- **The contract contains information about administrative body**

As mentioned above, shares were privatized in the form of direct purchase. Hence, in compliance with the Decree “On Privatization of state property in the form of direct purchase”¹³ the contract signed as a result of the transaction shall contain the data about the seller and the information about mutual liabilities on the use of property. Appropriately, the contract about alienation of 100% shares of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd. and “Tbilisi Tskali” Ltd, undoubtedly contains the data about Georgian government, Ministry of Economy and Sustainable Development of Georgia and Tbilisi government and their liabilities about further use of the property. As we mentioned above, the contract also contains information about Ministry of Environment. In particular, its liability “to develop environmental action plan within its competence and with the help of investor in order not to impose liability for historic pollution upon the investor”.

2. Established rules of recognizing public information a commercial secret were not met when classifying the contract

Ministry of Economy and Sustainable Development did not provide Green Alternative with a copy of the contract on procurement of 100% share of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd., “Saqtskalkanali” Ltd and “Tbilisi Tskali” Ltd. under the pretext that Clause 14.1 of the Contract provides for that the document is commercial secret.

In compliance with General Administrative Code of Georgia¹⁴ a person, when presenting information shall indicate whether this information is commercial secret. Public agency shall take a decision on classifying the information (regard or not regard it as commercial secret) not later than within 10 days. In this particular case, the above rule of classifying public information was, presumably, not observed, because Ministry of Economy and Sustainable Development failed to provide Green Alternative with a copy of normative act, according to which the contract was considered a commercial secret; by oral explanation given to Green Alternative the decision is reflected in the text of the contract in “Clause 14.1”.

In compliance with the General Administrative Code of Georgia¹⁵ commercial secret means any information concerning the plan, formula, process, or means that constitute a commercial value, or any other information that is used to produce, prepare, or reproduce goods, or provide service, and/or which represents an innovation or a significant technical accomplishment, or any other information, disclosure of which could reasonably be expected to cause competitive harm to a person. Hard to believe that sales contract contains such information, and all the more that the whole text of the contract is of commercial importance. It should be mentioned that “Georgian Global Utility Limited” has a monopolistic position¹⁶ in the market. So, there may not exist any information, let alone its reflection in the contract, that could cause competitive harm. Besides, as has already been mentioned, the contract contains a range of data, which cannot be, or simply has no sense to be classified - e.g. terms of purchase are established by Presidential Decree No.245 of 10 April 2008 “On arrangements to improve Tbilisi, Rustavi and Mtskheta water supply” and they are public.

On the one hand classification of the document on the basis of one of its provisions contradicts to the norms of General Administrative Code, and on the other hand, even if there is a clause in the contract classifying it as

¹³ p.4 of Article 3

¹⁴ The General Administrative Code of Georgia Article 27², p.3

¹⁵ The General Administrative Code of Georgia Article 27², p.

¹⁶ “Such a situation in the market when there is only one seller of particular goods and there are no interchangeable goods in the market” – Law of Georgia on Free trade and competition.

a commercial secret, there are no grounds for classifying this particular clause (as part of the whole document).

In compliance with Article 30 of the General Administrative Code of Georgia *“The decision designating public information to be classified may be rendered if law provides express requirement to protect such information from disclosure, establishes concrete criteria for such protection, and provides exhaustive list of classified information”*. With regard to this particular privatization Contract not only the law does not provide express requirement to protect it from disclosure but on the contrary, it provides this information to be made public. In particular, in compliance with law of Georgia *“On Environmental protection”*¹⁷ and Aarhus Convention¹⁸ Georgian government was obliged to provide the society with all necessary information and ensure public participation in decision making (including developing the agreement).

1.1.2 MINISTRY OF ECONOMY AND SUSTAINABLE DEVELOPMENT ARGUMENTS: WHY SHOULD THE CONTRACT BE INACCESSIBLE TO PUBLIC

Ministry of Economy and Sustainable Development’s position as to why Green Alternative’s lawsuit should not have been satisfied is short and laconic – as argued by a Ministry representative, in compliance with Clause 14.1 of the contract the parties to the contract have no right to make any statement on “shares” procurement or any other related issue without written consent of all the parties. Taking into account the above requirements of the contract the Ministry asked the parties’ opinion with regard to handing over a copy of the contract. The parties did not respond which the Ministry interpreted as refusal.

1.1.3 SITUATION THAT HAVE BEEN IDENTIFIED DURING THE TRIAL

The sides had to give explanation on some of the issues during the trial in city court. Below are some very interesting circumstances that became evident during the trial.

1. According to Ministry of Economy and Sustainable Development the contract classification procedure does not contradict to regulations set by General Administrative Code. In particular, administrative proceedings have been undertaken to classify the document; the decision taken as a result of administrative proceedings has not been passed as a single act, but is reflected in Clause 14.1 of the Contract.

2. Representative of “Georgian Global Utilities Limited” confirmed that the company had natural monopoly. At the same time, part of underground utilities is owned by physical persons and disclosure of the contract to them might have had harmed the company competitiveness.

Neither the court required, nor the company presented the proof of this. Even if the company is saying the truth, it is not clear how a physical person holding some utilities can compete economically (the competition, where economic agents are trying to carry out their economic activities better than the competitor by offering to their clients better terms, prices, quality etc) with “Georgian Global Utility Limited” - owner of Tbilisi, Rustavi and Mtskheta water supply and sewerage systems.

¹⁷ Law of Georgia on Environmental Protection, Article 6, p. f) “a citizen is entitled to take part in decision-making process and in the examination of this decision in the scope of environmental protection”

¹⁸ Article 7 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public”

3. According to “Georgian Global Utilities Limited” representative, the information, disclosure of which could allegedly harm the company is about the liabilities to implement municipal projects.

4. With regard to environmental information in the contract, “Georgian Global Utilities Limited” representative stated that “the only provision of the contract that may be believed to be environmental information is, that water quality should permanently meet the requirements of WHO regulations and should not be worse than existing in Tbilisi and Mtskheta by 14 May 2009 and it is copied from Presidential Decree 245 of 10 April 2008¹⁹ .

5. According to “Georgian Global Utilities Limited” representative, the company stands ready to transfer any environmental information at the request of Green Alternative

Green Alternative presented to the Court the proof of experience, contradicting to this statement. The company had already refused to provide the organization with environmental information. In particular “Georgian Global Utilities Limited” was opposed to that Ministry of Economy and Sustainable Development transferred the information on implementation of Presidential Decree No. 245 of 10 April 2008 “On the Arrangements to improve Tbilisi, Rustavi and Mtskheta water supply” to Green Alternative.

6. During the trials Green Alternative accidentally discovered that in response to an individual’s request, on 15 April 2010 (according to the information on web-page) alongside with other public documents, basic text of the contract between Georgian Government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” on direct purchase of “Rustavtskalkanali” Ltd. Mtskhetatskalkanali Ltd. “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd 100% shares was put on Public Registry web-page without attachments and amendments thereto.

Green Alternative presented to the Court the document as an additional proof and demanded to reduce plaintiff’s claim. In particular the organization no longer required basic text of the contract and demanded to ascertain lawfulness of classification of the attachments and the agreement on changes.

7. Accessibility of basic text of the contract between Tbilisi government and “Multiplex Energy Limited” on purchase of 100% shares of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali Ltd and “Tbilisis Tskali” Ltd would shed light on a range of circumstances, in particular:

7.1. The contract not only contains environmental information, but the whole document itself is environmental information. This is proven by p. “e” of Clause 7.6 of the Contract, which provides: *“The buyer realizes and recognizes that the goal of alienation of “enterprises” and “company” shares is to improve Tbilisi, Rustavi and Mtskheta water supply without any damage to the environment”* – i.e. the Contract between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” is a document reflecting the information on the act (alienation of enterprises) carried out in order to achieve this goal.

7.2. Regardless the fact that the attachments to the contract remained inaccessible, their titles indicated that the information therein might not have been commercial secret. In particular, according to the Contract basic text, the attachments contain the following information:

- Attachment 1. – Very general information about “Tbilisis Tskali” Ltd, “Rustavtskalkanali” Ltd, “Saqtskalkanali Ltd. and “Mtskhetatskalkanali” Ltd, such as: registration number, date and place of

¹⁹ Minutes of 17 May 2010 meetings of the Court. Case#3/1285-09

registration, office address, organizational and legal form, information about the partner – all the information accessible on public register web-page before and after selling them;

- Attachment 3 – contains the list of state assets sold – this information is available in Public Registry national agency at request;
- Attachment 4 – Tbilisi map (within old limits) and Attachment 5 – Tbilisi map (within new limits). How can a topographic map, approved and published at Tbilisi Sakrebulo (Council) decision No. 1-6 of 22 January 2007 “On zoning of the city of Tbilisi” be commercial secret of “Georgian Global Utility Limited”?!
- Attachment 6 – contains information about water quality in Tbilisi and Mtskheta, i.e. the information on the state of environment;
- Attachment 7 – contains information on Tbilisi and Mtskheta water supply duration and timing. This information may not be commercial secret of anyone as it describes water accessibility;
- Attachment 8 – contains the list of transmission lines and substations that are on “Tbilisi Tskali” Ltd balance. This information also is available in Public Registry National Agency at the request;
- Attachment 9 – Bank guarantee and how to use it. It contains information on how the “buyer’s” bank guarantee shall be used in order to ensure compliance with the commitments. In other words, it describes the measures that public institutions will undertake in case of noncompliance of the buyer with such environmental commitments as: (a) commitment to uninterrupted supply of water to Tbilisi within its old administrative limits; (b) commitment to uninterrupted supply of water to Tbilisi within its new administrative limits; (c) commitment to stemming the flow of sewage into Mtkvari river within Tbilisi administrative boundaries; (d) commitment to Tbilisi water quality compliance with WHO (World Health Organization) technical regulations; (e) commitment to uninterrupted supply of water to Mtskheta; (f) commitment to rehabilitation and modernization of Gardabani treatment plant; (g) commitment to rehabilitation of Gardabani sewerage system and building new collector array; (g) commitment to Mtskheta water quality compliance with WHO (World Health Organization) technical regulations. Thus, the information provided in Attachment 9 is also environmental information.

7.3. The text of the contract confirms that the document contains extensive information about an administrative body – almost every Contract clause contains information about rights and obligations of administrative bodies.

7.4 Only one paragraph of the Contract, paragraph 11.4²⁰ is dedicated to implementation of municipal projects (i.e. the information, revealing of which, according to company representative, would harm “Georgian Global Utilities Limited”). But this paragraph may not have commercial value.

7.5 The document confirmed that when classifying the contract, established rules of recognizing public information a commercial secret were not observed – the document does not contain the information confirming that the buyer required classification of the Contract full text and that administrative bodies, signatories to the contract, decided to meet this requirement (as the defendant claimed). It is true that there is clause 14.1 in the Contract, which provides that “no one side shall make a statement on procurement of “shares” or any other related issue without the sides’ prior written consent”. Besides that this clause is illegal by itself – as it provides for classification of any information related to “shares” purchase (i.e. not only specific commercial secret, but also any public information) – it may not be regarded as decision of administrative body on classification of the whole text of the Contract. The restriction provided in this clause refers to the

²⁰ Clause 11.4 Municipal projects. “Immediately after the “buyer”, in compliance with present Contract, takes over the management of the “company” and the “enterprises”, the “buyer”, of his free will, shall cooperate with the “sellers” in order that the “buyer” ensures infrastructural rehabilitation and implementation of development projects, indicated by “seller” and notified to the “buyer” within reasonable timeframe.

statement on alienation of the share. Besides, nothing is said about secrecy of the information and commercial secret is not mentioned at all.

It also should be noted, that Ministry of Economy and Sustainable Development, when using clause 14.1 as a pretext for not transferring the Contract to Green alternative, gave incomplete and incorrect interpretation to it. In particular, clause 14.1 goes: “with reference to clause 14.2, no one side shall make a statement on “share” procurement or any other related issue without the sides’ prior written consent”. And clause 14.2 provides: both sides are authorized to make a statement on procurement of “shares” or any other related issue, if this is required by legislation of appropriate jurisdiction. Given the fact that the document is environmental information and provides information on the administrative body (i.e. the information that shall not be classified) and there is no administrative body decision on considering it commercial secret, the document is public and in compliance with clause 14.2 of the Contract, Ministry of Economy and Sustainable Development was authorized to satisfy Green Alternative’s requirement for a copy of the Contract.

1.1.4 THE CITY COURT DECISION: THE CONTRACT SHALL NOT BE ACCESSIBLE TO PUBLIC

At 22 June, 2010 sitting of the court the judge announced beginning the study of evidences stage and considering lawfulness of classification of public information in the absence of the sides. Nino Sharashidze, the judge, spent 30 minutes behind closed doors studying full text of the Contract, presented by Ministry of Economy and Sustainable Development (quite a thick document); finally the judge declared that it was a complicated case and she needed time to take final decision. The judge postponed announcement of the decision on the case until next court hearing. At the next hearing the judge announced her decision, which was in complete dissonance with her position at trial; Nino Sharashidze, the judge, did not satisfy the claim of Green Alternative. Later the Court gave the following legal assessment of this decision:

“6.2.1. Given the set of facts the court considers that attachments to 14 May 2008 sales contract between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” on purchase of 100% share of “Rustavtskalkanali” Ltd, 100% share of “Mtskhetatskalkanali” Ltd, 100% share of “Saqtskalkanali” Ltd and 100% share of “Tbilisis Tskali” Ltd., as well as 22 December 2009 agreement # 1 on further clarification and changes to the sales contract on 100% shares of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd., contain commercial secret, disclosure of which may harm competitiveness of “Georgian Global Utility Ltd”. Besides, “Georgian Global Utility Limited” does not agree to disclosure or transfer of this Contract. In compliance with Article 28 of General Administrative Code of Georgia Public information shall be open, unless otherwise prescribed by the law, or except for information that constitutes state, commercial, or personal secret.

6.2.2 Court cannot accept the position of the plaintiff that attachments to 14 May 2008 sales agreement between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” on purchase of 100% share of “Rustavtskalkanali” Ltd, 100% share of “Mtskhetatskalkanali” Ltd, 100% share of “Saqtskalkanali” Ltd and 100% share of “Tbilisis Tskali” Ltd., as well as 22 December 2009 agreement # 1 on further clarification and changes to the sales agreement of 100% shares of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd contain environmental information.

Court believes that attachments to 14 May 2008 sales agreement between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” on procurement of 100% share of “Rustavtskalkanali” Ltd, 100% share of “Mtskhetatskalkanali” Ltd, 100% share of “Saqtskalkanali” Ltd and 100% share of “Tbilisis Tskali” Ltd., as well as 22 December 2009 agreement # 1 on further clarification and changes to the sales agreement of 100% shares of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd are civil law agreement between

administrative body and legal person aimed at allowing the first to exercise its public authority, i.e. it is administrative agreement on alienation of commercial shares of legal entities of private law “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd and the subject of this administrative agreement is not environmental issues or environmental protection commitments.

Court believes that information on administrative body, undoubtedly not a commercial secret, is not the subject of this agreement either. Interested parties may request any public information, including the information on administrative bodies - parties to this agreement.

6.2.3 Court cannot accept the plaintiff’s allegation on that in this concrete case established rules of referring public information to commercial secret were not observed. Based on the findings of fact, the court considers that proceeding from paragraph 14.1 of 14 May 2008 sales contract between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” on purchase of 100% share of “Rustavtskalkanali” Ltd, 100% share of “Mtskhetatskalkanali” Ltd, 100% share of “Saqtskalkanali” Ltd and 100% share of “Tbilisis Tskali” Ltd. administrative body – party to this contract, when signing the document, in fact made the decision on referring the information therein to commercial secret and pledged not to transfer the information on any related to the agreement issue without prior written consent of other sides.

6.3. In compliance with Article 331 of General Procedural Administrative Code of Georgia the suit on entrusting with a task to carry out an action is justified, if failure of administrative agency to provide information is illegal and causes direct and immediate (personal) damage to plaintiff’s legitimate rights and interests. Hence Court finds that the suit on entrusting with a task to disclose agreement # 1 on further clarification and changes to the sales contract on 100% shares of “Rustavtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Lt and its transfer to Ministry of Economy and Sustainable Development is not legally justified”²¹

1.2 THE COURT OF APPEAL: “I AGREE WITH PREVIOUS SPEAKER”

Green Alternative appealed the decision of city Court with the Court of Appeal.²² Let us remind the reader that Green alternative reduced the claim. In particular the organization no longer required basic text of 14 May 2008 Contract between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” on purchase of “Rustavtskalkanali” Ltd. “Mtskhetatskalkanali” Ltd, “Saqtskalkanali” Ltd and “Tbilisis Tskali” Ltd 100% shares. It only asked to establish lawfulness of classifying the text of attachments of the Contract and 22 December 2009 agreement on amendments to the Contract and to transfer public information.

Board of Administrative cases of Tbilisi Court of Appeals composed of judges Ketevan Dugladze (chairperson), Leila Mamulashvili and Merab Lomidze considered the case at one session on 15 December 2010, though, given the complexity of the issue²³, announcement of judgment was postponed until 29 December 2010.

15 December 2010 session lasted only 25 minutes. Within this short period of time the judge, Ketevan Dugladze declared the matter, listened to the parties’ explanations, considered and reviewed the evidences.

²¹ Decision on behalf of Georgia on case #3/1285-09, 9 July 2010, Board of Administrative cases of Tbilisi city Court; judge Nino Sharadze

²² Green Alternative received 9 July 2010 decision of city court on 10 October. Hence the appeal was filed only 3 November 2010

²³ Minutes of Tbilisi Court of Appeals Chamber of Administrative cases hearings of 15 December 2010, case #3b/2429-10

During the hearings it became clear that the judge not only was not familiar with the case, but did not even know the point at issue. For example, the judge asked, why did Green Alternative try to obtain the document from Ministry of Economy and Sustainable Development if it already had the text of the Contract (she learned about it also during the trial). After she realized, that the point at issue was only the attachments to the Contract and the amendments thereto, she questioned the importance of these documents – are they really that important or the organization filed suit just for the sake of action?

Tbilisi Court of Appeal's chamber of administrative cases, by its 29 December 2010 decision upheld the city court decision and Green Alternative's claim was declined.

Tbilisi Court of Appeal supported the conclusions of city court on that the Contract, as well as the attachments and amendments thereto did not contain environmental information and the documents were classified lawfully. "Taking into account the above the Chamber finds the claim of appellant unjustified because, allowing the appeal would be legally possible only if the refusal of administrative agency caused unlawful direct and immediate harm to the appellant; In this particular case, since one of the sides failed to implement the load of proof, in accordance with Article 102 of Georgian Civil Procedure Code, the appeal is unjustified and cannot be allowed", reads the Court of Appeal decision.

It is noteworthy that existence of direct and immediate harm is a condition, to be grounded. Otherwise the claim should be considered invalid and the proceedings halted. And this has nothing to do with the decision on allowing the appeal in the above case.

Green Alternative continued action in the Supreme Court.

1.3. PROCEEDINGS IN THE SUPREME COURT

Another important fact was revealed just before appealing to Supreme Court. This time Green Alternative found, that full text of the Contract (with the attachments, which, City Court and Court of Appeal judges did not consider public information)²⁴ was put on Public Registry National Agency web-page on 14 May 2008. It is noteworthy, that according to information on Public Registry web-page, the Contract – without any requirement for its classification – was presented by an authorized representative of "Georgian Water and Power" on 14 December 2010.

On 4 February 2011 Green Alternative appealed to Supreme Court. Newly discovered attachments to the Contract were attached to the appeal as additional proof.

Pursuant to the Supreme Court 7 March 2011 decision, Green Alternative's appeal was found invalid and, accordingly, Tbilisi Court of Appeals decision of 29 December 2010 upheld.

In accordance with the decision of the Supreme Court, Green Alternative's appeal was not essential for developing justice and establishment of uniform judicial practice; the decision of the Court of Appeals did not differ from the Supreme Court previous practice for similar cases and there were no significant violations in the Court of Appeal's proceedings that would significantly influence the outcome of the case.

²⁴ https://enreg.reestri.gov.ge/main.php?c=mortgage&m=get_scandoc_by_id&scandoc_id=199830&app_id=192096, The document on Public Registry web-page is put in DjVu format. The program installation file is available free at: <http://djvu.org/resources/>

By this decision²⁵ Supreme Court admits that, wrong interpretation of the facts and ignoring evidences by Tbilisi city court and later by the Court of Appeal is not a gross violation; even if the Court studied the evidences, the decision was, that public agencies have the right to classify the information, like, e.g. Tbilisi map within its old and new limits; results of laboratory study of Tbilisi and Mtskheta drinking water quality; list of alienated by the stat assets etc. as commercial secret, not to mention state agencies' and new owner's liabilities to improve Tbilisi, Rustavi and Mtskheta water supply.

1.4. AN EXCEPTIONAL CASE OR FAULTY PRACTICE?

Unfortunately, the above is not an exceptional case. Green Alternative has come across several cases, when established rules of considering information a commercial secret were violated.

For example, the situation was similar with regard to the agreement on transferring 100% state owned share of "Vartsikhehesi (Vartsikhe hydro power station) 2005" to "G.M. Georgian Manganese Holding Limited". Ministry of Economy and Sustainable Development argued that classification of the whole text of Agreement was provided in one of its clauses. Again, the Ministry justified classification by the fact that this clause reflects legal decision of an administrative agency on considering information as commercial secret. Green Alternative's all attempts to obtain the information through the courts of all instances were unsuccessful. Supreme Court decided not to take action in court proceedings with regard to recognizing classification of "Vartsikhehesi 2005" sales agreement unlawful. The decision says that considering the appeal and passing new decision on the case would not be important from the viewpoint of developing justice or establishing uniform judicial practice.

It is noteworthy, that after completion of litigation, the Agreement on transferring "Vartsikhehesi 2005" 100% state owned shares to "G.M. Georgian Manganese Holding Limited" (likewise the agreement with "Multiplex Energy Limited") was put on public registry National Agency web-page.²⁶ The Agreement, actually, contains environmental information, as Green Alternative claimed through all 3, 5 years of litigation²⁷.

Another situation is important – clauses of privatization agreements, providing for classification of full texts of documents, as a rule, ignore the requirement of Georgian legislation on openness of the information.

Agreement between Ministry of Economy and Sustainable Development and "G.M. Georgian Manganese Holding Limited", 8 December 2006

Clause 6 "Environmental responsibility":

"The parties agree that the seller will help the buyer, within his competence, to eliminate historic, or any later discovered pollution, if any on the territories, owned by the public as well as on the land, received from the government under usufruct agreements."

²⁵ the case was considered by Supreme Court Chamber for Administrative cases, composed by judges: Levan Murusidze (chairman), Maya Vachadze and Paata Silagadze,

²⁶ information about "Vartsikhe 2005", scanned documents, the document in DJVU format is accessible at https://enreg.reestri.gov.ge/main.php?c=app&m=view_doc&doc_id=38287

²⁷ Green Alternative filed the lawsuit with Tbilisi city court on 16 May 2007. It should be mentioned that Tbilisi city court, by its decision of 19 October 2007, granted the petition. Judge Inga Kvachantiradze, in her decision indicated that the Agreement contained environmental information and it cannot be anyone's commercial secret. Later, though, Ministry of economic development appealed the decision and the Court of Appeal disaffirmed previous decision (notification to Ministry of Economy on closed sitting of the court could not be found in the file) and the case was returned to city court. City Court reconsidered the case (this time judge George Tkavadze found no environmental information in the Agreement. Instead, he decided, that the Agreement contained important information of commercial value and did not satisfy the claim of Green Alternative. Green Alternative failed to convince either Court of Appeal or Supreme Court. On 8 July 2010 Tbilisi Court of Appeal did not allow Green Alternative's appeal and on 6 December 2010 Chamber of Administrative cases of Supreme Court (judges: Levan Murusidze (chairman), Maya Vachadze and Paata Silagadze) did not accept the organization's appeal.

However, administrative agencies, as well as the courts (for an unknown reason) are guided only by regulations providing for classifying the information; they ascribe to commercial secret any information about privatized enterprise and do not meet the requirement of separating non-commercial information.

Another major problem is level of knowledge of environmental issues and issues regulated by “Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters” (Aarhus) Convention by public officers and judges; this is clearly illustrated by the facts in this report as well as other suits in courts.

1.5. THE STORY CONTINUES...

Let’s remind the reader that the document of 14 May 2008 Contract with Multiplex Energy Limited is now available to public, but 22 December 2009 Agreement on amendments thereto remains closed. Since Green Alternative lost hope to obtain the document through courts, it began trying to find out the contents of the Agreement in a roundabout way.

The thing is that, as mentioned above, the decision on alienation of Tbilisi, Rustavi and Mtskheta water supply systems through direct purchase, as well as on transfer of enterprises and terms of their transfer should have been taken by the President. Hence, the decision on amendment thereto should have been taken by the President too. And this decision should have been reflected in appropriate Decree. So, Green Alternative started searching for Presidential Decree, which should have served as basis for 22 December 2009 Agreement on the amendments to the Contract. This turned out to be not an easy task...

Next chapter will be dedicated to presidential decrees on improvement of Tbilisi, Rustavi and Mtskheta water supply and sewerage systems, known, as well as unknown ones; also, to Green alternative’s efforts to obtain copies of unpublished Presidential Decrees.

CHAPTER 2. OPEN AND CLANDESTINE DECREES OF PRESIDENT OF GEORGIA ON IMPROVEMENT OF TBILISI, RUSTAVI AND MTSKHETA WATER SUPPLY

Exact number of decrees, passed by the President on improvement of Tbilisi, Rustavi and Mtskheta water supply is unknown to the public. Below we are telling about the Decrees, part of which have been published, part – have not, and part of them can only be assumed to exist.

2.1 UNPUBLISHED DECREES, ISSUED AGAINST THE BACKGROUND OF PROTEST ACTIONS

In November 2007 President of Georgia, against the background of political crisis and mass actions²⁸ of protest, signed two decrees a day prior to his resignation:

1. “On privatization 100% shares of of state owned “Saqtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd and “Rustavtskalkanali” Ltd in the form of direct purchase” (Presidential Decree No. 685 of 23 November 2007); and
2. “On privatization of 100% shares of, it “Tbilisis Tskali” Ltd., owned by a self-governing unit in the form of direct purchase” (Presidential Decree No. 702 of 24 November 2007

It should be mentioned that presidential decrees No. 685 of 23 November 2007 and No. 702 of 24 November 2007 have never been published and cannot be found on “Georgia’s Law Messenger” web-page.²⁹ Green Alternative succeeded to obtain copies of these decrees unofficially.

1. In accordance with Presidential Decree of 23 November 2007 100 % shares of state owned “Saqtskalkanali” Ltd, “Mtskhetatskalkanali” Ltd and “Rustavtskalkanali” Ltd was transferred to “Multiplex Energy Limited”. Here, we would like to draw the reader’s attention to two situations: in the process of “expressing interest” Swiss company Multiplex Solutions was declared the winner, and later, at the President’s resolution, the enterprises were given to Multiplex Energy Limited (a company, registered in the Islands of the British Virginia, as it became evident later); also important is the fact, that “Rustavtskalkanali” Ltd was not mentioned at all in the process of “expressing interests” and the public was not aware of not only the terms, offered by the buyer, but also of a plan to sell the company. By Presidential Decree the enterprise was alienated for 15 million US Dollar under the sole term - to pay it off until the end of 2008. By the same Decree, 100% shares of state owned “Saqtskalkanali” Ltd and 100% shares of state owned “Mtskhetatskalkanali” Ltd were transferred to Multiplex Energy Limited for 662 thousand US dollar.

The Decree also set water tariff for Mtskheta population, who had installed water meters, for the period of 2008-2018. Also according to the Decree the buyer was obliged to finish installation of water meters to Mtskheta population by 2015. However, water tariff set for the period until 2018 also applies to the population without water meters. The buyer was also obliged to rehabilitate and modernize Gardabani cleaning plant within 10 years and rehabilitate Gardabani sewage system and build new collector array within 5 years. It is noteworthy, that under the same Decree Ministry of Environment was tasked with developing, within its competence, environmental action plan with the help of the investor “so, that the investor is not made responsible for historic pollution”

²⁸ Mass protest actions demanding the resignation of the president were forcedly dispersed by the police and emergency situation was declared in the country. In response to the crisis President Saakashvili called early elections held in January 2008.

²⁹ www.matsne.gov.ge “Georgia’s Law Messenger” is legal entity within Ministry of Justice of Georgia. Its an official periodical founded in 1998 and was published as a journal until 2010. Since 2011 “Georgia’s Law Messenger” offers protected, constantly renewable official web-page, where users can find statutory acts passed by any Georgian agency, international agreements, decisions of Constitutional Court, local government acts and public statements.

In order to ensure that the above pledges are met, the buyer was obliged to present bank guarantee worth of 25 million US dollar. It should be noted that according to law³⁰ the buyer shall present bank guarantee, worth of 5% of property price to ensure fulfillment of privatization terms; in case if the investment exceeds the price of property under privatization, bank guarantee should be worth of 5% of the investment. In the event of failure to meet the pledges this sum is transferred to public budget (privatization of public property) or local self-government budget (privatization of local self-governing unit property).

Provided that, according to this transaction, the price of property under privatization (662 thousand US dollar) is less than the bank guarantee, one should presume that the sum of guarantee was calculated as 5% of total volume of investments – accordingly the buyer was obliged to invest 500 million US dollar in the development of “Mtskhetatskalkanali” and “Saqtskalkanali”.

2. In accordance with 24 November 2007 Presidential Decree Multiplex Energy Limited received at the price of 85 million US dollar, in the form of direct purchase, 100% of “Tbilisi Tskali” shares, owned by a Tbilisi self-governing unit. In the same Decree water tariff was set for Tbilisi population, those with water meters and those without water meters, until 2018; though installation of water meters to the houses was planned until 2012 and to blocks of flats – until 2015. The buyer was also obliged to eliminate sewage runoff into Mtkvari River within Tbilisi limits.

In this case the buyer also had to present bank guarantee worth of 25 million US dollar. Here again, if the sum of guarantee was calculated in relation to the object price (85 million US dollar), it should have been 4.25 million US dollar. Hence, it was calculated in relation to the amount of investments, which, by this logic, also is 500 million US dollar.

In the case of “Tbilisi Tskali” Ministry of Environment was tasked to develop, with the help of investor, environmental action plan so, that “the investor is not made responsible for historic pollution”.

Alongside with passing abovementioned Presidential decrees, logically, the procedure of drawing up agreements with the buyer should have started. Instead, four months later, a “new wave” of issuing legal acts started.

2.2. PUBLISHED PRESIDENTIAL DECREE

On 10 April 2008 President of Georgia issued Decree No. 245 “On arrangements to improve Tbilisi, Rustavi and Mtskheta water supply”, by which his previous, not published decrees of 2007 (No.685 and No. 702) were declared void. According to the same Presidential Decree Multiplex Energy Limited received, in the form of direct purchase:

- 100% state owned shares of “Rustavtskalkanali” Ltd, this time for 10 million US dollars, again without any preconditions;
- 100% state owned shares of “Saqtskalkanali” Ltd and 100% of state owned “Mtskhetatskalkanali” Ltd. for 662 thousand US dollar under the terms set forward in abrogated decree with only difference – the buyer was obliged to install collective water meters for Mtskheta population. The sum of bank guarantee also was changed and the buyer was obliged to present unrevoked bank guarantee at the sum of 5 million US dollar. Proceeding from the sum of bank guarantee one can assume that the sum of future investments amounted to 100 million US dollar (the law provides that bank guarantee shall make 5% of proposed

³⁰ P.9 of Article 61 of the Law of Georgia “On privatization of Public property, privatization and usufruct transfer of property of local self-governing unit”

investments). We would like to remind the reader that according to invalidated decree the investments were much higher and amounted to 500 million US dollar.

- 100% share of “Tbilisi Tskali” Ltd, owned by self-governing unit was sold to the buyer under similar terms for 85 million US dollar. Here as well the amount of bank guarantee and, appropriately, the sum of the investments are significantly reduced. This time the amount of bank guarantee was 10 million US dollar; so the sum of investments should be 200 million US dollar. Again, the amount of required investments decreased sharply (by 300 million US dollar).

It should be mentioned that total sum of investments to be implemented amount to 300 million US dollar, which is 700 million US dollar less than under invalidated presidential decree (and presumably by then agreed upon with the buyer) and 50 million US dollar less than offered by “Multiplex solutions” in “expression of interests” process.

2.3 ACCIDENTALLY REVEALED PRESIDENTIAL DECREE

On 14 May 2008, the day of drawing up of the agreement between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited”, President of Georgia issued Decree No. 323 “On amendments and changes to 10 April 2008 Presidential decree on arrangements for improvement of Tbilisi, Rustavi and Mtskheta water supply”. Since this decree has never been officially published, its existence became known only in June 2010, when Green Alternative found a copy of the agreement between Georgian government, Ministry of Economy and Sustainable Development of Georgia, Tbilisi government and “Multiplex Energy Limited” on public register National Agency web page. This Presidential decree is being referred to in the agreement, as a basis for reducing the enterprises’ sale price.

In June 2010 Green Alternative filed a request for this decree with the Administration of President; neither this request, nor administrative complaint, addressed to the chief of administration were responded. For that reason Green Alternative filed a lawsuit in Tbilisi City Court.

Alongside with the lawsuit, Green Alternative filed a request for 14 May 2008 Presidential decree, together with other public information with Ministry of Economy and Sustainable Development. Strange as it sounds, the Ministry handed over a copy of the Decree. Accordingly, Green Alternative stopped the lawsuit with the administration of President. Unfortunately this is not the only case in Green Alternative’s practice, when an Administrative agency (and this especially refers to administration of President) is reluctant to hand over the information, which is meant to be accessible without any request and the organization has to go through long administrative and then court procedures to obtain the information.

As for the contents of the Decree it became clear that the changes envisaged by the Decree applied only to the price of the objects for sale and payment regulations. In particular, according to new Decree, Multiplex Energy Limited received:

- 100% of “Rustavtskalkanali” Ltd state owned shares, this time for 8 996.857 million US dollar; besides, there was a new term there on payment of additionally accrued liabilities in the amount of 1 456 565 GEL;
- 100% of “Saqtskalkanali” Ltd state owned shares and 100% of Mtskhetatskalkanali” Ltd. state owned shares for 585 480 US dollar. Also payment of additionally accrued liabilities in the amount of 111 119 GEL.
- 100% of “Tbilisi Tskali” Ltd shares owned by a Tbilisi self-governing unit for 70 428 871 US dollar. Here again, the buyer was obliged to pay additionally accrued liabilities in the amount of 21 157 281 GEL.

2.4 “STUBBORNLY” CLASSIFIED PRESIDENTIAL DECREE

As mentioned in Chapter one, on 22 December 2009 Agreement was reached on amendments to 14 May 2008 Contract with “Multiplex Energy Limited”.

Since the decision on selling the enterprises and setting appropriate terms was taken by the President, the agreement on changing the terms of 22 December 2009 should have been drawn up at the President’s decision too.

Though the contents of this order of the President is still unknown to the public, one may assume with high probability, that it is about postponement of liabilities under the contract and about increase in water tariff. The following circumstances allow for such an assumption:

Company representatives themselves made statements on postponement of liabilities. *“Considering the workload ahead it is not realistic to achieve 24 hour water supply to the Capital by 2011. This in mind amendments have been introduced to the contract, according to which uninterrupted water supply to Tbilisi, within its old administrative boundaries have been postponed until 2013”³¹ – said Jorge Mathias, “Georgian Water and Powers” Director General, in his interview to “24 hours” newspaper.*

The decision about changing water tariff became known after Energy and Water Supply National Regulatory Committee (GNERC) took the decision to increase water tariff for “Georgian Water and Power” clients from 2.40 GEL to 3.20 GEL. The thing is that, according to 14 May 2008 Presidential Decree, as well as according to the contract between Georgian government, Ministry of Economy and Sustainable Development, Tbilisi government and “Multiplex Energy Limited” water tariff should not accede 2.95 GEL; The Company could increase tariff only in 2014 (up to maximum 3.3 GEL). That is why the GNERC decision³² to increase tariff was met with certain confusion and frustration.

Even the Mayor of Tbilisi expressed his “dissatisfaction” and “utter concern” at the increase of tariff. *“Gigi Ugulava did not agree with this SEMEK decision and yesterday, at the request of Nika Guilaure, Prime-Minister, the Commission convened. Ugulava thanked Nika Guilaure for convening the Commission, which agreed to the Mayor’s proposal about maintaining tariff – 2.40 GEL - for those citizens who have scheduled water supply. New tariff – 3.15 GEL – shall apply only to those, who have 24 hour water supply. According to Gigi Ugulava this will motivate Water Company to fully implement uninterrupted water supply program in the city. Besides, according to Ugulava, socially unprotected population will pay half the tariff, and the other half will be covered by Mayor’s office. This for 105 000 socially unprotected individuals is already envisaged in 2011 Tbilisi budget. Ugulava also said that Tbilisi water tariff will not be revised and will be kept unchanged for next 5 years” – wrote “24 hour” newspaper³³*

Soon it became clear that Tbilisi Mayor was not quite sincere when expressing concern about “unexpected” increase of tariff. Chairman of National Energy and Water Supply Regulatory Commission explained to public that GNERC did not violate law when increasing tariffs. He said: *“Water tariffs are set in accordance with tariff methodology, guided by the law of Georgia “On Electric Energy and Natural Gas” The Commission is authorized to take note of transactions with participation of the State as well as other legal acts in the field of water supply. Tariffs set by the Commission never exceed those envisaged by sales agreements”³⁴*. This explanation

³¹ “Tbilisi uninterrupted water supply has been postponed until 2015”, “24 hours” newspaper, 09.04.10

³² Resolution No 27 of 24 November 2010 of Georgian Energy and Water Supply Regulatory Commission on changes to Resolution No 17 of 17 August 2010 of Georgian Energy and Water Supply Regulatory Commission “On Water Tariffs”

³³ “Water for Tbilisians has risen in price” “24 hours” newspaper

³⁴ “Guram Chalagashvili: increase of water tariff is not legal abuse”. 2010.12.10. www.commersant.ge

made it clear that the decision on increasing tariffs was part of hidden Presidential Decree and, respectively, of 22 December 2009 Agreement.

One may assume, that Tbilisi Mayor, likewise other people, had never seen that full of secrecy Presidential Decree, but he must have seen 22 December 2009 Agreement, because Tbilisi Government is one of its signatories. Hence, Tbilisi Mayor's above efforts is nothing but farce-based PR campaign.

2.4.1 ATTEMPTS TO ACQUIRE THE DECREE

1. Green Alternative first tried to acquire the Decree (December 2010) from Ministry of Economy and Sustainable Development. Since the document entry was unknown, the organization required from the Ministry a copy of Presidential Decree, which served as a basis for 22 December 2009 amendments to the Contract with "Multiplex Energy Limited".

In response to the request for public information Green Alternative was informed that the request had been forwarded to Administration of President; Administration of President never responded to this request.

2. When it became evident that Administration of President would not respond to the request, Green Alternative applied to the President and asked for "copies of all the decrees, on the basis of which amendments and/or changes were introduced to Presidential Decree No. 245 of 10 April 2008 "On the arrangements of improving Tbilisi, Rustavi and Mtskheta water supply""³⁵ After longer than admissible silence on the side of Administration of President, Green Alternative brought the case to court. The case was tried in Tbilisi city Court by Judge Tamar Oniani, judge of the Board on Administrative Cases.

The lawsuit was filed against President of Georgia. Representative of the other side told the court that President of Georgia cannot be appropriate defendant in the case, since, "in compliance with Article 77 of Constitution of Georgia the administration of the President of Georgia shall be established on purpose to promote the exercise of the authority of the President of Georgia. Besides, in compliance with sub-point "f", point 11, Article 6 of 30 June 2005 Resolution # 562 of President of Georgia it is the function of administration of President of Georgia to ensure accessibility of public information".

In fact, the President's representative argued that President of Georgia and Administration of President are two different administrative bodies. Surprising as it is, the judge agreed to the above arguments and did not satisfy the claim of Green Alternative. Green Alternative appealed this decision of City Court in the Court of appeal. Our reader will be able to acquaint with Court of Appeal decision in Green Alternative's next report.

3. In September 2011 Green Alternative made another attempt to request the Presidential Decree. This time the organization applied to the person in Administration of President, responsible for issuing public information; the result, though, was the same – Green Alternative was not responded. There is no response to Administrative claim filed with Chief of Administration of President. Green Alternative plans to go to court again.

With regard to this case it is noteworthy, that the organization is requesting for the document, meant to be accessible to public without any claim; the public agency is doing its best to that the document is hidden from public.

³⁵ Green Alternative 15 March 2011 letter to President of Georgia

2.5 POSSIBLE REASONS FOR CLASSIFYING PRESIDENTIAL DECREE

The abovementioned Presidential Decree was aimed at improving Tbilisi, Rustavi and Mtskheta water supply. At a glance it is unclear what could cause classification of such a humane decision; but if we recall that unknown and inexperienced company as is “Multiplex Solutions” was preferred in the process of “expressing interests” precisely because of low water tariffs, high sale price and large amount of investments, we may come to logical explanation of classification of the document.

Below are the tables demonstrating how the sale price, bank guarantee and investments amount decreased with every next Presidential Decree.

Enterprise price				
Presidential Decrees	Rustavtskalkanali	Saqtskalkanali	Mtskhetatskalkanali	Tbilisis Tskali
23.11.2007, №685; 24.11.2007, №702	15 000 000 \$		662 000\$	85000000 \$
10.04.2008 №245	10 000 000 \$		662 000\$	85 000 000 \$
14.05.2008 №323	8 996 857 \$		585 480 \$	70 428 871 \$
Bank Guarantee				
Presidential Decrees	Rustavtskalkanali	Saqtskalkanali	Mtskhetatskalkanali	Tbilisis Tskali
23.11.2007, №685; 24.11.2007, №702	0		25 000 000 \$	25 000 000 \$
10.04.2008 №245	0		5 000 000\$	10 000 000 \$
Investments				
Presidential Decrees	Rustavtskalkanali	Saqtskalkanali	Mtskhetatskalkanali	Tbilisis Tskali
23.11.2007, №685; 24.11.2007, №702	0		500 000 000 \$	500 000 000 \$
10.04.2008 №245	0		100 000 000 \$	200 000 000 \$
According to the Contract total sum of investments is 220 million US dollar; it is still unclear, though, if this sum increased/decreased after 22 December 2009 Agreement was signed.				

CHAPTER 3. WHAT HAS BEEN DONE TO IMPROVE TBILISI, RUSTAVI AND MTSKHETA WATER SUPPLY?

As mentioned in previous chapters, Rustavi, Mtskheta and Tbilisi water supply and sewerage systems have been transferred to “Multiplex Energy Limited” under the terms, directly linked with state of environment and human health. Respectively, the document reflecting these terms, in compliance with Aarhus Convention, is environmental information³⁶ and shall be accessible to public;³⁷ besides, this is information on the arrangements, which will necessarily influence human lives and health and hence, according to the General Administrative Code of Georgia,³⁸ shall not be classified. What is more important, it is the information, which, in compliance with Georgian Constitution³⁹ shall be acceptable to any individual.

For more than two years Green Alternative had been trying to find the information on “Multiplex Energy Limited” compliance to its pledges under this document. In the sub-chapters below the reader will learn how successful it was and how much effort it cost the organization.

3.1. ATTEMPT I – “GARBLED VERSION”

Green Alternative attempted to obtain information on implementation of the arrangements for improvement of Rustavi, Mtskheta and Tbilisi water supply in May 2009, one year after the enterprises were sold.

Let us remind the reader that the contents of sales contract were unknown to public by then. But the terms set in Presidential Decree No. 245 of 10 April 2008 were well known. That is why the organization demanded from Ministry of Economy and Sustainable Development the information on implementation of the provisions of this particular Decree.

In response Green Alternative received a letter from Ministry of Economy and Sustainable Development, signed by a person, responsible for public information. The letter notified that “Multiplex Energy Limited” failed to present to the Ministry information on compliance with pledges under the Contract and it was fined for it. It was also mentioned there, that “Multiplex Energy Limited” was sent a demand to pay the fine and to present documents, supporting compliance with pledges.

Six months later Green Alternative again applied to Ministry of Economy and Sustainable Development with the same request. This time Green Alternative received a copy of the letter, sent by the Ministry to “Multiplex Energy Limited”. There the person, responsible for public information, requested the permission to “transfer the agreements” on the basis of Green Alternative’s query. It is noteworthy that “Multiplex Energy Limited” was sent the letter to the address, 4/10 Erekle II St., which the Company had had long changed.⁴⁰

As the subject of Green Alternative’s query was quite different (it was the documents reflecting implementation of the terms set in Presidential Decree and not a copy of the agreement), Green Alternative again explained to the responsible person the essence of its query, in order to avoid misunderstanding. Additional explanation was not responded at all. On 27 January 2010 Green Alternative addressed the same request to Zurab Pololikashvili, Minister of Economic Development directly. In response Green Alternative received a letter on 4 February 2010, again signed by the same responsible person. There he explained that

³⁶ Article 2

³⁷ Article 4

³⁸ (a) point of Article 42

³⁹ point 5 of Article 37

⁴⁰ The Ministry should have known about it, at least because the court could not find the company at this address during the trials and asked the Ministry to find out correct address

the Ministry would take the decision on transferring the requested information only at “Multiplex Energy Limited’s” written consent. The author did not explain the reason of waiting for Multiplex Energy Limited’s written consent.

In response to the above letter Green Alternative again addressed responsible for public information person on 8 February 2010; this time demanding legal basis for the refusal. Green Alternative, preventively, demanded the decision of an administrative agency on considering the document “Multiplex Energy Limited’s” commercial secret, if this was the case. Ministry of Economy and Sustainable Development did not respond at all.

After the Ministry’s two weeks silence Green Alternative filed administrative complaint with Prime Minister of Georgia. Green Alternative, in its complaint, described the details of its failure to obtain the documents from the Ministry and asked the Prime Minister to task Ministry of Economy and Sustainable Development with transferring public information, accessibility of which is guaranteed both, by National law and the International Convention. On 11 March 2010 Office of Georgian Government notified Green Alternative⁴¹ that the “letter” had been sent to the Ministry for further response.

It is noteworthy, that in compliance with the General Administrative Code of Georgia⁴² if solution of the matter set forth in the application falls within the jurisdiction of another administrative agency, an administrative agency shall refer the application and all attached documents to the applicable administrative agency within five days. At the same time, the applicant shall be informed in writing about the reference of the application and attached documents to the applicable administrative agency with an appropriate justification within two days.

Green Alternative was informed about the reference of its application to the Ministry without any justification and with one week’s delay, and only after the organization itself inquired about the claim’s whereabouts. No wonder – it is quite difficult to find justification to why should someone task “violator of law” to respond to his own violation

And Ministry of Economy and Sustainable Development’s “response” was as follows – chief of legal department of the Ministry informed Green Alternative, that *“in compliance with Article 47 of the General Administrative Code of Georgia the claim shall be filed in a court when access to public information is denied.”*

This time Green Alternative did not appeal to court because the organization found the text the Contract with “Multiplex Energy Limited” on Public Registry web-page and decided to put an end to playing “garbled version”.

3.2 ATTEMPT II – ANY ISSUE RELATING TO THE CONTRACT IS SECRET

As was mentioned above, in June 2010 Green Alternative found a copy of the Contract with “Multiplex Energy Limited” (now called “Georgian Global Utilities Limited”). As becomes evident from the text it contains a range of environmental pledges in compliance with Presidential Decree of 14 May 2008. For example:

⁴¹ Letter from the Office of Government of Georgia No 24/37 of 5 March 2010, signed by Levan Eriqasvili, chief of Office chancellery

⁴² Article 80. Referring an application to an applicable administrative body

- **Clause 11.2 of the Agreement “providing service”**

“After the buyer, in accordance with this Contract, takes over the management of the “company” and the “enterprises”, the buyer shall ensure, that the “company” and the “enterprises”

b) Keep within the law (including that in the sphere of Health and Security), especially when interacting with hazardous environment and touching dangerous items. These include the location of chlorination equipment, high voltage lifts and compressed gas cylinders and kits; this also includes keeping dangerous chemicals and equipping the site with safe and first aid kits in accordance with “best engineering and operational methods”.

c) Appropriately operate, keep, serve and replace water supply systems so that the pledges under the Contract are met”.

- **Clause 11.6 “The buyer’s” general obligations**

“11.6.1. With regard to Tbilisi

a) Water quality shall permanently comply with WHO (World Health Organization) technical regulations, but shall not be worse than the existing one (attachment No.6)

f) 24 hours water supply within city old boundaries (as of 26 December 2006, as indicated in attachment No. 4 to this Contract) from 2011 and on, but not worse than the existing one as indicated in attachment No.7

g) 24 hours water supply within city new boundaries (as indicated in attachment No.5) from 2015 and on, but until 2015 shall not be worse than existing;

e) Not later than 2012 eliminate sewage runoff into Mtkvari River within Tbilisi administrative boundaries;

11.6.2 with regard to “Saqtskalkanali” Ltd

(a) Rehabilitation and modernization of Gardabani cleaning plant to be carried out within 10 years after signing the Contract;

(b) Rehabilitation of Gardabani sewerage system and building new collector array within 5 years after signing the Contract;

11.6.3 with regard to Mtskheta

(e) Water quality shall permanently comply with WHO (World Health Organization) technical regulations, but shall not be worse than existing as provided by attachment No.6;

(f) From 2011 and on Mtskheta shall enjoy uninterrupted (24 hour) water supply and until 2011 it shall not be worse than the existing one, as provided in attachment No.7.”

At the same time, pursuant to Clause 11.6.4, “Multiplex Energy Limited” shall undertake to report to Ministry of Economy and Sustainable Development about the implementation of the terms of the contract every 6 months, as well as upon request of the Ministry. Green Alternative attempted to obtain these reports from both agencies.

3.2.1 MINISTRY OF ECONOMY AND SUSTAINABLE DEVELOPMENT REPLY

On 26 August 2010 Green Alternative applied to Ministry of Economy and Sustainable development with request to release public information on implementation of Contract terms. In particular, the organization attempted to obtain the following information:

- Does the Company meet its pledges to submit report on implementation of Contract terms?⁴³ The organization also requested copies of submitted reports;

⁴³ “Multiplex Energy Limited” was supposed to have presented 4 reports by then: November 2008, May 2009, November 2009 and May 2010.

- The document, reflecting “best engineering and operational methods”⁴⁴, on the basis of which the Company shall manage and maintain assets; who has developed the methods and when (specific body, specific legal act);
- Does the “buyer” manage and maintain assets in compliance with “best engineering and operational methods”?
- Does the sales contract contain the buyer’s obligations with regard to health and security? If so, the organization requested references to specific obligations;
- Does Mtskheta water quality comply to WHO technical regulations; the organization requested appropriate supportive documents;
- Are the “buyer’s” pledges on elimination sewage runoff into Mtkvari River met;
- How much investment was made by the “buyer”;
- Besides, Green Alternative requested some of those legal acts, which were referred to in the Contract, in particular, copies of: Presidential Decrees #245 of 10 April 2008 and #323 of 14 May 2008, Georgian Government’s Resolution #325 of 14 May 2008 and Tbilisi Mayor’s Resolution #310 of 13 May 2008.

Ministry of Economy and Sustainable Development responded to Green Alternative quite promptly (within 10 days), but their information only partly covered the organization’s questions.

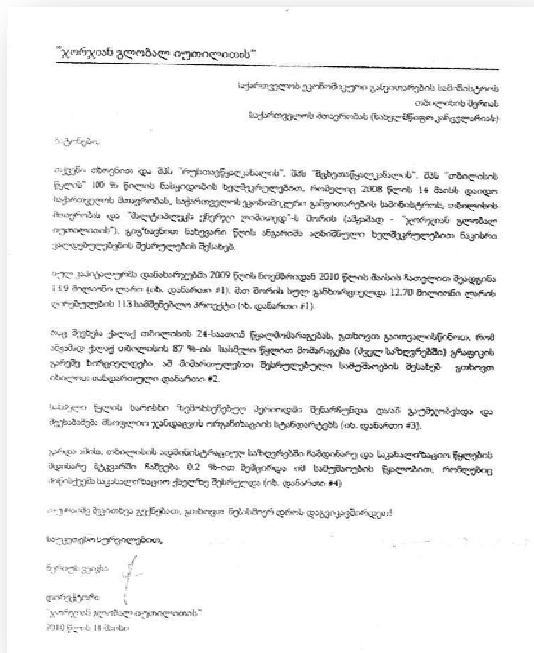
With regard to submitting the reports Ministry of Economy and Sustainable Development informed that in November 2009 “Multiplex Energy Limited” (now called “Georgian Global Utilities Limited”) was fined 12 thousand GEL because of failure to comply with its pledges. This answer allows assuming, that in May 2009, November 2009 and May 2010 the Company submitted appropriate reports to the Ministry. But in response to the request to hand over copies of the reports the Ministry only indicated, that additional information on additionally accrued payment obligation had been submitted to Ministry.

Strange and significant was the Ministry’s response with regard to documents reflecting “best engineering and operational methods”. The Ministry advised Green Alternative to ask this information form “Multiplex Energy Limited”; in fact the Ministry admitted not having the document on guiding principles, compliance with which it was supposed to monitor.

With regard to Gardabani cleaning plant and sewerage system rehabilitation, as well as building new collector array, the Ministry argued that the “buyer” is obliged to present appropriate audit conclusion within two months after the deadline. It is noteworthy that there is no such provision in the Contract. Besides, this means that the Ministry does not carry out monitoring of compliance with pledges.

With regard to Mtskheta drinking water compliance with WHO (World Health Organization) technical regulations the Ministry replied that the “buyer presented monthly the information on the results of chemical and bacteriological analysis of the water and the conclusion is that the water quality conforms to national standards”. Laboratory tests results for the period between November 2009 and March 2010 (i.e. 6 months) were attached to the letter. Results of other 18 months’ laboratory tests remained unknown to Green Alternative. Besides, the conclusions for those 6 months said nothing about compliance with WHO technical regulations; and the results of the analysis of samples taken at cleaning plant (which is no less important) do not contain information about the quality of water supplied to the population.

⁴⁴ 11th clause of the Contract “the buyer’s” current obligation”: 11.1 “After the buyer undertakes the management of the “company” and “enterprises” the buyer shall ensure that the “company” and “enterprises” are able to manage and maintain assets (or any share or its replacement) “in compliance with best engineering and operational methods”.



In response to the demand for compliance reports the Ministry handed over to Green Alternative cover-letter of submitted on 14 May 2010 company report. According to “cover-letter” Nerius Veicsa, director of “Georgian Global Utilities”, notified Tbilisi government and Georgian government as follows: *“Total investment from May 2009 to May 2010 inclusive was 13,9 million GEL (see attachment 1), of which 113 building projects were implemented at 12.70 million GEL (see attachment 1). As for 24 hour water supply to Tbilisi please be advised that water supply to 87% of Tbilisi territory (within its old boundaries) is not limited by schedule. Please see attachment #2 for information on carried out in this regard works. Drinking water quality has been preserved and/or improved for this period of time and it conforms to World Health Organization standards (see attachment #3). Besides, as a result of*

underground works on drainage system, waste and sewage water runoff into Mtkvari River within Tbilisi administrative boundaries has decreased by 0,2 % (see attachment # 4)”.

It should be mentioned that Ministry of Economy and Sustainable development honestly fulfilled its obligations and handed over to Green Alternative copies of: Presidential Decrees #245 of 10 April 2008 and #323⁴⁵ of 14 May 2008, Georgian Government’s Resolution #325 of 14 May 2008. The Ministry failed to hand over to Green Alternative a copy of Tbilisi Mayor’s Resolution #310 of 13 May 2008, which allegedly could not be found in the Ministry and the person, responsible for releasing public information found it unnecessary to inform Green Alternative about it.

The information submitted by the Ministry was quite superficial, which allowed putting in doubt the quality of its monitoring activities; hence Green Alternative repeatedly applied to the Ministry in the hope of obtaining more detailed information.

On 29 2010 Green Alternative filed new request with Ministry of Economy and Sustainable development. This time the organization was asking for:

1. A copy of the document confirming the payment of fines by “Georgian Global Utilities Limited”;
2. November 2008 (after paying the fines), May and November 2009 Company reports, together with attachments, submitted to the Ministry;
3. Copies of the documents confirming the payment of additionally accrued payment obligation;
4. Copies of criteria/terms that guide Ministry of Economy and Sustainable Development when monitoring fulfillment of engagements under 5.2, 11.1 and 11.5 clauses of the Contract by the “buyer”;

⁴⁵ Which had not been published before and which the Administration of President did not hand over to Green alternative regardless the request.

5. Attachments to “Georgian Global Utilities” reports, presented to Ministry of Economy and Sustainable development on 14 May 2010;
 - On investments and building projects implemented by the Company;
 - On activities for 24 hour water supply to Tbilisi; and
 - On the works on sewerage system.
6. Copies of documents describing Tbilisi, Mtskheta and Rustavi water quality at the moment of sale.

And here ended “benevolence”, “transparency” and “democracy” of Ministry of Economy and Sustainable development. This time Ministry responded to Green Alternative within record-breaking short time (2 days), but the response gave cause to lawsuit, which lasted quite long. In particular, Ministry of Economy and Sustainable development notified Green Alternative that it had answered all the questions in its previous letter (i.e. the letter, which caused the necessity to request additional information).

This answer indicated that there was no point in additional explanations and Green Alternative followed well-tested path – it filed the suit in court.

3.2.2 CITY COURT: IT IS POSSIBLE TO CLASSIFY NON-EXISTENT INFORMATION!

On 15 October 2010 Green Alternative filed a suit with Tbilisi City Court demanding that Ministry of Economy and Sustainable development be ordered to release the required information.

The court decided⁴⁶ to engage “Georgian Global Utility Limited” as third party in the case, which caused several postponements of the hearing. A representative⁴⁷ of “Georgian Global Limited” then had no authorization, then - no confirmation of authorizing body, then - he simply did not appear in the court. Finally, on 14 January 2011 the judge started hearings in the absence of the Company representative. It should be mentioned that representative of “Georgian Global Utilities Limited” never appeared at any follow-up court hearing. In reality his presence there was not needed because Ministry of Economy and Sustainable Development defended the interests of the Company.

It was at the hearing that Green Alternative heard the position of Ministry of Economy and Sustainable Development on the reasons of not submitting required information. It turned out that the Ministry based his refusal on the following:

1. Clause 14.1 of the Contract with “Multiplex Energy Limited” (now called “Georgian Global Utilities Limited”) provides that *“no one side shall make any statement on “shares” purchase or any other related issue without the other sides’ written consent”*; and
2. In compliance with Clause 12.4 of 22 December 2009 agreement on amendments to the Contract *“the information, proposals and agreements provided in this document shall be confidential and, respectively, the sides shall not release any information, related to this agreement, to another physical person”*.

Ministry argued that the agency was obliged not to satisfy Green Alternative’s requirement, since requested information was associated with fulfillment of pledges, which, together with the Contract was “Georgian Global Utilities Limited’s” commercial secret.

Especially interesting was the Ministry’s explanation on documentation on Tbilisi, Rustavi and Mtskheta water quality in the moment of sale to Green Alternative. Ministry representative said that this information is provided in one of the attachments, which, as part of the Contract, is also the Company’s commercial secret.

⁴⁶ The case was considered by Nana Daraselia, judge of Board of administrative cases of Tbilisi city court

⁴⁷ Besik Koberidze

It should be noted that Ministry of Economy and Sustainable Development was basing his reluctance on incomplete quoting of the Contract clause 14.1 and, respectively, was making speculative conclusions. The Ministry was concealing the fact, that the Contract contains a stipulation, providing that “both sides are authorized to make statements on “shares” purchase or any other related issue when demanded by: 14.2.1 the law of appropriate jurisdiction; 14.2.2 stock exchange, regulatory or governmental body, tax agency (also local self-government) or a court decision, which shall be binding for both sides irrespective of its location or whether this requirement has force of the law.”

Green Alternative tried to explain to the judge, that besides that the clause itself is unlawful – as it provides for classification of any information related to “shares” purchase (i.e. not only specific commercial secret but any public information) – it cannot be considered as a decision of administrative body on classification of compliance reports. As provided in the General Administrative Code of Georgia, when submitting particular information, a person shall indicate whether it constitutes commercial secret. A public agency shall within 10 days decide to classify public information (categorize or not the information as commercial secret); i.e. a public agency is authorized to categorize the information only after its submission to the Agency. It is impermissible to classify information before it is created and irrespective of its contents. This contradicts to the regulations set in the General Administrative Code of Georgia. Accordingly, 14 May 2008 Contract by no means could contain a public agency decision on classification of the documents (reports), crated after this date.

As for Clause 12.4 of 22 December 2009 agreement, it refers to confidentiality of the information therein and cannot be considered as a decision on classification of any other document.

Most controversial in the position of Ministry of Economy and Sustainable Development was the fact that a public agency was stubbornly arguing that the contract is the Company’s commercial secret forgetting that it was published on public registry National Agency web-page. Besides, on 10 December 2010 Georgian and English versions of the Contract and the attachments thereto (including the attachment on Tbilisi, Mtskheta and Rustavi water quality in the moment of sale) was put on the same web-page and this time it was presented by an authorized person of the Company;⁴⁸ Green Alternative submitted this document to the court, as additional proof.

From the viewpoint of inconsistency, city court was not far behind the Ministry and even surpassed it when passing the decision⁴⁹ on allowing Green Alternative’s claim partly. In particular the court decided that the information on Tbilisi, Rustavi and Mtskheta water quality should be handed over to Green Alternative since this is environmental information, which, in compliance with the General Administrative Code and the Aarhus Convention shall be publicly accessible. At the same time similar in content documents, submitted by the Company to Ministry of Economy and Sustainable Development (monthly reports on Tbilisi, Rustavi and Mtskheta water quality), are the Company’s commercial secret. Furthermore, the court admitted that Ministry of Economy and Sustainable Development, when signing the Contract on 14 May 2008, already agreed to that all submitted documents, and those to be submitted in future shall be commercial secret of the company. Respectively, information/reports on implementation of arrangements under the Contract shall not be publicly accessible.

⁴⁸ When the text of the Contract first appeared on public registry web-page, the Company claimed that it was due to its staff’s negligence.

⁴⁹ Decision of the Board for administrative cases of Tbilisi city court No. 3/4261-10 of 11 February 2010, judge Nana Daraselia.

Absurdity of court decision was in that it ordered Ministry of Economy and Sustainable Development to hand over the documents, which were available at public registry web-page, and which Green Alternative itself presented to the court as additional proof (!).

The court also denied Green Alternative's demand to receive copies of documents, supporting the payment by "Georgian Global Utilities Limited" of noncompliance fines and additionally accrued payment liabilities; the court explained its decision by that the documents represent the Company's financial documentation. During the trials Green Alternative attempted to explain to the judge that both, sum of the fine and of additionally accrued payment liabilities were open to society and the demanded document would only prove the fact of Company's conscientiousness. As mentioned above the judge found this explanation not convincing either.

3.2.3 COURT OF APPEAL

On 10 March 2011 Green alternative appealed the city court's decision and asked Court of Appeal to void it and take new decision. Although subject-matter of suit was information on the activities of "Georgian Global Utilities Limited", company representative did not attend the only hearing in court.

At April 19, 2011 sitting of court of appeal the judge listened to the sides attentively. In contrast to other judges, mentioned in this report, Judge Thea Dzimistarashvili did not take extra time "based on the complexity of the issue" and in the end of hearing announced that Green Alternative's appeal was not allowed.

Later, when announcing the court decision in the name of the State of Georgia the judge mentioned that she fully supported city court's decision. Besides, the judge noted that city court rightfully considered water quality documents public information and it satisfied the organization's demand to receive them. *"As for the rest of demanded information, including the information on investments and implemented projects, according to the court, these are not "the factors" influencing such element of the environment as is water. The appellant failed to ground his allegation that the demanded information would influence an element of environment (water)"*⁵⁰.

Even if Green Alternative really failed to prove what particular influence water-supply system rehabilitation works would have over the water quality, it should not have been difficult to see the link between these two circumstances; herewith, we would like to assure the reader that Green Alternative explained in details to all the judges involved, that the demanded information referred to the new owner's activities to improve water supply, to reduce water losses, to improve water quality, to eliminate sewage runoff into Mtkvari River etc. in other words to Green Alternative demanded information on the activities, which, if implemented, would decrease harm to environment and human health.

3.2.4 SUPREME COURT DOES NOT DISTURB THE TRADITION

In June 2011 Green Alternative brought the case to Supreme Court. Green Alternative hoped that Supreme Court would find it gross violation, when one of two documents of similar contents is considered environmental information, and the other one – commercial secret.

Regrettably, this expectation of Green Alternative proved to be vein. On 12 September 2011 Supreme Court passed traditional decision⁵¹: Green Alternative's appeal was not allowed and Tbilisi Court of Appeal decision of 19 April 2011 was upheld.

⁵⁰ 19 April 2011 decision on case No.3b/571-11 of Board of Administrative cases of Tbilisi Court of appeal

⁵¹ Chamber of Administrative cases in the following composition: Levan Murusidze (Chairman, speaker), Maya Vachadze, Paata Silagadze.

According to Supreme Court decision Green Alternative’s appeal was not important for court development or forming uniform court practice; Court of Appeal decision did not differ from Supreme Court’s previous decisions on similar cases and no significant procedural violations could be detected during the trial.

3.2.5 THE TBILISI GOVERNMENT GIVES EXPLANATIONS ONLY TO COURT

As was mentioned above article 11.6.4 provides that the new owner of Tbilisi, Rustavi and Mtskheta water supply systems shall present implementation reports to Ministry of Economy and Sustainable development every six months. With this in mind, in August 2010 Green Alternative, alongside with applying for information to Ministry of Economy and Sustainable development, required similar information⁵², only with regard to Tbilisi water supply, from Tbilisi Government.

Tbilisi Government redirected the letter to Property Management Agency, a LPPL (Legal Person of Public Law) with Tbilisi Mayor’s office. It should be noted that the issue was out of the Agency’s competence⁵³ and, appropriately, the Agency was not too eager to reply to this inquiry. Hence, on 15 October 2010 Green Alternative filed the suit with Tbilisi City Court.

Green Alternative heard the explanation on Tbilisi Government’s reluctance to submit the information only during the trials⁵⁴ at the City Court. In particular, the Tbilisi Government, likewise Ministry of Economy and Sustainable Development, argued that the compliance report was classified in accordance with one of the clauses of the Agreement⁵⁵. *“As it stands today, the required information is part of the Agreement, which is considered commercial secret and which enjoys the same with basic Contract fate and legal status. Any information, related to the text of the Agreement, which is considered a commercial secret, shall be also commercial secret. The plaintiff demands the information on implementation of the Contract, which enjoys restricted legal regime. Submission of this information would entail disclosure of the Agreement and attachments thereto, which is impermissible without written consent of all the sides.”* - the Tbilisi Government explanatory note to the City Court goes.

As mentioned above, basic text of the Contract, secrecy of which was so jealously guarded by Ministry of Economy and Sustainable development and the Tbilisi Government had already been put on Public Registry web-page by then. The Tbilisi Government argued during the trials that it happened through Public Registry’s negligence and, hence, the document remained the classified information. This argument of the Tbilisi Government slightly “slackened” when (on 10 December 2010, during trials) Georgian and English texts of the Contract were put on Public Registry web-page, this time by authorized staff representative of the Agency. After this the Tbilisi Government representative claimed that they had not received written consent of the Company and for that reason the document remained commercial secret.

We will not exhaust the reader with details to mention only one thing – Green Alternative’s lawsuit was only partly satisfied in City Court. In particular the Tbilisi Government was ordered to hand over to Green Alternative the following information:

- If the contract contains the buyer’s obligations with regard to human health and security
- If the buyer’s liabilities with regard to elimination of sewerage runoff into Mtkvari River are met; how does it appear;

⁵² See chapter 3.2.1

⁵³ Authority of the Agency is regulated by the Tbilisi Government Resolution No.08.32-412 of 30 March 2010 “On creation and approval of the Statute of Property Management Agency – a LPPL with Tbilisi Mayor’s Office. According to this Resolution the Agency is not authorized to monitor privatized enterprises.

⁵⁴ The case was considered by Nino Oniani, a judge of the Board of Administrative cases of Tbilisi City Court

⁵⁵ Bearing in mind this position it is no clear why the Tbilisi Government should have sent the letter to the Agency

- Presidential and Governmental Decrees regarding the Agreement.

The City Court did not satisfy Green Alternative's other claims. Tamar Oniani, the City Court judge agreed to the consideration that the sides, when signing the Agreement, prematurely considered non-existent compliance reports as commercial secret.

The City Court's this decision was appealed by both sides: Green alternative demanded to annul the part of the decision, by which the organization's claim was not satisfied, and Tbilisi Government demanded that the part, by which submission of information was ordered, be annulled.

The Court of appeal decision deserves special mentioning. Natia Kutateladze, judge of the board of administrative cases did not allow Green Alternative's appeal, and partly satisfied Tbilisi Government's appeal. In particular, the part of Tbilisi City Court's decision, which ordered the information on sewage runoff into Mtkvari River to be handed over to Green Alternative, was reversed. It is interesting, that the judge justified this decision as follows: "The chamber agrees to the City Court conclusion on that the information demanded by the plaintiff, i.e. whether the sales contract provides for the buyer's obligations with regard to human health and security, and if so to indicate specific obligations, and whether and how the pledges on eliminating sewage runoff into Mtkvari River are met – is the information on water quality and, respectively environmental information, which shall not be classified. The information demanded by the plaintiff is open public information and hence the chamber thinks that in this part the appealed decision should be upheld."

Green Alternative appealed this controversial decision with the Supreme Court. It should be mentioned that Tbilisi Government also appealed the part of decision, which ordered to submit the information on the Contract provisions with regard to the buyer's human health and security liabilities. Supreme Court has not yet considered either of these appeals. Green Alternative will inform the reader on the results of the dispute in its follow-up reports, and the Supreme Court decision will be put on the organization web-page⁵⁶ immediately on passing.

As a result of the lawsuit, initiated in October last year Tbilisi Mayor's Office has, so far passed to Green Alternative:

1. A copy of Tbilisi Mayor's order No 310 of 13 May 2008, by which he authorizes his deputy to sign the Agreement with "Multiplex Energy Limited". Initially the representative of Tbilisi Government argued that this Order was related to the contract and appropriately, was the company's commercial secret equally as any other, related to the contract information (though the order was passed before signing the Contract?!)
2. Laboratory test results, held at Samgori and Grmagele cleaning plants, as well as in Aragvi River gorge from May 2010 to October 2010 (i.e.6 months) - these results, as well as the data provided by Ministry of Economy and Sustainable Development say nothing about compliance with "WHO technical regulations";
3. Sewage runoff indices into Mtkvari River – short document, according to which the runoff from May 2010 to November 2010 reduced from 5600 L/sec to 5490 L/sec i.e. by 1.96%.

⁵⁶ www.greenalt.org

CHAPTER 4. GNERC FACING THE DILEMMA: THE LAW OR COMPANY INTERESTS?

In November 2010 media spread information that Georgian National Energy and Water Supply Regulatory Commission (GNERC) amended its resolution⁵⁷ “On water tariffs” and water tariffs were increased for the clients of “Georgian Water and Power” (i.e. Tbilisi, Rustavi and Mtskheta population) and “United Water Supply Company of Georgia”.

Green Alternative requested from GNERC President a copy of feasibility study on new tariffs, set by “Georgian Water and Power”, as well as copies of all public documents attached to the application for approval of new tariffs. This way Green Alternative hoped to receive the information on rehabilitation and environmental activities and the investments. There were several circumstances encouraging this hope:⁵⁸

1. One of the functions of independent regulatory agency is to provide population with public information;
2. Independent regulatory agency is obliged to hold public discussion on setting, changing or cancelling the tariffs prior to taking the decision in this regard. This is a compulsory procedure, without which the decision shall be void.
3. Methodology for establishing tariffs on water supply provides for taking into account the interests of both, the supplier and consumers. The following are the grounds for establishment of tariffs: (a) Reliable supply of customer with drinking water which meets the quality of technical requirements and its discharge; (b) Total recovery of expenses connected with the operation of water supply system, supply of drinking water, its distribution, passing-discharge and treatment of domestic waste water, as well as expenses related with protection of the environment in this sector; (c) Taking into consideration fair return necessary for reliable functioning of water supply enterprises during the current and long-term periods.

Keeping in mind the above mentioned, Green Alternative should have guaranteed unimpeded receipt of demanded information. Instead, the organization received the letter signed by GNERC office executive director informing that full package of “Georgian Water and Power” tariff statement, at the Company’s demand, was considered commercial secret. This proves that GNERC violated the law when taking the decision. It is impossible to arrange public discussion if the documents, if they are not publicly available, not to mention hearing the comments to them. Unfortunately Green Alternative learned about this violation too late, i.e. on expiration of the appeal. At the same time this would add nothing to accumulate information since Green Alternative had already brought similar action against Georgian Government, Ministry of Economy and Sustainable development and Tbilisi Government.

Though Green Alternative had not appealed GNERC’s this particular Resolution, the organization still tried to find out how often GNERC resorted to such methods. Unfortunately detected violations surpassed all expectations. In particular:

1. Overall GNERC decisions (legal acts) to initiate administrative proceedings are never published;
2. All the statements on “public proceedings” – irrespective of the subject of proceedings (whether electricity tariffs, water tariffs, private suits or issuing a license) are circulated in violation of the law. Standard notifications contain the following text: “Georgian National Energy and Water Supply Regulatory Commission has initiated administrative proceedings to discuss Ltd. application. Interested parties are requested to submit their proposals with regard to the above” – what should the interested parties submit is not quite clear. The existing practice of alleged formal observance of law is, in reality, prime example of neglect and humiliation of the population on the part of GNERC;
3. Electronic versions of the documents to be discussed are never attached to the statements. Neither are the links indicated on GNERC web-page;

⁵⁷ Resolution No. 17 of 17 August 2010

⁵⁸ Law of Georgia “On independent Regulatory Agencies” and Resolution No. 18 of 29 August 2008 of Georgian National Energy and Water Supply Regulatory Commission “On Approval of water supply tariffs setting methodology”.

4. Nothing is said in these statements about the time of public discussion (oral hearing) and the possibility for the citizens to participate in them.

Currently Green Alternative has brought two actions against GNERC;

1. Green Alternative demands the documents which have been discussed during public administrative proceedings prior to issuing GNERC Resolution⁵⁹ No.17 of 17 August 2010. The case is especially interesting due to several circumstances:

- GNERC is reluctant to provide Green Alternative with appropriate information under the pretext that “Georgian Joint Water Supply Company” demands that full package of tariff statement is classified;
- GNERC failed to present to the court both, the Company demand and the GNERC decision on considering commercial secret the information discussed during public discussions;
- It is not clear what had been discussed in public administrative procedure if the tariff statement was classified; and what was the point of making the statement; why did not they hold closed public discussions, if respective information was fully secret.
- Against this background, it is especially interesting that Kutaisi city Court and the Court of Appeal did not satisfy Green Alternative’s this count. .

The case is currently being considered by the Supreme Court.

2. Green Alternative demands that GNERC Resolution of 26 October 2010 “On increasing water tariffs for “Georgian Joint Water Supply Company” consumers (except for Poti self-governing entity) be cancelled. The decision was taken in violation of the regulations on public administrative proceedings:

- GNERC decision on public administrative proceedings had not been published;
- A vague notification, which was published, goes: “In compliance with “Georgian National Energy and Water Supply Regulatory Commission” Decision No.24/13 of 6 October 2011, public administrative proceedings have been initiated “On the amendments to “Georgian National Energy and Water Supply Regulatory Commission” Resolution No.17 of 17 August 2010 about water tariffs”. In order to be able to issue statutory administrative-legal act – the Commission Resolution, interested parties are requested to present their proposals in this regard before 25 October 2011 at the following address: 26, Chechelashvili St. Kutaisi. It remains unclear in which regard the interested parties were requested to present their proposals;
- The documents under discussion were not published; neither was the notification about considering the document a commercial secret published;
- Information on the time and place of public hearing, as well as the possibility to attend it was not published either.

Considering all the above Green Alternative demands the decision be cancelled. The case is so far being considered by Kutaisi City Court.

More detailed information about Green Alternative’s lawsuits against GNERC will be provided in the follow-up report. All the papers related to the trials will be put on the organization web-page.⁶⁰

⁵⁹ This decision provides for increase of water tariffs for the clients of “Georgian Joint Water Supply Company” (except for Poti Self-governing entity).

⁶⁰ www.greenalt.org

CHAPTER 5. A FEW WORDS ABOUT THE PRACTICE OF THE COMPANY...

In previous chapters we tried to show how public agencies ensure accessibility of information on implemented and/or planned activities aimed at improving water supply and water supply systems. In this chapter the reader will learn about compliance of activities of Rustavi, Mtskheta and Tbilisi water supply Owner Company with the law and best operational practices.

5.1 THE INFORMATION PROVIDED BY THE COMPANY TO ITS CONSUMERS

As has been mentioned above “Georgian Global Utilities Limited” is the owner of “Georgian Water and Power” (former Tbilisi Tskali) “Mtskheta Tskali” (former “Mtskheta Tskali”) and “Rustavi Tskali” (former “Rustavi Tskali”) since May 2008. Only “Georgian Water and Power” out of these three has its own web-page and usually it speaks on behalf of Mtskheta and Rustavi water supply companies too.

“Georgian Water and Power” (GWP) is a leading company on the water supply market of Georgia and South Caucasus. The company provides high quality service to the population of Tbilisi and its neighborhood, as well as to state organizations, industrial and commercial objects” – this is the information that can be easily found in different sources. The company actively spreads this information through different media facilities. Social networks and different forums give alternative information about the quality and reliability of the Company services. For example “I hate Georgian Water and Power” is the most decent title that the groups on this topic choose for themselves in the “facebook”. Consumers are not happy with long-run water off without prior notice and inaccessibility of the Company’s hot line.

The information spread by the Company is very diverse (from water tariffs to appeals to save water), but it does not contain the most interesting information – about water quality. The company only argues that *“Tap water is absolutely safe in Tbilisi. It means that drinking water quality complies in full with the WHO standards. GWP laboratories are operating with uninterrupted cycle. They are located at the Company old headworks in Aragvi gorge and Tbilisi. Central laboratory coordinates and oversees five other laboratories. The laboratories take drinking water samples once per hour.”* Tbilisi population has no choice but to trust their word because, as was mentioned before, papers on water quality are commercial secret of the Company (at the demand of the Company and the consent of public agencies and courts of all instances). It is noteworthy, that Mtskheta and Rustavi population is less lucky because even that much is not known about their water quality.

5.2 THE REGULATIONS AND PRACTICES OF REHABILITATION AND RECONSTRUCTION WORKS IN WATER SUPPLY SYSTEM.

In compliance with “Water supply and consumption regulations” approved by Georgian National Energy and Water Supply Regulatory Commission⁶¹ *“when the planned repair-reconstruction works cause limitation of water supply prior notice on limitation and its duration shall be sent at least 10 days in advance (this information may be spread through different media sources) – If this term is breached the limitation of drinking water supply shall be postponed”*.

“Georgian Water and Power” consumers usually learn about the limitation of drinking water supply, both, planned repair-reconstruction works or breakdown elimination, the same day or, at best, a day before. The Company notifications in mass media and own web-page testify to that. Below are some of “Georgian Water and Power” notifications published on its web-page in September and titled as *“urgent works”*. Out of 23 such notifications, 22 go as follows: ‘Georgian Water and Power is informing that Due to the individual metering

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process carried out in private houses, water supply will be limited to 21:00 pm to following streets...". It is unclear by what criteria individual metering process is urgent work and why 10 days rule is not observed.

Among "urgent works" are notifications on limitation of water supply due to planned works. In contrast to notifications on water meters, these are usually published one or two days in advance. For example:

- 2 September 2010 notification "Georgian Water and Power" informs that in order to improve reliability and stability of Tbilisi water supply "Georgian Water and Power" continues planned technical works. From tomorrow evening the company will be working at Grmagele-Vazisubani water-pipe tunnel. Due to preventive repair water supply will be limited from 3 September 21:00 pm to 4 September 21:00 pm to following streets...
- 20 September 2010 notification "Georgian Water and Power" informs that "Georgian Water and Power" informs that in order to improve reliability and stability of Tbilisi water supply "Georgian Water and Power" continues planned technical works. From tomorrow morning the company will be working at Samgori Filtering Station. Due to preventive repair water supply will be temporarily limited on 21 September from 11.00 a.m. to 22.00 p.m. to following streets...
- On 24 and 26 September the Company spread the following notification "in order to improve reliability and stability of Tbilisi water supply "Georgian Water and Power" continues planned rehabilitation works. The works are held within wide-scale project called "rehabilitation of mainline and central network of Tbilisi water supply and sewerage" .."

5.3 WATER METERS: ENDLESS DISPUTE

Pursuant to 14 May 2008 sales agreement on Tbilisi, Rustavi and Mtskheta water supply systems the buyer, (i.e. "Georgian Global Utilities Limited") shall install collective meters in Tbilisi: accommodation buildings – before May 2012, and in blocks of flats – before May 2015⁶². Besides, the buyer is obliged to install meters for Mtskheta consumers by 2015.⁶³ The company shall meet this obligation within the investments, contemplated by the Contract. i.e. at its own expenses.

There are no pledges of the company with regard to installation of individual meters in the Contract. It only provides, that *"a consumer has the right to install individual water-meter to calculate the cost of consumed water: all these meters should be installed by people designated by the "Company" or the "enterprises". The consumer's expenses shall not exceed market price of the works performed"*.

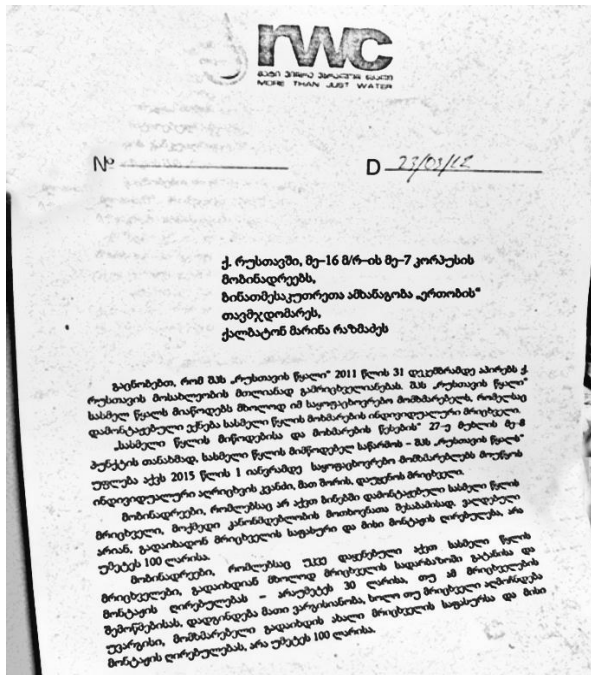
In summer 2011 Rustavi and Tbilisi population quite incidentally learned that the Company had started installing individual water meters without regard to consumers' desire. Cost of the meter installation is 100 GEL payable by the consumer. The Company started installing meters in Rustavi. The fact, unpleasant and onerous by itself, was aggravated by appearance of policemen accompanying "Rustavis Tskali" representatives. The company warned residents that "Rustavis Tskali" would take strong measures in case of resistance or putting obstacles in its way⁶⁴.

Initially the Company argued that they were authorized to install water meters pursuant to GNERC Resolution "On approving the regulations of water supply and water consumption". Later, when wave of discontent swept Tbilisi population too, "Georgian Water and Power" declared that the Company is not to blame, since GNERC had imposed this obligation on the Company.

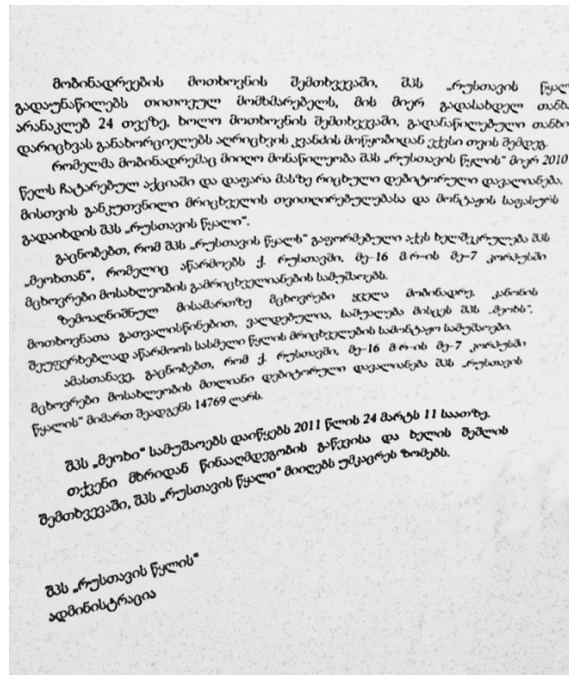
⁶² The Agreement clause 11.6.1, point (i)

⁶³ The Agreement clause 11.6.1, point (g)

⁶⁴ Friends with patrol "Rustavis Tskali" exasperate Rustavi residents. 25 March 2011. Manon Bokuchava. www.presage.tv



photos by Manon Bokuchava



5.3.1 THE GNERC RESOLUTION

It turned out that on 17 August 2010 GNERC had really passed the Resolution on changes and amendments to the Resolution “On approving the regulations of water supply and water consumption”. The population learned about these changes not before taking the decision on them (as provided by the law), but only after the water supply companies started exercising their rights, empowered pursuant to this decision.

The Resolution provided for several changes with regard to: (2) sanctions regarding persistent defaulters (2) calculation of costs for connection of new consumers to the water supply system and (3) the arrangements for streamlining water metering for the consumers with private houses and those with uninterrupted water supply – these are the arrangements empowering water distribution companies operating in Georgia to install individual meters.

Let us remind to the reader that GNERC is a collegial public agency, which takes its decisions in accordance with regulations of public administrative proceedings (the General Administrative Code). And public administrative proceedings provide for informing and including the public in decision-making process. In particular, GNERC is obliged to:

1. Announce the decision about starting administrative proceedings;
2. Announce about making the documents public (indicate what documents are available and where);
3. Set deadline for submitting the comments;
4. Announce the place and date of public (oral) hearing at least 7 days in advance.

GNERC passed its Resolution No.18 of 17 August 2010 in violation of all the above regulations. Even that bizarre announcement, which GNERC usually publishes before starting administrative proceedings, was not put on its web-page. Also, the issue is not in the agenda of the public session, where this particular decision was intended to be made.⁶⁵ All the above mentioned makes it clear, that GNERC took the decision in gross violation of law. This, if brought to court, would serve the basis for annulling the decision. But, as was

⁶⁵ <http://gnerc.org/index.php?m=692&sid=142>

mentioned above, the society learned about this decision only after “Georgian Water and Power” “announced” it to its customers.

It is noteworthy that, according to GNERC decision, the “water supplying companies have the right, before 1 January 2015:

a.a.) to install individual metering junction (including the meter), which should meet technical regulations and standards active in Georgia;

a.b) out of the installation costs:

a.b.a) the customer, living in individual house shall pay the meter cost price and installation cost not more than 70 GEL. At the same time total cost shall not exceed 100 GEL;

a.b.b) customers, living in blocks of flats shall pay the meter cost price and installation cost not more than 30 GEL. At the same time total cost shall not exceed 100 GEL”.

The above empowering of water supply companies entails liabilities of consumers to comply with this decision. At the same time no penalty is foreseen if the company does not exercise the right before 1 January 2015. Hence, the sense of setting deadlines is not quite understood. It should be kept in mind that pursuant to Tbilisi, Rustavi and Mtskheta water supply sales agreement the buyer pledged to install collective meters at its own expenses in Tbilisi and Mtskheta. This new GNERC decision, in fact, releases water supply company from obligations under sales agreement (which, regardless the approach of deadline, the Company did not hurry to comply with) – where individual meters are installed, the installation of collective counters is meaningless.

If one realizes, how profitable this decision of GNERC was for water supply companies (especially for Tbilisi, Mtskheta and Rustavi water supply companies) and how unpleasant (and often burdensome) new financial obligations are for majority of customers, it becomes understood why the decision was hidden from public.

5.4 MTSKHETIS TSKALI (MTSKHETA WATER) – AN ATTEMPT TO SHIFT RESPONSIBILITY UPON MUNICIPALITY

Pursuant to the information on “Georgian Water and Power” web-page “starting from September, 2008, water supply of Mtskheta is being carried out in uninterrupted regime, unlike previous years, when the Mtskheta population had a strict water supply schedule.”⁶⁶ By this statement the company underlines, that Mtskheta water supply improved only after signing 14 May 2008 sales agreement, according to which it became the owner of “Mtskhetatskalkanali” (now “Mtskheta Tskali” (Mtskheta water)).

Letter of 17 April 2008, signed by director of “Mtskhetatskalkanali” and attached to the sales agreement testifies to the contrary. According to it Mtskheta enjoyed uninterrupted water supply before selling the enterprise.

Even more improper were the methods of relieving themselves of responsibility for rehabilitation of sewerage system.

28 April 2011 the Fund of Municipal Development (MDF) announced⁶⁷ its intention to finance “Mtskheta sewerage and cleaning plant rehabilitation” project within the framework of the World Bank “Regional and Municipal Infrastructure Development Project”. According to the announcement, environmental impact assessment of the project had already been drafted in accordance with the World Bank security policy and the

⁶⁶ <http://www.georgianwater.com/main.php?pg=pg&mn1=5&mn2=101>

⁶⁷ <http://24saati.ge/index.php/tenders/view/9337>

Georgian legislation and the interested parties were encouraged to present their comments and participate in public hearing.

According to the documents under discussion, the project envisaged construction of central sewer collectors and wastewater treatment facilities. But, as the project title, and some of its parts indicate it was rehabilitation project. What is more important, the role of Municipality and MDF in Mtskheta sewerage system (private property of “Mtskheta Tskali” Ltd) construction or rehabilitation process was not understood. In order to clarify this issue Green Alternative applied to the project contact person Alexander Dumbadze, Head of MDF Environmental Analysis and Resettlement department with two questions: (1) did the project envisage construction of new object or rehabilitation of the old one and (2) who would own central sewer and wastewater cleaning facilities and who would operate them after completion of the project. The project contact person explained to Green Alternative that the construction of central sewer collectors and wastewater cleaning facilities was planned and that the question of ownership was out of his competence. Though, according to the information at his hand, the newly constructed facility would be the municipality property.

Green Alternative hoped to learn more about it during public hearing of “environmental impact assessment” of the project.

5.4.1 PUBLIC HEARING

Public hearing was held in Mtskheta government building. There was no announcement about the hearing neither on the building, nor inside the building. The security was not informed about the hearing and did not allow in. Those wishing to attend were clearly very few; representatives of Green Alternative and its partner organization – Georgian Association for the Development of Civil Society were waiting in an empty room for half an hour. As soon as the organizers learned who the waiting persons were, local government staff quickly filled the room. Mtskheta governor presided over the meeting.

As it became evident during the hearing, it was planned that “Mtskheta Tskali” Ltd was an accomplice and co-funder of the project. In particular, according to Mtskheta Governor, “Mtskheta Tskali” would be responsible for the construction of sewers, and Mtskheta Municipality – for the construction of cleaning facilities. For the period of construction the cleaning facilities would be the municipality property, and after the completion of construction it would be handed over free to “Mtskheta Tskali” Ltd. The later would be responsible for operation and the Municipality – for the World Bank debt service.

The presentation could not be held due to projection aperture technical problems. Besides, the organizers introduced an additional document during the hearing, where absolutely different project parameters were presented. Green Alternative indicated that “environmental impact assessment report” did not give enough idea to the public as for the essence of the project, to which MDF representatives replied that updated version of the document had already been drafted with all the deficiencies corrected. The hearing of “Environmental impact assessment report” ended there and the organizers promised Green Alternative an opportunity to make comments on the new document. In actual fact Green Alternative received the updated version of the document from MDF and the request to present the comments “in shortest possible time”. (As MDF representatives explained during the hearing, they had to send the document for permissive papers urgently).

5.4.2 “UPDATED” VERSION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORT

Below are the Green Alternative’s comments, sent to the Municipal Development Fund.⁶⁸ They will give the idea about the quality of the report.

⁶⁸ “Environmental impact Assessment” Report is accessible at Aarhus Center web-page:

Familiarization with environmental impact assessment report gives no understanding of the project. The introduction contains very general information about the project: *“Present assessment covers rehabilitation of Mtskheta sewerage system and construction of cleaning facility... It is planned to construct cleaning facility in Mtskheta, in the area adjacent to the confluence of the Mtkvari and Aragvi rivers. Besides, rehabilitation of sewerage system is planned. Since Mtskheta population is 12 000, the project is also designed for this number of consumers”*. This deficiency had not been eliminated in the updated report.

Following 32 pages of the document, for unknown reasons, were dedicated to the review of Georgian Environmental legislation (with, or without reference to the project). At the same time, “list of references used in the process of developing legal and regulatory draft decisions, or review of methodological and technical literature was not presented” i.e. the requirement of Resolution of Minister of Environmental Protection and natural Resources of Georgia “On environmental impact assessment” approved by Order No.8 of 9 March 2009 was violated. Neither this deficiency was eliminated in the updated report.

Next chapter of the document (“Description of the planned work and technical solutions”) also did not contain information about the essence of the project. It was only mentioned there that *“Mtskheta sewerage system rehabilitation” project, was developed by “Municipalpoekti” Ltd. under contract with “Georgian Fund for Municipal Development” in 2010 (Contract GOG/IBRD/C/D029-2010). The project provides for construction of central sewage collectors (collector “a” and “b” – total length 1838 m.) and wastewater cleaning facility”*. Second part of this chapter described, in two paragraphs, current situation with water supply and sewerage systems. In the updated version of the document it was added that *“some of the existing collectors would be rehabilitated. The project does not provide for demolition and removal of elements of the old infrastructure.”* It is not quite understood what “collectors “a” and “b”” means, where the collectors and cleaning facilities would be built and what technical decisions would be applied.

The document presented for public review did not indicate the project implementation site. Only an additional document (technical summary of the project, as the organizers explained) submitted during public hearing gave rough idea about it. There it was indicated that project implementation site would be the territory between Mtskheta new parking and Aragvi River. This information was added to the updated version of the document too.

In the introduction to updated version one could find the information: *“The project will be implemented in Mtskheta, on the territory between new parking and Aragvi Rivers. The nearest resident is distant from the object site at 300 meters, which rules out any kind of negative impact of the above mentioned infrastructure on his/her health”.*

It is noteworthy that the document did not offer alternative sites or justification for selection of this particular site. The updated version offered the following explanation for not considering alternative sites: *“There were very limited options for considering alternative sites, because the project envisages rehabilitation of existing system and, hence, there are no alternatives for pipeline routes or object sites. It was necessary to find a place for the pumping station within a homogeneous urban landscape and here, spatial location of the existing sewerage network and its hydraulic characteristics were decisive factors. From environmental viewpoint there were no arguments to refuse the selected versions. Main technical alternative is related to selection and technological system of cleaning facility. These issues are discussed within separate project and appropriate EIA” – only, it is unknown what “separate project and appropriate EIA” means.*

http://aarhus.ge/uploaded_files/ccf76b623e54124c67d0c868634b201684ca2bc3331f3ecf7af86603c17b1bb9.doc

“Environmental impact assessment” provides half page information about Mtskheta climate and meteorological situation (mainly charts), but nothing in relation to the project. For example, factor of wind for the spread of odors is not considered in relation to the upcoming work. One year old data (September 2010) were presented to demonstrate concentration of contaminants in Aragvi River waters, and “approximate” data were used to show air pollution degree.

As has been mentioned above the data about operation factors of wastewater cleaning facility in the document under discussion and its updated version differ. Technological cycle in fact disappeared from updated version and only meaningless artworks were put instead.

Neither the document under discussion, nor its updated version gives the assessment of the impact of wastewater cleaning facility on local natural and social environment and, respectively no mitigation arrangements were envisaged.

Especially interesting in the chapter, titled “Public awareness and study of public opinion” was, that instead of the information on public awareness and its attitude to the project, it contained the following entry: *“In compliance with article 37 of Georgian Constitution, Georgian citizen enjoys the following inviolable rights:*

- *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.*
- *A person shall have the right to receive complete, objective and timely information as to a state of his/her working and living environment.*

Proceeding from the above the public will receive objective, correct and complete information in comprehensible form (non-technical summary of the project) in order to avoid conflict situations and facilitate the process of cooperation between interested parties.”

5.4.3 THIS TIME THE COMPANY’S EFFORTS DID NOT WORK

Green Alternative sent its comments with regard to “Rehabilitation of Mtskheta sewerage system” project to both, Municipal Development Fund and the World Bank. Besides, the organization expressed its concern with regard to project funding, In particular Green Alternative indicated that “Mtskhetis Tskali” Ltd is a private commercial structure and is obliged to safeguard smooth functioning of Mtskheta water supply and sewerage systems. At present, on the basis of 14 May 2008 Contract between Georgian Government, Ministry of Economy and Sustainable Development of Georgia and Tbilisi government on the one side and “Multiplex Energy Limited” on the other side, “Mtskhetis Tskali” Ltd (former “Mtskhetatskalkanali”) is the property of “Multiplex Energy Limited” (now “Georgian Global Utilities Limited”). In the moment of buying the Company pledged to make \$220 US dollar investments for the development of enterprises. In this regard it is not understood why should the Fund for Municipal Development (the fund created to assist local governments) allot money for construction of commercial company’s property, especially when debt service is placed upon municipality.

Green Alternative sent its comments on the arrangements for public hearing of “Environmental impact assessment” report and project funding to Ministry of Environment and demanded to participate in administrative proceedings for preparing environmental impact assessment final report. With its letter of 22 July 2011, signed by David Ioseliani, Deputy Minister, the Ministry informed Green Alternative that it agreed to the organization’s comments and Green Alternative would participate in administrative proceedings, provided they are initiated at all. It seems that the Fund of Municipal Development changed its mind with regard to engaging in charity in favor of “Mtskhetis Tskali”, because project permit application has never been submitted.

6. CONCLUSIONS AND RECOMMENDATIONS

Our research and monitoring results allow making the key conclusion – Georgian population’s rights to accessibility of information on water supply systems and quality of drinking water are grossly violated as a result of privatization of Tbilisi, Mtskheta and Rustavi water supply systems. President of Georgia, Georgian Government, Ministry of Economy and Sustainable Development of Georgia and Tbilisi Government allowed an inexperienced company, covered with secrecy, to worry only about its commercial interests ignoring accountability to public.

Facts in the report also indicate to that the right of people to participate in decision making on the issues, related to exercising the right to water is totally ignored. It often happens that not only decision making process is closed, but the decision itself is classified.

One thing is striking when analyzing the cases in the report – these violations are not isolated instances. It is a systematic problem of clearly purposeful nature. We would like to remind to the reader that Green Alternative was denied access to information, related to water supply and drinking water quality by both, public agencies and courts of all instances (by decisions taken on behalf of Georgia). It is difficult to judge about concrete reasons, but the roots, probably, should be sought in problems related to building democratic institutions and securing rule of law in the country. Care of public institutions about non-existent competitiveness of a monopolist company at the expense of violation of civil rights could be regarded as an attempt to hide so called “elite” corruption.

We believe that, provided political will for protection of human right to water and generally, for introduction of accountable management style, the government needs to make efforts to improve disgusting situations, described in the report. Among them:

1. Revise existing in public agencies practice of considering public information a commercial secret; abandon the practice of agreeing to any demand for classifying public information;
2. Public agencies must exercise their authority - discuss in each case commercial value of classified document and compare the hazards of issuing or withholding the information;
3. Public agencies must observe established by law rules of publication of classified information; any reasonably separable part of classified document shall be published;
4. Lawfulness of classifying a document, or related to it information by one of its provisions must be reconsidered;
5. There is urgent need in training of civil servants and judges in the basics of environmental issues and environmental law;
6. Government should take urgent steps to implement the requirements of Comment No.15 to the UN Covenant “On Economic, Social and Cultural Rights” to create conditions for realizing human right to water in the country.

Association Green Alternative is a non-governmental, non-commercial organization that was founded in 2000. The mission of Association Green Alternative is to protect the environment, biological and cultural heritage of Georgia through promoting economically sound and socially acceptable alternatives, establishing the principles of environmental and social justice and public involvement in the decision making process.

Since the day of its foundation, the organisation has monitored the activities of the international financial institutions in Georgia; moreover, the organisation works on particular issues, such as: the improvement of environmental policy and instruments; the conservation of biodiversity; energy/climate change and poverty reduction; the protection of environmental, social and economic rights of the local population in the state property privatisation process; the eradication of illegal wood cutting and illegal trade in fauna species; the promotion of the availability of environmental information and full public involvement in the process of making important decisions.

Association Green Alternative cooperates with non-governmental organisations both in Georgia and outside Georgia. In 2001 Green Alternative, along with other local and international non-governmental organisations, founded a network of observers devoted to developing a poverty reduction strategy in Georgia. Since 2002 Green Alternative has been monitoring the Baku-Tbilisi-Ceyhan oil pipeline project implementation, its compliance with the policies and guidelines of the International Finance Corporation and the European Bank for Reconstruction and Development, the project's impact on the local population and the environment. Since 2005 the organisation has been a member of the Monitoring Coalition of the ENP (European Neighborhood Policy) Action Plan. In 2006 Green Alternative founded an independent forest monitoring network. Green Alternative is a member of CEE Bankwatch Network; it closely cooperates with Friends of the Earth International, an international network of environmental organisations, as well as Central and Eastern European Network of Climate Change, International Network for Sustainable Energy, and various international and national organisations working on environmental, social and human rights issues; Green Alternative is a member of the Coalition Transparent Foreign Aid to Georgia, which was founded in 2008. In 2009 Green Alternative established the Georgian Advocacy Network for Environmental and Social Justice.

In 2004 Green Alternative was awarded with the Goldman Environmental Prize for successful activities conducted for environmental protection, social justice and equality related to the Baku-Tbilisi-Ceyhan oil pipeline campaign.

