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This policy brief is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

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Opportunities for public participation in decision-making on spatial and urban development planning in Georgia

On July 20th, 2018 Code on Spatial Planning, Architectural and Construction Activities of Georgia was adopted (hereinafter referred to as the Code), which established new procedures for decision making on spatial and urban planning in Georgia. The Code was indeed adopted in July 2018, however, most of the norms introduced by the Code, including those relating to spatial and urban planning decisions, came into force almost a year later, on June 3rd, 2019¹. The following chapters describe the procedures for spatial and urban planning established by the current legislation of Georgia and the opportunities for public participation in these procedures. At the end of the work, there are given shortcomings identified as a result of the research.

1. Spatial and urban planning decision-making procedures

The Code defines "Spatial Planning" as a means of geographical reflection of the economic, social, cultural, and environmental policies of the public, which should ensure balanced development and physical organization of the space following the general strategy. The Code sets out three levels of spatial planning and, consequently, three possible types of spatial arrangement plans; these are:

1. Spatial Plan of Georgia;
2. Spatial Plan for Autonomous Republic;
3. Trans-municipal/municipal plan.

As for "Urban Planning", the Code explains that this is the process of developing an urban plan for settlements and different types of areas. Urban planning is crucial to create a proper, healthy, and safe environment for human life, activity, and recreation, and it must be based on the principles of sustainable development and the protection of cultural

¹ 2020 Certain provisions of the Code came into force later in 2020, and some have not yet entered into force.

heritage. As in the case of spatial planning, there are three hierarchical levels in urban planning and, consequently, three types of plans; these are:

1. Master plan;
2. Development plan;
3. Detailed development plan.

Thus, according to the Code, there are six hierarchical levels of spatial and urban planning in Georgia. These levels are summarized in the first table below.

Table 1. Hierarchy of Spatial Planning and Urban Development Plans in Georgia

Spatial plans	1. Spatial Plan of Georgia
	2. Spatial Plan for Autonomous Republic
	3. Trans-municipal/municipal plan
Urban development plans	4. Master plan
	5. Development plan
	6. Detailed development plan

One of the tasks of spatial and urban planning is to reconcile different sectoral interests and to overcome possible contradictions between different levels of planning; Therefore, the Code establishes the hierarchical system of spatial and urban planning, as given in the table above, and requires that hierarchically lower plans be compatible with hierarchically higher plans².

In addition to the plans listed above, the Code considers it permissible to develop a settlement agglomeration plan. If such a plan is developed, the procedures for adopting the trans-municipal/municipal plan should be applied to it.

It should be noted that the Code considers spatial and urban planning as integrated plans, which means that these plans combine all the major issues of spatial planning and formulate the main directions of spatial development for the respective area. In addition, the Code considers it permissible to prepare independent plans for certain issues covered by the plans; For example, development of landscape protection, waste management, seismic zoning, and other thematic plans. Such thematic plans, according to the Code, are subject to the requirements set for spatial and urban planning. The Code pays special attention to the need

² It should be noted that in this hierarchical compatibility, the Code also allows for the possibility of exceptions. According to the Code (Part 3 of Article 21), hierarchically subordinate plans may set different requirements, if such a possibility is provided for in the Spatial Plan of Georgia, and/or if the establishment of different requirements does not change its basic essence. In the latter case, the establishment of different requirements must be agreed upon with the Ministry of Regional Development and Infrastructure of Georgia.

to plan the territorial sea (waters) of Georgia and the Special Economic Zone of Georgia and stipulates that plans can be made for the development of this space as well.

In addition to the above thematic plans, the Code allows for the allocation of a planning unit on a historical-cultural and/or economic basis to solve specific tasks. The legislation refers to this as a "Regional Plan"³.

The Code also concerns the issue of the industry-wide plans; These are plans developed and implemented by industry agencies (for example, environmental, cultural heritage, energy development, agricultural development, transport system development, etc.). According to the Code, the "main aspects" of the industry-wide plans "should be included and harmonized in the system of spatial planning and urban development plans of Georgia." These plans should also meet the requirements of spatial and urban planning.

2. Authorities responsible for the development and adoption of spatial and urban plans

The Code defines the authorities responsible for the development and adoption of spatial and urban plans. It is noteworthy that the Code, in some cases, does not separate the authorities responsible for developing the plans. This shortcoming is supplemented by the by-law adopted after the adoption of the Code and its enactment - Resolution # 260 of the Government of Georgia of June 3, 2019, which approved the rule of spatial planning and urban development plans (hereinafter, the rule of elaboration of plans).

Table 2 below shows which authorities are responsible for initiating and adopting the plans. The information gathered in this table is based on the norms given in the rule of elaboration of plans.

Table 2. Authorities and persons responsible for the development and approval of spatial and urban plans

Spatial Arrangement Plans	<p>1. Spatial Plan of Georgia</p> <p>Also, in the case established by the Code:</p> <ul style="list-style-type: none"> • Regional Plan; • Spatial plan of the territorial sea (waters) of Georgia and the Special Economic Zone of Georgia. 	<p>Development: Ministry of Regional Development and Infrastructure of Georgia</p> <p>Approval: Government of Georgia</p>
	<p>2. Spatial Plan for Autonomous Republic</p>	<p>Development: Authority/Ministry with planning authority of the Autonomous Republic</p> <p>Agreement before approval: Government of Georgia</p> <p>Approval: Government of the Autonomous Republic</p>
	<p>3a. Trans-municipal plan</p>	<p>Development: Municipal Executive Authorities, Joint Council</p>

³ Such a plan is referred to as a "Regional Plan" not by the Code, but by a by-law: Resolution #260 of the Government of Georgia of June 3, 2019 on the Rule of Spatial Planning and Urban Development Plans.

		Agreement before approval: Prime Minister of Georgia Approval: Municipal Councils jointly	
	3b. Municipal plan⁴	Development: The executive authority of the municipality Agreement before approval: Ministry of Regional Development and Infrastructure of Georgia; The Prime Minister of Georgia Approval: Municipal Council	
Urban plans	4. Master plan	Urban plan	Special regulation area or zone
	5. Development plan	Development: Municipal Executive Authority; Natural person or legal entity under private law - only in case of a detailed development plan. Agreement before approval: Prime Minister of Georgia - only in case of master plan. Approval: Municipal Council	Development: Ministry of Regional Development and Infrastructure of Georgia Agreement before approval: Prime Minister of Georgia - in case of master plan. Approval: Government of Georgia
	6. Detailed development plan		

As it can be seen from the table, the various authorities are responsible for developing plans and subsequently approving them. In addition, in the case of hierarchically the highest level plan (Spatial Plan of Georgia) and the lowest level plans (Development Plan and Detailed Development Plan), no intermediary agreement process is required. In all other cases, the plans must be agreed with the Prime Minister of Georgia⁵, the Government of Georgia, or the Ministry of Regional Development and Infrastructure of Georgia before approval.

3. Rules for spatial and urban planning decisions

According to the Code and the rule of elaboration of plans, the consideration of the first four hierarchical plans (i.e., spatial plan and master plan) and the decision to adopt them are made independently of two interrelated but administrative proceedings. These stages are:

- Stage I – Review and approval of the plan concept;
- Stage II – Review and approval of the draft plan.

It is not clear from the Code whether the two-stage decision-making rule applies to the lowest hierarchical plans - the development plan and the detailed development plan. The rule of elaboration of plans, in this

⁴ It is known, that most of the municipalities in Georgia still do not have a municipal plan. The Code stipulates that all municipalities of Georgia must develop a municipal plan by January 1st, 2028.

⁵ As a person authorized to legally supervise the activities of municipal authorities as defined by the Local Self-Government Code.

The Local Self-Government Code further clarifies that in case of a trans-municipal plan and a master plan, the municipal council is obliged to apply to the Prime Minister of Georgia for legal advice on the drafts of these plans. The Prime Minister has 15 days to issue a legal opinion, which is of a recommendatory nature.

matter, does not allow exceptions. Thus, it can be assumed that these plans, like other plans, will be decided in two stages.

Only after a positive decision is made in the first stage it is possible to move on to the second stage. Both stages are led by the plan initiator. At each stage of the elaboration of the plans, the initiator of the plan must agree with the relevant authorities mentioned in the second table above on the relevant document of the stage (plan concept and draft plan), before their adoption/approval. The concept is approved by the initiator by an individual administrative-legal act, and the plan - by a normative administrative-legal act.

The Code does not specify the timelines for each stage, but they do define the rules of elaboration of plans; In particular, at both stages, the deadline for consideration and approval of documents (both in the case of the concept and in the case of the draft plan) should not exceed 90 working days (in the case of the concept and detailed plan of the development plan - 40 working days). The Code does not say anything about the possibility of extension, however, the rule of elaboration of plans allows it. In particular, according to the rule of elaboration of plans, "if it is necessary to establish a period essential for the case or other grounds" for administrative proceedings, the relevant administrative authority is authorized to make a reasoned decision to extend the administrative proceedings for not more than 3 months.

Regarding the agreement between the concept and the draft plan, the following should be additionally stated: According to the Code, in case of all the above plans, when submitting the concept and draft plan to the relevant authority, these documents must be accompanied by an expert opinion. Neither the Code nor the rule of elaboration of plans provides an explanation of what the expert opinion is about, who can be an expert, how the expert or expert group works, or what the status of the expert opinion is.

In addition to the above, it is clear from the rule of elaboration of plans that the above two stages are preceded by another formal stage; This is a decision on spatial plan and initiating the urban plan. According to the rule of elaboration of plans, this decision should include such important information as (a) The planning unit survey, (b) The planning unit; (c) Development vision; (d) Development strategy; (e) Feasibility assessment; (f) The composition of the plan concept/project and the plan-schedule for their development; (g) Preparation of Strategic Environmental Assessment report and other related documents (if required by law).

In addition to the above mentioned, it follows from the rule of elaboration of plans that the above two stages are preceded by a preliminary study - a preparatory study of the planning unit - which "involves the collection of basic data, in some cases their analysis." The concept of plans should be developed based on this preliminary research. What information should be included in the study is determined by the rule of elaboration of plans. It should be noted that the research should be conducted following the instructions issued by the authorized administrative authority.

4. Public participation in the decision-making process on plans

The issue of public participation in the decision-making process on plans is superficially addressed in the Code and relatively detailed - in the rule of elaboration of plans. The Code does not provide details of public participation (except for the last two levels of plans, where it discusses small details); It simply stipulates, under the General Administrative Code, what kind of administrative proceedings will be used in the adoption

of each plan - simple or public. It is the rule of administrative proceedings that determines the ability of the public to participate in the decision-making process of administrative authorities.

As it is known and practice shows, the rule of simple administrative proceedings does not ensure effective participation of the public, while the rule of public administrative proceedings, as the name suggests, is aimed at public involvement. Table 3 below shows which administrative procedure is used when decisions are made on spatial and urban plans.

Table 3. Rules of administrative proceedings used in decision-making on plans

Spatial Arrangement Plans	1. Spatial Plan of Georgia	Simple administrative proceeding
	2. Spatial Plan for Autonomous Republic	Rule of the public administrative proceeding
	3. Trans-municipal/municipal plan	Rule of the public administrative proceeding
Urban plans	4. Master plan	Rule of the public administrative proceeding
	5. Development plan	Rule of the public administrative proceeding
	6. Detailed development plan	Rule of the public administrative proceeding

As it can be seen from the table, at all levels of spatial and urban planning , except the highest hierarchical level, the rule of public administrative proceedings is applied. The Code directly states the obligation to apply the rule of public administrative proceedings at these levels. As for the Spatial Plan of Georgia, the Code does not say anything about the rule of administrative proceedings and thus, according to the General Administrative Code, in such a case, the rule of simple administrative proceedings is applied.

It has already been mentioned above that the relatively detailed norms for the application of the rule of public administrative proceedings to ensure public participation include the rule of elaboration of plans. Table 4 below describes the procedures proposed to ensure public participation in the decision-making process on the plans. It should also be noted that the public initiative of the plan is the responsibility of the initiator of the plan.

Table 4. Public participation in the process of spatial planning and decision-making on urban development plans

Type of the plan	<p>Spatial plan for Autonomous Republic</p> <p>Trans-municipal plan</p> <p>Municipal plan</p>
Public participation procedures	<ul style="list-style-type: none"> • The initiator of the plan, within 5 working days after the start of the administrative proceedings regarding the discussion of the plan concept or draft plan, is obliged to publish the information on its official website: (a) Regarding a plan or draft plan, (b) Regarding a plan concept or draft, and (c) Regarding information on the possibility of submitting opinions and remarks. • The initiator of the plan is obliged to conduct a public discussion on both the concept and the draft plan. • The initiator of the plan is obliged to publish the information about the public hearing on its official website, at least 30 working days prior to the public hearing. • The notice of public hearing shall include at least the following information: (a) An authorized administrative authority; (b) Information on the boundaries of the planning unit; (c) A summary of the plan concept or draft project; (d) The time and address of the public hearing; (e) Information on means of access to documentation; (f) Information on attendance at public hearings and on the possibility of submitting opinions and remarks. • The public hearing must be held no later than 40 days after the publication of the public hearing information. • Any person has the right to participate in the public hearing. • The public hearing is led by a person with the relevant authority. • The public hearing process should be reflected in the hearing protocol. • Any person has the right to submit written remarks and opinions on the concept or plan to the initiator, at least 15 working days after the completion of the public hearing. • The initiator is obliged to consider the submitted remarks and opinions and, if there are appropriate grounds, to make amendments to the concept or draft plan.
Type of the plan	<p>Master plan</p> <p>Development plan</p>
Public participation procedures	<ul style="list-style-type: none"> • No later than 3 months prior to the start of the administrative proceedings on the concept, the initiator of the plan shall publish the information on the commencement of the elaboration of the plan. Only after the expiration of this period does the initiator of the plan have the right to initiate administrative proceedings related to the discussion of the plan concept. • The initiator of the plan shall, within 5 working days from the commencement of the administrative proceedings for the consideration of the plan or draft plan, publish the information on its official website: (a) On the concept of the plan or

	<p>draft plan; (b) The concept of the plan or draft plan; (c) On the possibility of submitting opinions and remarks.</p> <ul style="list-style-type: none"> • The initiator of the plan is obliged to conduct a public discussion on both the concept and the draft plan. • The initiator of the plan is obliged to publish the information about the public hearing on its official website, at least 30 working days prior to the public hearing. • The notice of public hearing shall include at least the following information: (a) An authorized administrative authority; (b) information on the boundaries of the planning unit; (c) A summary of the plan concept or draft project; (d) The time and the address of the public hearing; (e) Information on means of access to the documentation; (f) Information on attendance at the public hearings and on the possibility of submitting opinions and remarks. • The public hearing must be held no later than 40 days after the publication of the public hearing information. • Any person has the right to participate in the public hearing. • The public hearing is led by a person with the relevant authority. • The public hearing process should be reflected in the hearing protocol • Any person has the right to submit written remarks and opinions on the concept or plan to the initiator, at least 15 working days after the completion of the public hearing. • The initiator is obliged to consider the submitted remarks and opinions and, if there are appropriate grounds, to make amendments to the concept or draft plan.
<p>Type of the plan</p>	<p>Detailed development plan</p>
<p>Public participation procedures</p>	<ul style="list-style-type: none"> • The initiator/interested person is obliged to place the information on the commencement of elaboration of the plan on the information board, in the vicinity of the planning unit, in a place visible to the public, not later than 2 weeks prior to the start of the administrative proceedings. • The initiator of the plan/interested person is obliged to place an information board regarding the discussion on the plan concept or draft plan in a place visible to the public (on the side of the public road) within 5 working days after the start of the administrative proceedings. • The information board shall contain, at least, the information on the boundaries of the area to be planned, the period for obtaining opinions and assessments from the interested persons, and the estimated timeframe for approving the plan. • Any person has the right to submit written remarks and opinions to the initiator within 10 working days after the information is published on the information board. • The initiator is obliged to consider the submitted remarks and opinions and, if there are appropriate grounds, to make amendments to the concept or draft plan.

5. Summary

Despite the declared goal of the Code to regulate spatial and urban planning on the territory of Georgia, this goal has not been fully achieved. The Code leaves some gaps; Often, the issues that need to be defined by the Code are found in the by-law - in the rule of elaboration of plans, and even there incompletely.

As for the opportunities for public participation, the norms related to this issue are scattered in the Code and the rule of elaboration of plans, and at the same time, they are not properly reflected in any of them.

As it can be seen from the previous chapters, Georgian legislation does not provide the possibility of public participation in the decision-making process on the main, highest hierarchical plan of the country - the spatial plan of Georgia (and, consequently, neither in the decision-making process of the regional plans nor of the territorial sea of Georgia and the spatial plan of the Georgian Special Economic zone).

Georgian legislation establishes certain norms for ensuring public participation at both stages of the decision-making process on other lower hierarchical level plans; However, it generally leaves behind such an important early stage of the decision-making process as the decision on spatial planning and the initiation of the urban planning. The legislation considers this stage as a kind of segregated decision and does not review it as a stage in the decision-making process about plans. Consequently, it does not consider the possibility of public participation in making such a decision (the Code provides only the possibility of informing the public, only in the case of urban development plans and also in an inappropriate form).

Finally, the forms of public participation, proposed by the legislation should be noted. Fair public participation in the decision-making process is impossible without informing the public in effective ways. Forms of information defined by law are inadequate. Publishing information necessary for the public only on the website or otherwise publishing information on the information board only in the vicinity of the planning unit may not be considered as an adequate form of informing the public and ensuring participation.

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