

Procedures for Expropriation of Land in Georgia

Çiğdem Bal and Kakha Sharabidze and Levan Nanobashvili

Experts observe that in Georgia, hydropower projects could potentially generate 5,000 MW of electrical energy and the demand for foreign investment for energy projects keeps increasing. The energy investment opportunities in Georgia are a huge chance for companies willing to expand overseas, and there are currently six (6) Turkish investors in Georgia who are expected to start their operations in 2011.

Current or prospective energy investors in Georgia may, and most probably will, require the right to use certain land for their projects. For this purpose, either the privatization of state-owned land or the expropriation of privately owned land may be necessary, depending on the ownership of the required land plot. In cases of privatization of state-owned land, the government of Georgia is known to be very helpful in transferring required lands to energy investors. On the other hand, if the required land is privately owned, certain procedures for its expropriation apply.

The first step in expropriation is the issuance of an order by the Minister of Economy and Sustainable Development of Georgia ("Minister of Economy"). The existing law in Georgia on Procedures for Forfeiture of Property for Public Needs stipulates that an order for expropriation may be issued by the Minister of Economy based on a request from the relevant state agency. For energy projects, the relevant state agency is the Ministry of Energy. Legislation does not specify the list of documents to be submitted to the Ministry of Energy to request expropriation. However, in general, such documents should include a general description of the property, an explanation of why expropriation is necessary, and documents and information about the project.

The procedure of expropriation includes the following steps;

- Issuance of the order by the Minister of Economy;
- Identification of all properties subject to expropriation;
- Publication of the information on expropriation;
- Delivery of the information on expropriation to the landowners;
- Submission of an application to the court and issuance of a court decision regarding expropriation;
- Expropriation; and
- Court proceedings, if any dispute regarding the

amount of the compensation arises.

Georgian legislation has only one procedure for expropriation. Energy projects (construction of hydropower plants) are not directly excluded from the expropriation laws of Georgia. At the same time, they are not explicitly listed in the law either. In general, expropriation is possible for "projects necessary for the public." However, it is not clear whether hydropower plant projects are regarded as projects necessary for the public. On the other hand, the state is very helpful in transferring state-owned land necessary for projects to investors by the procedure of state property privatization.

Georgian law does not specify what kind of land may be subject to expropriation. However, it is stipulated that for agricultural land, the compensation should cover the harvest. From this, it can be taken that expropriation applies to both industrial and agricultural land.

Relevant regional courts assess the order of the Minister of Economy and determine whether the project is necessary for the public and grant the expropriation entities the right to expropriate the land. The order of the Minister of Economy indicates the general purpose of expropriation. The court then verifies whether this general purpose applies to the particu-

lar land plot. The court also appoints a third party expert to assess the market value of the assets and determines the compensation payable to the relevant land owners according to the expert assessment. The final assessment of the amount calculated by the expert is made by the court. The land owners still have the right to claim that the proposed amount is not reasonable and submit their arguments to the court, after which the final decision will be rendered.

The table below summarizes the responsibilities of different parties in the process of expropriation under Georgian legislation.

Steps	Responsible Party
The order of the Minister of Economy assigning the right of an expropriator	The Minister of Economy
Granting the right to undertake expropriation	The court
Conducting the appraisal (evaluation) of the land and real property	Independent expert appointed by the expropriator

Assignment of the Right to Expropriate

The order of the Minister of Economy is issued according to Article 21 of the Constitution of Georgia. The order defines the land parcel to be expropriated for immediate public needs and the authorized party (state or local self-government body, or public or legal person of private law) having the right of expropriation.

The order of the Minister is not sent to the registering authorities. Owners may still sell or enter into other transactions with regards to their property.

Identification and Evaluation of the Property

After the issuance of the order of the Minister, the party interested in expropriation ensures that an independent auditor, chosen by the expropriator, undertakes the identification and valuation of the property to be expropriated. Furthermore, if other property is transferred to the owner in exchange (replacement) of expropriated property, the value of the property to be expropriated shall still be appraised by an independent auditor. Also, the major property may be linked to one or more minor parts, which are not important due to their small size, form or other conditions. If the minor parts of the property become useless without the major part, expropriation (and the relevant compensation) may also cover the mi-

nor parts of the property. During the evaluation of agricultural land, the value of standing crops is also included and calculated based on the income which the owner might receive during the current economic year. However, if the crops are harvested after the evaluation, their value shall not be included.

As indicated in the above paragraph, the expropriator and the owner may prefer to negotiate an exchange (replacement) of expropriated property for another property. Georgian legislation does not provide for a different procedure for such replacement, thus the only material difference is that the owner receives a different property instead of monetary compensation.

Publishing the Expropriation Information

The information published in national and local newspapers shall contain the scope of the project implementation and a brief description of the territory and property that are subject to expropriation. Georgian legislation does not specifically regulate the procedure for objection by owners following the publication of this information or provide a specific objection period.

In general, any order issued by the Minister of Economy may be appealed in the administrative courts.

Submission of the Application to the Court

Article 5 of the Georgian Law on the Procedures for Forfeiture of Property for Public Needs states that the regional (city) court is authorized to decide the final right of expropriation based the application of the person interested in expropriation. The application for expropriation shall be submitted to the regional (city) court and shall indicate the following:

- Name of the regional (city) court;
- Name and legal address of the applicant;
- Name and address of the applicant's representative;
- The request of the applicant;
- A description of the circumstances the applicant refers to in his/her request;
- Evidence verifying these circumstances; and
- A list of the documents attached to the application.

In addition, the following documents shall be attached to the application; (i) a detailed description of the project that requires the right of expropriation for its implementation, (ii) the order of the Minister of Economy granting the right of expropriation, (iii) a

detailed description of the property that is to be subject to expropriation, and (iv) a document verifying the publication of the information on expropriation.

Informing the Owners

The person interested in expropriation shall ensure that every owner whose property is subject to expropriation is informed of the submission of the application to the court and the date of the court hearing. Georgian legislation does not specify by which means such information should be delivered. Therefore, the expropriator is free to choose by which means such information will be communicated but evidence of the notification must be maintained. In addition, there is no specific deadline for the delivery of such notification.

The requirement of informing the owners does not release the court from its general obligation to inform the parties of the court hearing. However, in any case, the expropriator is obliged by a direct requirement of the law to inform the owners. There are ways to bypass this obligation if it is not possible to determine the actual addresses of the owners. For example, notifications may be delivered to the neighbors, workplace, or deposited with local authorities.

Assessment by the Court

The court, after considering the application, renders a decision on whether to grant the right of expropriation. The decision indicates the party who is granted the right of expropriation, a detailed description of the property to be expropriated and instructions to the landowners for ensuring due compensation. The court decision is immediately executed, in accordance with the rule of execution. In other words, even if the decision is appealed, the execution of the court decision is not suspended due to the appeal. However, upon a claimant's request, the court may issue a special decision and suspend the enforcement of the decision.

Expropriation

After the court renders a decision, the expropriator

makes the landowners an offer for the purchase of the property and conducts negotiations with them on the amount of compensation. In addition, the expropriator provides the landowner with a written document issued by an independent expert verifying the assessment of the value of the property to be expropriated and compensated. The amount of compensation or the value of the property to be exchanged shall not be less than the value of the property to be expropriated.

Court Proceedings on Property Market Value and Compensation

If the expropriator and the property owner fail to come to an agreement regarding the property's market value and the amount of compensation, in accordance with the Civil Procedural Code of Georgia, either party has the right to apply to the same regional court with jurisdiction for the location of the land parcel. In this case, the following documents shall be submitted to court; (i) a detailed description of the property to be expropriated, (ii) documents verifying the existence of a public need for property expropriation (this may be a map indicating that the construction has to take place on that particular land plot), (iii) documents related to the project to be implemented for a public need, and (iv) the decision of the regional (city) court granting the right of expropriation. The court is authorized to assign an independent expert to appraise the property within the defined time period and provide the court with a report on the market value of the property to be expropriated and that of other property offered to the owner as compensation (if compensation shall be undertaken through the transfer of replacement property). On the basis of the independent expert's report and the evidence provided by both parties, the court renders a final decision on the amount of compensation for the property to be expropriated. The expropriator is responsible for reimbursing the costs incurred by both parties including the costs of court proceedings, costs of property appraisal services, and property transfer costs. It is possible to appeal the decision of the court on property market value and compensation.