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Challenges of Implementing the “Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority” in Georgia

Democracy implies not only the existence of elected representatives, but also the existence of active and politically engaged citizens. People's participation in the exercise of government is the basic essence, ground and purpose of democracy.

The present article analyzes the environment and practice of citizens' participation in the implementation of local self-government in Georgia. The article talks about the challenges in Georgia in the mentioned field, their causes and ways to solve them.

Keywords: *Local Self-government, Citizens' Participation, Additional Protocol to the Charter.*

1. Introduction

On May 29, 2019, the Parliament of Georgia ratified the additional protocol (hereinafter – the additional protocol) of the “European Charter of Local Self-Government” on “the right to participate in the affairs of a local authority”.

Approximately 3 years have passed since the ratification of the Additional Protocol. The purpose of the article is to analyze the implementation of the obligations provided for in the Additional Protocol in Georgia. The main attention in the article is given to the assessment of the state of implementation of Article 2 of the Additional Protocol, which defines the list of measures and conditions for the implementation of the right of citizens to participate in the exercise of local self-government.

The evaluations presented in the article are based on the analysis of Georgian legislation and the results of three studies conducted with the author's participation.¹ The findings of the mentioned scientific studies are developed on the basis of the desk research methodology and also the information obtained through interviews with political officials of municipalities, heads of structural units of the City Hall, regional non-governmental organizations and representatives of the population. The legal acts and practices of approximately 20 municipalities of Georgia have been analyzed within the framework of the studies.

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¹ See *Kakhidze I., Toklikishvili G., Chanturia S., Kadagidze M.*, Survey of Citizens' Participation in the Implementation of Local Self-government, CTC, 2020 (in Georgian); *Kakhidze I.*, Project – Development of a Concept for Introducing a Feedback Mechanism at the Level of Local Self-government and Improving the Practice of Administrative Complaints, CTC, 2021 (in Georgian); *Kakhidze I.*, Project – Development of Feedback Management Manual at the Local Self-government Level, CTC, 2022 (in Georgian); *Kakhidze I.*, Project on the Development of the Supporting Procedural Manual for Administrative Complaints Review in Municipalities, CTC, 2022, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).

The article also uses the results of the evaluation of the “Local Self-Government Index” (hereinafter – the index). The index is a tool for assessment of the proactive publication of public information, e-governance and citizen participation in Georgian municipalities. The assessment is conducted every two years and municipalities are ranked on its basis.²

The first part of the article answers the question why citizens’ participation in the exercise of local self-government is important, the second part – describes the standards of the additional protocol on the participation of citizens in the exercise of local self-government and analyzes the compliance of the Georgian legislation and practice of municipalities with Article 2 of the protocol. The last part of the paper summarizes the results of the analysis carried out.

2. Why the Citizens’ Participation is Important?

The Committee of Ministers of the Council of Europe in its recommendation “on Citizen Participation in Local Public Life” notes: citizen participation is “the heart of the idea of democracy”. Citizens who are committed to democratic values, aware of their civic obligations and engaged in political activity are the “lifeblood” for any democratic system.³

“In keeping with the principle of subsidiarity, local authorities have, and must assume, a leading role in promoting the participation of citizens, and that their commitment is critical to the success of any local democratic participation policy.”⁴

The following arguments can be presented to the question on why citizens’ participation is important?:

a) Ensuring “Viable Democracy”

“Democracy is a political system the direct control over which is held by a subject with sovereign power, the people.”⁵ Representative democracy is the simplest and therefore actively used form of popular sovereignty. Nevertheless, the effectiveness of representative democracy has its limits. Representative democracy is facing significant challenges in the modern world, which is manifested in the decrease of trust in the existing political system, the decrease in the electoral activity of citizens and distancing from politics. These trends are not alien to local democracy either.⁶

Participatory democracy, which manifests itself in the direct participation of citizens in deciding public affairs, has a complementary function to representative democracy.⁷ Participatory democracy

² See Local Self-Government Index, <www.lsgindex.org> [22.08.2022].

³ Council of Europe, Committee of Ministers, Recommendation CM/Rec(2018)4 to Member States on the Participation of Citizens in Local Public Life, 21 March 2018, <<https://rm.coe.int/16807954c3>> [22.08.2022].

⁴ Ibid.

⁵ Lutz D., Principles of Constitutional Design, New York, 2006, 97.

⁶ Congress of Local and Regional Democracy, Rapporteur: Karl-Heinz Lambertz, Beyond Elections: The Use of Deliberative Methods in European Municipalities and Regions, Report CG(2022)42-12, 23 March 2022, <<https://www.coe.int>> [22.08.2022].

⁷ Ibid.

gives citizens not only the right to choose government bodies, but also a real opportunity to participate in the public decision-making process and influence it.⁸

Based on this, during the last few decades, there is a clear tendency to use “non-electoral forms” to ensure the strengthening of citizens' participation in political processes. Today, it is not disputed that the functioning of the developed mechanisms of citizens' participation is an important indicator of the existence of a “healthy democracy”.⁹

Participation of citizens in solving public affairs increases a person's sense of belonging to a specific country, region, city or village and develops the desire to share responsibility for its destiny and the will to take active action.¹⁰

b) Ensuring the Legitimacy and Effectiveness of Public Policy

The effectiveness of public authorities decreases when its decisions do not have the support and trust of citizens. Public authorities may make decisions in full compliance with the legislation, spend significant financial resources, time and effort, but the reform implemented by them may fail.

The implementation of successful public reform is related not only to qualified decisions, but also to achieving a positive change in public behavior. Changing behavior requires convincing members of society to change their behavior. For example, wear a seat belt, not to cross the street at a red light, collect plastic waste separately, etc.

Citizens' participation in the public decision-making process creates trust towards the decision, which means sharing responsibility. Thus, citizens' participation ensures high legitimacy of decisions, government accountability and public policy efficiency.¹¹

c) Improving the Quality of Public Services

Another important argument in support of citizens' participation is related to the improvement of the quality of public services.¹² In the theory of public administration, the quality of public service is associated with meeting and exceeding the needs and expectations of users, which is ultimately evaluated by the satisfaction of users.¹³

The user of public service and the evaluator of its quality are those natural and legal persons that use public service.

⁸ See *Kakhidze I.*, Basic Principles of the Constitution of Georgia, Constitutional Law of Georgia, *Gonashvili V., Tevdorashvili G., Kakhiani G, Kakhidze I., Kverenchkhiladze G., Chigladze N.*, Tbilisi, 2020, 26-27 (in Georgian).

⁹ Congress of Local and Regional Democracy, Rapporteur: Karl-Heinz Lambertz, Beyond Elections: The Use of Deliberative Methods in European Municipalities and Regions, Report CG(2022)42-12, 23 March 2022, <<https://www.coe.int>> [22.08.2022].

¹⁰ See Council of Europe, Committee of Ministers, Recommendation CM/Rec (2009)2 to Member States on the Evaluation, Auditing and Monitoring of Participation and Participation Policies at Local and Regional Level, 11 March 2009, <<https://www.coe.int>> [22.08.2022].

¹¹ Ibid.

¹² Ibid.

¹³ See *Goetsch D., Davis S.*, Quality Management for Organizational Excellence: Introduction to Total Quality, Seventh Edition, New York, 2014, 1-19.

Thus, knowing what consumers want and how to meet or exceed their expectations is a necessary condition for providing quality public services. One of the main tools for obtaining the aforementioned knowledge is the active use of forms of citizens' participation in the process of making public decisions.

3. “Standards” of Citizens' Participation Determined by the Additional Protocol

The “European Charter of Local Self-Government” from 1985 (hereinafter – the Charter) mentioned the issue of citizens' participation in the implementation of local self-government only indirectly. This Charter approach was revised in 2009 when the Council of Europe developed an additional protocol.

Article 2 of the additional protocol explains the right to participate in the affairs of the local authority as follows: “The right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities.”¹⁴

In addition, the protocol clearly establishes the direct obligation of the signatory states to “... secure to everyone within their jurisdiction the right to participate in the affairs of a local authority.”¹⁵ In addition, the additional protocol indicates the need to determine the means of exercising the right to participate by law. “The law should facilitate the implementation of the said right by means of appropriate instruments.”¹⁶ The additional protocol assigns the responsibility of ensuring the practical implementation of the right to participation to the central government.

It should be noted that the additional protocol uses the term – “every person” and not a citizen, which includes both stateless persons and foreign citizens who legally reside in a particular municipality. Thus, in addition to the charter, the protocol develops the approach that within the framework of the law and according to the established procedure, all persons may have the right to participate in the resolution of issues within the authority of the local government. However, it should be taken into account that the mentioned approach is not an unconditional and imperative requirement. According to the additional protocol, “Without unfairly discriminating against any person or group, the law may provide particular measures for different circumstances or categories of persons.”¹⁷ This norm requires the maximum inclusiveness of citizen participation forms and regulations, however, at the same time, it does not exclude the existence of a different approach, which is determined by objective circumstances. In particular, the additional protocol considers it permissible that only the citizens of the country benefited from some opportunities for citizens' participation. “In accordance with the constitutional and/or international obligations of the party, the law may, in particular, provide

¹⁴ Article 1, Paragraph 2, Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Utrecht, 16/11/2009, <<https://rm.coe.int/168008482a>> [22.08.2022].

¹⁵ Ibid. Article 1, Paragraph 1.

¹⁶ Ibid. Article 1, Paragraph 3.

¹⁷ Ibid.

for measures specifically limited to voters.”¹⁸ For example, the right to participate in a local referendum may be considered here.

Article 2 of the additional protocol defines the general standards for the realization of the right to participate in local government affairs. “The right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities.”¹⁹ The mentioned norm requires not only legislative strengthening of the right to participate, but also its effective enforcement.

In accordance with the Additional Protocol to the Charter, the signatory states must take the following measures to ensure the effective implementation of the right to participate:

Firstly, local government should be empowered to initiate, strengthen and promote the real use of the right to participate in the activities of local government.²⁰

Secondly, procedures must be established that may include consultation mechanisms, referendums and petitions for participation in local government activities, and in the case of local self-governments with a large population or a large area, mechanisms must be developed to ensure participation as close as possible to them territorially.²¹

Thirdly, the procedures that ensure the availability of official documents of the local government should be strengthened.²²

Fourth, it is necessary to implement measures that strengthen the possibility of participation of social groups traditionally excluded from public processes for objective reasons.²³

Fifth, mechanisms and procedures should be developed that ensure response to complaints and suggestions of the population regarding the functioning of local government and the provision of local public services.²⁴

Finally, the use of information and communication technologies should be encouraged to strengthen and actively exercise the right to participate.²⁵

It should be noted that the Additional Protocol generally does not define mandatory provisions that are subject to direct enforcement. It establishes guiding principles; the protection guarantees and enforcement measures of which must be provided by the signatory states themselves. This approach significantly reduces the degree of imperativeness of the Additional Protocol and leaves the signatory states with a wide discretion of enforcement.²⁶

¹⁸ Ibid.

¹⁹ Ibid. Article 2, Paragraph 1.

²⁰ Article 2, Paragraph 2.I, a, Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Utrecht, 16/11/2009, <<https://rm.coe.int/168008482a>> [22.08.2022].

²¹ Ibid, Article 2, Paragraph 2.II, a.

²² Ibid, Article 2, Paragraph 2.II, b.

²³ Ibid, Article 2, Paragraph 2.II, c.

²⁴ Ibid, Article 2, Paragraph 2.II, d.

²⁵ Ibid, Article 2, Paragraph 2.III.

²⁶ *Boggero G.*, *Constitutional Principles of Local Self-Government in Europe*, Brill, Leiden, 2017, 133.

The following subsections of the article present an analysis of the compliance of the Georgian legislation and its enforcement practices with the six requirements of the additional protocol listed above.

4. Analysis of Compliance of Georgian Normative Acts and Practices of Municipalities with the Requirements of the Additional Protocol

4.1. Equipping Local Government with the Power

The Charter requires the signatory states to equip local self-government with appropriate powers to ensure the effective implementation of the right of citizens to participate. Equipping local self-government with power means defining the titles by law and giving wide discretion for their execution.

Georgia fulfills the requirement of the Additional Protocol by taking into account the relevant provisions in the Organic Law of Georgia – Local Self-Government Code (hereinafter – the Code). A separate 4th Chapter in the Code is devoted to the regulation of citizens’ participation issues.

The Code defines 5 forms of citizens' participation in the process of exercise of local self-government: the general meeting of the settlement; petition; Civilian Advisory Council; participation in the sessions of the municipality assembly and the commission of the municipality assembly; Listening to the reports on the work done by the mayor of the municipality and the member of the municipal assembly.

In addition, according to the Code, municipalities are equipped with the discretionary authority to determine additional forms of citizen participation and to allocate funds from the municipality's budget to support the development of citizen participation mechanisms.²⁷

In accordance with the code, “municipality bodies and officials of municipality bodies are obliged to ensure the participation of citizens in the exercise of local self-government, to create organizational and material-technical conditions for the reception of citizens, meetings with citizens, activities of municipal bodies, including meetings of collegial public institutions, citizen participation and decision-making for the transparency of the process.”²⁸

4.2. Development of Appropriate Procedures and Mechanisms to Ensure Participation

The list of forms of participation specified in the additional protocol – consultation mechanism, petition and referendum – is only an exemplary list of forms of participation. The additional protocol does not provide for the imperative obligation to consider the mentioned forms within the national legislation.

²⁷ Based on the volume of the issue, the main attention in the article is given to the forms of participation – mechanisms defined by the Code.

²⁸ Paragraph 1 of Article 85, Organic Law of Georgia "Local Self-Government Code", Legislative Herald of Georgia, 1958-II, 19/02/2014.

It should be taken into account that compliance with the Additional Protocol cannot be confirmed only by formal recognition of participation mechanisms by law. According to the additional protocol, the forms defined by the law should ensure the actual exercise of the right of citizens to participate.²⁹

Effectiveness of the forms of citizens' participation determined by the Code requires an assessment of the practice of their use, which is analyzed below.

a) General Meeting of the Settlement

By the additional protocol, the signatory states are obliged to develop such forms of participation that ensure maximum territorial inclusiveness. In particular, residents of settlements far away from the administrative center of the municipality should not have to go to the administrative center to exercise their right to participate.

Georgia has one of the largest municipalities in Europe in terms of territory and population. Thus, the existence of territorially accessible forms of participation with the population is a significant challenge. The code ensures formal compliance with the requirement of the additional protocol by determining the general meeting of the settlement.

The general meeting of the settlement is a form of citizens' participation in the self-organization of the population and the exercise of local self-government, the purpose of which is to ensure the involvement of voters registered in the settlement in solving important issues for their own settlement and municipality.

The Code sets quite a high requirement for convening a general meeting of the settlement, in particular, convening a general meeting requires the support of 5% of the registered voters in the settlement, and the presence of 20% of the voters for the convened meeting to be eligible.

In addition, the Code regulates in detail practically all issues related to convening and to the activities of the general meeting of the settlement. Due to the excessive legislative regulation of the activities of the general assembly, it resembles an inflexible bureaucratic mechanism and becomes difficult for the population to use. The analysis of the practice of municipalities indicates that the mentioned regulations are an important hindering factor for the functioning of general meetings.³⁰

Such an approach limits the municipality's ability to adapt the mechanism to local conditions, which does not correspond to the requirement of the additional protocol to ensure the effective use of the right of citizen participation.

Thus, an important part of the norms governing the convening of meetings and issues of activity should be removed from the code and their regulation defined as the discretionary authority of municipalities.

²⁹ Article 2, Paragraph 1, Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Utrecht, 16/11/2009, <<https://rm.coe.int/168008482a>> [22.08.2022].

³⁰ See *Kakhidze I., Toklikishvili G., Chanturia S., Kadagidze M.*, Research on Citizens' Participation in the Implementation of Local Self-government, CTC, 2020, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian); *N. Luhtvadze*, Evaluation of Existing Mechanisms of Citizens' Involvement in the Implementation of Local Self-Government in Georgia, Tbilisi, 2017, 20-21, 32-33 (in Georgian).

b) Petition

The Code envisages the right of voters to apply to the municipality assembly in the form of a petition. In the case of a petition, the Code defines relatively flexible regulations. In particular, the municipality is equipped with the authority to determine the minimum number of voters' signatures necessary for submitting a petition, which leaves possibility to adapt to local conditions.

The Code gives the municipalities the authority to define the procedure for submitting the petition in electronic form, which corresponds to the requirement of the additional protocol on the use of information technologies for the active use of the right to participate.³¹

The possibility of submitting a petition in electronic form has been established in 25 municipalities.³² Some municipalities have reduced the minimum number of voter support required for a petition to 1%. For example, it is 0.5% in Batumi, Zugdidi and Ozurgeti municipalities. In Lagodekhi, at least 10 voters can submit a petition.

It is worth noting that in municipalities where there is a possibility of electronic petition submission and the minimum number of voters determined to submit a petition is reduced, the rate of petitioning is relatively high. In such municipalities, a higher quality and thematic variety of prepared petitions are also recorded.³³

Thus, the analysis of the practice of municipalities indicates the need to expand the good practice of e-petition and reduction of the number of signatures required for petition submission.

c) Mayor's Civil Advisory Council

The mayor's civil advisory council is the mayor's deliberative body. The composition of the council is determined by representatives of businesses, non-governmental organizations and the population, with a total of not less than 10 members.

In accordance with the code, the mayor of the municipality is obliged to submit the budget project for municipality, spatial planning documents of the municipality, proposals on the names of geographical objects of the municipality, as well as drafts of other important administrative-legal acts, along with infrastructural and social projects, to the Civil Advisory Council for consideration.

According to the recommendation of the Congress of Local and Regional Authorities of the Council of Europe, the signatory states of the Charter should develop participation mechanisms, which are characterized by a high degree of involvement and allow dialogue – deliberation between citizens and authorities.³⁴

³¹ See Article 2, Paragraph 2.III, Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Utrecht, 16/11/2009, <<https://rm.coe.int/168008482a>> [22.08.2022].

³² See Local Self-Government Index, <www.lsgindex.org> [22.08.2022].

³³ See *Kakhidze I., Toklikishvili G., Chanturia S., Kadagidze M.*, Research on Citizens' Participation in the Implementation of Local Self-government, CTC, 2020, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).

³⁴ Congress of Local and Regional Democracy, Rapporteur: Karl-Heinz Lambertz, Beyond Elections: The Use of Deliberative Methods in European Municipalities and Regions, Report CG(2022)42-12, 23 March 2022, <<https://www.coe.int>> [22.08.2022].

Unlike consultation, the purpose of dialogue is not only to understand the opinion of citizens. The level of dialogue of the citizen participation implies mutual activity. Dialogue is based on the idea of regular exchange of views and inclusiveness of different interests in public policy and consensus-based political decisions. It serves the purpose of joint preparation of decisions, and not only of understanding the opinion of community representatives.

The Citizen Advisory Council is not based on the idea of ensuring dialogue and is only a consultative form of citizen participation. The leading role in the activities of the Council is assigned to the public authorities.

Accordingly, it is recommended to define such powers by the statute of the Council, which will take into account the joint preparation of initiatives in addition to consultation on certain issues. For example, the Council may have the authority to draft legal acts, develop programs.

However, in most municipalities, the determination of the composition of the council is within the full discretionary authority of the mayor, there are frequent cases when a significant part of the composition of the council is staffed by civil servants of the city hall, which limits the form of participation of the council and reduces trust in it.

The procedure of formation of the council provides a higher degree of transparency and reliability when the representatives of the public are involved in the selection of the members of the council and the composition of the council is also composed mainly of their representatives.

For example, in Batumi, unions of entrepreneurial legal entities and non-governmental organizations have been granted the exclusive right to nominate candidates for council membership, based on the mayor's written appeal. In the case of Tsageri and Gori, the initiative group of the municipality's population (at least 20 citizens in Tsageri, 30 in Gori) and entrepreneurial and non-entrepreneurial legal entities have the right to nominate a candidate for council membership.³⁵

d) Attending Meetings of the Local Assembly and Commission of the Local Assembly, Initiating an Extraordinary Meeting of the Assembly

Sessions of the municipality Assembly (Sakrebulo) and assembly commission are public. Any person has the right to attend the meetings without prior notice or permission. In addition, persons attending the public sessions of the Municipality Assembly and the Commission of the Municipality Assembly have the right to ask questions, make clarifications and statements, and submit information without prior permission, with the approval of the chairman of the session.

For the effective realization of the mentioned right, it is important to correctly define the “consent” of the chairperson of the session in practice, which is defined by the Code. The requirement of consent does not imply an unfettered discretion of the chairperson to refuse the person to express his opinion. The consent of the chairman of the Assembly in the Code should be interpreted as the authority to maintain order and order of speakers at the meeting, which derives from the responsibility of the Chairman of the Assembly as the leader of the meeting. Thus, it is appropriate to have a clearer reference to the scope of the authority of the chairman of the Sakrebulo in the Code.

³⁵ See *Kakhidze I., Toklikishvili G., Chanturia S., Kadagidze M.*, Research on Citizens' Participation in the Implementation of Local Self-government, CTC, 2020, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).

The same can be said about the procedure provided by the rules of municipal assemblies, which determines the necessity of prior application (notification) to the assembly office in case a citizen wishes to express his/her opinion at the meeting. The mentioned record should only have the function of smooth operation of the assembly meetings and protection of organizational order. In practice, such an entry in the rules of procedure should not be interpreted as permission to speak at the meeting. According to the Code, a citizen is entitled to attend the session of the City Assembly without prior permission and to ask questions.

Nevertheless, in some municipalities, the mentioned norms of the code and rules of procedure are interpreted incorrectly.³⁶

Another opportunity to participate in the sessions of the Sakrebulo is the procedure of convening an extraordinary session of the Sakrebulo at the request of at least 1% of the voters. The mentioned norm does not allow the municipality to reduce the minimum number of supporting voters, although it can increase it, which contains the danger of excessive restriction of the right to participate. For example, convening a session of the City Assembly in Batumi needs the support of at least 3% of the voters.

Thus, it is reasonable for the Code to determine only the maximum number of supporting voters and to leave the possibility to the municipality to determine the minimum number of voters necessary for convening a meeting of the Sakrebulo itself, in accordance with local conditions.

e) Accountability towards the Voter

The mayor of the municipality and the member of the municipal assembly are obliged, at least once a year, but no later than November 1, to organize public meetings with the voters and submit a report on the work done, as well as answer questions during the review of the report.

A study of the practices of municipalities indicates that reporting is the weakest mechanism among the existing forms of participation. There are frequent cases when the presentation of the report is attended by the employees of the municipality, from whom the critical comments and questions are less expected in general.³⁷

Based on the results of the 2021 index assessment, the mayor's report submission in the form of a meeting with the voters took place in less than 1/3 of the municipalities, and the submission of report of the members of the Sakrebulo – in 9 municipalities, while there is only one municipality where all the members of the Sakrebulo submitted their report.³⁸

In spite of the above, examples of good practice are recorded in some municipalities. In particular, in some municipalities, the obligation to proactively publish information on the date, place and time of the submission of the mayor's and city council member's report in advance, as well as the text of the report. The report form has also been approved.³⁹ Such an approach creates a unique opportunity of informed engagement for the voter.

³⁶ Ibid.

³⁷ Ibid.

³⁸ See Local Self-Government Index, <www.lsgindex.org> [22.08.2022].

³⁹ See Kakhidze I., Toklikishvili G., Chanturia S., Kadagidze M., Research on Citizens' Participation in the Implementation of Local Self-government, CTC, 2020, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).

In order to ensure the effective involvement of citizens in the process of submitting the report, it is also recommended that voters be given the opportunity to submit questions on issues of interest to them in advance, to which the public official will answer directly during the presentation of the report.

4.3. Availability of Official Documentation

Access to information is the minimum condition for citizens' participation.

According to the Code, along with fulfilling the obligations established by the “General Administrative Code of Georgia” regarding the provision of access to public information, the municipal bodies are obliged to publish important public information related to the activities of the municipality.⁴⁰

The index provides valuable information on the practice of access to public information and proactive use in municipalities. According to the results of the 2021 index assessment, the average rate of proactive publication of public information in municipalities is only 27% on a 100% scale. It should be noted that only 32 municipalities improved the rate of proactive publication of public information compared to the 2019 assessment. Regression was observed in 30 municipalities. The worst practice is recorded in relation to the administrative expenses of the municipality (8%) and non-publication of the information on the legal entities based with shared participation or under the management of the municipalities (12%).⁴¹

The mentioned data, despite the legal compliance with the requirements of the Additional Protocol, indicates clear challenges of its implementation in practice.

4.4. Ensuring Inclusiveness of Citizens' Participation

The Additional Protocol requires the signatory states to take special measures to develop the possibility of participation of those groups of population that are often excluded from the process or are less involved. For example, persons with disabilities (hereinafter – PWD), young people, ethnic minorities, stateless persons and citizens of foreign countries, women, etc.

The consultative and deliberative bodies of the mayor and the assembly represent the main instrument for the involvement of vulnerable social groups in the municipality's activities in the municipalities of Georgia.

The Code defines two regulations to ensure the increase of women's participation in the local self-government activities. In one case, it provides for the obligation to ensure equal participation of men and women in the activities of the general meeting of the settlement, and in the other case, it determines the gender quota for the composition of the Mayor's Civil Advisory Council, in particular,

⁴⁰ See Paragraph 3 of Article 85¹, Organic Law of Georgia “Local Self-Government Code”, Legislative Gazette of Georgia, 1958-II, 19/02/2014.

⁴¹ See *Tushurashvili G., Kakhidze I., Kighuradze K., Naskydashvili T., Toklikishvili G., Turashvili T.*, Local Self-government Index: Main Findings and Recommendations, Tbilisi, 2021, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).

the number of representatives of one gender in the composition of the Mayor's Civil Advisory Council should not be less than 1/3. In case of failure of the said request, the Council loses its authority.

The analysis of the practice of municipalities indicates that local policies on vulnerable social groups are mainly focused on strengthening the civic activism and involvement of PWD and women, and less on other groups, for example, ethnic and religious minorities, IDPs, and youth. There are also rare cases of good practice, for example, in Bolnisi Municipality, the Mayor's Civil Advisory Council provides for a quota of representatives of ethnic minorities.⁴²

In conclusion, it can be said that Georgia's degree of compliance with the requirements of paragraph 2.II of Article 2 of the Additional Protocol is weak. The final responsibility for the complete fulfillment of the obligation stipulated by the additional protocol rests with the state government. Accordingly, it is necessary to create legal regulations and develop mechanisms of state financial incentives of the municipality to ensure support for the involvement of vulnerable social groups in the activities of local self-government.

4.5. Effective Response to the Complaints and Proposals of Population Regarding the Provision of Public Services

The Additional Protocol obliges the signatory states to develop mechanisms to ensure an effective response to citizens' complaints and suggestions regarding the functioning of local authorities and the provision of local public services.⁴³

Within the citizens' complaints and suggestions, the Additional Protocol refers to the statements of citizens presented in the form prescribed by law, including administrative complaints, as well as informal messages incoming into the municipality. For example, a citizen's message left on the social network address of the municipality or the message left on the hotline regarding the query to arrange a park in the neighborhood or a complaint requesting the repair of damaged outdoor lighting. In the theory of public management, the term “feedback from citizens” is used to denote this type of communication with citizens.⁴⁴

In the process of modern public administration, complaints and other forms of feedback from citizens are perceived as an opportunity to “really listen” to the customer and turn the received information into knowledge that ensures the improvement of service quality.⁴⁵ Public authorities should have an answer to the question of what consumers want. The answer to this question gives an indication of what, how and why should be done in order for the user to be satisfied with the public service.

⁴² See *Kakhidze I., Toklikishvili G., Chanturia S., Kadagidze M.*, Research on Citizens' Participation in the Implementation of Local Self-government, CTC, 2020, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).

⁴³ Article 2, Paragraph 2.II, d, Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Utrecht, 16/11/2009, <<https://rm.coe.int/168008482a>> [22.08.2022].

⁴⁴ European Union, Quality of Public Administration a Toolbox for Practitioners, Luxemburg, 2017, 10.

⁴⁵ *Ibid*, 2-21.

Hence, the above-mentioned requirement of the additional protocol should be understood as a requirement for the existence of guarantees for the protection of human rights, as well as the need to develop effective mechanisms for self-control and improvement of the quality of public services.

Existence of the mentioned goals radically changes the policy of the public authorities in relation to administrative complaints. Complaints are an important source of information for local authorities to identify problems and their causes in the provision of public services. Thus, the local government should perceive the complaint not as a problem, but as an opportunity to improve the quality of service. This approach automatically eliminates the “traditional policy” of “zero complaint” and replaces it with an accessible complaint policy.

The development of other feedback mechanisms should focus on the task of improving service quality. Its purpose should be to avoid formal procedures, including administrative appeals and court disputes, and to meet customer requirements as quickly and efficiently as possible.

Below is an analysis of the extent to which the legal and practical environment in municipalities is compatible with the implementation of the mentioned goals.

a) Administrative Appeals

The analysis of the practice of Georgian municipalities shows that the municipalities focus only on the observance of the principle of legality when dealing with an administrative complaint, the administrative complaint is considered in a narrow legal sense, and it is not perceived as a potential tool for improving municipal services.⁴⁶

The information received from the municipalities indicates that in about 20% of the municipalities, no administrative complaints are recorded at all during the year. This practice is explained by the following reasons:⁴⁷

First, organizational culture. Making all decisions in a centralized form by the mayor of the municipality is a kind of “tradition” of local management. Acts of the mayor can only be appealed in court.

Second, legal restrictions on the delegation of authority. Most of the sectoral laws⁴⁸ regulating the powers of local self-government define the authority to issue individual administrative-legal acts in the provision of public services (for example: issuing permits for construction, outdoor advertising and regular passenger transportation) as the direct responsibility of the mayor and do not refer to the possibility of delegation of authority, which limits their appeal to a higher administrative body.

Third, municipal service delivery practices. The provision of municipal services is rarely carried out directly by the municipality's mayor's office. The provision of a significant part of municipal services is provided by legal entities established by the municipality, or the provision of services is carried out on the basis of state procurement. The mentioned approach is part of the good practice of

⁴⁶ *Kakhidze I.*, Project – Development of a Concept for Introducing a Feedback Mechanism at the Level of Local Self-government and Improving the Practice of Administrative Complaints, CTC, 2021, <www.tvitmartveloba.ge> [22.08.2022].

⁴⁷ *Ibid.*

⁴⁸ For example: the Law of Georgia on Licenses and Permits, the Law of Georgia on Windshield (Land Protection) Strip, the Code of Spatial Planning, Architectural and Construction Activities of Georgia.

modern public management, although the administrative legislation of Georgia does not consider the mayor of the municipality as the superior body for appealing administrative-legal acts of legal entities of the municipality. Accordingly, the list of issues that can be appealed to the mayor of the municipality in an administrative manner is objectively reduced.

Not having the opportunity to appeal in an administrative manner, on the one hand, deprives the user of the opportunity to protect his rights through a simple, fast and cheap administrative appeal mechanism and avoid court disputes, and on the other hand, it does not give the mayor of the municipality the right to review the issue once again and correct the mistakes made by the employees of the municipality. At the same time, the possibility of using administrative complaints as a mechanism for service quality improvement is limited.

The solution to the mentioned challenge requires the expansion of the legal possibilities for the delegation of the mayor's authority. For this purpose, changes should be made in the sectoral legislation of Georgia and “executive body of the municipality and the person authorized by it” should be defined as the issuing entity of the individual administrative-legal acts of the municipality hall. It should be noted that such practice already exists in some laws.

In addition, based on the legislative amendments, a legal opportunity should be created to appeal the decision made by the municipality's NNLEs in the process of exercising public authority to the municipality's mayor's office in an administrative manner. For example, a similar practice already exists in relation to administrative fines.⁴⁹

b) Other Mechanisms of the Feedback from Citizens

Development of informal means of feedback is especially important to ensure service quality. When using the aforementioned mechanisms, the municipality is less limited by the “frameworks” of the legislation, which allows more flexibility. For example, social networks, hotline, relevant electronic platforms.

The development of effective feedback mechanisms is possible only in the presence of a systematic approach and sustainable procedures, which are determined by the legal acts of the municipality.

Usually, a citizen initiates communication with the municipality when a problem arises. A citizen should be able to easily contact the municipality (for example, on the municipality's Facebook page, website, hotline, etc.) and solve the problem. It should not always be necessary to initiate bureaucratic administrative proceedings.

For example, if a message left on the municipality's social media address is about damaged outdoor lighting, the person responsible for feedback in the municipality must ensure that the entity responsible for solving the problem is informed and the citizen is provided with an explanation.

The analysis of the practice of municipalities indicates that the response to informal feedback depends only on the personal activity of the employees and it takes the form of spontaneous response to individual cases. Informal feedback management is not based on a procedure regulated by legal

⁴⁹ See Parts 3 and 4 of Article 2093, Code of Administrative Offenses of Georgia, Departments of the Supreme Council of the SSR of Georgia, Annex 12, 31/12/1984.

acts. Effective feedback mechanisms in municipalities are not perceived as a means of improving the quality of services, and the received information is not processed, analyzed and used for the purpose of improving the quality of services.⁵⁰

Municipalities have not approved customer communication standards, which define the rules of behavior of employees when communicating with citizens. For example, the form of greeting and farewell, the manner of behavior of the employee during an offensive address, when answering a question on a social network or hotline, etc. The citizen should be informed about the possibility and procedure of submitting a claim in case of inappropriate treatment by the employee.⁵¹

Therefore, there is a need to develop a quality-oriented system of informal feedback services in municipalities and legal regulation of relevant procedures.

As a summary, it should be noted that the legal and practical environment for managing administrative complaints and other feedback mechanisms in the municipalities of Georgia is significantly below the requirement of the additional protocol.

4.6. Use of Information and Communication Technologies

The additional protocol determines the obligation to use information and communication technologies for the active realization of the right of citizens to participate.⁵² In Georgia, the mentioned issue is mainly within the discretionary authority of municipalities.

Examples of good practice in the use of information technology to promote citizen participation are recorded in municipalities. In particular, some of the municipalities have introduced mechanisms for electronic participation in the meetings of the representative bodies of the municipality, which allows not only to follow the meetings, but also provides the opportunity to ask questions and give feedback.

For example, in Ozurgeti municipality, since 2015, the practice of live broadcasting of assembly meetings has been in effect. Its promotion is facilitated by the SMS service, through which citizens become subscribers to the news of the City Assembly and receive notifications about the scheduled meeting. Citizens have the opportunity to follow the current sessions of the City Assembly, including asking questions in live mode.⁵³

Any citizen can watch the session through the website of the Batumi Municipality Council. Citizens also have the opportunity to ask questions and express their opinion.⁵⁴

⁵⁰ *Kakhidze I.*, Project – Development of Feedback Management Manual at the Local Self-government Level, CTC, 2022, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).

⁵¹ Ibid.

⁵² Article 2, Paragraph 2.III, Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Utrecht, 16/11/2009, <<https://rm.coe.int/168008482a>> [22.08.2022].

⁵³ See *Kakhidze I., Toklikishvili G., Chanturia S., Kadagidze M.*, Research on Citizens' Participation in the Implementation of Local Self-government, CTC, 2020, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).

⁵⁴ Ibid.

It should be noted here that the procedure of electronic participation in the sessions of the City Assembly is not regulated by normative acts in any municipality. The absence of formalized mechanisms and legal obligations raises questions about the sustainability of the mechanism and leaves the City Assembly with wide discretion in its selective use.

Despite the existence of examples of good practice, it is important to further expand the mechanisms of electronic participation, for example, to extend it to the procedure of submitting the reports of the mayor or the member of the city assembly.

Municipalities also use electronic means to provide administrative complaints and the delivery of some municipal services, such as building permits.

Citizens can apply to the municipality and receive services through the official e-mail address of the municipality or using the portals www.my.gov.ge and www.ms.gov.ge.

Despite the above, very few people use the possibility of electronic services in the municipalities of Georgia, which is explained by insufficient awareness of the population and limited access to relevant electronic technologies.⁵⁵

Thus, Georgia mostly fulfills the requirements of the additional protocol, however, it is necessary to increase the intensity of practical use of electronic technologies by the population, which can be achieved through an information campaign and the implementation of relevant municipal programs.

5. Conclusion

The fulfillment of the obligations of the additional protocol requires the central government to determine the procedures for ensuring citizen participation by law and to develop a policy supporting citizen participation, which ensures the practical realization of the right to participate.

Important steps have been taken in recent years to ensure citizens' participation in the implementation of local self-government in Georgia. In 2015, the regulation of issue of the citizen participation by the Code gave a good impetus to the development of citizen participation mechanisms in municipalities and the introduction of new forms. However, despite the mentioned positive changes, significant challenges remain in the direction of the practical implementation of the right to participate.

Municipal authorities have little understanding of the positive value of citizens' participation, therefore, sometimes it is perceived as an artificial “democratic addition” to the governance process rather than an effective management tool. Moreover, in addition to municipal authorities, the local population does not clearly see the need for citizens' participation, there is not enough trust in the process of citizens' participation, and the level of civic activity is low. Forms of citizen participation sometimes exist only because they are required by law.⁵⁶

⁵⁵ *Kakhidze I.*, Project – Development of a Concept for Introducing a Feedback Mechanism at the Level of Local Self-government and Improving the Practice of Administrative Complaints, CTC, 2021, <www.tvitmartveloba.ge> [22.08.2022].

⁵⁶ *Ibid.*

Trust towards citizen participation cannot increase and civil initiative will not develop if the population does not have faith that their activism brings real results. This conclusion coincides with the position of the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe in the 2018 report on Georgia.⁵⁷

Bibliography:

1. European Union, *Quality of Public Administration a Toolbox for Practitioners*, Luxemburg, 2017, 10.
2. Council of Europe, *Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority*, Utrecht, 16/11/2009, <<https://rm.coe.int/168008482a>> [22.08.2022].
3. Council of Europe, *Explanatory Report to the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority*, Utrecht, 16/11/2009, <<https://rm.coe.int/16800d3838>> [22.08.2022].
4. Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2018)4 to Member States on the Participation of Citizens in Local Public Life*, 21 March 2018, <<https://rm.coe.int/16807954c3>> [22.08.2022].
5. Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2009)2 to Member States on the Evaluation, Auditing and Monitoring of Participation and Participation Policies at Local and Regional Level*, 11 March 2009, <<https://www.coe.int>> [22.08.2022].
6. Congress of Local and Regional Democracy, Rapporteur: Karl-Heinz Lambertz, *Beyond Elections: The Use of Deliberative Methods in European Municipalities and Regions*, Report CG(2022)42-12, 23 March 2022, <<https://www.coe.int>> [22.08.2022].
7. Congress of Local and Regional Authorities, Monitoring Committee, *Local and Regional Democracy in Georgia*, CG35(2018)18, 7 November 2018, <https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016808e551a> [22.08.2022].
8. Organic Law of Georgia “Local Self-Government Code”, *Legislative Herald of Georgia*, 1958-II, 19/02/2014.
9. General Administrative Code of Georgia, *Legislative Herald of Georgia*, 32(39), 15/07/1999.
10. Code of Administrative Offenses of Georgia, *Departments of the Supreme Council of the SSR of Georgia*, Annex 12, 31/12/1984.
11. *Boggero G.*, *Constitutional Principles of Local Self-Government in Europe*, Brill, Leiden, 2017, 133.
12. *Goetsch D., Davis S.*, *Quality Management for Organizational Excellence: Introduction to Total Quality*, 7th ed., New York, 2014, 1-19.
13. *Kakhidze I., Toklikishvili G., Chanturia S., Kadagidze M.*, *Research on Citizens' Participation in the Implementation of Local Self-government*, CTC, 2020, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).
14. *Kakhidze I.*, *Project – Development of a Concept for Introducing a Feedback Mechanism at the Level of Local Self-government and Improving the Practice of Administrative Complaints*, CTC, 2021, <www.tvitmmartveloba.ge> [22.08.2022] (in Georgian).

⁵⁷ Congress of Local and Regional Authorities, Monitoring Committee, *Local and Regional Democracy in Georgia*, CG35(2018)18, 7 November 2018.

15. *Kakhidze I.*, Project – Development of Feedback Management Manual at the Local Self-Government Level, CTC, 2022, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).
16. *Kakhidze I.*, Project on the Development of the Supporting Procedural Manual for Administrative Complaints Review in Municipalities, CTC, 2022, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).
17. *Kakhidze I.*, Basic Principles of the Constitution of Georgia, Constitutional Law of Georgia, *Gonashvili V., Tevdorashvili G., Kakhiani G., Kakhidze I., Kverenchkhiladze G., Chigladze N.*, Tbilisi, 2020, 26-27 (in Georgian).
18. *Lutz D.*, Principles of Constitutional Design, New York, 2006, 97.
19. Local Self-Government Index, <www.lsgindex.org> [22.08.2022].
20. *Tvaltvadze N.*, Evaluation of the Existing Mechanisms of Citizens' Involvement in the Implementation of Local Self-government in Georgia, Tbilisi, 2017, 20-21, 32-33 (in Georgian).
21. *Tushurashvili G., Kakhidze I., Kighuradze K., Naskydashvili T., Toklikishvili G., Turashvili T.*, Local Self-government Index: Main Findings and Recommendations, Tbilisi, 2021, <www.tvitmartveloba.ge> [22.08.2022] (in Georgian).