

10 DECEMBER REPORTS

Analysis

*(For the accounting period
from 2001 through 2009)*

Tbilisi
2010



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1. Introduction

Freedom of information is a very important tool in the hands of the society to ensure the public control. The Georgian legislation, in particular, Chapter III of the General Administrative Code of Georgia specifies terms and procedures for the access to information. The transparency and accountability of the state authority can be ensured when the freedom of information is properly implemented. In this context, it is very important for a public agency to ensure the accessibility to information, to observe the principle of openness and procedures and standards established by the law. Obligation provided in article 49 of the General Administrative Code of Georgia for public agencies to report to President and Parliament of Georgia on the issues concerning the fulfillment of the requirements of freedom of information is an important mechanism of control.

By stipulating the above mentioned obligation, the legislator recognized the need for adequate reporting on the implementation of norms of freedom of information as well as the need for controlling mechanism. Therefore, a necessary condition for the fulfillment of the norm is the submission of reliable, adequate and complete data to the controlling agencies.

The above mentioned obligation, on the one hand, extends to every public agency which shall conduct this type of reporting; on the other hand, however, this obligation implies the task of the controlling bodies to study, on the basis of submitted reports, the situation regarding the observance of the freedom of information recognized by article 41 of the Constitution of Georgia and Chapter III of the General Administrative Code of Georgia.

The Georgian Young Lawyer's Association (GYLA) applied to the President's Administration and the Parliament for the copies of those reports that were submitted by public agencies, pursuant to article 49 of the General Administrative Code of Georgia, for the period between 2000 and 2009¹. The Parliament of Georgia provided the reports for the years 2001, 2002, 2005, 2006, 2007, 2008 and 2009,

¹ Since 2006, at the end of each year, the GYLA has applied to the controlling bodies for the copies of reports submitted by public agencies.

whereas the President's Administration supplied the reports for only last four years (2006, 2007, 2008 and 2009)². Therefore, the information provided in this paper is based on the materials obtained from the controlling bodies.

The GYLA has scrutinized available materials and in this paper provides the analysis of a number of aspects: the reporting on the issues of freedom of information as well as the operation of controlling mechanism, approaches of public agencies and the controlling bodies, existing problems and main tendencies.

The study has revealed that the mechanism of control on the fulfillment of freedom of information has not been properly implemented for years. The review of the reports prepared by public agencies during a nine year period allowed us to single out three key problems in this area:

- Reports are submitted only by a small number of public agencies;
- Reports are not complete and do not meet the requirements established under the law;
- Controlling bodies do not review, analyze and react to the submitted reports.

One of the main problems is also a formal attitude to the mechanism. This approach is unfortunately common not only to public agencies but also the controlling bodies.

Consequently, one cannot get a full picture on whether the freedom of information, as the right recognized by the Constitution, is observed and to what extent it is observed. Therefore, it becomes difficult to

² It is noteworthy that we applied to both agencies with an identical letters of request, however, the President's Administration did not respond to the application dated 3 September 2008 whereas the Parliament informed us that it failed to find the reports for the years 2003 and 2004. The GYLA had the reports for the year 2004, submitted to the controlling bodies and therefore, the data from those reports are reflected in the present analysis. As regards the reports for the year 2003, we are, unfortunately, unable to provide them to interested parties due to the failure of relevant agencies to supply these materials.

develop new approaches for the protection of this right and to undertake actual measures for the improvement of attitudes. The result is that one and the same problem persists from year to year.

2. What should be reflected in 10 December reports

Article 49 of the General Administrative Code of Georgia stipulates a compulsory rule for the submission of 10 December reports and provides the exact list of requirements that should be met by submitted reports.

According to the above said, public agencies shall reflect in 10 December reports and submit them to the controlling bodies the information:

- on the number of requests to provide or modify public information provided to the agency and the number of decisions denying the requests;
- on the number of decisions complying with or denying requests, the names of the public servants rendering those decisions and the decisions of corporate public agencies to close their sessions;
- on the public databases and the collection, processing, storage, and furnishing of personal data by public agencies;
- on the number of violations of this Code by public servants and the imposition of disciplinary penalties upon officials;
- on filing complaints against decisions on denying requests for public information;
- on costs incurred by public entities in relation to processing and furnishing information as well as in relation to complaints, including payments in favour of a party, filed against decisions on denying requests for public information or on closing corporate public agency's sessions.

As one can see, the above list is quite exhaustive and includes all the main issues related to the freedom of information. The listed issues make it clear that a public agency is obliged to include not only statistically processed data in a report but also descriptions of separate issues. It is apparent that the aim pursued by the legislature is to en-

sure the accumulation of complete and exhaustive data regarding the freedom of information in the hands of the controlling bodies. This, in turn, should help picture the general situation in this area. The existing reality, however, does not provide us even with the possibility to present the interested public with exact statistical data point by point, because the reports produced by public agencies (with the exception of a few) do not meet the above mentioned requirements.

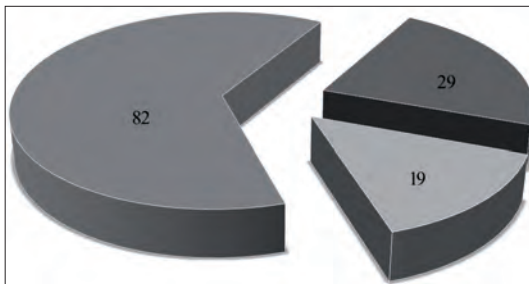
3. Dynamics of submission of 10 December reports and statistical indicators available since the adoption of General Administrative Code of Georgia to date

We will now show the dynamics of the submission of reports to the controlling bodies by years. As it was noted in the Introduction, the study does not cover the data for the year 2003 as the Parliament of Georgia failed to find the reports submitted by public agencies in the abovementioned period.

a) Reports submitted in 2001

In 2001, the total of 130 public agencies submitted the reports in accordance with article 49 of the General Administrative Code of Georgia. During that year; 34,529 applications for information were received by public agencies. Out of presented reports, 19 are structured in such a way that it is impossible to derive accurate data.

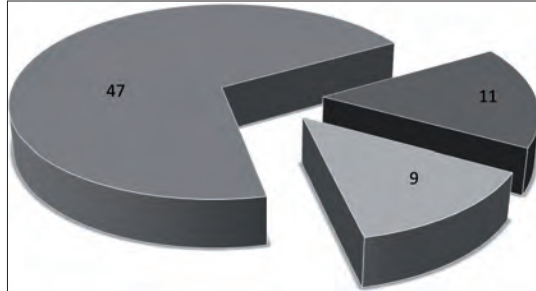
Data on applications to public entities in 2001



34,529 applications were submitted to 82 public agencies;
Applications were not submitted to 29 public agencies; N/A – 19.

b) Reports submitted in 2002

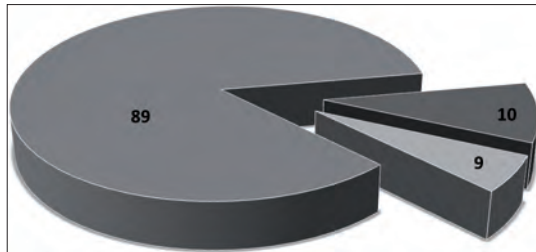
In 2002, the number of reports almost halved to 67 although the applications for information increased to 36,488, as compared to the previous year.

Data on applications to public entities in 2002

36,488 applications were submitted to 47 public agencies;
Applications were not submitted to 11 public agencies; N/A – 9.

c) Reports submitted in 2004

In 2004, the total of 108 public agencies submitted the reports and 23,007 applications for information were received by public agencies.

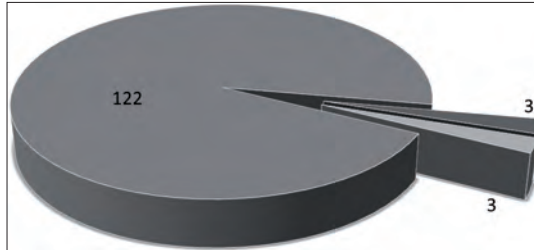
Data on applications to public entities in 2004

23,007 applications were submitted to 89 public agencies;
Applications were not submitted to 10 public agencies; N/A – 9.

d) Reports submitted in 2005

In 2005, the total of 128 public agencies submitted the reports and 68,250 applications for information were received by public agencies.

Data on applications to public entities in 2005

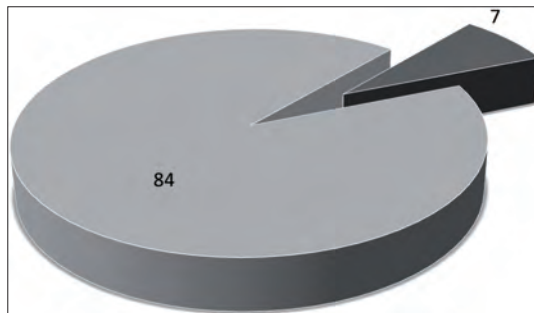


68,250 applications were submitted to 122 public agencies;
Applications were not submitted to 3 public agencies; N/A – 3.

e) Reports submitted in 2006

In 2006, the total of 91 public agencies submitted the reports and 436,307 applications for information were received by public agencies.

Data on applications to public entities in 2006



436,307 applications were submitted to 84 public agencies;
Applications were not submitted to 7 public agencies.

Content of the majority of the reports submitted from 2001 through 2006 is incomplete and only a small number of them allow to detect some trends. This reporting indicator speaks of the malfunctioning of the mechanism and makes impossible to assess it against other indicators. Consequently, the main trend observed over the period

from 2001 through 2006 is the submission of incomplete reports by a small number of public agencies. One important thing, in the accounting period, is the difference between the numbers of reports submitted to the President and to the Parliament of Georgia. This trend has persisted in the following years as well, showing the inconsistency in the numbers of reports submitted to the controlling bodies.

Since 2007, however, the indicator of submitted reports has significantly increased. This enabled us to not only scrutinize the situation with the freedom of information in the country but also identify certain trends and assess the quality of reports.

f) Reports submitted in the period from 2007 through 2009

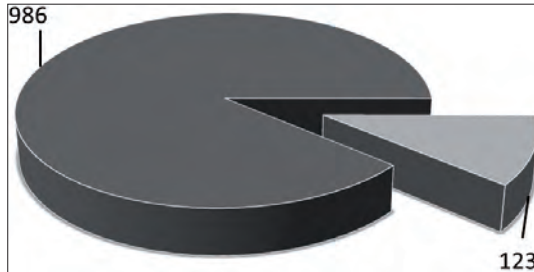
Quantitative data on the submission of reports

To conduct the study we selected several indicators and assessed the data available in the accounting period against the selected indicators. One of such indicators is the data on reports submitted by various public agencies.

In 2007, this obligation was fulfilled by 1,109 public agencies. However, the increase in the number was the result of the fact that schools, as legal entities of public law, performed this obligation. Out of 1,109 reports 986 were submitted by schools whilst the remaining 123 reports were submitted by other public agencies.

Although the number of public agencies having submitted the reports increased in 2007 owing to the fulfillment of the obligation by schools, the reports were still not submitted by even half of Georgia's schools. In particular, 2,462 schools³ operated in Georgia in that period whereas the reports were submitted by only 986 schools.

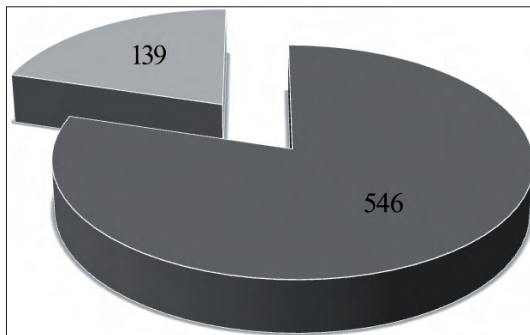
³ This figure does not include musical schools, etc., which are also legal entities of public law and are subject to the requirements of article 49 of the General Administrative Code of Georgia.



Schools – 986; other public agencies – 123.

The year 2008 saw a significant decrease in a total number of submitted reports and this indicator stood at 685. The bulk of these reports accounted for schools again. However, a positive sign is that the number of reports submitted by other public agencies increased, though insignificantly, as compared to the previous year.

546 reports were submitted by schools whilst 139 reports by other public agencies.



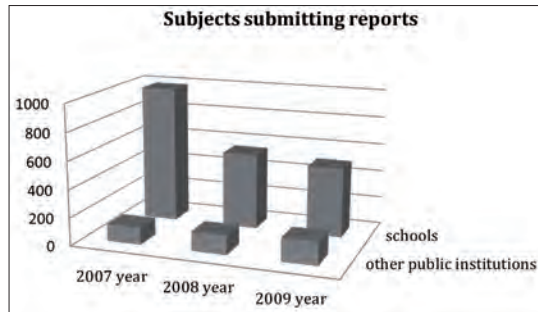
Schools – 546; other public agencies – 139.

In 2009, the general indicator of submitted reports shrank insignificantly as compared to the preceding year and comprised 666. The submission of reports by schools also decreased and stood at 499. However, a significant increase is observed in submitted reports by other public agencies, which has reached 167.

As you may see, the total indicator of submitted reports has shown an annual decrease over the period from 2007 through 2009. Moreover,

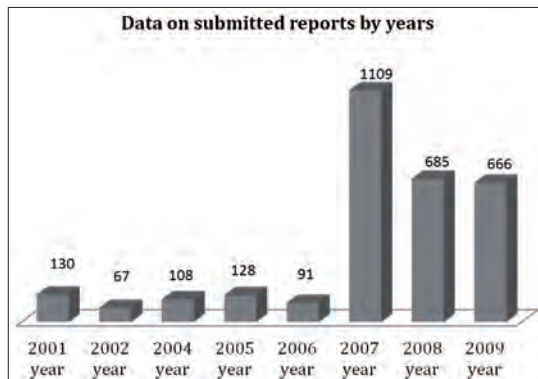
the number of reports from schools in the total indicator significantly decreased whilst against this decrease, the submission of reports by other public agencies increased.

Subjects submitting reports



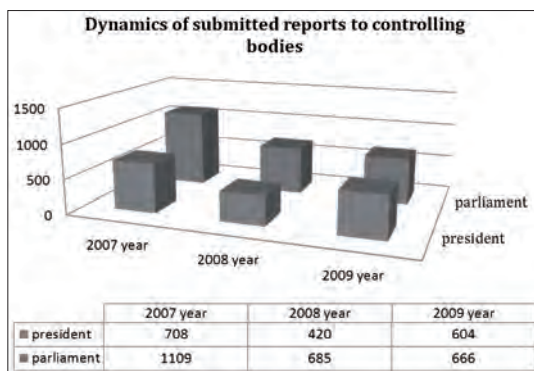
According to the general picture, the indicator of submitted reports from 2001 through 2006 is rather low with the dynamics changing insignificantly. In 2007, the number of submitted reports increased by 1,018. However, this indicator was not maintained over the past two years. As a result in 2008-2009, as compared to the preceding year, the number of public agencies that fulfilled the obligation envisaged by article 49 of the General Administrative Code of Georgia decreased by 400.

Data on submitted reports by years



The discrepancy between the quantities of reports submitted to the President and to the Parliament of Georgia kept on unchanged over this period.

Dynamics of submitted reports to controlling bodies



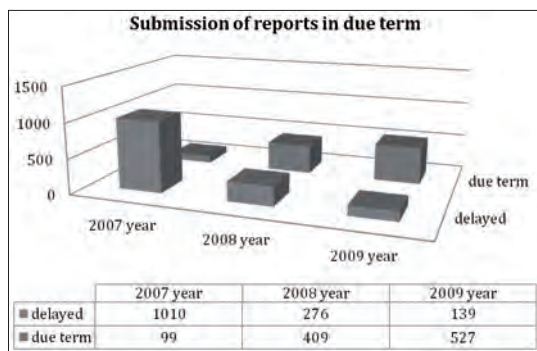
Submission of reports in due term

One of important issues is the submission of reports within the term specified in the law. Although the law obliges public agencies to submit reports on 10 December each year, the majority of reports in 2007 were submitted after the expiration of the set term. A particular attention should be paid to one small detail. The Georgian Young Lawyers' Association sent an application with the request to provide reports for the year 2007 on 29 January 2008 and the majority of reports that were supplied to the GYLA with delays were dated 30 January 2008 and the beginning of February⁴.

The issue of the observation of specified term is less problematic in case of reports submitted in 2008. The indicators of the year 2009 also show a positive trend. However, when making a comparative analysis of this issue one should bear in mind a significant decrease in the overall indicator of submission of reports.

⁴ This fact provides the ground to assume that it was the GYLA's above mentioned application that led to the submission of reports with delays. This, in our view, is a result of the implementation of public control.

Submission of reports in due term



Data provided in the reports and the completeness of the reports

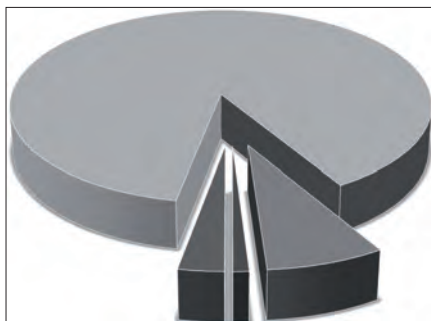
One of the significant and problematic issues is the compliance of the reports with the requirements established by the law. The reports by public agencies shall satisfy the requirements listed in article 49 of the General Administrative Code of Georgia. Consequently, the completeness of the content of the reports should be assessed against these requirements, in particular: does the information provided in a report satisfy each point? Does the data provided in a report objectively reflect an existing situation? How adequate and complete is the data reflected in reports? And so on and so forth.

Out of the reports submitted within the accounting period only a small amount meets the requirements of the law and reflects an actual and full picture. The attitude of public entities submitting the reports is mostly formal. Unfortunately, such cases represent the majority and represent a dominant trend. The result is incomplete reports.

In terms of the completeness of the content, the overall picture is as follows.

In 2008, a complete report was submitted by 30 public agencies. In case of 606 reports the data was incomplete. The reports submitted by 52 public entities contain some additional information apart from incomplete data while seven reports do not meet the requirements of the law at all.

Content of the reports, 2008

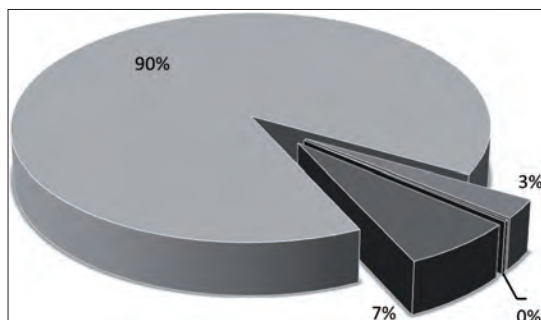


Incomplete – red; complete – blue; absolutely incompatible – violet; incomplete with additional information – green.

The situation in this area did not improve in 2009 either and the qualitative result was almost identical in percentage terms. However, an insignificant increase is observed in the indicator of complete reports.

In 2009, the majority of submitted reports – 464, partially meet the requirements of the law and only few (in the majority of cases, only one) fully meet the requirements.

Content of the reports



Incomplete – 90%, 600; complete – 7%, 46; absolutely incompatible – 0%, 2; incomplete with additional information – 3%, 18.

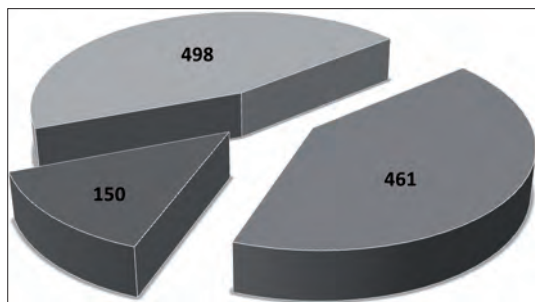
Indicator of applications for information to public agencies by interested persons

One of important and interesting issues for the assessment is to find out how actively the society applies for information and how frequently the mechanism established by the law for the request of information is used. However, the reports under consideration make it difficult to obtain this information. In particular, the submitted reports are quite varied and it is often difficult to figure out the number of applications to a public agency. The most problematic in this regard are the reports submitted by schools. The review of school reports makes it clear that this public entity itself fails to distinguish the applications for information from other applications. Such facts, naturally, give rise to doubts about the accuracy and authenticity of this data.

The failure of public agencies to submit reports, the incompleteness and vagueness of reports limit the possibility to compare derived statistical data with the actual one. Taking this into account, we still tried to arrive at a real indicator.

The study of 2007 reports revealed that only some part of reports contain the data on applications for information. As a result, the applications submitted to public agencies for information makes up 241,139 in 2007. 150 reports allow to assume that these public agencies did not receive any application for the information whereas 498 reports make it impossible to identify the number of received applications for information.

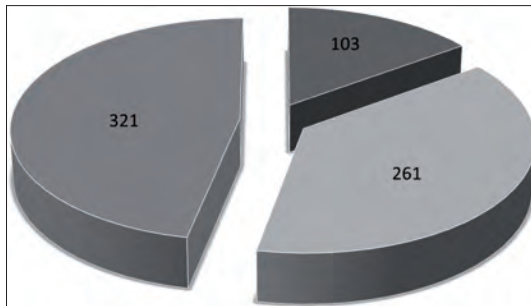
Data on the applications for information to public entities – 2007



Unknown whether applications were submitted or not in case of 498 public agencies; 241,139 applications submitted to 461 public agencies; applications were not submitted to 150 public agencies.

It also proved to be impossible to identify the accurate number of applications for information submitted to public agencies from the data given in the reports of 2008. The reason again is the large amount of vague reports. 261 reports make it clear that during the year, the public information was requested in 213,865 cases. The public information was not requested from 103 public agencies; and it is impossible to identify the amount of applications in case of 321 reports.

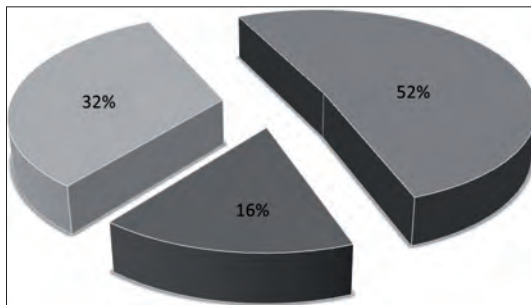
Data on the applications for Information to public entities – 2008



Unknown whether applications were submitted or not in case of 321 public agencies; 213,865 applications submitted to 261 public agencies; applications were not submitted to 103 public agencies.

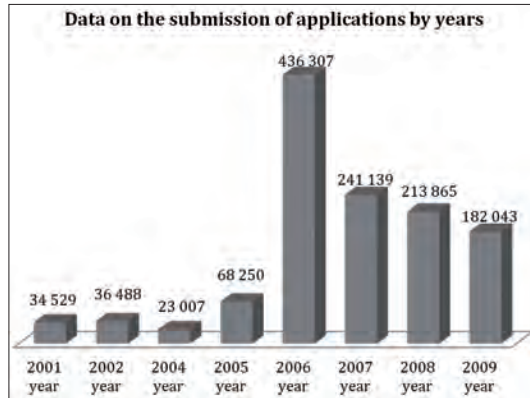
In 2009, the number of the reports which indicate the number of submitted applications increased, however, the number of written applications with the request to provide the information decreased as compared to the previous year.

Data on the applications for information to public entities – 2009



Unknown whether applications were submitted or not in case of 215 public agencies (32%); 182,043 applications submitted to 343 public agencies (52%); applications were not submitted to 108 public agencies (16%).

Data on the submission of applications by years



According to overall results, the number of applications for public information submitted by interested persons makes up 1,235,628. This indicator is based on the official documentation obtained from the controlling bodies but it does not reflect the real picture of the situation in this area.

4. Compliance of reports with the requirements of the law

The study of the reports submitted by public agencies shows that the mechanism of reporting does not serve the aims of the law and fails to ensure the provision of complete information to the controlling bodies. However, these reports allow to identify tendencies, main attitudes of public agencies and, at the same time, reveal a very low degree of knowledge in the issues concerning the freedom of information among public agencies of Georgia.

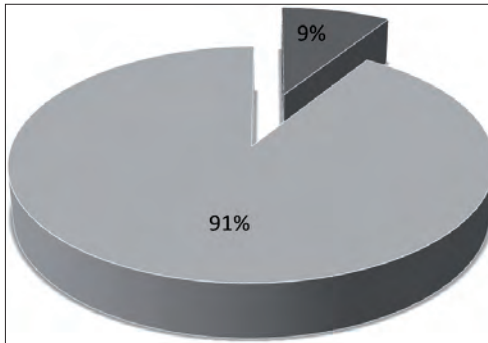
Unfortunately, this problem is a complex one and the incompleteness of the content of reports is one of aspects of this complex problem. There is a significant difference between those inconsistencies which are seen in reports submitted by schools, on the one hand, and other public agencies, on the other. Therefore, we will dwell on these issues separately.

a) Reporting of various public agencies to controlling bodies

In terms of content, the reports for the years 2007-2009 were scrutinized because this is the period when the indicator of the submission of reports significantly increased.

According to 2007 data, out of 123 public agencies 11 submitted complete reports. The majority of submitted reports – 112, are considered incomplete as they only partially meet the requirements of article 49.

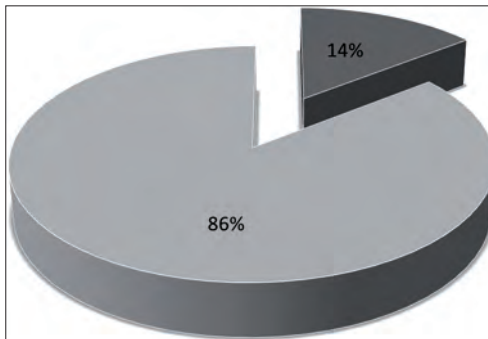
Content of reports, 2007



Incomplete – 112 (91%); complete – 11 (9%).

The analysis of the reports in 2008 show that out of submitted reports 20 are complete whilst the 119 reports do not meet the requirements provided in article 49.

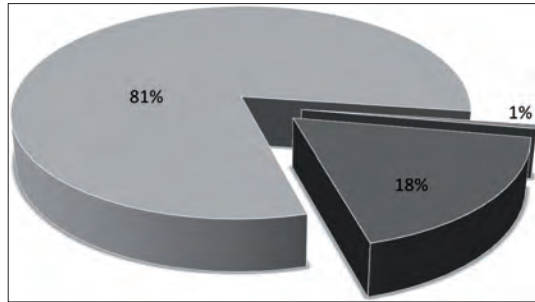
Content of reports, 2008



Incomplete – 119 (86%); complete – 20 (14%).

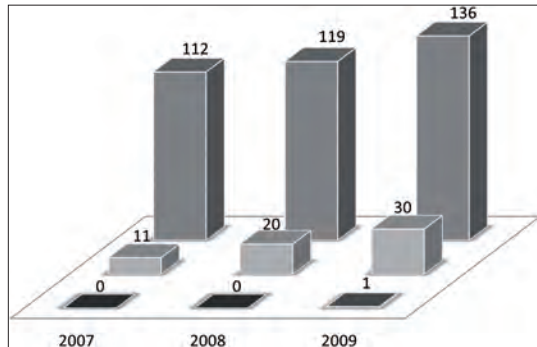
In 2009, various public agencies submitted 167 reports – the highest indicator in the accounting period. The complete reports in 2009 were submitted by 30 public agencies whereas 136 reports do not fully meet the requirements of the law. One report fell short of any of the criteria established under article 49 of the General Administrative Code of Georgia.

Content of reports, 2009



Incomplete – 136 (81%); complete – 30 (18%); not meeting any of the requirements – 1 (1%).

Comparative diagram



Short of any of the requirements; complete; incomplete

b) Complete reports

The accounting period saw an annual doubling of complete reports prepared by public agencies. The public agencies having submitted

them do not have any preliminarily developed form. It is precisely this factor that ensures the positive assessment of their reporting. Complete reports do not reflect only statistical data. The familiarization with them enables an interested person to identify what sort of information is in more demand on the part of the public, how well are the issues of processing personal data observed, what kind of databases are created and stored in public agencies. The most remarkable in this respect is the report submitted by the National Communications Commission. It provides detailed information on the number of applications for the issuance of information, the number of applications submitted by citizens for public information, the type of information requested and the cases of the issuance of information. The report contains the information, which is arranged by topics, on the meetings of the Commission, minutes of the meetings, excerpts of the minutes, decisions taken by the Commission, licensing and authorization certificates, the information on licensed companies, etc. It also provides the information on the publicity of meetings, processing of databases, issuance of information, collection and processing of personal information.

The reports submitted in 2009 by the Ministry of Education and Science, the Ministry for Refugees and Resettlement and other public agencies contain the exhaustive data on the performance of norms of the freedom of information and meet all the requirements established for reporting. However, the report of the National Communications Commission makes it apparent that the reporting of public agencies to the controlling bodies may be more detailed. It is the submission of informative and exhaustive reports that makes the implementation of article 49 of the General Administrative Code of Georgia possible. However such reports are, unfortunately, rare.

c) Incomplete reports

The majority of public agencies submit their reports in an incomplete form. Such reports mainly contain very scarce data and cover only one or two items of article 49 of the General Administrative Code of Georgia.

The analysis of the reports reveals a number of problems. One of such problems is a formal attitude of public agencies to the reporting. The proof of it is such cases when it is impossible to figure out from reports even little information on the situation existing in a specific public agency. According to one common tendency, public entities submit the information register as reports to the controlling bodies, which contain the data on incoming and outgoing documentation of the public agency. The data given in the table makes it impossible to separate applications for information submitted to a public agency from other applications and information. Therefore, such types of reports fail to provide accurate information to the controlling bodies and accordingly, to achieve the goal of reporting. It is noteworthy that this common tendency is characteristic for the public agencies of a concrete type. For example, in 2009, reports with enclosed registers were submitted by territorial bodies of the Ministry of Education and Science: educational resource centres of Akhalkalaki, Chkhorotsku, Isani-Samgori and other districts. From the listed ones the most astonishing is the report submitted by the educational resource center of the Baghdati municipality, which contains only one sentence: "Please, be advised that within the working period in 2009, there was no instance of the fulfillment of the requirements of article 49 of the General Administrative Code of Georgia in Baghdati municipality". Naturally, a report which says that no single document is stored in an entity is irresponsible and unrealistic. It is unbelievable for a public agency, especially an educational resource centre, not to create a database and process personal data. Reports of such content do not represent any value. Their submission just increases the statistics on the submission of reports to the controlling bodies and proves the ignorance of the public agency of issues concerning the freedom of information.

An irresponsible approach of public agencies to the reporting is observed frequently. For example, in 2007, the Gori municipality administrative body submitted the 10 December report in accordance with a form which was developed for recommendation purposes by the UN Association non-governmental organization. The report show that **"the issuance of public information was denied in accordance with 0 article, complaints were filed against 0 decisions on the**

denial to issue the public information in 2007, of which 0 was challenged in accordance with administrative rule in the same public agency and 0 in higher administrative body". This report is enclosed with annexes in the form of tables that certify those zeroes. We think that the submission of such reports is an expression of total irresponsibility towards the requirements of the law. Unfortunately, this tendency persisted in 2009 too and such sorts of reports were submitted to the controlling bodies.

The illustration of such approach is the reports submitted in 2007-2008 by the ministries of culture, monument protection and sport; environmental protection and natural resources, and state minister for diaspora issues. The reports of the Ministry of Culture, Monument Protection and Sport reflect only the data on incoming applications and decisions taken on them. Moreover, the responses during personal meetings and by phone are regarded as the issuance of public information. The report submitted by the Ministry of Culture, Monument Protection and Sport in 2009 is of identical content. The report consists of a few sentences and does not properly meet any of the requirements of the law: "In 2009 the ministry received written applications from more than 100 legal and physical persons.... The management of the Ministry, officers of the structural subunits of the ministry issued requested public information verbally during personal meetings and phone conversations". One and the same type of reporting on the part of the Ministry for years is the proof that the situation does not change even insignificantly in a concrete public agency. And this is much conditioned by the fact that the controlling bodies completely ignore such facts.

One of the problems which is observed for years is the issue of including incorrect information in reports. The 2007 report of the Ministry of Environmental Protection and Natural Resources is too "laconic". This is not, however, its sole flaw. The author of the report underlines the absence of the cases envisaged in the paragraphs C, D, E and G of article 49, during 2007. However, there is no information with regard to paragraph F – the filing of administrative complaints. It is not clear whether the public agency deliberately avoids saying anything about this issue or it accidentally omitted the fact that the association Green Alternative filed an administrative complaint in 2007, concerning

the issuance of information. In 2008, a number of such false reports were detected. In particular, the Georgian Young Lawyers' Association filed administrative complaints with the following public agencies: the Ministry of Economic Development, the Ministry of Refugees and Resettlement, the Revenue Service of the Ministry of Finances, and the Chamber of Control. However, the reports submitted by the listed public agencies say that in the accounting period administrative complaints were not filed and accordingly, no outcome occur as a result of the review of complaint. In reality, however, administrative complaints were ignored and left without review. As regard the Ministry of Culture, the report says that the public agency satisfied all the applications to the agency for the issuance of public information. However, two applications submitted by the Georgian Young Lawyers' Association to the Ministry within this period were not satisfied. Thus in 2007 and 2008, a number of cases of wrong information were detected in the reports, although this tendency was not observed in the reports of 2009.

The submission of incomplete reports is quite frequent on the part of courts. This is especially true in case of regional courts. This tendency was crystal clear in 2009. The content of incomplete reports submitted by courts is not identical but none of them meets even basic requirements for reporting. The main problem is the scarcity of information given in the reports. For example, the report of the Ozurgeti regional court contains only one sentence, saying that "During this year, the Ozurgeti regional court has not received any application with the request for public information or making a change to public information". The report of the Signaghi regional court contains the data on the applications for the information alone.

However, there are the cases which are much worse – when a court fulfills the obligation envisaged in article 49 of the General Administrative Code of Georgia in such a form: "Please, be advised that the cases envisaged in article 49 of the General Administrative Code of Georgia, regarding the issuance of public information, have not occurred in the Tkibuli regional court during this year". The report of the Khoni district court is of the same content: "the circumstances envisaged in article 49 of the General Administrative Code of Georgia have not occurred in the Khoni district court in 2009". It is of course

impossible for a court not to have documentation and not to store and enter this documentation in a database. Especially strange is the report submitted by the Vani district court, which reads that “As of 10 December 2009, the Vani district court has not issued any public information. Therefore we are not sending a report on the reception and issuance of public information, in accordance with article 49 of the General Administrative Code of Georgia”. The first sentence is absolutely vague. It is not clear whether an application for the information was not submitted to the public agency or it was but the agency did not issue the information. The last sentence of the report is also not clear because the absence of an application for information does not release a public agency of the obligation to submit a report. Moreover, the absence of applications for information to an entity is a significant information for reporting, which should be reflected in the report along with the remaining 6 requirements.

In regards to 2009 reports, it can be said that the reports submitted by courts is often not only incomplete but also inadequate to the requirements of the law. The Khobi district court’s report clearly shows that even after 10 years of the enactment of the General Administrative Code of Georgia, the proper understanding of article 49 is still a problem among courts, whereas in the accounting period there were cases of complete reports submitted by public schools. Incomplete reports by the courts are mostly signed by the heads or acting heads of district courts. The above quoted examples show not only improper attitude to this issue on the part of public entities but also emphasize a low level of knowledge of the issues concerning the freedom of information in courts. However, it is precisely the responsibility of the judiciary to control the decisions and actions of administrative bodies against illegal restriction of the access to information. The study of the submitted reports gives rise to strong doubts about the possibility of the courts to actually observe the requirements of the freedom of information, to take competent decisions, to interpret existing norms, to set precedents, to ensure the availability of public information and the introduction of the freedom of information standards in practice.

The review of 2007-2009 reports made it clear that despite a quantitative increase in the reports, the improvements in the content of the reports are very slow. This situation is largely conditioned by a for-

mal approach of public agencies to the reporting and a lack of proper knowledge about the issues of the freedom of information.

d) Reporting of schools to controlling bodies

The content of applications is especially problematic in the reports submitted by schools. The majority of the reports are incomplete whereas in other cases the reports are, as a rule, short of any requirement of the law or contain additional information along with the required data. A few cases of the submission of complete reports by schools were observed in 2009 alone. Therefore, one can distinguish four trends in the submission of reports to controlling bodies by schools:

- Complete reports;
- Reports partially meeting the requirements of article 49;
- Reports that partially meet the requirements of article 49 but at the same time contain additional information;
- Reports that do not meet any of the requirements in article 49.

Complete reports

Not a single instance of the submission of a complete report by schools was detected in the period between 2000 and 2008. It was in 2009 alone that a few schools managed to submit reports in compliance with the requirements established under the law. For example, the reports submitted by Tbilisi public schools #82 and 88 fully reflect all those issues that are obligatory under article 49 of the General Administrative Code of Georgia. Moreover, the information is provided not only in the form of statistics but also in a descriptive form. These reports contain a detailed account on the number of applications received as well as the identity of applicants, the mode of processing personal information, types of databases a school possesses, the number of decisions taken on satisfying and denying applications as well as the names of decision makers. The reports also reflect the information on public meetings, closing these meetings, about complaints filed against taken decisions and other issues. Naturally, it would be better to have the reports with more information

but these reports are deemed complete as they adequately cover every requirement provided in article 49 of the General Administrative Code of Georgia.

Reports partially meeting the requirements of article 49

The majority of reports submitted by schools fall under this category. In most cases, such reports cover one or two of the obligatory issues and accordingly, consist of the same number of sentences. One of the issues which is, as a rule, reflected in the reports is the data on incoming and outgoing applications, letters and documentation of a public agency. The accuracy of this data is a problem but this is not the only statistical data which is included in the reports. Data is rarely provided on such issues as the denial to provide public information, decisions of corporate public agencies to close their sessions, furnishing personal information to third parties and complaints filed against decisions. The scarcity of data, in turn, makes it impossible to process such sort of information and study a general situation.

The reports providing the data on incoming and outgoing correspondence were regarded as reports partially meeting the requirements of article 49 of the General Administrative Code of Georgia. These reports can be divided into two main categories. In the first case, the reports indicate outgoing and incoming correspondence in quantitative form whilst in another case the reports indicate the concrete types of incoming and outgoing correspondence. The term “correspondence”, as applied by schools, covers all the incoming and outgoing written documentation. The data in the reports does not reflect only the issuance or delivery of documents related to public information, which partially meets the requirements of paragraph A of the article 49, let alone any other requirement of this article. With a report reflecting only quantitative indicators, however, it is impossible to identify the number of cases of issuing public information. This is difficult even in such cases when the report contains the list of incoming and outgoing letters and other documents in the form of a list. In the accounting period, including the year 2009, there were a number of such cases observed⁵.

⁵ Reports submitted by Tbilisi schools #138, #13, schools of the village of Varketili, Martvili municipality #1 and other public schools.

Instead of the term “application” defined by the law, the reports often use the terms “correspondence”, “letter”, “appeal”, “request”, “report”, which makes it impossible to find out how many of these were about public information. Consequently, the aim of reporting – to provide the controlling bodies with the data related to public information - is unattained.

A number of cases of submitting reports by schools in the form provided below were observed in the accounting period:

“The number of requests to a public agency, concerning the issuance of public information and making changes to the public information - 0;

Of which:

The request for the issuance of public information – 0;

The request for making changes to the public information – 0;

The number of decisions on denying the issuance of public information – 0;

The number of decisions on complying with the request – 0;

The number of decisions on denying the request – 0;

The number of people requests of which were not satisfied – 0;

The number of decisions of corporate public agencies to close their sessions – 0”.

According to the wording of article 49 of the General Administrative Code of Georgia, a negative answer to a previous item may rule out a positive answer to the next item. But such contradictions may also be seen in reports. In particular, there are reports which say that a school has neither denied the request for information nor taken a decision on closing a collegiate session. However, the same report lists those “legal acts which were used by the school as grounds for denying the issuance of public information or closing a collegiate session: Constitution of Georgia, Law on General Education, General Administrative Code, Law on Legal Person of Public Law, Labour Code of Georgia”. Such instances illustrate that schools submit reports mechanically. It is also noteworthy that the reports of such type submitted by public schools are identical, containing same flaws and problems. This is especially apparent in reports that are submitted by public schools from one territorial unit. Especially remarkable in this respect are public schools from the Ninotsminda municipality which

have submitted identical reports with insignificant technical changes. The same holds true for the reports of schools from the Mtskheta, Chiatura, Akhalkalaki and Tkibuli districts.

The submitted reports were categorized as partially complete because they reflect at least part of legal requirements provided in article 48. However such reports cannot give a true picture of the situation existing in public agencies in terms of the freedom of information.

We think that any additional analysis of such reports is pointless. However, for illustration purposes, we will provide excerpts from some reports submitted by public schools:

“Be advised that the public school # 16 of the Zestaponi municipality received 16 public information which have been answered”.

“Be advised that from January through December 2009, the public school of the village Sachamiaseri received 180 (one hundred and eighty) letters of which 170 were answered in a writing whilst 10 in a verbal form.”

“All the requirements for public information have been satisfied”⁶.

“There was no complaint from the higher body or court”⁷.

“None of public agencies has entered the school for public information and accordingly, no public information was issued”⁸.

“35 public information has been delivered to the Ghvitori public school of which 28 were complied with and 7 information were denied”.

“The school received 30 letters of which 20 were replied in writing and 7 in a verbal form. In the same year, the school sent 62 letters in the form of public information”⁹.

⁶ Report by Zrgani public school of the Baghdadi municipality.

⁷ Report of the Khibula public school of the Khobi district.

⁸ Report of the public school #9 in Rustavi.

⁹ Shuapartskhma school of the Chokhatauri municipality.

Reports that partially meet the requirements of article 49 but at the same time contain additional information

This category reports were submitted throughout the accounting period. Therefore, it can be viewed as a tendency. In 2008, the most outstanding in this regard are the reports submitted by public schools of the Ninotsminda district, which are prepared in one and the same form. The reports provide public information, received by public agencies, in bullet points which are then followed by a list of all of them. The second point refers to public databases and the issues of processing, storing and furnishing personal information of public agencies, which also detail all the measures implemented. Although these reports deserve a better evaluation than those falling under the next category, they are anyway marked with significant flaws. For example, these reports do not need to reflect the information on receiving the stationery as this issue does not fall within the sphere defined in article 49 of the General Administrative Code of Georgia.

This category reports discuss such issues as: geographic location of schools, number of employees, their academic background, number of schoolchildren, schedules of classes, distribution of academic hours and issues of financing, school achievements, future plans, existing problems and requests for assistance.

In 2009, the tendency is especially obvious among several schools of Gardabani, Sagarejo, Gurjaani and Tbilisi. These reports also reflect such issues as the number of teachers in schools, their qualification, the number of schoolchildren, curricula and academic hours, educational plans, annual costs of schools and property owned by schools, school achievements and other similar issues which need not be included in the reports on issues of the freedom of information.

Reports that do not meet any of the requirements in article 49

Especially problematic are those reports which do not comply with the rule of reporting at all. In 2007, the most outstanding in this respect were the reports prepared by the Tsalenjikha district schools. The study of these reports makes it absolutely clear that representatives of these public entities have not even a slightest idea about

the General Administrative Code of Georgia and especially the obligation provided in article 49 of the Code. For illustration purposes we will present the report submitted by the public school #1 of the Tsalenjikha district, which provides the information on the number of schoolchildren, on gifts granted to first grade pupils, vouchers given to school teachers, etc. The report is also enclosed with the list of revenues and expenditure of the school. 33 reports submitted by schools from Tsalenjikha district are identical.

The content of the report submitted in 2007 by the Kolagi village school of Gurjaani district is almost similar. It describes a general situation in school. It also provides the data on applications submitted by people seeking employment and on the decisions to deny these applications. The report says that “**numerous** requests were received by the Kolagi school for the issuance of public information”. The above quoted example proves that public agencies do not understand the obligation they are imposed under the law and the fulfillment of this obligation is only of formal nature. This report as well as the reports from public schools in Tsalenjikha district does not have any informative value in terms of article 49 requirements.

In 2008, the response of the administration of the public school #1 of Akhaltsikhe to the application of the Georgian Young Lawyers' Association was sent as a report to the parliament of Georgia¹⁰. The report reads: “**In response to application #g-04/70-08 dated 12 November, we provide the following information about the public school**” and then come, point by point, answers to the requests outlined by the GYLA in its application¹¹. Whereas the administration of the Zemo Bodbe village school informs that “**reports concerning the issues of public information envisaged by article 49 of the General Administrative Code of Georgia have not been received by school and corresponding documentation was not issued by school either**”.

¹⁰ In November 2008, the GYLA sent the application to all the public entities for the purpose of updating the database. Such an application was, accordingly, received by every public school in Georgia.

¹¹ The report submitted on 8 December 2008 by the Shota Rustaveli public school #1 of the city of Akhaltsikhe.

The number of such reports decreased in 2009 even though such cases were still observed. The report of the Gorelovka village public school #3 includes, instead of the issues regarding the freedom of information, the information about the state of the building and a request to the President of Georgia for the construction of a new school. One of the reports says: “the requirements envisaged by article 49 of the General Administrative Code of Georgia were not fulfilled in the Nergeeti public school of the Baghdati municipality in 2009“. The report submitted by the Tskaltashua village public school of the Baghdati municipality is identical.

The reports of this category make it clear that school employees lack appropriate knowledge in the issues concerning the freedom of information, which, naturally, raises doubts about the observance of the requirements for the freedom of information in the mentioned public agencies.

The above presented categorization into four groups is very unscientific but the review of all of them together was impossible and unjustifiable due to stark differences between them.

5. How effective is the activity of controlling bodies

The key aim of the reporting mechanism established in the General Administrative Code of Georgia is to carry out control over the implementation and observance of the norms of freedom of information through the analysis of the situation existing in the country. The obligation of public agencies to submit reports is the primary means of achieving this goal. The review of the reports submitted from 2000 through 2009 makes it obvious that the existing mechanism does not ensure the creation of an overall picture of the situation regarding the observance of the norms of the freedom of information. However, the above explained situation is itself a real picture and enables to identify significant problems. A low indicator of submitted reports and their inconsistency with the requirements of the law speaks of lack of knowledge about the issues of the freedom of information in public agencies; this is how the existing situations should first and foremost be assessed by the controlling bodies. However, the problem persists

throughout years and this stagnation is largely conditioned by the failure of the controlling bodies to fulfill the controlling function.

Apart from a significant increase in the submitted reports, we also inquired about the situation concerning the review of reports by the controlling bodies and in 2007- 2009 sent applications¹² to the President's Administration and the Parliament of Georgia. The issues that interested the GYLA were:

- If the reports were processed statistic- and content-wise;
- How many public agencies were sent the feedback regarding the submission of incorrect or incomplete report;
- How many public agencies improved submitted incorrect and incomplete reports;
- The identities of those public servants who performed this activity.

The President's Administration did not respond to the application submitted in 2008 whilst the Parliament of Georgia provided us with Analysis of the Reports Submitted to the Parliament of Georgia Regarding the Issuance of Public Information and Denial to Issue Public Information (by the years 2006 and 2007).

The reports prepared by the Parliament of Georgia are of as formal nature as the majority of reports prepared by public agencies. However, it should be noted that until 2006 even such reports had not been prepared.

The report of the Parliament provides the list of those public agencies which submitted the reports. It also reflects the number of applications – 438,566, submitted to public agencies in 2006, which slightly differs from the indicator available to the GYLA. According to the report prepared by the parliament the number of applications submitted to public entities in 2007 makes up 276,972, which also differs from the data available to the GYLA. However, the report noted that the number may be inaccurate as “**reports of separate public**

¹² The GYLA's applications regarding the issuance of public information, dated 9 September 2008 and 18 February 2010.

schools indicate ‘a certain number of applications’ or several applications instead of a concrete number of applications”.

It is important that the controlling body studied the submitted reports but, unfortunately, it did not identify such flaws as the failure to indicate the total number of applications or the incorporation of other type of applications in the total number. It also left beyond its attention the above indicated issue concerning the verbal request for or issuance of public information.

The data provided in the report of the Parliament on disciplinary sanctions, administrative complaints or the number of complaints are far from reality as the majority of the reports do not contain such information. It is also unclear the issue regarding the collection, processing and storing of personal information as it is actually impossible to quote an accurate statistical data.

Unlike the previous year, the President’s Administration responded to the GALA’s application in 2010. However, it did not provide the requested information and relevant documentation. In the response of the President’s Administration¹³ it is explained that “the administrative obligation of public entities to submit reports on 10 December is specified in article 49 of the General Administrative Code of Georgia... The authority of the structural subunits of the President’s Administration is defined in the Regulation on the President’s Administration approved by the decree #562, dated 30 June 2005, of the President of Georgia”. According to subparagraph P), article 2 of the enclosed Regulation on the President’s Administration, the President’s Administration ensures “the reception of the information on the activity of public entities subordinated to the President of Georgia and submission of a report to President”. However, the response from the President’s Administration to the GYLA’s application did not include the documentation on the fulfillment of obligations specified in the indicated acts. This proves that the President’s Administration has never analysed submitted reports during the accounting period and consequently, the failure of agencies to submit reports or the incompleteness of submitted reports were left without any reaction.

¹³ Letter #15.76, dated 24 February 2010, by Khatuna Maghradze, the head of organizational service of the President’s Administration.

In contrast to the President's Administration, the Parliament of Georgia reviews the reports since 2006. However, the analyses prepared by the Parliaments are unchanged throughout the years and the Parliament's attitude to this issue does not differ much from that of the President's Administration which does not review the submitted reports at all. The analysis prepared by the organizational department of the Parliament on the reports of 2009 comprises one page alone which is enclosed with the document in the form of a table reflecting the data of all public agencies. A one page conclusion prepared by the Parliament reflects only statistical data and repeats the sentence from the analyses prepared in previous years: "the data provided in this analysis is inaccurate due to objective reasons – reports of public schools do not, as a rule, meet the requirements of article 49 of the General Administrative Code of Georgia, whereas some reports do not indicate the concrete numbers of applications and instead provide such wordings: 'a certain number of applications' or 'several applications'. Moreover, several public entities did not submit reports within the term defined in the law"¹⁴. As you can see, the identification of problems and analysis by the Parliament of Georgia in regards to the reports is limited to the above quoted and unfortunately, the role and the activity of the parliament as of a controlling body is limited to that as well.

It is obvious that the controlling bodies actually do not perform the controlling function. This inactivity encourages a formal attitude towards the legal requirements and renders the reporting mechanism absolutely inefficient.

6. Conclusion

The study of 10 December reports throughout the period from the enactment of the General Administrative Code of Georgia to date enabled us to better identify the problems. Although the controlling bodies did not provide us with the reports for all the years, a more or less clear picture regarding the freedom of information has been drawn up.

¹⁴ See annex: document provided by the Parliament of Georgia – information on submitted reports.

The indicators provided in this study are not accurate due to many objective reasons. This is conditioned by the following main factors:

- Reports are not submitted by quite a large number of public agencies;
- The majority of submitted reports do not meet the requirements established by the law;
- The data provided in the report are mostly vague or inadequate to the requirements of the law;
- Controlling bodies do not analyse the submitted reports or the analysis is of a formal nature.

A section of public agencies does not fulfill the obligation established by the law regarding the submission of reports on the issue of freedom of information. Such entities comprised the majority in 2000-2005. Moreover, submitted reports do not contain some type of data or they are vague, which makes it impossible to study the real situation in a whole number of public agencies.

The increase in the total number of submitted reports over the past three years accounts for public schools. As regards other public entities, the situation is actually the same from year to year. An interesting circumstance also is that among the reports submitted in 2001, one of the best reports was prepared by the Ministry of Defence. However, this did not develop into a tradition and this ministry has not submitted any 10 December report over the past years. Complete reports are traditionally submitted by one and the same public agencies year after year whereas those agencies the reports of which fall short of legal requirements continue the preparation of their report in the same form.

The existing factors cannot ensure the effective operation of the mechanism but allow to identify significant problems. Absolute majority of submitted reports prove that there is a problem of proper realization of the right to freedom of information in public agencies, especially given that most of public entities lack even basic knowledge on the issues of the freedom of information.

It is apparent that the progress in terms of the execution of article 49 of the General Administrative Code of Georgia is very slow. In order

to prevent the reporting to be of formal nature it is necessary that the Georgian President and Georgian Parliament scrutinize and analyse these reports. Those public entities which fail to submit proper reports shall be identified and recommended to improve the shortcomings. Whereas those public agencies which do not fulfill the obligation imposed on them by the law shall be required to submit reports.

The fulfillment of these recommendations will ensure the full picture of the situation in Georgia with regard to the observance of the right to the freedom of information recognized by the article 41 of the Constitution of Georgia. The study of reports will make it possible to get the exact information on how public agencies observe the requirements provided in Chapter III of the General Administrative Code, whether or not the civil activity is high in controlling the government, whether or not personal data is protected from illegal disclosure, what kind of databases are processed and stored by public agencies, what is the attitude of public agencies or public servants to this type of activity.

A relevant answer to each of these questions on the part of public agencies and the efficient implementation of the controlling function by the controlling bodies will build the basis for the full implementation of the reporting mechanism established in article 49 of the General Administrative Code of Georgia, which, at the same time, will facilitate the observance and fulfillment of the requirements of the freedom of information on a daily basis.