REVIEW OF LEGISLATIVE AMENDMENTS AFFECTING FREEDOM OF INFORMATION

(Study covers the period from

December 2003 to September 2010)

Tbilisi
2010

REVIEW OF LEGISLATIVE AMENDMENTS AFFECTING FREEDOM OF INFORMATION

(Study covers the period from December 2003 to September 2010)

Tbilisi
2010

The report has been prepared by Georgian Young Lawyers' Association within the framework of **Promoting Transparency and Accountability in Georgia** with the financial support of **Open Society Institute (OSI)**

Authors: **Tatuli Todua**

Editor: **Khatuna Kviralashvili**

Proofreading and styling: **Maia Menagharishvili**

Technical editor: **Irakli Svanidze**

Responsible for edition: **Tamar Khidasheli**
Tamar Kordzaia

Computer typeset and bound at the Georgian Young Lawyers' Association
Printing run: 300 copies
15, J. Kakhidze Str, Tbilisi, 0102, Georgia
(+995 32) 95 23 53, 93 61 01

No part of this paper may be reproduced, copied or circulated for commercial purposes without the permission in writing of the Association

----

© 2010, Georgian Young Lawyers' Association

Table of contents

Introduction 4

Scope and method of study 4

I. Application for information to public agencies 5

1. Addendum to the General Administrative Code of Georgia 5
2. Amendments to the Georgian Law on Fees for Duplicating Public Information Copies 7
3. Adoption of Law of Georgia on Normative Acts 9
4. Amendments to the Law of Georgia on State Secrets 10
5. Amendments to the Law of Georgia on Entrepreneurs 11
6. Adoption of the Law of Georgia on Public Registry 13
7. Adoption of the Tax Code of Georgia. Amendments 16
8. Adoption of the Law of Georgia on Electronic Communications 18

II. Protection of personal data 19

1. Amendment to General Administrative Code of Georgia 19
2. Adoption of the Law of Georgia on Official Statistics 19
3. Adoption of the Law of Georgia on Freedom of Speech and Expression 20
4. Adoption of Labour Code of Georgia 22

III. Legal proceedings on cases concerning the freedom of information 23

1. Amendments to the Code of Georgia on Administrative Procedure 23

Conclusion 24

Introduction

The freedom of information or, “the right to know”, is a fundamental human right. The significance and necessity of the access for the society to the documentation kept in public agencies has been repeatedly proved over the past few years. On 18 June 2009, 12 member-states of the Council of Europe, including Georgia, signed the Convention on Access to Official Documents[1]. The year 2009 was also remarkable because of the interpretations provided by the European Court. In the case TÁRSASÁG A SZABADSÁGJOGOKÉRT v. HUNGARY[2] the Court recognized the broad nature and significance of the freedom of information in the Convention: “the Court has recently advanced towards a broader interpretation of the notion of “freedom to receive information” and thereby towards the recognition of a right of access to information”[3].

Against the background of the above mentioned development in the area of the freedom of information, it is especially interesting to review the legislative changes introduced by the Government of Georgia and assess these changes in terms of their effect on the degree of the freedom of information. The aim of this paper is to review and assess these legal changes - to find out whether the introduced changes have enhances the freedom of information or, on the contrary, are directed towards restricting it.

Scope and method of study

The freedom of information is a directly acting law. It is however specified in a number of separate legal acts. Norms regulating the freedom of information are scattered throughout such legal acts as:

- General Administrative Code of Georgia;
- Georgian Law on Fees for Duplicating Public Information Copies;
- Law of Georgia on Freedom of Speech and Expression;
- Law of Georgia on State Secrets;

[1] The Parliament of Georgia has not ratified this Convention yet.
[2] Decision was taken on 14 April 2009.
[3] TÁRSASÁG A SZABADSÁGJOGOKÉRT v. HUNGARY, Paragraph 35.

- Law of Georgia on Operative Investigative Activity;
- Law of Georgia on Normative Acts;
- Other legal acts.

In this study we will analyse the most significant amendments to the law, which affected the situation with the freedom of information in Georgia. We will not touch upon the established court practice in this paper, which might be limiting the meaning of specific norms even further. The conclusions are drawn on the basis of comparison of old and new wordings of the laws and their analysis in the context of international acts.

I. Application for information to public agencies

1. Addendum to the General Administrative Code of Georgia

On 21 July 2010, article 3 of the General Administrative Code of Georgia was extended to include paragraph 5:

"Chapter III of this Code shall not affect the activities of the Executive, which are related to the participation of the Georgian state in legal proceedings or hearings of cases in international arbitrage courts, courts of foreign countries or international courts until after these courts have delivered their final rulings. Until the final rulings of the courts, the information shall be issued in accordance with the court rules envisages by international treaties and agreements of Georgia or/and by this part".

The reservations of the type - "Chapter III of this Code does not affect", were not common to the General Administrative Code of Georgia. One can find only the wording of the following type in Chapter I of the General Administrative Code of Georgia:

- This Code, except for Chapter 3, may not affect the activities of the following state institutions…. (paragraph 2, article 3);
- This Code may not affect those activities of the Executive that are related to… (paragraph 4, article 3).

However, it should be noted that the latter wordings do not rule out the effect of Chapter III of the General Administrative Code of Georgia

on the activities that are listed as exceptions. This is how the Constitutional Court interpreted this norm in the case *Georgian Young Lawyers' Association and a Citizen of Georgia Rusudan Tabatadze vs the Parliament of Georgia*. In particular, the Court stated that the information regarding the activities listed in paragraph 4, article 3 of the General Administrative Code of Georgia does not automatically fall under the scope of Chapter III, instead "it is important to find out whether or not the information listed in the norm belongs to state, professional or commercial secret the issuance of which can be limited under the article 41 of the Constitution of Georgia".

Therefore, we think that the wording – "Chapter III of this Code does not affect"- added to the General Administrative Code of Georgia on 21 July 2010, conflicts with paragraph 1, article 41 of the Constitution of Georgia, which says that "Every citizen of Georgia shall have the right to become acquainted, in accordance with a procedure prescribed by law, with the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secret".

Information that is related to the participation of the Georgian state in legal proceedings or hearings of cases in international arbitrage courts, courts of foreign countries or international courts until after they have delivered their final rulings, does not fit in any of the categories listed in the Constitution. The explanatory note of the draft law did not even provide any reasoning to justify those legitimate interests which might be endangered if the mentioned information were published. However, the public interest towards justice has always been high in Georgia as the issue of court reform still remains a serious problem.

The Council of Europe's Convention on Access to Official Documents as well as the Council of Europe's 2002 recommendation on access to official documents, does not recognize such exception. On the contrary, according to these international documents, official documents are mainly public and they can be not disclosed only with the aim to protect others' rights and legitimate interests.

It is also worth noting that legal service fees and other related cost for international courts and representations are, as a rule, high and

"unforeseen" and allocated from the government's reserve fund. Allocations from reserve funds are not subject to obligation to apply public procurement procedures. Therefore, the information on these costs can become available to the public only by applying the General Administrative Code of Georgia.

The adoption of such an addendum to the law by the Parliament is a significant move-back in transparent and accountable governance in Georgia. The participation of the Executive in both national and international courts will always be a matter of high public interest and such information should be limited only in individual cases provided that the grounds envisaged in the Constitution for limitation are in place and the decision on it is well substantiated.

2. Amendments to the Georgian Law on Fees for Duplicating Public Information Copies

On 15 May 2005, the Parliament of Georgia adopted the Law on Fees for Duplicating Public Information Copies. It defined the size of the fee for duplicating public information, instances of exemption from this fee, payers of this fee and the procedure of payment. On 17 July 2009, paragraph 1, article 8 of the Law changed into such wording:

"Fees for duplicating public information shall be paid to a cash-desk of a public agency or/and through banking institution in cash and in non-cash payment, in accordance with the procedure established by a public agency. Moreover, a public agency is entitled to define a minimum amount of public information which can be issued free of charge during a year".

The need for amending the norm was obvious as it prescribed for the payment of the fee to a cash-desk of a public agency alone. Given that the majority of public agencies do not operate cash-desks, the issue of using a non-cash payment was put on the agenda. Indeed, the introduced amendment concerning the non-cash payment is an innovation, which should be assessed as a positive development. However, we cannot agree to that section of the amendment which entitles a public agency to establish the procedure for the payment of the fee: "Fees for duplicating public information shall be paid in accordance

with the procedure established by a public agency". We believe that the granting of such a right to a public agency will create lots of difficulties to citizens in their endeavour to timely receive the information.

In particular:

This wording does not contain any mention of timeframe and does not specify a term during which a public agency would be obliged to develop the procedure for the payment of the fee. On the other hand, however, even the establishment of a strict term in this draft law cannot be a guarantee that every public agency (schools, museums, etc.) will necessarily develop this procedure[4]. This means that there is a threat that this procedure will never be developed or the development of this procedure will be protracted and thus prevent citizens from exercising the right to freedom of information.

Moreover, granting a public agency a right to develop a norm will result in very diverse regulations, varied practices and different approaches throughout the country. In such a variety of rules an ordinary citizen will find it very difficult to find out and remember which rule is applied by which public agency. Thus, an applicant for information should know an internal regulation on the payment procedure of every public agency. The publication of such types of acts is, however, not obligatory for every public agency[5] and consequently, citizens would not be able to learn about established rules. The law does not provide people seeking information with the opportunity to choose among forms of payment. We believe that in the end, a timely and efficient acquisition of information will be impeded.

[4] The Georgian Young Lawyer's Association runs a database on freedom of information (see, www.gyla.ge/foidatabase), which contains the list of all the public agencies and various data (except for those persons/legal entities of private law which exercise authority of public law or are financed from the state/local budget). The number of such public agencies stands at 2,960. This indicator shows how difficult it may be to ensure the implementation of this norm by all the public agencies.

[5] Especially, in a nationwide publication, taking into account that, for example, the information stored in one concrete municipal administration may be required by a person who does not live in that municipality.

It should be noted that when adopting the law, the Georgian Parliament partially agreed to the suggestion of the GYLA regarding the establishment of a minimal amount of information to be issued free of charge during a year. The GYLA was insisting on stipulating this minimum amount in the law but the Parliament delegated this authority to a public agency.

3. Adoption of Law of Georgia on Normative Acts

On 22 October 2009, the Parliament of Georgia adopted a new Law on Normative Acts. According to the Law, State Register of Normative Acts of Georgia is established for the aim of ensuring the publicity of legal system[6]. It regulates the issue of recording secret normative acts, including in a transitional period (until 1 January 2009).

As a general rule, the Law stipulates that a normative act or part thereof classified as "secret" shall be entered into the secret section of the State Register. The procedure and requirements for access to the information in the secret section of the Register shall be defined by the law of Georgia on State Secret (paragraph 3, article 29).

For the transitional period, the initial wording of the Law (paragraph 8, article 31) defined the type of data which would be recorded in the main part of State Register when registering secret normative acts. It also provided for the publicity of separate sections of "secret" normative acts, which included:

- The type of the normative act;
- The name of the body (official) that has adopted (issued) the act;
- The date and place of its adoption (issuance);
- The state registration code of the act.

Such an approach echoed the logic of article 33 of the General Administrative Code of Georgia (the procedure for publicizing secret information) and at the same time, was in compliance with the principle of openness. This article stipulates that "After classified information is declassified, any part of classified public information or protocol

[6] Paragraph 1, article 29 of the Law of Georgia on Normative Acts.

of the closed session of a corporate public agency that can be separated on reasonable grounds shall be publicized. When publicizing information in such a case, it shall indicate a person who classified the information, the ground for classifying the information and the period during which it is classified".

In an opinion submitted to the Parliament, the GYLA demanded that a general rule be formulated similarly to the norm provided in transitional provisions. However, the Parliament made an opposite and transformed the norm drawn up for a transitional period into a general rule. This means that some data, which represent no interest to classify, would no longer be recorded in the main part of State Register when registering secret normative acts, even in the transitional period.

4. Amendments to the Law of Georgia on State Secrets

When discussing the issues concerning the freedom of information, it is especially worth noting the Law on State Secret adopted in 1996, which is rather outdated today.

With the amendments made to the Law in 2004, Georgia made quite a progressive step forward. The amendments rescinded paragraph 5, article 38 of the Law, which read: "If a medium of mass information made public a state secret and thereby caused a significant damage to the state security or to the international relations of Georgia, or thereby put in danger the lives of the individuals, then the editor on duty (the person responsible for the broadcast) shall be liable according to the Georgian legislation".

With the amendment to the Law on 15 June 2005, the list of that information which was not regarded as state secret has significantly slimmed down. The article is constructed in such a way that it defined a general rule: "normative acts, international treaties and agreements shall not be considered a state secret" and at the same time, specifies exceptions. However, the list of these exceptions has been enhanced so that it restricted the essence of the general norm. This list additionally included acts of the ministries of justice and finances; moreover, the norm additionally specified the obligation to regulate

internal activities of public agencies not only in terms of defence and security but also in terms of operative investigative activity. With the amendment of 25 May 2006, the border control department dropped out of the list of exceptions as by that time it had been already subordinated to the Ministry of Internal Affairs which was anyway affected by this norm. On 22 June 2007, the list of exceptions was extended again to include the Ministry of Environmental Protection and Natural Resources whereas on 27 February 2009 - one more entity – the Ministry of Corrections and Legal Assistance of Georgia made it into the list.

The amendment of 11 November 2005, provided for a possibility to extend the term of classifying the information; this possibility never existed before. This authority was granted to "heads of special services with regards to that counterintelligence-related information, declassification of which would inflict a material harm on the state interests".

The amendments in 2009, clarified the regulation for classifying special maps as state secret; according to this amendment maps could be classified only in case if a map "shows that information and data which belong to the defence and security spheres of the country, provided in the list of data categorized as state secret".

5. Amendments to the Law of Georgia on Entrepreneurs

The Law of Georgia on Entrepreneurs is important in terms of the freedom of information inasmuch as its article 7 refers to the publicity of the information on business partners and other data. According to the current wording of the article (last amendment was introduced on 27 April 2010), the data on entrepreneurs and non-entrepreneurial (non-commercial) legal persons, recorded in the Register, is public. At the same time, the Law does not provide a full list of the data which shall be recorded in the Register. The decision what data shall be included in the list is decided by the Ministry of Justice of Georgia by means of the issuance of a normative act.

During a year and a half, from 8 May 2008 until 31 December 2009, the information on partners of enterprise (founding partners) was

included only in a registration application of an enterprise and even it was not obligatory to indicate it. Accordingly, the enterprises that were registered during the above mentioned period might not even have submitted the information on their partners. This information was not indicated either in a record book of entrepreneurs' register or in its extracts, even though the record book is the only document that is subject to publicity. The entrepreneurs' register contained the information on managers and persons authorized to represent an enterprise instead of the information on founders.

On 31 December 2009, subparagraph d, paragraph 4, article 7 of the order #241 of the Minister of Justice of Georgia specified that in case of a company with limited liability the extract would also include the information on partners of the enterprise and their shares. As for the Law itself, the amendment of 27 April 2010 stated that "in case of a limited liability company and commandite society, the excerpt shall also include the information on the shares of partners, movable assets and the data on intangible assets recorded in the registry of rights".

According to the earlier wording of the Law, the change in shares of partners of an enterprise was not required to be entered into the entrepreneurs' register, which means that the register and the extract contained outdated information. With the amendment introduced on 3 November 2009, the above provision was annulled, while the amendment of 25 December, paragraph 3, article 5^1 of the Law was worded in such a way that it was only joint stock companies, their shareholders and changes in their shares that did not require the registration in the register.

After the relocation of the entrepreneurs' register from the ministry of finance to the National Agency of Public Register, a fee was imposed on an extract. However, paragraph 2, article 7 of the Law on Entrepreneurs stipulates that electronic copies of the registration documentation shall be published on the webpage of the Agency. The access to such type of documents does not envisage the payment, according to the Law.

As one can see, in contrast to the situation in 2008-2009, the information on partners and their shares is public and accessible today. How-

ever, neither the law nor the decree of the Ministry of Justice obliges the enterprises that were registered during 2008-2009 to submit the information about their partners and shares, which creates problems in the publicity.

6. Adoption of the Law of Georgia on Public Registry

National Agency of Public Register is one of large public agencies, which accumulates important information related to immovable or movable property, and to enterprises. It is interesting to review to what extent the Public Registry ensures the access to information for citizens.

The Law of Georgia on Public Registry was adopted on 19 December 2008. Paragraph s, article 2 of the Law defines the "accessibility to information" as ensuring unrestricted familiarization with and issuance of information and documentation stored in the Public Registry and a registering body. The above definition fully conforms with the provision of article 37 of the General Administrative Code of Georgia concerning the right of an applicant to choose the form of receiving public information, since it mentions unrestricted familiarization with (corresponding to "familiarization with original") and unrestricted issuance (corresponding to the accessibility to electronic and printed copies) of the information as the means of accessibility. Moreover, the mentioned definition provides for full access to all the information, without exception, stored in Public Registry and a registration body, however, paragraph 1, article 6 of the Law contains a reservation – "except for cases specified by the Georgian legislation". Thus, the list of such cases is not limited to that in the General Administrative Code of Georgia alone and therefore, the content of the Law requires further investigation.

The Law of Georgia on Public Registry provides a number of opportunities to a citizen seeking information. The emphasis is basically put on proactive publication of the information, which is naturally a positive factor, rather than a traditional scheme of seeking the information when a citizen applies to a public agency. We will discuss each possibility for the access to information and shortcoming in them:

1) **A person interested in obtaining the information can familiarize him/herself with the information published on the webpage of the Agency if the information is published.** Paragraphs 1 and 2, article 7 of the Law of Georgia on Public Registry grants the Agency the right to store the documents kept by it in an electronic form. However, the wording is weak because it does not oblige the Agency to publish electronic copies of all the documents on the webpage. This creates a possibility of incompleteness of the electronic database. At the same time, a provision in the law that grants electronic copies a legal power equal to the original of a document is a progressive wording.
2) **A person seeking information can request from the Agency an electronic copy of a concrete document even if it is not published.** This right stems from paragraph 1, article 3 of the General Administrative Code of Georgia; article 6, paragraphs 1 and 2, article 7 of the Law of Georgia on Fees for Duplicating Public Information Copies as well as paragraph 1, article 7 of the Law of Georgia on Public Registry.
3) **Any person has the right to print out electronic copies of documents available on the webpage of the Agency or obtained from Agency.** In such cases, the rule established for certifying the accurateness of a copy with the original does not extend to the print-out copy and the cope has the legal power equal to the document issued in an electronic form.
4) **A person seeking information can obtain a copy of information stored in the Public Registry and require the certification of the accurateness of a copy with the original on the basis of article 20 of the General Administrative Code of Georgia.**

We should touch upon the extracts from the Registry and the imposition of fees for the issuance of documents.

A special timeframe and fee for such type of information were first defined by the Law adopted in 2006. As of now, the following rates of the fee are set through effective norms:

a) Preparation of an extract from Public Register – 1 working day – 15 GEL;

b) Preparation of a cadastre plan - 1 working day – 5 GEL;
c) Preparation of a cadastre map - 4 working days:
d) A version on a paper – 1 page – 10 GEL;
e) An electronic version – 10,000 m^2 (1 ha) – 5 GEL;
f) Preparation of a certificate on the existence of restriction on public law service – 1 working day – 7 GEL;
g) Preparation of up to date information on data stored in the Public Registry concerning the right on object and intangible asset, liability related to the ownership right of immovable property, restriction on public law service or/and tax mortgage – 4 working days – 10 GEL;
h) Preparation of information from technical inventory archive on status of ownership of immovable property - 4 working days – 7 GEL;
i) Preparation of inventory plan from technical inventory archive- 4 working days – 5 GEL;
j) Preparation of a copy of document stored in archive – 4 working days – 1 page – 0.50 GEL;
k) Issuance of ortophoto – 4 working days:
l) A version on a paper – 1 page – 10 GEL;
m) An electronic version – 10,000 m^2 (1 ha) – 5 GEL.

Moreover, according to paragraph 5, article 6^1 of the Law, "in case the issuance of information is denied and an application is not reviewed, the fee paid for service shall not be refunded". Whereas article 38 of the General Administrative Code of Georgia provides for opposite: "No fees shall be charged for distributing public information, except for copying costs", whilst the second sentence of article 29 of the General Administrative Code reads: "A person may have access to his personal information that is kept in a public agency, and may obtain copies of such information free of charge". An issue of preparing copies of documents kept in archive is also noteworthy. The fee for a page is 0.50 GEL whereas according to the Law of Georgia on Fees for Duplicating Public Information Copies, the fee for this operation is 10 times lower – 0.05 GEL.

One may wonder whether the information issued by the Public Registry in the form of extract, certificate, cadastre map, plan, orthopoto is of any special legal nature. All types of documents, including drawing, layout, scheme, plan, photograph, electronic information, video and audio recording, constitute public information according to subparagraph m, paragraph 1, article 2 of the General Administrative Code. Article 31 of the Law on Public Registry is itself interesting, which defines terms and fees for the service rendered by the Agency. The article consists of three paragraphs. First paragraph covers the terms and fees for the service rendered by the Agency. The second paragraph provides the same list though not for the service rendered by the Agency but for the access to information. It does not mention the service by the Agency, which once again proves that the establishment of fee for free information is unjustified.

Hence, we believe that extracts from the Public Registry and other documents which do not need any special service on the part of the Agency, shall be free. Citizens shall pay only the costs related to copying. Only such regulation will fully comply with the requirements of the General Administrative Code of Georgia and the principle of freedom of information.

7. Adoption of the Tax Code of Georgia. Amendments

On 22 December 2004, the Parliament of Georgia adopted a new Tax Code. The innovation in this Tax Code is the term "Tax secret" (article 122) although in terms of content, the old Tax Code also envisaged the confidentiality of similar type of data.

Currently effective Law, unlike the old one, envisages the list of that little data which does not belong to tax secret. They are:

- Name of a taxpayer;
- Address of a taxpayer;
- Identification number.

At the time of adopting the Code, it envisaged the information on registered capital of an enterprise as public information. However, on 14 December 2006, it was replaced with the public information stored in

the entrepreneurs' register and state register of non-entrepreneurial (non-commercial) legal person. This provision was deleted altogether by the change introduced on 21 July 2010.

Norms regarding the tax secret, effective today, are by no means perfect. The flaw of article 122 of the Tax Code is also established by the Constitutional Court. The constitutionality of the norms concerning tax secret was considered in the case *Public Defender of Georgia and Georgian Young Lawyers' Association vs the Parliament of Georgia*. Although it was not the subject of dispute, the discussion touched upon the issue of classifying the information concerning high officials under the above mentioned norm. The Constitutional Court noted clearly:

"It is not a subject of dispute…why a legislator did not deem it necessary to make the **information concerning a high official as a taxpayer** *accessible when adopting the Tax Code of Georgia.* **This needs to be added to the cases of accessibility of information listed in article 122 of the Tax Code of Georgia".**

The above ruling was delivered by the Constitutional Court on 30 October 2008. No amendment has been made so far to article 122 regarding declassifying the information on a high official as a taxpayer. According to the Law this information belongs to tax secret, which is absolutely unacceptable.

The previous Tax Code envisaged the preparation and publication of a report on the activity of the Georgian tax system. Along with statistical data, the report included some personal information, in particular, "the list of those physical and legal persons who were imposed taxes but failed to fully pay these taxes, if the tax arrear exceeds 10,000 Lari".

In the Tax Code adopted in 2004, the above provision was changed establishing an outstanding amount of 100,000 Lari as a precondition for reflecting in a report. Thus the information on those physical and legal persons whose tax arrear were above 10,000 GEL and below 100,000 GEL and were subject to publicity under the previous Code, no longer made it into the report and was classified as tax secret. Therefore, the information subject to publicity decreased. In

addition to the above mentioned, an annual report contained the following information:

- amounts of taxes collected by the Georgian tax agencies according to the tax legislation, by types of taxes and regions;
- amounts of tax arrears, with similar breakdown;
- expenses incurred by the Tax Department of the Ministry of Finance of Georgia during collecting taxes;
- statistical data by the components of tax payments;
- a description of the positive and negative sides of the operation of the tax system;
- information on the issuance of orders, during the previous year, regarding the solicitation to courts, the number of orders issued by courts and results of audits carried out on the basis of court orders.

With the amendment of 29 December 2006, the obligation for tax bodies to publish annual performance reports was abolished. The information reflected in reports, including the list of those persons which failed to fully pay the imposed taxes and tax arrears exceed 100,000 GEL, is no longer public.

8. Adoption of the Law of Georgia on Electronic Communications

On 2 June 2005, the Parliament of Georgia adopted the Law on Electronic Communications. Article 24 of the Law defines the rule for publishing those decisions of the Commission, which are taken on the basis of preliminary regulation of competition and analysis of service market. Such decisions, except for the parts containing state, commercial and personal secret, are published on the webpage of the Commission (www.gncc.ge). The above mentioned clause sets the obligation of proactive publication of separate information on the web, which is a positive move.

It has been long since the GYLA advocated for setting the obligation of proactive publication of information, including through the activity of anticorruption interagency coordination council, as a legal norm. It is apparent that web pages of public agencies can greatly contribute

to the improvement in their accountability and transparency. Part of public agencies runs their own web pages. However, there is no single act regulating the issues of their management. This results in a situation where administrative bodies publish on their web pages only that information which they deem favourable for them. It is necessary to define an obligation of a public agency regarding the management of a webpage. It is needed to identify the list of basic information (names of employees, position, valid telephone numbers), which should be published in this way.

II. Protection of personal data

1. Amendment to General Administrative Code of Georgia

On 27 December 2005, the General Administrative Code of Georgia was added a new article 37^1, which stipulates the procedure and grounds for the access to personal data and commercial secret by public agencies. The access to the mentioned data is possible only in case when the information is needed for a public agency to decide on certain issues. If an ordinary applicant seeking the information is required to submit an approval from a relevant person which is notarized or certified by an administrative body, it is sufficient for a public agency to provide a written approval, for instance, application or other written document, in which an applicant gives his/her consent to a public agency to obtain personal data or information about him/her classified as commercial secret. On its part, a public agency shall, along with the submission of approval, apply for needed information in writing.

We think that the above mentioned norm, on the one hand, speeds up the resolution of an issue which is of interest for a citizen and on the other had, envisages guarantees for the protection of data.

2. Adoption of the Law of Georgia on Official Statistics

On 11 December 2009, the Parliament of Georgia adopted the Law on Official Statistics. This legislative act uses such terms from the older law as confidential statistical data. It should be said that the men-

tioned term does not conform to the terms defined in the chapter on freedom of information of the General Administrative Code of Georgia and causes some confusion.

The new law also contains some norms which are different from the rules established in the General Administrative Code of Georgia. For example, according to article 45 of the General Administrative Code of Georgia, "Personal data may be accessible for the purpose of conducting a scientific research. This rule excludes the possibility of identifying a person". Whereas paragraph 1, article 29 of the Law on Official Statistics prohibits the use and disclosure of confidential statistical data collected and processed for the purpose of statistical survey by employees of statistical bodies, including for personal, academic, scientific and other reasons.

The Law prohibits the publicity of identifying statistical data, i.e. personal data. The failure of employees of statistical entities to comply with this obligation entails a disciplinary punishment[7] which, in our view, is quite lenient especially as compared to the guarantees provided in article 47 of the General Administrative Code. According to article 47 of the General Administrative Code, a person whose right was violated is entitled to demand:

- the nullification or amendment of the decision of a public agency or public servant
- compensation for material damages;
- compensation for non-material damages.

Therefore, it would be better if the Law of Georgia on Official Statistics stipulated the responsibility of employees in case of the disclosure of personal data more completely in order to ensure the effective use of the right to privacy by citizens.

3. Adoption of the Law of Georgia on Freedom of Speech and Expression

On 24 June 2004, the Parliament of Georgia adopted the Law on Freedom of Speech and Expression. Although the key sphere of the

[7] Paragraph 3, article 29 of the Law of Georgia on Official Statistics.

regulation of this Law is the freedom of speech and expression, and defamation, the role of this Law is important for the clarification of a number of issues concerning the freedom of information. In particular, the Law provides a more detailed definition of the terms personal and professional secrets.

According to this Law, personal secret is:

- information having personal value that should be protected according to the law (including, according to the General Administrative Code)
- as well as the information or facts with respect to which a person has a reasonable expectation of inviolability of private life.

The above definition of personal secret is broader and this may be related to the scope of activity of the Law. In contrast to the General Administrative Code, it refers not only to public agencies and the information stored there but also private persons.

Information on an administrative agency is not considered a private secret (neither is it a commercial secret).

According to this Law, professional secret is:

- secrecy of confession;

information confided to:

- a Parliament member,
- a doctor,
- a journalist,
- a public defender,
- a lawyer in the course of their professional activities;
- information having professional value, which became known to a person on condition of confidentiality in the course of performance of this person's professional duties, the disclosure of which information may cause damage to the professional reputation of the person.

The above definition is more detailed although not broad since the information which is not a state secret or another person's private or

commercial secret, is not considered a professional secret, similarly to the provision in article 27^3 of the General Administrative Code.

The Law dedicates a separate chapter to the issues of protection of secret and establishes guarantees for the protection of professional secret and its source, also, defines a liability for the disclosure of secret. A person shall be liable only for disclosure of a secret, which should be protected by him due to his/her official position or under a civil contract, and a disclosure of which creates direct and substantial danger to the values protected by law.

At the same time, the Law provides for a fair balance between a secret and the right of public to know and relieves a person from the liability in case if:

- the purpose of disclosure of a secret was protection of the lawful interests of the society, and
- the protected good exceed the caused damage.

Collision of rights is decided in favour of the freedom of expression with respect to an event that should be known to a person for the exercise of the public self-government in a democratic society.

We deem this innovation envisaged by the Law as a progressive move as it contributes to the establishment of fair balance between the rights and to the maximum extent ensures the realization of the right of the society to know even when issues of the public interest are masked with various types of secrets.

4. Adoption of Labour Code of Georgia

In contrast to the new Labour Code, the previous code of labour laws did not refer to the issues of the exchange of information between an employer and an employee. Separate effective provisions give rise to doubts regarding their conformity with the General Administrative Code. For example, according to paragraph 1, article 5 of the Code, "Employer is authorized to obtain information about the candidate which is needed for making decision on hiring such person". The General Administrative Code envisages the access to personal information on the basis of consent from a relevant person, while the issu-

ance of the information classified as a personal data - on the basis of consent or a decision substantiated by the court. The Labour Code does not require any of these grounds and the right of an employer to get personal information on a candidate is unconditional.

Paragraph 2, article 35 of the Labour Code recognizes the right of the employee to have the information on the working environment whilst obliges an employer to provide an employee, within a reasonable time, with full, objective and comprehensible information available to him/her about all those factors which affect the life and health of an employee or about the safety of a natural environment.

III. Legal proceedings on cases concerning the freedom of information

1. Amendments to the Code of Georgia on Administrative Procedure

On 13 July 2006, paragraph 1, article 39 of the Civil Procedure Code defined the size of a state duty on non-material dispute – 100 GEL, on appellation and cassation claims – 150 and 300 GEL, respectively.

On 28 December 2007, important amendments and addenda were made to the Code of Georgia on Administrative Procedure. The most painful in the context of freedom of information were the amendments concerning the state duty and the obligation to file an administrative complaint.

According to pre-amendment norms, a physical person was obliged to pay a state duty in lower courts only in case if he/she would not use the possibility of submitting an administrative complaint. At the same time, the failure by a physical person (except for individual entrepreneurs) to pay a state duty was not an impediment to hearing and resolving a case. An approach of this type facilitated the access for citizens to courts which, in its turn, encouraged a strict public control on decisions by administrative bodies. With the amendment made on 28 December 2007, both these provisions were deleted from the Law. In both cases, the dispute in lower courts became charged whereas the failure to pay state duties – the ground to deny the claim. Consequently, such non-material disputes as cases concerning the freedom

of information have been subject to an obligation to pay high court duties at the stage of appealing to courts.

According to one of the amendments made on 28 December 2007, courts can be appealed only after the submission of an administrative complaint to higher administrative body or high official. Given the fact that administrative bodies are, as a rule, unprepared, a dispute on the information which should be issued immediately, becomes protracted. A protracted dispute and legal proceeding often makes the dispute senseless because in a modern informative society the information is a perishable good.

Conclusion

The developments in the modern world concerning the recognition of the freedom of information as a fundamental right, prompts us to critically assess the changes carried out in our country. Unfortunately, progress achieved in some spheres cannot outweight the overall situation with the freedom of information, which is as follows: the list of information considered secret has extended in various legislative acts, the procedure for the payment of fee has become complicated, the liability of employees of certain public agencies for the violation of the requirements of law has become more lenient, legal proceeding has become more expensive and longer. The above mentioned factors limit the possibility to fully benefit from the freedom of information and allow public agencies to perform important activities without a public control.