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SYSTEMIC PROBLEMS INVOLVED IN ENACTING FREEDOM OF INFORMATION LEGISLATION IN GEORGIA IN 2004/2005 AND SUGGESTIONS FOR REMEDYING THE SITUATION

What follows is an attempt to trace Georgia's advance toward freedom of information over the past two years. Besides, I shall share my ideas concerning ways to enhance the transparency and openness of public institutions.

Georgian legislation includes articles regulating provision of public information. The Freedom of Information Chapter of the General Administrative Code (adopted on June 25, 1999) contains definitions of public information, commercial, personal, professional, and state secret, establishes public information provision procedures, explains the reasons for which public information can be withheld and how denials of information of public interest can be appealed by administrative or legal procedure...
Furthermore, officials responsible for provision of public information who fail to perform their official duties are liable to disciplinary sanctions on the part of their superiors according to the Law on Public Service. In addition, Article 153 of the Criminal Code of Georgia provides that

> "Unlawful interference with the right to receive and provide information, which resulted in significant damage or abuse of public office, shall be punished by a fine or a year in a labor camp or up to two years in prison; the guilty party may be barred from taking office or engaging in professional activity for up to three years. "

Hence, failure to provide public information, resulting in severe damage, is a crime punishable by Georgian law.

Unfortunately, the record of Freedom of Information (FOI) Act implementation by public institutions over the past two years (2004/2005) is definitely poor. The problems related to it can be divided into several categories:

- Failure of public agencies to provide public information within set time limits

  The law provides that public information should be provided immediately, unless the information requires processing or has to be gathered from different agencies, in which case information should be supplied within 10 days of receiving a request for it (Article 40, General Administrative Code.) When immediate provision of information is not possible, the Agency shall notify the applicant about that within 3 days of receiving the request.

  Unfortunately, public agencies fail to comply with this provision. The unlawful practice of providing information within 10 days of receiving a request for it rather than immediately, has become a tradition with public agencies. Information is provided immediately on request only in rare exceptional cases - when the person requesting it uses his connections or influence, as a rule.

Moreover, public agencies almost unanimously fail to acknowledge the receipt of the request within three days of its coming in. Cases of public agencies complying with this requirement are extremely rare.

– Failure of public agencies to provide information of public interest

There are agencies which merely ignore requests for public information without explanation instead of complying with them.

– Refusal to register request for public information

Certain public agencies, far from providing public information, do not even register requests for it. In certain cases, technical reasons are given as an excuse, such as lack of duplicating equipment, absence of technical personnel in charge of registering such applications etc. These excuses are most often resorted to in regions of Georgia, most notable being the administration of the Presidential Representative (Governor) in Shida Kartli.

– Refusal to provide public information

General Administrative Code establishes an exhaustive list of grounds on which provision of public information can be refused. Specifically, information containing personal, commercial, professional and state secrets is not to be divulged to the public. In cases when the State agency officially refuses to provide public information, it shall justify the refusal by reference to the relevant legal provision. The questions of whether such refusals are legal shall be decided by courts of appeal. Instances of public agencies giving official reasons for refusal to provide public information are comparatively rare.

Reasons for such refusals may vary.
Sometimes they may be caused by public servants' incompetence. In 2004, public service has experienced a major reshuffle which resulted in appointment of officials, *inter alia,* which lack experience and knowledge in the field. Hence, certain cases of non-compliance with requests for public information might have been caused by that.

Furthermore, neglect of official duties by officials in charge of handling such requests may be due to their unawareness of the importance of freedom of information and failure to give top priority to requests for it. As a result, such requests are relegated to the shelf.

Cases of requests for public information being ignored should not be put up with. They might be caused either by negligence on the part of civil servants, or by willful intention to discourage citizens from "prying" into certain areas, which should best remain least transparent. Those areas which relate to the functioning of special funds in which budgetary or extra budgetary financial resources are accumulated, are among the institutions which are off-limits to the general public – such as Funds of Presidential Representatives in Samegrelo-

Zemo Svaneti region or Shida Kartli where many requests for public information have remained unanswered.

Moreover, such actions have become commonplace due to the established culture of impunity among civil servants violating FOIA requirements. Regrettably, cases of administrative sanctions being taken against public servants guilty of non-provision of public information at citizens' requests are very rare. This might be explained by the fact that citizens, whose interests have been injured, are shy of appealing such violations to the negligent public servants' superiors as well as the fact that few citizens insist on the imposition of administrative sanctions on such civil servants. As to superior officials, they never impose such sanctions *proprio motu,* on their own initiative.

In addition, law enforcement agencies, Ministry of Foreign Affairs and the Prosecutor's Office neither investigate such violations which have become common practice, nor call the malfeasant officials to account thus contributing to the culture of impunity. Unfortunately, instances of officials having been prosecuted for committing the above-mentioned offenses punishable under the Criminal Code of Georgia, are unheard of.

The following political and legal actions ought to be taken to remedy the situation.

Political remedies include proclaiming transparency of public institutions a matter of priority in government policy and requesting that the entire government machinery, at all levels, be geared towards that end. This will add to the decision makers' awareness of the importance of said transparency and to their determination to make it a reality.
Furthermore, it is necessary to draw up advanced training programs for civil servants responsible for providing public information the idea being to brush up their knowledge on Public Information Law, on their professional duties imposed by it and on the sanctions to be applied to them for breaching it.

In addition, there is a need for legislation amendments on more effective mechanisms of appealing against denials of public information. Nowadays, appeals against public information denials are considered by courts in accordance with standard procedures established for civil and administrative cases. However, such practice detracts from the value of requested information, because ordinary cases may last for up to a year before the court hands down a ruling that binds the defendant to provide public information to the claimant. Meanwhile the information in question loses all of its value, especially if it is required for purposes of journalistic investigations. Hence the need for procedural legislation amendments expediting the hearing in court of appeals against public information denials. This can be achieved by cutting the duration of judicial procedure in such cases or by establishing a special procedure for hearing appeals against FOI abuses, different from that of hearing a case on merits.

Administrative and criminal sanctions imposed on civil servants for every violation of FOI legislation would certainly discourage them from doing so in future.

Last, but not least, innovations brought by technological progress could be used to enhance transparency of state institutions. FOI legislation can be amended to make it incumbent on each state agency to post all of its documents of public interest on the web. Although local self-government bodies may lack the equipment to abide by these instructions, national public agencies will have no difficulty doing so. Opponents might argue that posting all public information (e.g. procurement reports, correspondence etc.) on an agency's website is hardly a realistic task. So, to begin with their web publications may be restricted to current regulatory documents of which there are not too many.

Although this change in the legislation might cause an increase in state agencies' expenditures, this is nothing to worry about considering that most agencies have their expenses on web site maintenance and development covered in their annual budgets. For all that, information will be much more readily available to the public.

In conclusion, it must be admitted that the situation with public information provision by state agencies was not satisfactory in Georgia in the period of 2004 and 2005 for different reasons. However, there is hope that the legislative and executive government agencies will take measures to enhance the transparency of state institutions.

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