

5.1. AVAILABILITY OF PUBLIC INFORMATION AND EXISTING PROBLEMS

Introduction

In order to ensure comprehensive monitoring of media-related matters, it is often important and decisive to receive and handle the information held by government agencies. Georgian legislation envisages quite an efficient mechanism for interested persons in this respect that is met in the norms regulating the availability of public information (General Administrative Code of Georgia; a chapter related to freedom of information). However, in order to enforce the law efficiently, it is important to have the will of administrative bodies and generally government agencies to ensure the availability of public information held by them under the established rules and timeframes.

It is important for any citizen or organization interested in obtaining particular public information to receive this information within certain timeframes because information handling serves a specific purpose. The delayed information may lose its value just stemming from this purpose.

Statistical Data

In 2014–2015, Media Development Foundation (MDF) requested information from 150 public institutions, including the ministries and their structural units, legal entities of public law and legal entities of private law established by the state. A part of information was about media spending and the other part – about important issues related to professional activities of the media. It should be noted that in most cases public institutions provide public information, but some difficulties are still observed.

MDF's request for public information was rejected in 17 cases. For each case of refusal, MDF filed administrative complaints to a superior body. Seven administrative complaints were satisfied and information was provided based on the orders from superiors or superior bodies.¹⁰ administrative

complaints were rejected and the cases moved to the court. The parties reached an agreement on four court disputes; one lawsuit was satisfied fully and one was rejected; five court disputes are still underway.

Non-Notification of Refusal to Provide Information

Not only some public institutions do not provide public information, but they do not even notify applicants about refusal. It is problematic in itself, because in this case applicants will learn about their failure to receive the information indicated in an application only after expiration of a term necessary for providing information and they will not be able to understand the reasons for such refusal.

MDF requested information from the Georgian Chamber of Commerce and Industry on January 13, 2015; from the Interior Ministry – on October 22, 2015; from the Georgian Railway – on June 24. In none of these cases the applicant was notified about refusal to provide information; neither was the requested information provided within defined timeframes.

Providing Information at Litigation Stage

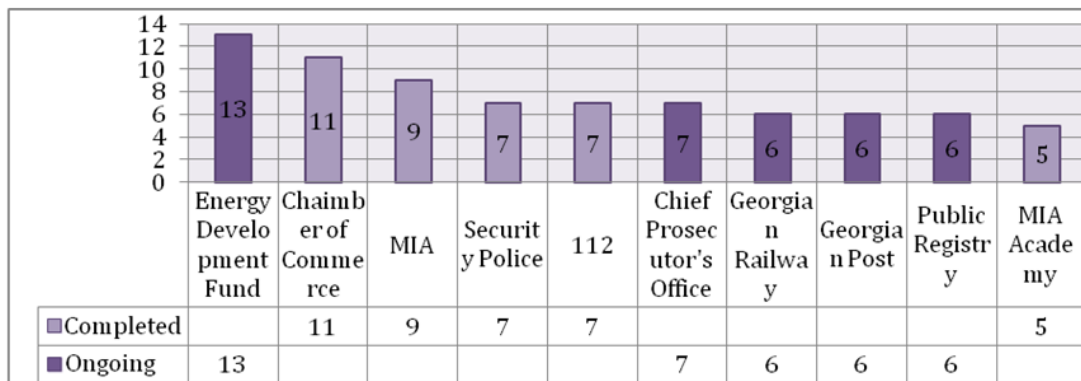
On December 25, 2014 the Media Development Foundation requested information from the Interior Ministry's legal entities of public law – Security Service, 112 and Academy of the MIA about advertising, marketing and media expenses covered by them. However, MDF managed to receive this information only after filing a lawsuit in court. In this case, the parties managed to reach an agreement; however, it took several months to obtain information. The above mentioned agencies decided to provide information in the process of litigation that is an alarming fact, as it indicates that they realize public nature of information and the obligation to provide it, though they fulfill this obligation inappropriately and make efforts only after the case moves to court. As a result, a party interested in information loses time and resources; moreover, it causes inefficient spending of administrative resources.

Delay in Providing Public Information

It is important to note that legislation sets a 10-day period for preparing and releasing public information. But it is a maximum period within which a public agency should ensure providing relevant information; it means that an agency accountable to the public is obliged to provide requested information as soon as possible even if it has been disclosed proactively. Such approach in legislation is based on a presumption that information must be provided unless there is a certain objective hampering circumstance.

Even if an interested party wins court dispute, according to MDF's practice, the period from requesting information to receiving this information reaches half a year, on average.

Table 1.1. The terms of adjudication of lawsuits related to requesting public information according to MDF's practice for 2014-2015



The terms of delivering a court ruling are also quite problematic. The court rejected MDF's lawsuit against the prosecutor's office and announced its ruling at a hearing on November 18, 2015. However, the ruling was delivered to MDF almost after two months (on January 14) in violation of the terms that further delays the term of receiving information.

Chief Prosecutor's Office of Georgia

The Chief Prosecutor's Office is a problematic and closed agency in terms of information availability. Naturally, stemming from the essence of activities carried out by the prosecutor's office, any information cannot be as open as in case of other public agencies. However, the prosecutor's office turns legislative exceptions into norm and introduces harmful practices in terms of releasing information. In case of requesting information about any media-related incident containing the signs of criminal offence, the Chief Prosecutor's Office refers to subparagraph "a" of part 4 of article 3 of the General Administrative Code of Georgia, according to which "this Code shall not apply to the activities of the bodies of the executive authority related to: a) criminal prosecution and criminal proceedings against a person having committed a crime." Through this approach the Chief Prosecutor's Office of Georgia disclaims the obligation to provide public information and does not even confirm opening of investigation into high-profile cases; in case of delayed investigations, it leaves the public without information about the course of investigation and its results. Judicial misinterpretation deprives the civil society of an opportunity to control how investigative and prosecution bodies fulfill their obligations. Moreover, an interested party fails to receive information about those cases, where opening of investigation has been confirmed but no tangible results have been achieved. It paves the way for dragging out the investigation on important cases related to human rights.

Personal Data Protection and Public Information

As it seems, the Law on Personal Data Protection represents a problem for Georgian administrative bodies in terms of providing public information. Administrative bodies fail to give reasons explaining

their refusal for each individual case and use an undifferentiated approach when refusing to provide information containing personal data.

The Media Development Foundation requested the founding documents of a political party Alliance of Patriots of Georgia from the National Agency of Public Registry, as it wanted to examine whether the prohibition envisaged by the Law of Georgia on Broadcasting was violated. According to the law, the broadcasting license holder cannot be a political party or its officials. However, MDF received the founding documents from the National Agency, where the names and surnames of party officials (secretary general and members of the revision commission), except of the party chairperson, were hidden citing personal data protection. Since proceeding from the tasks of the political party, they represent public persons, it is unclear what the purpose of hiding the names of party officials is. Currently, this dispute is also adjudicated by court, but the trial is dragged out because of the involvement of the Alliance of Patriots of Georgia as a third party that is an obscure procedural action, because a claimant has a dispute about the issue that an administrative authority is obliged to provide disputable information even without having a consent from a personal data subject.

Hiding personal data is also problematic when requesting court decisions, because a particular case may trigger public interest just stemming from the subject of this case. Frequently, hiding personal data makes it impossible to search the entire decision. MDF has prepared a constitutional lawsuit in connection with this problem.

Constitutional Lawsuit

According to the constitutional lawsuit prepared by the Media Development Foundation, it is essential to announce as unconstitutional the normative content of paragraph 1 of article 44 of the General Administrative Code of Georgia (A public institution shall be obliged not to disclose personal data without consent of the persons themselves, or without a justified court decision if so provided for by law, except for personal data of officials (and of the nominees for positions), which allows for such explanation of the norm according to which common courts can hide the names and identity information of all persons participating in each decision/judgment/verdict. When appealing against this normative content, the foundation guides itself by paragraph 1 of article 41 of the Constitution of Georgia, which secures freedom of receiving information.

MDF believes that the right to having public access to documents should be as wide as possible. Providing information should be limited only when disclosure of such information will harm concrete public or private interests. Restrictions on access to information citing personal data protection should be imposed with respect to individual cases and not generally.

Receiving Public Information from Legal Entities of Private Law

Receiving information from non-entrepreneurial (non-commercial) or entrepreneurial legal entities established by the state is yet another problematic issue. In most cases, legal entities of private law disclaim their obligation to provide public information citing that they do not represent the subjects of public law. The ongoing dispute with the Georgian Post and the Georgian Railway highlights just this problem.

It should be noted that on June 11, 2015 a lawsuit filed by MDF against Agricultural Projects Management Agency was satisfied. The judge made a precedent decision and further strengthened the standard, according to which legal entities of private law are obliged to provide public information if they adhere to the principles of public law. But even in this case, it took MDF seven months along with mobilization of relevant resources to receive the requested information.

Recommendations

- In order to efficiently implement the chapter on freedom of information of the General Administrative Code, public institutions should carry out effective measures and introduce clear internal procedures for this purpose.
- The Chief Prosecutor's Office of Georgia should hold consultations with the participation of civil society and lawyers in order to rule out legal misinterpretation and eradicate the practice introduced by this institution in connection with high-profile cases.
- Courts should ensure duly adjudication of the cases related to providing public information so that trials are not dragged out for an indefinite period and public information does not lose its value.

5.2. FREEDOM OF EXPRESSION CASES

In 2015, two complaints were filed with courts against the infringement on honor and dignity by journalists' reports exposing the involvement of public servants in corruption. The first case concerned the Parliament Vice-Speaker Manana Kobakhidze whilst another concerned the journalistic investigation into the activity of Georgia's Co-Investment Fund associated with the former Prime Minister Bidzina Ivanishvili. Yet another court dispute concerned the retraction of information about a family member of the opposition party published in online media.

5.2.1. Parliament Vice-Speaker Manana Kobakhidze v. Editor of Kronika+ Newspaper Eliso Kiladze

On 22 December 2015, Davit Lanchava, the defense lawyer of Vice-Speaker of Parliament Manana Kobakhidze, filed a complaint on her behalf with the Tbilisi City Court against the editor of Kronika+ newspaper, Eliso Kiladze.

According to media reports, the complainant alleges that the material published by Kronika+ infringed on the honor and dignity of Manana Kobakhidze, was untruth and libelous and aimed at discrediting her in the eyes of society.

Manana Kobakhidze accuses Eliso Kiladze of defamation and demands that the court order Eliso Kiladze the publication of a court decision.

Apart from the editor of the newspaper, the Parliament Vice-Speaker also filed a complaint against a member of the city council, Aleko Elisashvili, in particular, against the latter's allegation in regard with the so-called pardon case that Manana Kobakhidze and the chairman of parliament's human rights committee Ekaterine Beselia had the financial interest in pardoning convicts in a high-profile drug-dealer case.

5.2.2. JSC Georgia's Greenhouse Corporation v. Rustavi 2 Broadcasting Company and Journalist Eka Kvesitadze

On 6 May 2015, the JSC Georgia's Greenhouse Corporation filed a complaint with the Tbilisi City Court against Rustavi 2 TV company and its journalist Eka Kvesitadze. The complainant demanded the publication of information refuting the report harming the reputation of the complainant.

On 21 March 2015, the Ganskhvavebuli Akcentebi program aired on Rustavi 2 reported that within the framework of Produce in Georgia state program, the government of Georgia, by its decree #1477 of 26 August 2014, handed over the state-owned 350,000 square meter non-agricultural land, which was estimated at 2,450,000 GEL by the state, to the JSC Georgia's Greenhouse Corporation for a symbolic price of 1 GEL. According to the complainant the land was handed over to the JSC Georgia's Greenhouse Corporation through a direct sale on the condition that it will make 9,800,000 GEL worth investment in it. Consequently, the complainant believes that the Rustavi 2 reported essentially false facts and deliberately released incomplete information.

The complainant claims that the author of the program misled the audience by reporting that the owner of the JSC Georgia's Greenhouse Corporation is GCF Partners, the management company of the Georgian Co-Investment Fund, which is co-owned by Ucha Mamatsashvili, a cousin of Bidzina Ivanishvili, and Giorgi Bichiashvili, the Chief Executive Officer of the Fund.

On 24 March 2015, the news program of Kurieri on the Rusatvi 2 TV channel reported that the land plot worth 2,500,000 GEL, located in Gardabani, was handed over to a company of Bidzina Ivanishvili's cousin for 1 GEL. The final shots of the report featured an old, Soviet-era greenhouse which did not belong to the JSC Georgia's Greenhouse Corporation. According to the complainant, the report created an impression that the Greenhouse Corporation did not make any investment.

The complainant demands that the defendants be ordered to refute the statements harming the complainant's reputation in a commensurate manner – through the same means and in the same program – Ganskhvavebuli Akcenetbi and Kurieri. In particular, the complainant demands that the defendant make the statements that (1) the information that “the owner of the JSC Georgia's Greenhouse Corporation is GCF Partners, the management company of the Georgian Co-Investment Fund, which is co-owned by Ucha Mamatsashvili, a cousin of Bidzina Ivanishvili, and Giorgi Bichiashvili, the Chief Executive Officer of the Fund” is incorrect. In reality, the shareholder of the JSC Georgia's Greenhouse Corporation is Georgian Agro Development LLC; (2) the information that the JSC Georgia's Greenhouse Corporation purchased the property for 1 GEL alone is wrong and that the property was handed over to the complainant under the investment obligation of 9,800,000 GEL.

The complainant notes that according to Article 13 of the Law of Georgia on Freedom of Speech and Expression, a person shall be imposed civil liability for defamation against a private person if the claimant proves in court that the statement of the respondent contains essentially false facts directly related to the claimant, and this statement caused damage to the latter. The complainant believes that the reports of the defendant do not constitute personal opinions of the journalist about the complainant but the assertion of facts. In the complainant's view, the failure to double check facts indicate about the deliberate distortion of facts.

5.2.3. Davit Vashadze v. Exclusivenews

Claim: On 18 August 2014, the news agency Exclusivenews published an article titled “Giorgi Vashadze's Brother ‘Got Married’?!” by journalist Darejan Liparteliani.¹ According to the complainant, with this article, alleging that the complainant has intimate relationship and lives with the head of Prometheus cinema, Gaga Chkhaidze, the journalist defamed the complainant.

According to the complainant, the journalist showed interest towards him for the only reason that he is the brother of Giorgi Vashadze, one of the leaders of the political association United National Movement and the publication aimed at discrediting both Giorgi Vashadze and him rather than satisfying the public interest.

The complainant noted that the author of the article neither contacted him nor made any attempt to double check the information received from an “informant” regardless of the fact that, as the article reveals, the journalist had the complainant's phone number. Consequently, the complainant learned about the article only after its publication and was not given a possibility to provide adequate response to the incorrect information released about him.

The initial complaint indicated both the media owner Exclusivenews LLC and the journalist as Darejan Liparteliani defendants, however, at a session held on 24 March, the complainant specified the claim indicating the Exclusivenews LLC as the only defendant.

¹ <http://www.exclusivenews.ge/?page=view&artid=6363>

The complainant demanded (1) the retraction of false facts released by Exclusivenews LLC and the publication of the court decision by the news agency, (2) the compensation for moral damage in the amount of 10,000 GEL by Darejan Lipeateliანი and Exclusivenews LLC solidarily.

The defendants Darejan Lipeateliანი and Exclusivenews LLC did not appear at a main court session held at 10:00 on 24 March 2015. They did not notify the court about the reason of their absence. The representative of the complainant filed a motion for ruling in absentia.

Ruling: On 24 March 2015, because of the failure of defendants to appear before the court, the Tbilisi City Court made a ruling in absentia and fully satisfied the claim of the complainant.

According to the court ruling, the Exclusivenews LLC was (1) ordered to refute the information published in the article of Darejan Liparteliანი titled “Giorgi Vashadze’s Brother ‘Got Married’?!” in the Exclusivenews in the following form: to publish that the information according to which “Vashadze and Chkheidze were in intimate relationship. Now they decided to come out. Therefore Gaga Chkheidze ‘legalized’ his relationship with Vashadze and they live together today. In short, Giorgi Vashadze’s brother ‘got married’,” is false.

The court imposed the compensation of 10,000 GEL for moral damage to Davit Vashadze on Darejan Liparteliანი and the Exclusivenews LLC.

Motivation: The decision notes that according to Paragraph 1 of Article 230 of the Civil Procedures Code of Georgia, if the defendant fails to appear at the hearing and the plaintiff files a motion for a judgement in absentia, then the factual circumstances referred to in the claim shall be deemed proven. In accordance to Paragraph 2 of Article 230 of the Civil Procedures Code, if the circumstances referred to in the claim provide a legal justification for the claim, the claim shall be satisfied.

The city court ruled that the circumstances referred to in the claim and deemed as proven legally justifies the claim in accordance to Article 17 of the Law of Georgia on the Freedom of Speech and Expression and Article 18 of the Civil Procedures.

Appeal: The news agency appealed the decision taken in absentia.

Comment: The journalist challenges that part of the decision of the court of first instance, which imposes on her the compensation, because according to Article 6(2) of the Law on Freedom of Speech and Expression, “In case of a court dispute related to the defamation published by a journalist in the media, the defendant shall be the owner of the media.” The complainant specified his initial claim and indicated the Exclusivenews LLC as the only defendant, but the court wrongly imposed the payment of compensation on the journalist.