

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Calls on the Parliament of Georgia to Turn Down Anti-Constitutional Draft Law

Today the Parliament of Georgia is reviewing the draft law on addendum to the General Administrative Code of Georgia. Under the draft law, clause 5 will be inserted in Article 3 of the General Administrative Code of Georgia:

“5. Chapter III of this Code does not apply to activities of the executive authorities that are related to participation of the state of Georgia in litigations and review of

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cases in international arbitrary, foreign or international courts before deliverance of judgment by them. Prior to deliverance of final judgment by court, information will be released in compliance with an international agreement and treaty of Georgia and/or terms of courts provided in this paragraph”.

The Georgian Young Lawyers' Association believes that noted addendum contradicts Article 41 of the Constitution of Georgia, which stipulates:

1. 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.

GYLA believes that information concerning participation of the state of Georgia in international arbitrary, foreign or international courts in litigations and review of cases before final judgment is delivered by the courts, does not fall under any category of secret information listed in the Constitution. As the explanation note of the draft law fails to state any legitimate interest that will be jeopardized by publication of the noted information.

According to the current wording, the General Administrative Code, including Chapter III does not apply to activities of the executive bodies that are related to

- (a) Criminal prosecution and criminal proceeding against the person, who committed a crime,
- (b) Investigation and task force activities,
- (c) The enforcement of a valid judgment rendered by a court,
- (d) Rendering decisions on military matters and matters of military discipline, except those related to a person's constitutional rights and freedoms,
- (e) The appointment or dismissal by the President of Georgia of a person to or from the offices stipulated by the Constitution and the exercise of authority according to Subparagraphs (a), (d), (e), (g), (h), and (n) of Paragraph 1 and Paragraphs 2, 4, and 5 of Article 73 of the Constitution of Georgia, and
- (f) The implementation of international treaties and agreements and the pursuance of foreign policy.

GYLA believes that the list of current exceptions in the law does not include information kept by a court, as public interest for justice has always been high, particularly in Georgia, where the issue of court reform is an acute problem.

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Georgia was one of the first out of the twelve signatories to the Council of Europe Convention on Access to Official Documents in June 2009. Noted convention, as well as the 2002 Recommendation of the European Council on Access to Official Documents does not recognize such exception; furthermore, according to the noted international acts, official documents are mainly public and access to the documents may be restricted only for the purposes of protection of rights and legitimate interest of other individuals.

It shall also be noted that last year the Human Rights Court of Europe recognized freedom of information as a fundamental human rights. In the case of *Társaság a Szabadságjogokért v. Hungary* the plaintiff sought information concerning a case. The European Court assessed restriction of access to the information as monopolization of information by the Constitutional Court, which equals to a certain form of censorship.

Below is an incomplete list of cases, where the government of Georgia participated: With the Feb 21, 2005 order of the Government of Georgia #90, at the International Arbitration Court of the International Chamber of Commerce, in the case against a Turkish Company Tustash, the Ministry of Justice of Georgia was authorized to ensure selection of and signing an agreement with the corresponding international legal company through one bidder negotiation. On January 24, 2007, on the basis of the Jan 24, 2007 #25 decree, corresponding funds were assigned to the Ministry of Justice for procurement of legal service.

The Nov 2, 2005 #475 order of the Government of Georgia, with regard to the lawsuit brought by Raiffeisen Zentralbank Oesterreich Aktiengesellschafts against the Ministry of Energy of Georgia in the Arbitration Court of the International chamber of Trade of Paris, the Ministry of Energy of Georgia was authorized to procure legal service through a one bidder negotiations for ensuring legal representation of the Georgian state. The Ministry of Finance was commissioned to ensure allocation of corresponding funds from the Government's Reserve Fund for procurement of legal service.

Under the June 21, 2006 order of the Government of Georgia, GEL 40 000 was allocated from the Government's Reserve Fund in order to ensure legal representation of the state of Georgia in the European Human Rights Court and the International Arbitration Court. Same agency was commissioned with controlling implementation of the order.

Under the October 25, 2006 order #51 of the Government of Georgia, GEL 20 000 and

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USD 130 000 equivalent in GEL was allocated from the Government's Reserve Fund in order to ensure legal representation of the state of Georgia in the international arbitrary courts. Same Ministry was commissioned with controlling implementation of the order.

Under the April 1, 2006 order of the Government of Georgia, regarding the lawsuit brought by ITERA International Energy L.L.C. against the Ministry of Energy of Georgia in the International Commercial Arbitration Court of the Chamber of Trade and Industry of the Russian Federation, the Ministry of Finance of Georgia was commissioned with allocation of corresponding funds to the Ministry of Justice in a short period of time for procurement of legal service in order to ensure legal representation of the State of Georgia. The procurement was implemented through a single bidder negotiation.

Under the February 9, 2006 order #53 of the Government of Georgia, GBP 510.00 (five hundred and ten thousand) equivalent in GEL was allocated to the Ministry of justice from the Government's Reserve Fund in order to ensure legal representation of the State of Georgia in the international arbitrary court of the international chamber of commerce. The procurement was implemented through one bidder negotiation.

Under the January 12, 2006 order #2 of the Government of Georgia, concerning Batumi-Kobuleti Road construction, USD 230 000 equivalent in GEL was allocated to the Ministry of Economic Development from the Government's Reserve Fund in order to protect interests of the State of Georgia in the Arbitration Court of Paris.

Under January 24, 2007 order #25 of the Government of Georgia, corresponding funds were allocated from the Government's Reserve Fund in order to ensure representation of the State of Georgia in the International Arbitration Courts and the Dutch Court.

On the basis of a arbitrary notification received from the legal company Crowell&Moring LLP representing iZee Enterprises LLC, Lazer-2 Tbilisi LTD, Café Rustaveli LTD, concerning litigation against the State of Georgia in the arbitrary court to be created in compliance with UNCITRAL terms, The Ministry of Justice of Georgia was commissioned with selection of relevant international legal company and procurement of legal service through a single bidder negotiation (the December 10, 2008 order #866 of the Government).

With regard to a dispute between the State of Georgia and Ina Gudavadze in the arbitrary court created in compliance with UNCITRAL, additional USD 1 200 000 equivalent in GEL was allocated from the Government's Reserve Fund to the Ministry of Justice of Georgia in order to procure legal service (the July 8, 2009 order #484 of

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the Government).

Under the January 17, 2007 order #12 Government of Georgia, GEL 1 316 000 was allocated to the Ministry of Justice of Georgia, in order to ensure legal representation of the State of Georgia in the European Court of Human Rights.

Certainly, there is a high public interest regarding all of the above-listed cases, as expenses for legal service and representation in international courts is frequently “unforeseen” and high and allocated from the Government’s Reserve Fund. Obligation of using state procurement procedures does not apply to cases where financial resources are allocated from the reserve funds. Therefore, the General Administrative Code is the only mean for securing public access to the information concerning noted expenses.

Therefore, GYLA considers that adoption of the noted addendum by the Parliament would constitute a notable setback with regard to transparent and accountable governance in Georgia. Participation of the state in both national and international courts will always be subject high public interest and in such cases information shall be restricted only in individual cases based on constitutional grounds and through well-justified decisions.