

საქართველოს ახალგაზრდა იურისტთა ასოციაცია
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The New Draft about “State Secret” Requires Key Amendments

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The new draft about “State Secret” has been initiated in the Parliament. The author of the draft is the interagency working group and the initiator - MP Irakli Sesiashvili. We appreciate the initiative to amend the outdated applicable law, though it should be noted that submitted version fails to meet current challenges and does not ensure compliance of the norms regulating state secret with international standards, that was the aim of the law. Furthermore, today, when state has been working actively on the new Freedom of Information Law, we consider inappropriate adoption of the Law on State Secret ahead of this process.

GYLA has already submitted its opinion to the Parliament. In view of the international standards, GYLA considers that the draft requires serious amendments and revision, in particular:

Submitted version does not envisage public interest test. The latter implies disclosure of state secret in view of high public interest when the interest of access to information outweighs the interest of keeping it confidential. Accordingly, public interest test needs to be added to the draft;

Information may be considered state secret when its disclosure brings serious harm to state □ legitimate interest (harm test). Though according to the proposed draft, the harm test is quite weak and envisages recognition of information as state secret, when it might have “adverse affect” on certain state interests;

Generally, there is a risk to recognize as state secret information, which reveals violation of law, corruption, human rights violations or serious threat to environment or health. Therefore it is important that public officials, who have access to state secret and who reveal unlawful act by its disclosure-were protected in the process of disclosing information;

The norms of the criminal law envisaging relevant responsibility for disclosure of state secret should also be revised, namely 1) disclosure of information causing harm should be recognized as offence, rather than merely disclosure of state secret; 2) Imposing responsibility upon journalists needs to be excluded.

Both the applicable law and the draft grant the leading role to the Ministry of Interior

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in the field of protection of state secret. We think that the issue needs to be reviewed for several reasons: 1) the Ministry of Interior itself possesses secret information, and generally is keen to get as much information to be secret; 2) The Ministry of Interior may use such controlling authority for collection of information which otherwise should have required court consent; 3) There is no responsibility envisaged for the Ministry of Interior in the process of implementing such activities. Therefore, in view of international experience, it is desirable if independent body or information officer undertakes supervision functions;

As opposed to applicable legislation, the draft considers possible to consider state secret statistical data related to operational-investigative activities. GYLA opines that the provision prejudices administration of transparent and accountable governance and is impermissible.

Furthermore, in its opinion, GYLA focuses on:

- the risks of attributing individual authorship to the state secret;
- terms of keeping information confidential;
- the necessity of annual revision of the decision about considering information secret and etc.

It should be noted that on July 16, 2014 GYLA representatives attended the first reading of the draft at the session of the Legal Issues Committee of the Parliament and have expressed opinions of the organization before the committee members and initiators of the draft. In its conclusion legal issues committee reflected GYLA opinion about necessity of envisaging public interest test in the draft. We remain hopeful, that the Parliament will take into account GYLA opinion in the process of revision of the initiative and will reflect them accordingly in the document.