

A/HRC/RES/27/23 “Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes”

Question 1

The Georgian national legislation and the international agreements, to which Georgia is a party, regulate access to the information, including the environmental information through the following normative acts:

General legal framework guaranteeing the right of access to public information is enshrined in the **Constitution of Georgia**. It provides that citizens of Georgia have the right to become acquainted, in accordance with a procedure prescribed by law, with the information, including official documents, available at state institutions unless it contains state, professional or commercial secret.¹

Article 37 (5) of the Constitution of Georgia provides, that “Everyone shall have the right to complete, objective, and timely information about environmental conditions”.

The above-mentioned constitutional principle is replicated and is further developed in General Administrative Code of Georgia (GAC) that is the main statutory act regulating procedures on access to information. According to CAG everyone has the right to access to public information available at the administrative body, as well as to receive copies unless the information contains state, professional, or commercial secrets or personal data.² “Administrative bodies” are all state or local self-government bodies or institutions, legal entities under public law (other than political and religious associations), and any other person exercising authority under public law in accordance with the Georgian legislation.³ “Public information” is determined as an official document (including a drawing, model, plan, layout, photograph, electronic information, or video- and audio-recording), i.e. any information stored at a public institution, as well as any information received, processed, created or sent by a public institution or public servant in connection with official activities; also any information proactively published by any public institution.⁴ Public institution is under obligation to issue public information immediately or not later than 10 days if the request for public information requires: retrieving of information from its structural subdivisions in another locality or from another public institution, and its processing; retrieving and processing of single and uncorrelated documents of considerable size; consulting with its structural subdivision in another locality or with another public institution.⁵

If request for access to public information was rejected, the agency shall provide an applicant with information concerning his/her rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those structural subdivisions or agencies, with whom consultations were held when making a decision.⁶

A person may file a claim in a court requesting the nullification or amendment of the decision of an agency and claim material or non-material damages incurred for denying access to public information and/or for the

¹ Article 41.1, Constitution of Georgia (1995)

² Article 10.1, General Administrative Code of Georgia (1999)

³ Article 2.1(a), General Administrative Code of Georgia (1999)

⁴ Article 2.1(l), General Administrative Code of Georgia (1999)

⁵ Article 40.1, General Administrative Code of Georgia (1999)

⁶ Article 41.2, General Administrative Code of Georgia (1999)

creation and processing of incorrect public information. Burden of proof shall rest with respondent state agency.⁷

GAC clearly states that the information concerning environment and hazard that constitutes a threat to life and health shall not be classified and everyone shall have access to it.⁸

Additionally, **General Administrative Code of Georgia** (1999), Article 42 (the information inadmissible to make confidential) provides, that “Everyone shall have the right to be aware of information about the environment, as well as the details of risks endangering their lives and health”, thus the environmental information shall not be made confidential. Additionally, pursuant to the Articles 37-42 of the same code, everyone has the right to claim for the public information (including environmental information) and if access to public information was denied or the session of a corporate public agency was closed, the agency shall provide an applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those subdivisions or public agencies, which provided their suggestions regarding the decision. An individual administrative act issued in writing must contain a reference to the body to which the act may be appealed, its address and a timeframe for appealing. An interested party may appeal an administrative act issued by an administrative body. An administrative complaint must be filed within one month after publication or becoming officially familiar with the administrative act, unless otherwise provided by law.

Pursuant to the **Waste management Code** (2014) of Georgia, namely, under Article 12, subparagraphs “a” and “b”, the source about species and quantity of waste in order to raise the awareness in this field, should be contained in the national action plan of waste management. This information under Article 12, paragraph 2 of the abovementioned law is considered as public.

In general the right of access to the information on hazardous substances and waste is regulated by the national regulation on the access to the environmental information⁹.

The **Law of Georgia on Environmental Protection** (1996), particularly, Article 5 (2) (m) (Basic Principles of Environmental Protection), enshrines that the information on the state of the environment is transparent and available to the public” - “the Principle of Access to the Information”.

According to Article 20, paragraph 4 of the same law, interested parties have the right to receive the information about the reports revealed by environmental audit, unless the requested information does not comprise the information concerning the state or commercial secret. Under Article 271 of the mentioned law, collecting the information about the environment and providing the access for public is under the responsibilities of the Legal Entity of Public Law (LEPL) Environmental Information and Education Centre within the Ministry of Environment and Natural Resources Protection of Georgia.

Under Article 2, paragraph 2, “k”, of the **Order N175** of the Minister of the Environment and Natural Resources Protection of Georgia (5 February 2015), LEPL Environmental Information and Education Centre has an obligation to provide access to the environmental information through the official web-site and through other relevant resources.

Under Article 2, paragraph 1, “b” of the **Law of Georgia on Environmental Impact Permits** (2007), the public participation in significant decision-making in the field of environmental protection is provided as a goal of the given law. According to the Article 6 of the mentioned law, public hearing of the environmental

⁷ Article 47, General Administrative Code of Georgia (1999)

⁸ Article 42(a), General Administrative Code of Georgia (1999)

⁹ Waste Management Code (2014) of Georgia, Law of Georgia on Environmental Protection (1996), Law of Georgia on Environmental Impact Permits (2007), General Administrative Code of Georgia (1999), respective orders of the Ministers, resolutions and regulations.

impact assessment (EIA) reports are necessary to be conducted before submitting it to a permit issuing administrative body by the project developer.

Moreover, under Article 2, paragraph 2, "o" of the **Regulation of the LTD Solid Waste Management Company** under the Ministry of Regional Development and Infrastructure of Georgia, promotion of activities of public awareness raising regarding the solid waste management belongs to the responsibilities of this company.

Pursuant to the Article 3, paragraph 1, subparagraph "l" of the **Regulation on Ministry of Environment and Natural Resources Protection of Georgia**, approved by the Governmental Resolution N98 of April 2013, environmental information (including the information about hazardous substances and wastes) may be provided by the Ministry of Environment and Natural Resources Protection of Georgia.

Population of Georgia despite their civil status have a right to receive information about nuclear and radiation situation (Georgian Law on Nuclear and Radiation Safety, Article 49, paragraph 2, "b").

Environment and Health Division was established within the L. Sakvarelidze National Center for Disease Control & Public Health (NCDC&PH), which aims to create safer environment for human health. By the initiative of the NCDC&PH European Commission-Technical Assistance Information Exchange Instruments (TAIEX) expert mission on "Supporting for development an effective Environment and Health system in Georgia" was carried out in Tbilisi. We've recently received report of the TAIEX expert mission with the recommendations to develop an effective environment and health system in Georgia in line with the EU standards, for strengthening administrative capacities of relevant institutions in the sphere of Environment and Health.

According to the **Priority Measure 5** (page 10) of TAIEX expert mission report, Georgia should develop **Priority Measure 5: (page.10)** according to which: *"Georgia has obligation to approximate the classification of chemicals with Regulation 1272/2008 on classification, labeling and packaging of substances and mixtures (CLP). The issue is complicated since Georgia has never applied such legislation and assistance, provided by a project is recommendable"*.

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) (Aarhus Convention), particularly, Article 4 (1), establishes general obligation for public authorities to ensure access to environmental information (comprising the right of access to information on hazardous substances and wastes). Each Party shall ensure that, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation.

Article 15(2) of the **Rotterdam Convention** on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade provides that - "Each Party shall ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III". According to the Law of Georgia on Normative Acts, the above mentioned conventions constitute part of the Georgian legislation.

Question 2

Department for Nuclear and Radiation Safety of the Ministry of Environment and Natural Resources Protection keeps detailed information for all users of ionization radiation within the country. Every year the Ministry produces report on environment conditions that includes the data for radiation safety among others. In addition, once per three years as a member of "Joint Convention on the Safety of Spent Fuel

Management and the Safety of Radioactive Waste” Georgia issues national report covering all aspects of radioactive waste management existing in the country. Furthermore, every person may request desirable information from the Ministry and receive it if not assigned as secret.

Question 3

LEPL Environmental Information and Education Centre facilitates access to the environmental information, public participation in environmental decision-making and access to justice, as well as promoting environmental awareness raising of general public and support of training and improvement of skills of the relevant professionals.

The Centre has its website, where environmental related information obtained from the state agencies and other sources is uploaded and updated, as well as information about hazardous substances and wastes. Accordingly, abovementioned information is available for general public. The environmental related information is also disseminated by means of electronic and printing media, for example via CENN (Caucasus Environmental NGO Network).

The Center conducted 20 public hearings on the draft Law of Georgia on Waste Management Code with representatives of different municipalities in 2014. Based on the legal analysis of this draft law and from the Aarhus Convention perspectives, the Centre prepared recommendations and sent them to the Ministry of Environment and Natural Resource Protection of Georgia for their consideration. In addition, the Center held awareness raising seminars and information sharing meetings on sanctions according to the Waste Management Code for schoolchildren and teachers.

Question 4

The Ministry of Environment and Natural Resources Protection of Georgia conducts authorization of any nuclear and radiation activity by issuing special licenses and permits. Fulfillment of license conditions is controlled by special inspections conducted by the Department of Nuclear and Radiation Safety. All activities carried out to protect human health and environment from harmful impact of ionization radiation are in compliance with safety conditions enshrined in Georgian legislation.

Question 5

Until recently, businesses had no legal obligation to provide information on hazardous substances and waste. Even though there was no regular waste monitoring in Georgia. Inventories of the household, industrial, medical or chemical waste were carried out only in some exceptional cases and depended on available resources of specific projects. In the frame of the UNDP project waste inventory on the territory of Georgia was carried out in 2007. As the data corresponded only to the sites where the inventory has been carried out, only a fraction of the total industrial waste was presented.

On January 15, 2015 the **Law of Georgia on Waste Management Code** entered into force that provides the legal conditions for implementation of measures aiming the prevention of waste generation and its increased re-use for environmentally-sound treatment of waste (including recycling and extraction of secondary raw materials and energy recovery from waste as well as its safe disposal).

Within the one year period, according to the Waste Management Code, the Ministry of Environment and Natural Resources Protection of Georgia will elaborate several bylaws regarding waste data management and establish waste classification according to its types and properties in compliance with the respective EU legislation. Those bylaws will allow the Ministry to receive complete and reliable information related to the

waste management activities by defining the procedures of documenting and reporting of data, as well as obligations of the natural and legal persons producing, collecting, transporting and/or treating waste. Any nuclear and radiation activity conducted in Georgia should be licensed. License applicant should submit required documents to the Ministry of Environment and Natural Resources Protection of Georgia. The content of documents is defined by requirements of Law on Nuclear and Radiation Safety. In case of any changes in this document, license holder should immediately inform the Ministry. In case of failing to meet these obligations, the Ministry can use enforcement actions defined by legislation.

Question 6

Regarding the limitation of the access to the environmental information, including the information on hazardous substances and wastes, the following legal norms shall apply:

The **Constitution of Georgia** provides general obligations and rights with regard to the access of information, in particular, according to the article 24 of the constitution, everyone has the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or by any other means and the exercise of the rights enumerated in this article may be restricted by law on such conditions which are necessary in a democratic society in the interests of ensuring state security, territorial integrity or public safety, for preventing of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of justice.

Pursuant to the Article 4, (4) of the **Convention on the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters** (1998): A request for environmental information may be refused if the disclosure would adversely affect one of the listed categories under article 4, (4) of the convention. The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.

Moreover, Article 30 of the **General Administrative Code of Georgia** (1999) establishes, that “The decision designating public information to be classified may be rendered if law provides express requirement to protect such information from disclosure, establishes concrete criteria for such protection, and provides exhaustive list of classified information”. Under the same Code, Article 42 (a) (the information inadmissible to make confidential) provides, that “Everyone shall have the right to be aware of the information about the environment, as well as the details of risks endangering their lives and health”.

Information on a plan, formula, process, or means of a commercial value, or any other information used for manufacturing, preparing, processing of goods or rendering services, and/or information that is a novelty or a significant result of technical activity, as well as other information that may prejudice the competitiveness of a person if disclosed is considered as commercial secret.¹⁰ Public information containing commercial secret shall not be open.

When submitting information, a person shall specify that the information is his/her commercial secret. A public institution shall, within 10 days, consider the information as a commercial secret unless the requirement to open information is determined by law. If a public institution does not consider information to be a commercial secret when it is submitted, it shall decide to make the information open and shall immediately notify the respective person of its decision. The information shall become open 15 days after making the decision, unless an owner of this information appeals the decision to a superior administrative

¹⁰ Article 27².1, General Administrative Code of Georgia (1999)

body or to a court as determined by the Georgian legislation.¹¹ Information on commercial secret of others that has become known to a person while performing his/her professional duties shall be a professional secret.¹²

Professional and commercial information shall be classified indefinitely, except as provided by law. A commercial secret must be declared open if it has lost its value for being considered classified.¹³

Article 4, paragraph 1, the **Order N142** of the Minister of the Environment and Natural Resources Protection of Georgia of October 3, 2014 on provisions of the Regulation on Nuclear and Radiation Safety Department notes that this department prepares the information on nuclear and radiation safety which does not comprise state and/or commercial secret.

Pursuant to the **Law of Georgia on Environmental Protection** (1996), namely under Article 20, paragraph 4, "the representatives of public are entitled to demand to acquaint with the results of the environmental audit, if this information is not classified as an official, industrial or commercial secrecy."

The information which is protected in state information funds must not be revealed to the physical or legal person unless the consent of the owner of the information is provided.

Question 7

The implementation of the right of access to information is ensured by through the following legal mechanisms:

- Under Article 49 of the **General Administrative Code of Georgia** (1999) the annual report on the digested and issued public information shall be sent to the Prime-Minister, President and Parliament of Georgia until December 10 of each year and should be officially published.
- According to Article 2, paragraph 1 of the **Government Resolution N 219** on "Electronic Access on Public Information and Proactive Publishing" (26 August, 2013) all public institutions are obliged to publish report on their websites quarterly. The report shall include number of information requests and their outcomes, including refusals and justifications.

With regards to the correlation of the right of access to information and the commercial secrecy, the following legal regulations shall apply:

- Under Article 28 of the **General Administrative Code of Georgia** (1999) on the accessibility of public information, public information shall be open except of personal data and the information concerning state or commercial secrecy. The public authority is obliged to provide proactive publishing of public information pursuant to the relevant legislative provisions. According to the Article 27² of the same code, which covers the issues related to the commercial secrecy, everybody has a right to fill the relevant application when he/she is considering relevant information as commercial secret, and submit to the higher administrative authority or when prescribed by legislation – to the court.
- Under Article 29 of the **Law of Georgia on Minerals** (1996) "information about geological structure, reserves of mineral resources, mining-technical conditions and other characteristics or parameters of resources, represents the property of the person (natural/legal) whose funds were used for obtaining information". The information which is protected in state information funds mustn't be revealed to the physical or legal person unless the consent of the owner of the information is provided.

Some examples of the relevant national case-law are provided below:

¹¹ Article 27².3, General Administrative Code of Georgia (1999)

¹² Article 27³., General Administrative Code of Georgia (1999)

¹³ Article 31, General Administrative Code of Georgia (1999)

- **Supreme Court of Georgia – case # 06-1278-1240 (5 July, 2010)** -Supreme Court of Georgia affirmed the decision of Appellate Court and held that, since the Administration of the President of Georgia had not the required environmental information, this authority was not obliged to issue information, as according to the national legislation, the lack of information is the legal basis for refusal of the issue the information.
- **Supreme Court of Georgia - case # 06-1484-1466(23-11) (9 March, 2012)** - Supreme Court of Georgia stated that the information on the status of the water constitutes environmental information and hence it is the kind of information that is prohibited to be secret under the national legislation. The Court obliged Government of Georgia to issue the environmental information on whether the obligation of the eradication of the dumping of the sewage in the river is fulfilled and in what the fulfillment of this obligation is resulted.
- **Supreme Court of Georgia -case # 06-718-619-3-04 (24 November, 2014)** - Supreme Court of Georgia held that the applicants right of the access to the environmental information was not violated, as the Court concluded that the documentations presented by the investor, in order to obtain the permission, met all of the requirements provided by the agreement and access to this documentations was ensured. The Court also noted that, notwithstanding the fact that, in this particular case, international agreement provided the rules for obtaining permission, different from what is provided by Law on Environmental Permit, the issue of environmental permit according to the rule of the agreement cannot be regarded as essential violation of the requirements for the issue of the environmental permit.
- Appellate Court of Georgia – case #30310014414640 (23 December, 2014) - Non-governmental organization "Green Alternative" was refused by administrative act to have access to the environmental information. The applicant claimed that the abovementioned administrative act should be annul and void. The claim was satisfied and the Court obliged the Ministry of Environment and Natural Resources Protection of Georgia to issue a new administrative act, as the administrative act at the question was issued without study and assessment of essential circumstances of the case.