

Abstract from the decision of the Constitutional Court of Georgia

Dated as of 27.03.2017

The Constitutional Court of Georgia (1st Panel) satisfied a constitutional claim of citizen Kraveishvili (registration N757) against the Government of Georgia and declared the confidentiality of independent experts, who evaluate project proposals submitted in the frame of the fundamental research grant call (N 84 decree of Government of Georgia, February 16, 2011, article 9, paragraph 4), as unconstitutional, considering the freedom of information guaranteed by the Constitution of Georgia (article 41, part 1).

The Court explained, that the openness of public information stored in public institutions is a precondition for effective public control. Confidentiality of the experts during the ongoing call and after the announcement of evaluation results restricts individual right to access public information, due to the fact, that the expert is involved in decision making and the evaluation is a precondition for grant allocation. Taking into consideration the publicity of expert activity, their identity could not be considered as private information, as expert identity is a public information and accessibility is guaranteed by the freedom of information provided by the Constitution of Georgia.

The Court admits, that expert identity is an important variable for evaluating their conclusion. Society and interested stakeholders should have an opportunity to question (to doubt) experts' conclusion, considering subjective and objective factors. Additionally, the issues considered by the National Science Foundation such as - conflict of interests, experts' impartiality and competences may be the subject of society's interest. Thus, in democratic society these issues should not be entrusted to the unlimited discretion of administrative bodies and effective public control should be guaranteed, each active citizen should be able to implement effective public control.

The Court considered, that disputed provision illegally restricts an individual right to access official documents and information stored in public institutions with respect of public, interest guaranteed by the Constitution of Georgia.

Constitution of Georgia, Article 41, part 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.

General Administrative Code of Georgia

Article 27² – Commercial secret

1. Commercial secret – 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 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.
2. Information about an administrative body shall not be a commercial secret.
3. When submitting information, a person shall be obliged to specify that the information is his/her commercial secret. A public institution shall, within 10 days, be obliged to consider the information

under the first paragraph of this article as a commercial secret unless the requirement of open information is determined by law. If a public institution does not consider information to be a commercial secret when it is submitted the institution 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 body within the 15 days, and to a court as determined by the procedural law of Georgia. The owner must immediately notify the public institution of the appeal.

4. Any person may appeal a decision to consider information to be a commercial secret to a superior administrative body, and to a court as determined by the procedural law of Georgia.

5. A public institution shall be obliged to enter into the Public Register information about a request for a commercial secret by a third party or a public institution, the date of the request, and the identity and address of the requester.

Article 27³ – Professional secret

Information about personal data or a commercial secret of others that has become known to a person while performing his/her professional duties shall be a professional secret. Information not being personal data or a commercial secret of another person may not be a professional secret.

Article 27⁴ – State secret

Information considered to be a state secret shall be defined by the law on state secrets.