



## **Institute for Development of Freedom of Information**

### **The Openness of Government Meetings in Georgia or the Necessity of Bringing the Georgian Government out of “Shadow”**

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(Comparison of Practices - Georgia and the United States of America)

The following paper deals with the concept and practice of the openness of government meetings. The main question that needs to be answered is the following: “Should the meetings of the Government of Georgia be open as a rule?”

To answer this question, first of all, I consider it appropriate to use comparative analysis of the legal practices of Georgia and the United States. The mentioned practice generally reflects the attitude of the lawmakers and, accordingly, of the nation towards openness of the government meetings.

#### **Openness of the Government Meetings –Legislation of Georgia**

**In Georgia, as a rule, meetings of the Government are closed.** The meeting may be declared public in certain cases considered by law, as well as, by the decision of the Government<sup>1</sup>.

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<sup>1</sup>Law of Georgia on “Structure, Competence and Rule of Activity of Government of Georgia”. Art. 12 (5).

According to the General Administrative Code of Georgia, each collegial public authority is required to hold sessions openly and publicly<sup>2</sup>, except the cases when it should avoid the disclosure of personal data or the information related to state or commercial secrets.

The Government of Georgia does not possess the freedom to declare its meeting (session) public. At the same time, the open meeting shall be considered as an exception from the general rule. We meet the same situation in the cases of Autonomous Republics of Adjara<sup>3</sup> and Abkhazia<sup>4</sup>.

An interesting topic is the determination of the Government of Georgia as a collegial public authority. According to the General Administrative Code of Georgia, “collegial public authority is a **public authority**, the directing or advisory body of which consists of more than one person and in which decisions are made or prepared collectively by more than one person”<sup>5</sup>. While, “a public authority is an **administrative body**, a private legal entity funded from the state or local budget within the scope of such financing”<sup>6</sup>. An administrative body is “any **state** or local self-governing **body** or **authority**”, legal entity of public law (except political or religious unions), as well as any other legal entity which exercises public law authority on the basis of the legislation of Georgia.”<sup>7</sup>

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<sup>2</sup>General Administrative Code of Georgia, Art. 32.

<sup>3</sup>Law of Autonomous Republic of Adjara on “Structure, Competence and Rule of Activity of Government of Autonomous Republic of Adjara”. Art. 16 (5).

<sup>4</sup> Order of the Government of Autonomous Republic of Abkhazia as of February, 22, 2005 on “Regulations of the Government of Autonomous Republic of Abkhazia” Art. 19 (3).

<sup>5</sup>General Administrative Code of Georgia, Art. 27 (b).

<sup>6</sup>General Administrative Code of Georgia, Art. 27 (a).

<sup>7</sup>General Administrative Code of Georgia, Art. 2 (1) (a).

The Government of Georgia, as a body carrying advisory functions, consists of more than one person, and decisions on its meetings are made collectively<sup>8</sup>. Hence, the Government of Georgia is a collegial public authority.

The obligation of conduction meetings openly and publicly defined by the General Administrative Code of Georgia lacks the possibility to spread its regulation upon the Government of Georgia, as a collegial public authority. Specifically, a provision in concord with the General Administrative Code of Georgia would read: “in Georgia the meeting of the Government is, as a rule, open, except in cases considered by law.”<sup>9</sup> However, in practice, the rule is the exact opposite.

The General Administrative Code of Georgia and Law on “Structure, Competence and Rule of Activity of Government of Georgia” are both ordinary laws of Georgia, and therefore, both are of equal legal power. The current legislation of Georgia determines that if two normative acts of equal legal power oppose, the preference is given to the normative act that has been passed at a later date<sup>10</sup>. **Therefore, the preference in Georgia is given to the rule of closed Government meetings.**

<b>Openness of the Government Meetings – the U.S Legislation.</b>
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The main act that regulates the openness of meetings in the United States is the so called “Government in the Sunshine Act”. According to this Act, apart from exceptional cases, any

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<sup>8</sup> Order of the Government of Georgia N313 as of July 31, 2012 on “Regulations of the Government of Georgia” Art. 24 (1).

<sup>9</sup>Cases of avoidance of secret information disclosure.

<sup>10</sup>Law of Georgia on “Normative Acts”. Art. 7 (8).

part of the sessions of the governmental agencies is open to the public. The mentioned exceptions are ten in number:

- information to be kept secret in the interests of national defense or foreign policy;
- information related to the internal personnel rules and practices of an agency;
- matters specifically exempted from disclosure by statute;
- trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- information related to the accusing a person of a crime;
- disclosure of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- disclosure of investigatory records compiled for law enforcement purposes;
- disclosure of information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
- information, the premature disclosure of which would lead to significant financial speculation in currencies, securities, or commodities, or significantly endanger the stability of any financial institution; or be likely to significantly frustrate implementation of a proposed agency action;
- information specifically concerning the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration<sup>11</sup>.

**Accordingly, in the United States, preference is given to the rule of open meetings of agencies, with certain exceptions.**

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<sup>11</sup> The Government in the Sunshine Act. 5 U.S.C. § 552b “Open Meetings” Available at: <http://www.justice.gov/archive/oip/gisastat.pdf>

At the same time, “Harvard Law Review”, in an article titled “*Open Meeting Statutes: The Press Fights for the ‘Right To Know’*”, determined six reasons for why the meetings of authorities should be open:

1. *open meetings provide public knowledge that is essential to a democratic process. Even though the actual number of people who might attend a meeting may be small, these few individuals can disseminate the information to wider audiences;*
2. *decisions regarding public expenditures should be made openly so that the public can observe how public money is spent, the hope being that openness will deter misappropriations and conflicts of interest;*
3. *government officials will be more responsive to the public when there is an opportunity for public participation at a meeting;*
4. *meetings as a whole are a way for elected officials to gain information. Factual misconceptions can be corrected by members of the public who may know more about a specific local issue;*
5. *if citizens gain a better understanding of complex and difficult decisions, they may be more understanding about accepting initially undesirable policy outcomes;*
6. *open meetings promote better reporting of governmental activities.*

Reasons for deterrent and negative factors for holding sessions publicly are also outlined in the same article:

1. *in some cases freedom from public pressure is desirable during deliberation and decision making;*
2. *public officials are more likely to make long, time-wasting speeches during an open meeting than during a closed meeting;*
3. *open meetings may be to the disadvantage of lower-level government employees who may object to a program and voice those objections in public but in the end have to administer the objectionable program or policy;*
4. *elected officials may harden their positions once they state them publically;*
5. *the tendency of the press to sensationalize stories and emphasize only controversial topics brought up at meetings.<sup>12</sup>*

For many years, the necessity and practice of open meetings of the governmental agencies is undisputed in the United States, while the legislation of this country demonstrates the consensus of opposing the benefits and disadvantages of this practice. I think that, following the same logic, changes should be made to the legislation of Georgia.

<p><b>Concrete Steps Towards the Openness of Government Sessions in the United States of America</b></p>
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The most interesting and relevant to the present paper is a publication titled “An Analytic Framework for Open Meetings and Transparency” by Suzanne J. Piotrowski and Edin Borry,

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<sup>12</sup>Suzanne J. Piotrowski. *An Analytic Framework for Open Meetings and Transparency*. p.142. available at: <http://www.spaef.com/file.php?id=1129%20>.

which is available at: <http://www.spaef.com/file.php?id=1129%20>. Out of eight components of public meetings given in a publication several can be pointed out as a useful initial practice for Georgian reality. Those components are:

*“Electronic Meetings* - The term electronic meetings refers to meetings conducted via videoconferencing, teleconferencing, email, list serves, and chat rooms. As technology evolves, the definition of what is considered an electronic meeting expands.<sup>13</sup>”

Currently, 25 state sunshine laws allow meetings to be conducted by teleconference or videoconference, though there are number of relevant peculiarities. e.g. North Carolina’s law states that public bodies can hold a teleconference or videoconference and are allowed to charge attendees up to \$25 to offset the costs associated with setting up the meeting, Nebraska does not allow teleconferences but instead allows videoconferences for statewide public bodies only, the New Jersey Sunshine Law states that meetings can be held by “communication equipment,” it is unclear whether teleconferences or videoconferences are allowed to occur *etc.*<sup>14</sup>

Other components of much interest to present paper are **Notice and Agenda**. Both agendas and notices greatly increase transparency surrounding a meeting. If the public is not given adequate notice, they may be unable to attend<sup>15</sup>. For instance, notice is required one to five days before the meeting according to open meeting laws of Alabama, Alaska, Arkansas, Colorado, Georgia, Illinois, Indiana, Kansas, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oregon, Tennessee, Washington and Wyoming, while the notice six days or more before the meeting is required according to open meeting laws of Delaware, Hawaii and New York. As for Utah, it requires both a schedule and 24

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<sup>13</sup> Suzanne J. Piotrowski, *Supra*, p. 147.

<sup>14</sup> Suzanne J. Piotrowski, *Supra*, p. 157.

<sup>15</sup> Suzanne J. Piotrowski, *Supra*, p. 144.

hours notice, while a schedule of meetings is required as notice in Connecticut, Kentucky, Louisiana, Minnesota, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island and South Carolina<sup>16</sup>.

What is interesting about another important component - *Public Comment* concerns its functions. One function of public meetings is to allow elected officials to gain a better understanding of public opinion. This can be done through public comment sessions at public meetings<sup>17</sup>. Though, 41 states do not provide the mentioned component for the meetings of authorities, still there are ten states which do. For instance, the sunshine laws in Minnesota, New Mexico, and South Carolina give the public body discretion regarding public comment but do not specifically grant that right to individuals, while the New Jersey Sunshine Law requires that all public bodies set aside a time for public comment regarding government issues that may be of interest to citizens of the municipality<sup>18</sup>.

<p style="text-align: center;"><b>Openness of the Government Sessions – Recommendation Concerning the Changes in the Legislation of Georgia</b></p>
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For the purposes of implementation of the Open Government best practices, several amendments to the legislation of Georgia (including the corresponding legal acts of Autonomous Republics of Adjara and Abkhazia) are necessary:

- The provision in Article 12 of Law of Georgia on “Structure, Competence and Rule of Activity of Government of Georgia”, according to which: „in Georgia, as a rule, meetings of the Government are closed” should be changed to the following one: “in Georgia, as a rule, meetings of the Government are open. The closed session of the Government meeting may be declared in order to avoid the disclosure of secret

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<sup>16</sup> Suzanne J. Piotrowski, *Supra*, p. 166.

<sup>17</sup> Suzanne J. Piotrowski, *Supra*, p. 146.

<sup>18</sup> Suzanne J. Piotrowski, *Supra*, p. 156.



information provided for by the law, also for the purposes of ensuring the state security essential for the democratic society, health protection, and avoidance of criminal conduct, the protection of right and freedoms of individuals.”

- The regulations of the Government of Georgia, as well as the related legal acts of Autonomous Republics of Adjara and Abkhazia must be brought into compliance with the provision proposed above”.
- Law of Georgia on “Structure, Competence and Rule of Activity of Government of Georgia” should expressly emphasize that the Government represents a collegial public authority as defined by the General Administrative Code of Georgia and therefore is the subject to the obligations under the Article 32 (Publicity of Sessions) of the Code;
- The existing legislation of Georgia should provide for the possibility of holding electronic meetings, inter alia by means of the Internet;
- It is desirable that the provision - “other persons may attend the meeting of the Government according to the decision of the prime-minister or other authorized official” set forth in paragraph 3 of Article 22 of the Regulation of the Government (“Attendance on the Governmental meetings”) be detailed with the following addition: “including a selected number of persons registered for attendance and participation in discussion of a specific topic”.
- The practice of public comment should be regulated. The registration for questions

and comments by the interested persons should not be an obstacle<sup>19</sup>;

- Preferably, the practice of notifications about public sessions and the availability of the agenda should be regulated, including publication on the official website of the government. Notifications about upcoming planned, unplanned and emergency sessions should be published regularly. It is desirable that the agenda be also published before the session. At the same time, the dates for the publication of the notifications regarding public sessions and agenda should be determined.
- It is also preferable that the rule of the recording and publication of the minutes, including electronic, be developed and regulated.

### Conclusion

„Should the meetings of the Government of Georgia be open as a rule?”- the answer to the mentioned question is definitely positive. The Government of Georgia is the collegial body, whose openness of meetings will indicate on high standard of the democratic state. When talking of this standard, the first that comes to mind is the United States of America. The steps taken towards the openness of the Government meetings in Georgia must not be the mere formal copy of the US Open Government standard, rather it must be the process of harmonic integration of best practice components into the reality of Georgia. The present paper may indicate the ways to increase the responsibility of Government of Georgia towards its people and the transparency of its activities.

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<sup>19</sup>The model proposed includes the possibility of selecting the interested persons pursuant the provision of agenda on particular topic. The selection can be based upon such factors as membership of civil society organization, qualification, reputation etc. though the mentioned practiced may be deemed discriminatory and hence, non-democratic, which indicates that the issue requires further elaboration.

The precise imposition of open meetings obligation on the Government of Georgia viewed as a collegial public authority, the detailing of particular cases for closed meeting sessions, the establishment of such open government components as electronic meetings, public comment, delivering notice and agenda, as well as maintenance of electronic minutes and their publication - can be viewed as a set of initial steps taken towards the openness of meetings of the Georgian Government.

As for the present reality – the law according to which “in Georgia, as a rule, meetings of the Government are closed” contradicts the concept set forth in the present paper.