

# The problem of ensuring freedom of information: international standards and legislation of the Azerbaijan Republic

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## ABSTRACT:

This article deals with the right to freedom of information, its protection under international standards and national legislation. The right to freedom of information has its particular space among basic human rights and freedoms. Central to the guarantee in practice of a free flow of information and ideas is the principle that public bodies hold information not for themselves but on behalf of the public. This right creates opportunity for the citizen to be informed about his/her other rights, to enjoy them and to be able to protect them, as well as to follow the activities of the state and local municipality bodies, the measures of these authorities in the direction of priority and fateful issues and to hold all kind of information regarding these.

Açar sözlər: məlumat azadlığı, ifadə azadlığı, fikir azadlığı, informasiyanın sərbəst axını, informasiyanı əldə etmək.

## XÜLASƏ:

Bu məqalədə məlumat azadlığından, onun beynəlxalq və milli səviyyədə qorunmasından bəhs edilir. Məlumat azadlığı hüququ digər insan hüquqları arasında xüsusi yerə malikdir. Dövlət orqanlarının informasiyanı öz maraqları üçün deyil, ictimaiyyətin maraqları üçün saxlaması prinsipi informasiya və ideyaların sərbəst axınına zəmanət verir. Bu hüquq vətəndaşlara

öz hüquqları haqqında məlumat əldə etmək, istifadə etmək, müdafiə etmək, dövlət və yerli bələdiyyə orqanlarının fəaliyyətindən xəbərdar olmaq, bu orqanların fəaliyyətində prioritet və qabaqcıl məsələlərin yönəldilməsi və bunlarla bağlı hər cür məlumatın əldə edilməsi imkanı yaradır.

Ключевые слова: свобода информации, свобода выражения, свобода мнений, свободный поток информации, доступ к информации

В этой статье рассматривается право на свободу информации, ее защита в соответствии с международными стандартами и национальным законодательством. Право на свободу информации имеет свое особое пространство между основными правами и свободами человека. Центральным элементом гарантии на практике свободного потока информации и идей является принцип, согласно которому государственные органы хранят информацию не для себя, а от имени общественности. Это право создает возможность для гражданина быть информированным о его / ее других правах, пользоваться ими и иметь возможность защищать их, а также следить за деятельностью государственных органов и органов самоуправления, мерами этих органов в направлении приоритетных вопросов и содержать всю информацию об этом.

First of all, it should be noted that the basic human rights and freedoms are reflected in many international declarations and States are guided by the provisions of those declarations

in their national legislation system. In 1946, the UN General Assembly declared that freedom of information acted as one of the basic human rights and incorporates criteria for all freedoms protected by the United Nations(1). The Universal Declaration of Human Rights (1948) followed this. Article 19 of the Declaration states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

To be aware of the processes going on in the society is the preliminary need of citizens. Each person has the right to obtain information about all events and facts affecting social environment, assuming interest and importance for people and this right is an integral part of the freedom of thought. When normal environment is created for people to freely obtain, to gather and to disseminate the information they are interested in, the mentioned right is being realized. This right creates opportunity for the citizen to be informed about his/her other rights, to enjoy them and to be able to protect them, as well as to follow the activities of the state and local municipality bodies, the measures of these authorities in the direction of priority and fateful issues and to hold all kind of information regarding these.

At the international level the International Covenant on Civil and Political Rights can be shown as an example of a document determining the obligations of the states and its article 19 states:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security

or of public order (order public), or of public health or morals(2).

The right to freedom of expression has been enshrined in the the European Convention on Protection of Human Rights and Fundamental Freedoms and its article 10 states:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary(3).

Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual's self-fulfilment. At the same time freedom of expression can conflict with other rights protected by the Convention, such as the right to a fair trial, to respect for private life, to freedom of conscience and religion . When such conflict occurs, the Court strikes a balance in order to establish the pre-eminence of one right over the other. The balance of the conflicting interests, one of which is freedom of expression, takes into account the importance of the other.

In the context of effective political democracy and respect for human rights freedom of expression is not only important in its own right, but also it plays a central part in the protection of other rights under universal standarts. Without a broad guarantee of the right to freedom of information by independent and impartial courts, there is no free country, there is no democracy.

Since re-gaining independence in early 1990's, the legal system of Azerbaijan has been introducing new attempts regarding the implementation of international standards and

requirements into certain domestic legal acts. Mainly, these standards and requirements are based on the international obligations derived from the European Convention on Human Rights and other international instruments. Significantly, the fundamentals of national legislation in the country such as the Constitution and the codes contain several provisions ensuring free flow of information and media freedom. The national legal system of Azerbaijan is based on civil law system and the Constitution has the highest legal power in the country. Starting from the preamble, the constitutional provisions centralize main attention on international duties and obligations of Azerbaijan in the field of human rights(4). As so, key concepts for the realization of the freedom of information in domestic law are included to the Preamble of the Constitution stressing out fundamental intentions of the Constitutions as an expression of the will of the nation while remaining faithful to universal human values. The general obligation of government to protect human rights and freedoms are proclaimed in Article 12. Going further, Article 47 enshrines the rights of everyone to the freedom of opinion and expression, Article 50 guarantees free flow of information through any means along with prohibiting unlawful limitation such as censorship regarding media and press. As it is at the core of a democratic state not to restrict free generation and distribution of any information not limited by state law and our legislation provides this provision. But if this information is harmful and dangerous for the development of an individual, state and society, free generation and distribution of this kind of information can be prohibited.

It should be noted that the general legislation on ensuring human rights also is playing a great role of foundation for national framework on information rights and information society. In this respect, the Constitutional Law "On Regulation of the Implementation of Human Rights and Freedoms in Azerbaijan Republic" brings the national human rights standards in compliance with the European Convention on Human Rights.(5)

The special acts on freedom of information such as the Law on Access to Information stands first in bringing European standards of freedom of information.(6) The adoption of the Law was widely welcomed by internation-

al and domestic organizations as an important first step towards making freedom of information a reality for everyone in Azerbaijan. This law provides that everyone has the right to freely obtain, use, disseminate information by legal ways.

Substantially, the Law on Freedom of Information(7) and the Law on Mass Media also plays basic roles for freedom of information. The Law of Freedom of Information sets out basic principles on the guarantee of freedom of information. According to this law everyone is entitled to look for, obtain, transmit, develop and distribute any information by legal way in accordance with article 50 of the Constitution of the Republic of Azerbaijan. Article 5 of the Law defines main principles of execution of freedom of information:

- Guaranty of freedom of information;
- Transparency of information and freedom of its exchange;
- Fairness, completeness and authenticity of information;
- Legality of searching, obtaining, use, distribution and protection of information;
- Protection of personal and family secret of everyone;
- Protection of security of a person, society and state.

The special strategy was realized in our republic in the information sphere. Alongside with constitutional norms, relevant laws government of Azerbaijan has adopted National Action Plan on promotion of Open Government, National Program for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan. Its' paragraph 2.22 is devoted to the arrangement of the courses on the exercise of the freedom of speech and thought. The paragraph 4.16 of the Program is devoted to conduction of awareness activities involving explanation of the national legislation of the Republic of Azerbaijan on access to information and securing effective access to information., which is being successfully implemented.

In this way the government of Azerbaijan demonstrates its strong attitude to respecting, protecting and fulfilling human rights in the country.

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