

RIGHT TO ENVIRONMENTAL INFORMATION: LEGAL BASIS FOR ENSURING

Turgay Huseynov
(turguy1973@gmail.com)
Doctor of Law
(Baku State University)

Abstract

In the article, the issues related to the legal framework for ensuring the right to information on the environment was extensively analyzed based on the existing diversity of opinions in the legal literature, including international and domestic legal norms. In the end, it was concluded that summing up the above-mentioned, we can note with confidence that one of the important factors in ensuring environmental safety is the availability of information about the environment. An important role is also played by public participation in the decision-making process regarding cases specified in the annex to the Aarhus Convention. The improvement of existing mechanisms for informing and public participation in resolving environmental problems should be considered as the primary informational challenges of our time.

Keywords: *environmental safety, environmental information, ecology, environmental expertise, environmental education.*

As you know, the fundamental rights and freedoms of citizens are an integral part of a modern democratic state. Among them, a special place is occupied by the right of citizens to information about the environment, since it is the possibility of citizens' access to environmentally significant information that determines the level of development of democratic institutions of the state, the degree of trust in relations between citizens and state structures. Public awareness raises the level of legal consciousness of people, promotes a deeper understanding of environmental problems and direct participation in their solution [1]. It should be agreed that an important problem is the low level of ignorance of citizens about where they need to apply in order to obtain environmental information. Here educational work should play its role. Ecological education should constantly accompany a person, influence the formation of an ecological worldview, instill in him a sense of responsibility for the state of nature, as well as to realize the need for personal participation in environmental activities. One of the aspects that also negatively affect the state of the environment is the low awareness of the population about the current regulatory framework in the environmental sphere and about projects that affect the state of the environment. This factor is reflected in the active participation of the public in ongoing environmental projects. Here it would be appropriate to note the development of the concept of ecological civilization, which was formed in the 90s of the last century at the National Academy of Sciences of Azerbaijan. It was in Azerbaijan that for the first time the concept of ecological civilization appeared in the textbooks of general education schools. And in 2013, within the framework of the Baku International Humanitarian Forum, on the initiative of L.Aliyeva, a round table was held on the topic "Sustainable development and ecological civilization". As academician A. Alizade noted, sustainable development, the issue of human potential development, the transition to ecological civilization should be in the field of view not only of those involved in planning and managing development, but also for specialists of all spheres [2, p.5]. Ecological civilization consists of preventing negative and anthropogenic impacts on the environment and its main components (air, earth, water, flora, fauna, etc.), correct and purposeful use of natural resources, their conservation and transfer to future generations [3, p.6].

The first international agreement guaranteeing the public right to access environmental information was the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (entered into force on 30 October 2001). On October 8, 2009, the Protocol on Pollutant Release and Transfer Registers to this Convention entered into force. The Protocol provides for the provision of comprehensive infor-

mation on emissions and geographical coverage of substances potentially hazardous to the public environment. In accordance with the objectives of the Convention, each Party shall guarantee human rights such as the right to access to information, the right to public participation in decision-making and the right to access to justice in environmental matters. The Protocol will make it possible to identify the largest sources of environmental pollution, including pollution associated with greenhouse gas emissions. The annual reports of the States Parties to the Protocol on Emissions into the Environment and the Transfer of Pollutants will be made available to the public.

As you know, the fundamental rights and freedoms of citizens are an integral part of a modern democratic statehood. Among them, a special place is occupied by the right of citizens to environmental information, since it is the citizens' possibility to access to environmentally significant information what determines the level of development of democratic institutions of the state, the degree of trust in relations between citizens and government agencies. Public awareness raises the level of legal consciousness of people, promotes a deeper understanding of environmental problems and direct participation in their solution [4]. One of the problems that do not allow to fully realizing the right to receive environmental information is the lack of awareness of citizens about where to apply and submit their requests (requests) for the provision of environmental information. To solve this problem, an important attention should be given to education. Environmental education should accompany a person throughout his/her life, form an ecological worldview, instill a sense of responsibility for the state of nature, help to realize the need for personal participation in environmental activities. One of the aspects that negatively affect the state of the environment is that the population is not informed and does not know about the laws in force, and even more so about projects that affect the state of the environment to some extent.

In accordance with the objective of the Convention, in order to promote the protection of the right of every person of present and future generations to live in an environment conducive to his health and well-being, each Party shall guarantee the rights to access to information, to public participation in decision-making and to access to justice in matters concerning the environment. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility of the provisions governing the implementation of the information, public participation and access to justice provisions of this Convention, as well as appropriate measures to ensure their application, in order to create and maintain a clear, an open and coherent framework for the implementation of the provisions of this Convention.

The constitutional basis for the implementation of the provisions of the analyzed Convention in the Republic of Azerbaijan is Article 39 of the Constitution, according to which everyone has the right to live in a healthy environment [5]. In accordance with Part 2 of this Article, everyone is guaranteed the right to collect reliable information about the state of the environment and the right to compensation for damage to health and property as a result of an environmental offense. As one may notice, we are talking about collecting reliable information, since information, even if complete and reliable, but provided out of time, cannot be of interest from the point of view of protecting the right to a favorable environment. The main domestic act that secures the right to receive information about the environment is the Law of the Republic of Azerbaijan "On obtaining information about the environment" dated March 12, 2002. Article 1.0.1 of this Law defines environmental information as information about the state of land, water, subsoil, atmosphere and living organisms; changes that occur and may occur in the components of the environment as a result of activities that have or may have an impact on the environment, people's lives; on the assessment of these changes, measures and costs associated with the protection and rational use of the environment [6]. This definition generally reflects the content of "environmental information" disclosed in Article 2 of the Convention. Thus, this definition does not cover information about the state of health and safety of people, living conditions of people, the state of cultural objects and buildings and structures to the extent that they are affected or

may be affected by the state of environmental elements or, through these elements, factors activity or measure.

An important condition in the Convention is the procedure for providing information. Thus, in accordance with paragraph 2 of Article 4 of the Convention, environmental information is provided as soon as possible, but no later than one month after the submission of the request, unless the volume and complexity of the relevant information justify an extension of this period to two months after the submission of the request. The applicant shall be informed of any extension of this period and of the reasons justifying such a decision. According to Article 8.1 of the Law, an appeal or request related to obtaining information about the environment must be submitted in writing, drawn up accurately and clearly, and reflect complete information about the requester. At the same time, it is not necessary to indicate the legal or other interests of the applicant in obtaining information. An appeal or request related to obtaining information about the environment is registered, considered, they receive a response in the manner prescribed by law. In this case, the Law does not specifically define the term for responding to an appeal and refers to the provisions of another law - the Law of the Republic of Azerbaijan "On the procedure for considering citizens' appeals" dated June 10, 1997. According to Article 10 of this Law, the appeal must be considered within a month, with the exception of cases provided for by law, and the appeal that does not require additional study and verification, no later than 15 days, unless otherwise provided by law. In cases where it is necessary to conduct a special check, require additional materials or take other measures to consider the appeal, the head or deputy head of the relevant body, institution, organization, enterprise, in exceptional cases, may extend the period for considering the appeal by no more than one month. This should be reported to the applying citizen, and when the state authority takes control of the consideration of the appeal, to the state authority.

Although it should be noted that the Law "On obtaining information about the environment" determines the deadlines for responses to appeals (requests) in case of refusal. Thus, in accordance with article 9.2, when the application or request is refused, a reply with the reasons is sent to the addressee no later than within 10 days. In the event that the information covered by the appeal or request loses its meaning when it is not provided in time, the answer will be sent without delay and if this is not possible - within 24 hours. In other cases, the response to the appeal and request for receiving information about the environment is sent no later than one month, if the information is complex, - within two months (with a preliminary response to the requester).

It is important to note that Article 4 of the Convention also establishes an exhaustive list of grounds for refusing to provide environmental information [7].

The Convention contains sufficient provisions providing for the conditions for public participation in decision-making on specific types of activities. Each Party shall apply the provisions of Article 6 of the Convention in relation to decisions on the appropriateness of permitting proposed activities, which are listed in the Annex to the Convention.

Thus, the only conditions for public participation in accordance with Azerbaijani legislation are the exercise of public control in the field of environmental protection by public associations and the right of citizens to put forward proposals for public environmental expertise (Articles 6 and 7 of the Law on Environmental Protection). It is important to note that the conclusion of the public environmental review is informational and advisory in nature. The Law focuses on state environmental expertise. In general, environmental expertise determines the possible impact of economic activity on the environment and its consequences in order to prevent or predict them in order to determine to what extent they comply with established environmental standards and requirements.

Article 9, which provides for access to justice, occupies a special place in the Convention. Thus, each Party shall ensure, within the framework of its national law, that any person who

believes that his/her request for access to information has not been considered is wrongfully denied, whether in part or in full, inadequately approach that does not comply with the provisions of this article, had access to the procedure for reviewing the decision taken in court or in another independent and impartial body established in accordance with the law. Where such a judicial review is provided for, a Party shall ensure that such person also has access to a statutory fast and timely-justified judicial process, at no or minimal fee, for reconsideration by a public authority or review by an independent and impartial body other than a court.

The law of the Republic of Azerbaijan "On obtaining information about the environment" provides for the possibility of applying to the court in case of refusal to grant permission to use open information about the environment and information about it, the receipt of which is restricted, as well as unreasonable classification of open information as information, the receipt of which introduces restriction, evasion or refusal to provide information, an incomplete or inaccurate answer. Persons who received an inaccurate answer or an answer with an unjustified refusal related to the environment have the right to demand compensation for the material and moral damage caused to them. Disputes about the unreasonable attribution of information about the environment to the type of information, the receipt of which is restricted, as well as claims for compensation for damage caused as a result of an unreasonable refusal to provide this information to the applicant or violation of his other rights, are and should objectively considered at the national courts.

In a number of special environmental legislation, an important place is occupied by the Law of the Republic of Azerbaijan "On Environmental Protection" dated June 8, 1999, according to which citizens are assigned the right to receive accurate information about the existence of an environment favorable for the life and health of each citizen, its condition and measures for improving her condition. The same right is granted to public associations (Article 7 of the Law). It would be appropriate to note that this law narrows the circle of persons who have the right to receive information about the environment, while the law "On obtaining information about the environment" speaks in general about persons. In accordance with Article 64 of this Law, information in the field of environmental protection includes the state of the environment, financing of measures regarding its pollution, improvement and protection, the state, restoration and use of natural resources, environmental impact, environmental quality regulation, environmental requirements for business and other activities.

In addition, according to Article 50 (part 1) of the Constitution of the Republic of Azerbaijan, everyone has the right to freely seek, receive, transmit, produce and disseminate information in any legal way. This provision of the constitution was enshrined in the Law of the Republic of Azerbaijan "On Freedom of Information" dated June 19, 1998. For the purposes of this Law, information means information, regardless of the form of their presentation, about events, processes occurring in nature, society and the state, as well as about facts and persons.

Along with the above domestic acts, the submission of a request for information and consideration of this request are regulated by the Law of the Republic of Azerbaijan "On the receipt of information" dated September 30, 2005. The purpose of this Law is to determine the legal basis for ensuring the right, enshrined in Article 50 of the Constitution of the Republic of Azerbaijan, to free and unhindered access to information on equal terms for all based on the principles of an open society and a democratic rule of law, as well as creating conditions for citizens to control the performance of public functions. According to Article 29 of the Law, in order to more easily and more quickly ensure the interests of society, reduce the large number of information requests, the information holder must disclose information about the state of the environment, damage to the environment and dangerous environmental impacts. In addition, information holders cannot read information about the state of ecology, health care, demography, education, culture, economy; including transport and agriculture, as well as crime provided for official use (Article 37).

The publicity of information about the environment is also confirmed by Article 7 of the Law of the Republic of Azerbaijan "On State Secrets" dated September 7, 2004, which contains a list of information that is not subject to classification as state secrets and classification. Such information, in particular, also includes information on the state of the environment.

Important provisions on the right of citizens to access information are enshrined in the Law "On Information, Informatization and Protection of Information", adopted on April 3, 1998.

The above analysis provides reason to assert that the provisions of national acts generally comply with the provisions of the Aarhus Convention, and the problems of conflict, as enshrined in laws (Article 13 of the Law "On Obtaining Information on the Environment", Article 82 of the Law "On Environmental Protection" etc.) will be decided in favor of the latter. It should be noted that in the post-Soviet space only in the Republic of Azerbaijan the constitutional provision on the right of access to information about the environment has been enshrined in a special law.

It should be noted that in the post-Soviet space, only in the Republic of Azerbaijan, the constitutional provision on the right to access information about the environment was enshrined in a special law. In other states, this issue is regulated in various regulatory legal acts. Thus, in the Russian Federation, the possibility of obtaining information about the natural environment is based on Article 42 of the Constitution and special environmental legislation. Thus, the right to demand the provision of timely, reliable and complete information on environmental pollution and measures for its protection for citizens and public organizations is provided for by Article 11 of the Law of the Russian Federation "On Environmental Protection". In Ukraine, these are Article 50 of the Constitution and the Law "On Information" of October 2, 1992. In the Republic of Belarus, Article 34 of the Constitution guarantees citizens the right to receive, store and disseminate complete, reliable and timely information about the activities of state bodies, public associations, political, economic, cultural and international life, the state of the environment.

Within the framework of the CIS, on April 17, 2004, the Model Law was adopted "On the right to access to information", which includes environmental information in the list of information received.

The problem of ensuring the realization by citizens of their right to receive information about the state of the environment is also widely discussed in European countries, where there is a tendency towards greater transparency in relations between the state and society. Thus, on June 7, 1990, the Council of the European Community adopted the Directive "On freedom of access to information about the environment" (90/313 / EEC), according to which information about the environment or otherwise - environmental information - is defined as any information available in written, visual, acoustic or fact-recording form about the state of water, air, soil, fauna, flora, land and natural resources, as well as about activities (including activities that cause such an unpleasant phenomenon as noise) or activities that have an adverse impact on the environment (or capable of influencing it in this way), or on activities and measures aimed at protecting the environment, including administrative measures and environmental programs. This definition does not include information about climate change and human conditions as a result of environmental disasters. In accordance with Article 3 of the Directive, Member States must ensure that the authorities are obliged to provide information on the environment to natural and legal persons upon their request without ascertaining the reasons for their interest. Member States should also define a system of practical measures to ensure access to such information. The Directive establishes a list of grounds (part 2, article 3) that states can establish in their legislation, according to which information may be refused.

The provisions of the directive were reflected in the domestic acts of the EU Member States (for example, the German Law on Environmental Information of July 8, 1994; the Norwegian Law of May 9, 2003 No. 31 "On the right to receive environmental information and public participation in decision-making processes relating to the environment environment"). Although it should be noted that in a number of European countries there is no constitutional fixing

of the right to receive information. The right to a favorable environment is mainly confirmed (for example, article 55 of the Bulgarian Constitution, article 45 of the Spanish Constitution).

Summing up the above-mentioned, we can note with confidence that one of the important factors in ensuring environmental safety is the availability of information about the environment. An important role is also played by public participation in the decision-making process regarding cases specified in the annex to the Aarhus Convention. The improvement of existing mechanisms for informing and public participation in resolving environmental problems should be considered as the primary informational challenges of our time.

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