

Partnership for Good Governance
Yaxşı İdarəçilik üçün Tərəfdaşlıq



ANALYSIS OF AZERBAIJANI LEGISLATION ON ACCESS TO INFORMATION

This document has been produced as part of a project co-funded by the European Union and the Council of Europe. The views herein can in no way be taken to reflect the official opinion of either party. The information contained in this document is correct as of November 2017.

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The main purpose of this analysis is to provide an up to date overview of the legislative and regulatory framework of the Republic of Azerbaijan concerning the access to information, and evaluate its compliance with the requirements of the Article 10 (freedom of expression) of the Convention for the Protection of Human Rights and Fundamental Freedoms, as elaborated in the decision of the European Court of Human Rights. This analysis starts with the core principles of access to information, general norms applicable to the right to information and continues with an overview of national laws and regulations concerning access to information. The recommendations on how the existing legal framework should be reformed towards compliance with the Council of Europe standards, as well as a summary and overview of the analysis are also included in the last section of the analysis. This analysis is intended to be useful for journalists, media workers, citizens and lawyers, as well as the civil society and government officials interested in legal issues concerning access to information in Azerbaijan.

Introduction

Before becoming an independent right, right of access to information was more introduced an integral part of the freedom of expression. Freedom of expression encompassed the right of people to search, obtain and impart information.

Access to information has particular importance as a right. Existence of informed citizens significantly contributes to elimination of problems in public administration and settlement of problems in the society. It is not incidental that the importance of the right of access to information increases day-by-day. Right of access to information is a condition of transparency in state administration, prevention of corruption, accountability, alleviation of poverty, and improving the efficiency of governance. One of the first societies in the world to comprehend the importance of the freedom of information was the Swedish. 251 years ago – in 1766, a very first Law on Freedom of Information was adopted in Sweden.¹

Article 19 of the Universal Declaration of Human Rights (1948) adopted by the UN, reads as follows, after mentioning the freedom of expression of everyone, “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.” Despite Article 19 focuses on freedom of expression, it has also included the right of access to information into this scope.

Article 19 of the International Covenant on Civil and Political Rights² adopted in 1966 and entered into force in 1976 through ratification by the UN member states that has binding force for the participating states has similar content: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart

¹ <http://www.peterforsskal.info/1766law.html>

² **The Milli Majlis of the Republic of Azerbaijan ratified the International Covenant on Civil and Political Rights with the Law No 227 of 21 July 1992**

On 9 November 1999 Milli Majlis of the Republic of Azerbaijan ratified this Convention with the Law No 736-IQ and thus it entered into force in the country.

² International Covenant on Civil and Political Rights was ratified by the decision number 227 of Milli Majlis of the Republic of Azerbaijan from 21 July 1992.

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”.

This right has been touched upon also in the 34th General Comment of the UN Human Rights Committee. Article 18 of this Comment covers the right of access to information and includes the following: “Article 19, paragraph 2 embraces the right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production”. It further stresses: “To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment of the access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information, as well as in cases of failure to respond to requests”.

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters adopted by the United Nations Economic Commission for Europe on 25.06.1998 (short name is – Aarhus Convention) recognizes the possibility of having access to environmental information, participating in decision making on environmental matters and having access to justice on environmental issues.³

Article 10 of the European Convention on Human Rights⁴ also prescribes access to information as one of crucial prerequisites of the freedom of expression after declaring the right of everyone to express opinion: “This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by the public authorities and regardless of frontiers”. Thus, the right of access to information plays a role of means of exercising the right of freedom of expression.

The Recommendation of the CoE Committee of Ministers to Member States REC (2002) 2 on access to official documents adopted in 2002 has been brought to the agenda with the view of regulating the right of access to information and providing accessibility of official documents to everyone. The documents explains how various definitions should be understood:

"public authorities" shall mean government and administration at national, regional or local level, natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law. The Recommendation also clarifies the definition of official documents: “official documents” shall mean all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.

On 18 June 2009 another document that has importance for the freedom of information was agreed. This is the Council of Europe Convention on Access to Official Documents.⁵ , so

³ On 9 November 1999 Milli Majlis of the Republic of Azerbaijan ratified this Convention with the Law No 736-IQ and thus it entered into force in the country.

⁴ The Convention was ratified by the law number 236-IIQ adopted by Milli Majlis of the Republic of Azerbaijan on 25 December 2001.

⁵ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205>

called Tromso Convention. This Convention defines a number of key principles on freedom of information and group of experts on access to information is established. This document is a first international instrument with binding force recognising a general right of access to official documents adopted by public institutions. The purpose is to provide transparency in public institutions, to settle key feature of good administration, and support the establishment of real democratic and pluralist standards in the society. The Convention stresses the importance of the right of use of official documents for the self-development of people and exercise of fundamental human rights and indicates that it strengthens the legitimacy and trust of public entities in the eyes of people. This Convention identifies the right of use of official documents and permits restrictions only for the purposes of national security, protection of legitimate interests and integrity of private life. The document also prescribes that the group of experts on access to official documents will monitor the implementation of this Convention.

It is expected that this document will enter into force after being ratified by at least ten states. Nevertheless, as this number of ratifications has not been achieved, the Convention has not entered into force yet. Nevertheless, as insofar it has been signed or ratified only by nine states. There are discussions going on regarding Ukraine's and Armenia's joining the Convention and soon one of these states may become the 10th party. In this case the Convention will enter into force. Unfortunately, the Azerbaijani side has neither signed, nor ratified the Convention. There are no discussions held on this issue and it is not expected that they will take place in the near future as the policies pursued in this sphere during the period since the recognition of the right of access to information give us grounds to say so.

Article 11 of the EU Charter of Fundamental Rights adopted in 2000 by the European Union 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. The freedom and pluralism of the media shall be respected". Despite this Charter does not directly cover the right of access to information, it is in compliance with Article 10 of the previously adopted Convention on Human Rights and Article 19 of the UN Covenant on Civil and Political Rights.

Article 41 of the same Charter enshrines another right that is linked to the right of access to information – "right to good administration" and thus even more expands this right. It is not possible to speak about good administration in the absence of the right of access to information.

Core principles of access to information

Each state has certain positive obligations in terms of providing the right of access to information. The principles identifying their framework in international scale are also called the principles of the freedom of information. The Recommendation of the CoE Committee of Ministers to member-states on Access to Official Documents REC (2002) generally describes these principles. The international organizations involving in protection and promotion of human rights mainly refer to these principles.

One organization whose purpose is protecting and supporting information freedom is "Article 19", which has taken its title from Article 19 of the International Covenant on Civil and Political Rights adopted by the UN. This organization has established 9 important principles from the viewpoint of the freedom of information and access to information. These principles are the following:

- Principle of the Maximum disclosure: According to this principle, maximum disclosure of information should be at the core of the legislation on the freedom of information. As the information in hands of the parties who are the owners of information is mainly of public importance, it should be in the public domain.

- Obligation to publish information; -According to this principle public bodies should publish significant information. Publication means here, taking into account the development of ICT resources, their dissemination in the largest audience. For instance, publication may take place in print media, online media, electronic media and online resources.
- Promotion of open government; - According to this principle, public bodies should actively support open government, conduct public awareness raising activities and efficiently tackle the culture of official secrecy.
- Limited scope of exceptions; -According to this principle when limitation is applied to access to certain information, this limitation should be very few and narrow. Besides, when limitation is applied, the information should undergo three-part test prescribed in the law, the information must relate to a legitimate aim listed in the law; disclosure must threaten to cause substantial harm to that aim; and the harm to the aim must be greater than the public interest in having the information.
- Processes to facilitate the access; - According to this principle the requests for obtaining information shall be handled promptly and fairly and there should be a possibility of the review of any decision on refusal to provide information by an independent authority.
- Free of charge nature of public information; - The key purpose of this principle is necessity of providing public information free of charge. In exceptional cases fees may be applied for the service of providing information. In this case the fee should not be too high, so it does not deter the access to information.
- Conduct of open meetings; - According to this principle, meetings of public bodies should be open to the public.
- Precedence of disclosure of information; - The objective of this principle is that the laws that are inconsistent with the principle of maximum disclosure should be amended or repealed. Despite all laws are equal, the attitude here is that the right of access to information is a prevailing right and is a necessary key for protecting other rights.
- Protection for whistle-blowers; - According to this last principle, individuals transferring information from inside the institution should have lawful protection, and legislation should design specific protection for them.

Right of access to information in national legislation and normative documents in this sphere
The Constitution of the Republic of Azerbaijan

Article 47 of the Constitution of the Republic of Azerbaijan adopted in 1995 enshrines the freedom of expression, while Article 50 provides for freedom of information of everyone. Thus, the Constitution protects the freedom of information as an independent right from the freedom of expression.

Articles 50 of the Constitution declares, under the title of freedom of information, the right of everyone to lawfully seek, obtain, impart, process and disseminate any information upon his/her choice and enshrines the constitutional character of the guarantee of this right and prohibits the state censorship in mass media, including in the press.

In 1995 when the Constitution was adopted, this article that regulates guaranteeing the freedom of expression and freedom of information was not included incidentally. After obtaining its independence, one of the aims of Azerbaijan was to integrate into the European values and to become an equal member of the European family. As Article 19 of the Universal Declaration of Human Rights adopted by the UN in 1948, at the same time Article 19 of the International Covenant on Civil and Political Rights adopted again by the UN in 1966, as well as Article 10 of the European Convention on Protection of Human Rights adopted in Rome in 1950 form certain standards of freedom of expression, during adoption of the Constitution this framework was taken as a basis, the protection of the freedom of

expression has been guaranteed in Article 47, hence the notion of freedom of information encompassing also the right of access to information has been introduced in the Constitution as an independent right.

Unfortunately, as a result of the constitutional referendum of 2009, paragraph 3 was added to Article 50, which is not in line with the substance of the Article and is not of constitutional nature and is not adequate to the freedom of information. According to the amendment, everyone has a right to refute or respond to the information that is published in media and violates his/her rights and negatively affects his/her interests.

Along with the international instruments listed above, The United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and Recommendation Rec (2002) of the Committee of Ministers of the Council of Europe to the Member States on Access to Official Documents in general protect the freedom of information as an integral part of everyone's right to seek, obtain, develop, impart and disseminate information.

Each of these documents has been ratified by the Milli Majlis of the Republic of Azerbaijan at various times through legal acts. According to the requirement of Article 151 of the Constitution, the international documents ratified by law have superior legal force as to the national laws and in case there is contradiction between normative legal acts constituting the legislative system of the Republic of Azerbaijan (except for the Constitution of the Republic of Azerbaijan and acts adopted through referendum) and the inter-state agreements joined by the Republic of Azerbaijan, those agreements apply.

It is necessary to mention that in paragraph 6 Article 71 of the Constitution of the Republic of Azerbaijan it has been indicated that "human rights and freedoms have direct force in the territory of the Republic of Azerbaijan". Right of access to information occupies prominent position among the human rights and from this viewpoint has direct force.

Constitutional Law on regulation of the implementation of human rights and freedoms in the Republic of Azerbaijan

In the Constitution of the Republic of Azerbaijan there is only limited grounds for restrictions of human rights and freedoms, including freedom of expression and information. Paragraph 3 of Article 71 reads, "Rights and liberties of a human being and citizen may be partially and temporarily restricted on announcement of war, martial law and state of emergency, and also mobilization, taking into consideration international obligations of the Azerbaijan Republic".

Despite the fact that there are no other Articles in the Constitution restricting human rights and freedoms besides this Article, on 24 December 2002, the Milli Majlis of the Republic of Azerbaijan brought a number of restrictions by adopting the Constitutional Law 404-IKQ on regulation of the implementation of human rights and freedoms in the Republic of Azerbaijan. This includes provisions restricting freedom of expression and freedom of information protected under Articles 47 and 50 of the Constitution. According to Article 3.6 of the Constitutional Law freedom of expression and information may be restricted upon the following grounds:

For the protection of state interests, health and morals, rights and freedoms of others, for the prevention of the perpetration of a criminal offence;

For the prevention of mass disorders;

For the protection of public security and public order;

For the interests of economic welfare of the country;

For the protection of the state's interests related to territorial integrity;

For the protection of the image and rights of other persons;

Prevention of the disclosure of the confidentially obtained information or provision of the reputation and impartiality of courts;

Despite the fact that many of the grounds listed above are in line with the grounds prescribed in Para 2 Article 10 of the European Convention of Human Rights, it is not possible to consider the restriction "for the economic welfare interests of the country" as a legitimate one.

Law on freedom of information

Before the adoption of the Law of the Republic of Azerbaijan "On Access to Information" the regulation in this field was not sufficient. The Law of the Republic of Azerbaijan on Freedom of Information was adopted by the Milli Majlis of the Republic of Azerbaijan on 19 June 1998 and entered into force on 16 September 1998. This Law was supposed to regulate the relations related to the enjoyment of freedom of information. The Law on Freedom of Information did not provide for the submission of information requests, the obligations of the parties possessing the information and other significant issues. The practice of 1998-2005 showed that it was practically impossible to have an access to information based on that Law on freedom of information. Nevertheless, as this Law is of declarative nature, it was not able to solve practical problems of access to information. In fact, the Law on freedom of information that was effective for seven years until 2005 did not work. This was the reason of the necessity of adopting a new law on access to information. It is true that the Law on Freedom of Information is in force at present, however the procedures on obtaining information are regulated by the Law on Access to Information adopted in 2005. For this reason there is no sphere left for regulation by the Law on Freedom of Information.

Other legislative acts that guarantee the right of access to information and are directly linked to freedom of expression

Freedom of expression and information enshrined in Article 50 of the Constitution of the Republic of Azerbaijan have acquired a large practical possibility of implementation in various laws.

The Law of the Republic of Azerbaijan on access to environmental information

One of the normative acts related to the right of access to environmental information is the Law of the Republic of Azerbaijan on Access to Environmental Information 270-IIQ adopted on 12 March 2002. This Law regulates relations related to the access to the information possessed by the public institutions and local self-governance authorities concerning the environmental situation and use of natural resources, as well as related to obtaining full, timely and precise information from officials.

The Law of the Republic of Azerbaijan on Mass Media

This Law was adopted on 7 December 1999 and signed and entered into force on 8 February 2000. In 2001 this Law was seriously amended in connection with Azerbaijan's joining the Council of Europe.

The Law defines general rules for seeking, access, developing, imparting, processing and disseminating information, as well as the organizational, legal and economic grounds of the activities of media, information agencies, TV and Radio organizations directed towards full enjoyment of the right of citizens to have full and prompt access to correct information.

The Law of the Republic of Azerbaijan on TV and Radio Broadcasting

The Law of the Republic of Azerbaijan on TV and Radio Broadcasting adopted on 25 June 2002 and entered into force on 9 October 2002 defines legal, economic and organizational grounds of TV and radio activities directed towards provision of the right of everyone to freedom of information, thought and speech, freedom of conducting open and free discussions.

The Law of the Republic of Azerbaijan on Public TV and Radio Broadcasting

The Law of the Republic of Azerbaijan on “Public TV and Radio Broadcasting” was adopted on 28 September 2004 by the Milli Majlis of the Republic of Azerbaijan and entered into force on 5 November 2004. The objective of the public TV and Radio broadcasting is to ensure general interests of the population of the Republic of Azerbaijan – the society as a whole and its various layers in such fields as social sphere, science, education, culture, entertainment, etc., to reflect various ideas and opinions concerning freedom of speech and thoughts, develop balanced information with correct content and disseminate this information according to modern technological and quality broadcasting standards.

The Law of the Republic of Azerbaijan on Information and Protection of Information

The Law of the Republic of Azerbaijan on Information and protection of Information was adopted on 3 April 1998 by the Milli Majlis of the Republic of Azerbaijan.

The Law regulates relations arising from formation of information resources based on collection, processing, accumulation, maintenance, search, and dissemination of information, at establishment and use of information systems, technologies, their support means and defines the rights of subjects participating in information processes.

The Law of the Republic of Azerbaijan on Biometric Data⁶

The Law of the Republic of Azerbaijan on Biometric Data determines forming of biometric information resources and the requirement to them, the organization and purpose of activities of biometric identification system, scope of biometric technologies and governs the relations arising in this field.

The Law of the Republic of Azerbaijan on individual (personal) data⁷

The Law of the Republic of Azerbaijan on individual data regulates relations in connection with collection, processing and protection of individual data, formation of the individual data section of the national information space, as well as the issues related to cross-border transmission of individual information and defines the rights and responsibilities of public and self governance institutions, legal and natural persons functioning in this sphere.

The key objective of this Law is to define the legislative grounds and general principles of collection, processing and protection of data, the rules and requirements for the state regulation in this sphere, rules for formation of individual data in information resources, creation of information systems, provision and transmission of information, the rights and responsibilities of the persons participating in this process, to protect human rights and freedoms, including the right of protecting personal and family life secrets.

The Law of the Republic of Azerbaijan on State Secret

⁶ Was adopted by the Milli Majlis on 13 June 2008 by the Law No 651-IIIQ.

⁷ Was adopted by the Milli Majlis of the Republic of the Azerbaijan on 11 May 2010 upon the Law No 998-IIIQ.

The Law of the Republic of Azerbaijan “On State Secret” was adopted by the Milli Majlis of the Republic of Azerbaijan and entered into force on 5 November 2004. This Law governs the relations arising in connection with reference of data to the state secret, protection and use, its classification or declassification for the purpose of safety of the Azerbaijan Republic.

Election Code of the Republic of Azerbaijan

The Election Code of the Republic was adopted by the Milli Majlis of the Republic of Azerbaijan on 27 May 2003 by the Law No 461. This Code establishes the rules for the organization and conduct of the elections of the deputies to the parliament (the Milli Majlis) of the Republic of Azerbaijan, presidential and municipal elections, and nation-wide opinion polls-referenda. Media plays special role in this process. The function of media for the purpose of satisfying the information needs of the society has been largely regulated in this Code.

Code of Administrative Violations of the Republic of Azerbaijan

The Code of Administrative Violations of the Republic of Azerbaijan was adopted by the Milli Majlis of the Republic of Azerbaijan on 01 March 2016. Along with other offences, behaviour against the access of media to information, administrative violations against the use, dissemination and protection of information, interference with the distribution of the mass media, violation of journalists’ rights, breach of rules during elections and other violations related to the activities of media have been reflected in this Code.

Civil Code of the Republic of Azerbaijan

Civil Code of the Republic of Azerbaijan was approved by the Milli Majlis of the Republic of Azerbaijan upon the Law No 779-IQ of 28 December 1999 and entered into force since 1 September 2000 upon the Law No 886-IQ of 26 May 2000. Along with regulating all spheres of civil law relations, this Code also reflects the issues related to prevention of the damage caused by the media in their statements to honour and dignity, as well as to business reputation of persons.

Criminal Code of the Republic of Azerbaijan

The Criminal Code of the Republic of Azerbaijan was adopted by the Milli Majlis of the Republic of Azerbaijan upon the Law No 787-IQ of 30 December 1999. The Code in general defines the sentences for the criminal offences. This Code also reflects the problems faced during the functioning of mass media, interference with lawful professional activity of journalists, use of mass media while persons are subjected to defamation and slander, unacceptability of inciting ethnic, racial, social and religious hatred, inadmissibility of appeals for the start of an aggressive war, protection of the honour and dignity of the President, as well as criminal offences of slander and offence in social networks using anonymous accounts are punished in the order prescribed by this Code.

There are other laws, which do not directly regulate the activity of mass media, but still relate to the issues faced by media and journalists in their daily activities. These are the following: “The Law of the Republic of Azerbaijan on copyright and related rights”; the Law of the Republic of Azerbaijan “On Advertisement”; etc. Each of the above mentioned laws have sections related to media and they play important role in regulation of the activities of media.

The Law of the Republic of Azerbaijan on Access to Information

The Law of the Republic of Azerbaijan on Access to Information was adopted by the Milli Majlis of the Republic of Azerbaijan on 30 September 2005 and entered into force after the President signed it on 9 December 2005. The Law has the objective of lawfully regulating the right of everyone of access to information guaranteed by international law and the Constitution, and to secure transparency in governance in the process of building of free and democratic society.

The main aim of this Law is to provide access to information for everyone. Adoption of this Law and its application guarantees the rights of legal and natural persons of access to information and at the same time is a means possessing legal, democratic values of the state and leading to its transparent governance. State is the largest public institution. As its establishment is the product of the joint will of people, governance of the state and whether its competent officials act in a lawful way is very important for the public opinion. From this viewpoint, all the information related to governance is information of public importance and activities in this direction should be accepted as execution of public duties.

Existence of informed individuals in the society creates possibilities for them to positively influence the administration and boosts up the creation of informed society. At the same time, in the information society the number of negative cases in public administration goes down to minimum and the cases of corruption, abuse of power, arbitrariness almost disappears. Accountable office (government) is created. To be a civil servant is perceived not as seeing oneself above law but rather as serving people, taking care of them and holding an accountable service.

In parallel to the state there are such institutions in the society the activities of which occupy important position in the life of the society. Particularly there are such forms of cooperation in new relations brought about by globalization where activities and sphere of service are closely linked to the community at large. Taking this into account, there is no doubt that public information will be not only held by public institutions and public officials, but also by every institution involved and dealing with public activities. The information in hands of such institutions is the information, which is in the centre of interest of the society and is of public importance. In this sense the Law on access to Information also defines the duty of preparing and providing information depending on in whose hands is this information.

The field of regulation of the Law on Access to Information

This Law encompasses the terms, procedures and forms of access to information, as well as the forms of disclosure of information by the information owners and the liability imposed in the case of refusal to implement it, as well as the grounds for denial by the information owners from providing such information.

Along with this, this Law grants certain powers to the Human Rights Commissioner with the view of conducting control over the organization of the access to information. Inclusion of the Commissioner into the process and identification of the rules for the conduct of the control is a factor assisting the information subjects to fulfil their duties related to providing and disclosing information in a more responsible way.

The Law also reflects the restrictions imposed on access to public information and the rules for disclosure and submission of the part of this information that is not regulated by other laws.

The relations regulated by other laws are outside of the scope of this Law. Thus, as the information that constitute state secret pursuant to the Law on State Secret, access to work with such information, and protection of such information is regulated in a special way, they are outside the scope of this law. As the access of work with archive documents is conducted in line with the Law of the Republic of Azerbaijan on "National Archive Foundation", the scopes of two laws do not overlap. The issues regulated with the Law on Personal data are also settled with the procedures that are outside of this Law.

As proposals, applications, complaints and other relations are regulated under the Law of the Republic of Azerbaijan "On the order of reviewing the applications of the citizens" guaranteeing the right of citizens on application to public institutions and officials enshrined in Article 57 of the Constitution, these relations are also outside the scope of this law. Finally, when there are restrictions prescribed in international agreements, it has been indicated that they will be excluded from this Law.

Main principles of the access to information in the Law on Access to Information

The principles of freedom of information have been mainly standardised for democratic societies and they have been accepted as a basis in the entire world. The principles that are close to the principles provided for in the model laws by the "Article 19" organization have been enshrined also in this Law and their number has been increased from 9 to 11.

First, the principle of equality of information request for everyone has been preserved and the necessity of its free supply with no barriers has been mentioned.

Second, the principle of lawfulness of the access to information has been touched upon. By this, it has been stressed that the right of everyone to receive information is protected on the basis of lawful grounds.

Third, it has been mentioned that the public institutions and municipalities have the obligation to disclose information. According to this principle, along with stressing the openness of the information, in fact the obligation of the institutions carrying out public functions is remembered and it has been imposed on them as a duty.

Fourth, the principle of maximum openness of information has been mentioned. This is among the basic principles.

Fifth, the response to the information request within shortest period and by the most suitable way is indicated. This plays important role in identification of deadlines for responding to information requests. Existence of this principle is one of the important barriers preventing the delays in responding to requests.

Sixth principle is an important moment that should be taken into account during the collision of two interests. While submitting information security of persons, society and the state should be considered and at the same time, the right of the society to receive information should not be disrespected as a whole. The interest that is weighing more should be protected.

The seventh principle provides for protection of the right of access to information by the state and mentions that judiciary restoration of the violated rights is admissible. From this viewpoint, envisaging a Commissioner on Information is also an additional protection measure.

Eighth principle is the principle of provision of the information of public importance free of charge. Law should openly prescribe the cases when payment shall be made.

Ninth principle is the factor increasing the responsibility of the information owners. The fact that the information owners bear responsibility for the violation of the right of access to information is stressed in this principle.

Tenth principle in fact is the follow up to the sixth principle. The necessity of defining that the restriction to the access to information should not exceed the grounds creating this restriction has been stressed in this principle.

The last, eleventh principle is the principle of the protection of whistle-blowers. Non-persecution of officials for disclosing information about violation of public importance has been accepted as a basis.

Having a look into the legislation of Azerbaijan from the viewpoint of these principles we can see the existence of some shortcomings. Thus, despite the fact that the legislation lists certain principles, it does not provide for the others. Particularly, the principles of promotion of open government, conduct of open gatherings and limited list of restrictions are missing and the law has not touched upon them.

Owners of information

The Law broadly regulates the definition of the owners of information and provides several classifications.

1. Without any restriction state institutions and municipalities are direct owners of information. The state institutions include all executive, legislative and judiciary power organizations and public agencies that do not have direct dependency on these branches of power, but have been established and are functioning in accordance with law.

2. The notion of owners of information is not limited only to the state and municipalities. It also includes legal persons implementing public functions, as well as private legal persons or natural persons providing services in such spheres as education, healthcare, culture and social sphere based on legal acts or contracts. Information of public importance is the information that is created or acquired in the process of execution of public duties defined in laws or other regulations, the information whose disclosure to society is necessary from the perspective of lawful interests of society.

All institutions that are dealing with the execution of public duties, as well as working in fields where society may rightly conduct control are considered the owners of information of public importance. According to Article 9 of the Law on Access to Information the above-mentioned institutions are obliged to keep the information that they create and acquire in the course of their activities open in line with this Law and provide information.

Since 1 February 2017 public legal persons have also been added to the definition of owners of information. It should be mentioned that Public legal persons were established in 2015⁸.

3. Private legal persons or natural persons providing services in spheres such as education, healthcare, culture and social sphere based on legal acts or contracts. Legal persons imply here commercial and non-commercial organizations established as legal persons, registered with the state registry of legal persons. Natural persons refer to entrepreneurs and officials involved in commercial activities.

Private healthcare, educational, cultural and social service enterprises: private clinics, medical centres, hospitals, private schools, orphanages, universities, institutions providing care to the disabled, elderly persons, children deprived of parental care, various groups of population, etc., are examples of institutions included in this list.

According to this Law such private legal or natural persons are obliged to disseminate or disclose not all the information they possess, but only that which they create or obtain in the course of public works.

4. Legal persons that have dominant position in the commodities market, have special or exclusive rights or are natural monopolists are also considered information owners according to this Law.

The entities that have market share of more than 35 per cent alone or together with their daughter or dependant companies are considered to be the dominant entities in the market. The entities that may substantially influence the market with the licences, orders, import quotas issued by the states are considered as monopolists. As due to the technological features of production natural monopolists work under the conditions when competition does not exist, they also occupy dominant position in the market. Thanks to their dominant position in production, sales and services markets they are able to create deficit in the market any time they want, artificially raise the prices of their goods and services, and not leave any other chance for consumers than to buy their low-quality products. Law prohibits monopolist activities. The government is obliged to control the cases of monopolism, and to

⁸ <http://e-qanun.az/framework/35017>

prevent the artificial restriction of competition. Antimonopoly Department of the Ministry of Economy controls such cases. This institution maintains registry of entities that have monopolist capacity and thus prevents their activities that contradicts the anti-monopoly regulation. Along with this it is necessary to have also public oversight over certain aspects of the activities of those companies. Such companies should keep the information concerning the terms of supply of goods and services and their prices, and changes of those prices in the public domain and take public opinion into consideration while making decisions in this regard.

5. a) fully or partially state-owned or subordinated non-commercial organizations, off-budget funds, for instance, the State Oil Fund, the Fund of Social Protection of Population also considered as information owners.

b) The commercial unions where the state has a membership or participation (Azersutikinti (Azerwaterconstruction), Azeraqrartikinti (Azeragrarcnstruction), Kapitalbank (Capitalbank), International Bank of Azerbaijan, Azerinsurance, Azerlottary, etc) are considered information owners for the data on the use of the funds allocated from the state budget or property allocated to them and bear the same responsibilities with information owners.

Obligations of information owners

First of all, an owner of information is obliged to secure everyone's free, unrestricted and equal right of access to the information resources it owns under the procedures established by this Law. During this process the laws should be respected and freedom of information should not be undermined. The information owner should appoint an official or establish a department on information matters. According to Article 58 of the Law, a 3-months period is allocated for the appointment of an official on information matters. Since the adoption of the Law, despite the fact that this deadline has expired, the majority of information owners have not yet executed this task.

Information owners are obliged to instruct their information officials from time to time and to create conditions for them to implement their duties deriving from the Law. Not appointing an official on information matters or not establishing an information department may not serve as a ground for refusing to submit information.

Information owner should register the documents at his or her disposal, enter them into the register of documents, and provide free access to both the information and the notes in the register.

Information owner should store the documents during the period indicated in the Law and protect them from being destroyed or damaged or distorted. Information owner bears responsibility for the safety of the documents.

Owner of information should organise access to the information, should explain to requesters in a clear way the rule of access to information, its terms and methods. It should also assist the introduction of information requests, comprehensively assist in clarifying what type of information is required by the requesters and which method of access to information would be easier and more suitable for them.

Information owner should distribute the information that it should disclose to the public in the manner prescribed by law and on time, and regularly inform the public about fulfilment of its public duties.

Information owners are obliged to inform the requesters on restrictions imposed on access to certain information.

Provision of information which is not correct, complete and precise is unacceptable. Information owner bears responsibility for the accuracy and authenticity of information.

Restricted information

One of the basic principles of the right of access to information is maximum availability of information. The main thing is availability (openness) and if there is no legitimate reason, no restriction may be applied on information.

In certain cases application of restrictions is possible. Such cases should be necessarily prescribed by law and applied to rights in a balanced way.

Principles six and 10 described in Article 6 of this Law have been dedicated to the points related to restricted information. Principle six is about the issue that should be taken into account during the collision of two interests. When information is submitted, security of people, the society and the state should be taken into consideration and at the same time the right of the society to be informed must also be respected.

Principle 10 in fact is the follow up of principle six. This principle stresses the necessity of not defining the restriction to the access to information in a way that it exceeds the reasons that caused this restriction.

In Article 10 where the obligations of information owner are described, if there is a limitation over the information, the information owner should secure the compliance to the restrictions concerning the access to information and inform the requesters on the restrictions in force. Provision of information which is not correct, complete and precise is unacceptable.

Article 12 which regulates the maintenance of the register of documents, indicates that the register should contain at least entries on incoming and outgoing documents, who they were received from and were sent to, incoming/outgoing date, the way of incoming or outgoing communication (regular mail, e-mail, fax, courier, in person handling, etc.), details and type of the document (information request, proposal, application and complaint, report, normative act, rapport, decision, etc.).

According to the requirement of Article 19 after registration of the request the information owner should comprehensively study it. The official on information matters should clarify all the issues requested in the request and after finding out the content of the requested information and the details of the document should find out whether it has the requested information; if the information owner does not have the requested information at its disposal it should clarify where the request should be sent. It should also be clarified whether the access to this information is restricted or not, in case the access is restricted to certain part of the information, the possibility of separating it from other part of the document and submitting is considered.

Article 21 of the Law regulates refusal to execute the information request and describes that when the request refers to the information access which is limited by law, or the requester is not duly authorized to acquire such information or when the requester fails to present identification document as required by this Law the owner of information shall refuse execution of the request.

If requested information constitutes the part of the document limited by law, only its open part may be submitted. Upon substantiated claims of the requester, the information owner that provides incomplete or imprecise information should make free of charge additions to the information and deliver it to the requester.

Article 34 of the Law classifies information. Information is divided into publicly accessible and with limited access information. Information without any access limitations in accordance with the law is the publicly accessible information.

Information whose access is limited by law is divided into confidential and secret. State secrets are included in the list of secret information.

Official secret, professional (doctor, attorney, notary), commercial, investigation or judicial secrets with access limited in order to protect the lawful rights of individuals, entities,

agencies, organizations and other legal entities, irrespective of the type of ownership, as well as private information are the confidential information.

Due to the legal regime, both secret and confidential information have limited access and access to them is regulated by other legislation. For instance, in the Law on State Secret it has been indicated who and in which circumstances may work with the state secret.

Article 5 of the Law of the Republic of Azerbaijan On State Secret that was adopted on 7 September 2004 by the Milli Majlis of the Republic of Azerbaijan and entered into force on 5 November 2004 has summarised the information that constitutes state secret under 4 main headings. These are the following:

1. Information constituting state secret in military field;
2. Information constituting state secret in economic sphere;
3. Information constituting state secret in the field of foreign policy;
4. Information constituting state secret in intelligence, counter-intelligence and operational-search activities.

The Decree of the President of the Republic of Azerbaijan No 248 of 3 June 2005 on approval of the List of information comprising state secret, defines the list of the pieces of information that constitute state secret. In that list the list of information comprising state secret is collected under 39 headings and almost all public institutions and state bodies have been assigned to protect these information.

Confidential (secret) information

Official secret, professional (doctor, attorney, notary), commercial, investigation or judicial secrets with access limited in order to protect the lawful rights of individuals, entities, agencies, organizations and other legal entities, irrespective of the type of ownership, as well as private information are the confidential information. Access to such information is limited.

Professional (doctor, attorney, notary) secrets

Secrets of advocates

According to Article 17 of the Law on Advocates and Advocacy the information received and advices and certificates given by an advocate in connection with execution of his/her professional duties constitute secret of advocate.

Secret of notary

According to Article 32 of the Law on Notary, information, certificates and other documents related to notary acts are the secret of notary.

Secret of a doctor

According to Article 21 of the Law of the Republic of Azerbaijan on protection of public health, artificial insemination, implantation of embryo as well as ID of a donor are the secrets of a doctor.

Article 53 of the same Law indicates what comprises the doctor's secret. According to this, the fact that person applies for medical assistance, diagnosis of his/her health problem, state of health, and other information obtained during examination and treatment constitute doctor's secret.

Pursuant to Article 7 of the Law on Psychiatric assistance only the person himself and persons that have permission in the order prescribed by law are eligible to use the information about the state of mental health of the person and psychiatric assistance that he/she received.

Article 1 of the Law of the Republic of Azerbaijan on fight against AIDS provides for confidential examination of human immune deficiency virus, and guarantees confidentiality concerning medical examination of human immune deficiency and its results.

According to Article 8 of the same Law, when employer possesses information about the fact that certain employee has been infected with immunodeficiency virus, he/she should not disclose this information.

Pursuant to Article 11 of the Law, information regarding medical examinations related to human immune deficiency, positive status on human immune deficiency, as well as information about the positive status of HIV positive status of a person after his/her death is stored confidentially and protected in the order prescribed by law. Persons who possess such information are obliged to protect them.

Pursuant to Article 7 of the Law on Narcological service and control, the persons who carry out narcological service and control, as well as other persons that obtain information about narcological patients while implementing their service duties due to their official position should avoid dissemination of those information.

Commercial and bank secrets

Commercial secrets are information that has real or potential material value. Its disclosure and dissemination may significantly damage the commercial interests of the information owner protected by law. When commercial secrets are disclosed, their commercial value for the information owner diminishes, thus it causes damage to him/her.

The Law on Commercial Secret, Tax Code, Criminal Code and other normative legal acts define norms protecting commercial secrets. Pursuant to Article 2.0.1 of the Law on Commercial Secrets commercial secret is information related to manufacturing, technological, management, financial and other entrepreneurship activities of legal and natural persons whose disclosure without the consent of the information owner may damage the lawful interests of the person.

Pursuant to Article 41 of the Law on Banks, according to the Civil Code, a bank guarantees the secrecy of the information related to bank accounts, account operations and balance, as well as information about clients, including their name, addresses, and senior officials.

According to the requirement of Article 5.8 of the Law of the Republic of Azerbaijan on state registration and state register of legal persons, information about founders (participants) of legal persons and their shares in the charter capital are considered confidential information and their disclosure is prohibited. This provision was included into the legislation in 2012 after various journalist investigations that revealed and disseminated to the public many facts of corruption, thus having an aim of hindering journalist investigations and providing legal grounds for its prohibition.

Pursuant to Article 43.6 a non-commercial (non-profit) legal entity may engage in entrepreneurial activity only in furtherance of its primary purpose for which it was established and where such activity corresponds to such purpose. When non-profit organizations are engaged in commercial activity, the information that relates to their commercial activity and has commercial value may be protected as commercial secret.

Statistical secret

Primary statistical information (individual information) submitted by legal and natural persons for the conduct of statistical observations are considered statistical secret. Primary statistical information is the information about activities of concrete entities, enterprises, organizations, and natural persons (for example, title of the produced goods and provided services, their volume, general amount, amount of the income, general number of staff members, number according to individual individuals, etc.).

Secrets related to operational-search activities

Pursuant to Article 4 of the Law of the Republic of Azerbaijan on Operational Search Activities, dissemination of the information related to integrity of a person's personal life, including private and family life secret, as well as information about his/her honour and dignity without consent of that person is prohibited. The purpose of this article is to guarantee human rights and freedoms, and to protect them against groundless interventions. In some cases the persons involved in operational search activities transfer the operational information and materials about private or intimate life of persons to media under the title of fight against criminality and this leads to their disseminations. Legislation prohibits such behaviour and provides for responsibility of those who perpetrate such actions. Dissemination of information about personal life or information touching honour and dignity of a person creates civil and criminal liability.

Private life secrets of a person – personal data

Article 8 of the European Convention on Human Rights also guarantees the integrity of a person's private life: "Everyone has the right to respect for his private and family life, his home and his correspondence".

Article 17 of the International Covenant on Civil and Political Rights adopted by the UN and ratified also by Azerbaijan protects private life. The Article reads, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference and attacks".

Everyone has a right to claim the correction or removal (cancellation) of the information that has been collected in his/her regard and which does not comply with reality, as well as the information received through violation of the provisions of law.

Information on private life also includes personal data. This type of information is listed in Article 38 of the Law on Access to Information. According to the Law the following includes personal data:

- information reflecting the political views, religion and ideology of persons;
- information on ethnic origin or racial belonging;
- information collected during prosecution of on crimes or other offences – until an open court session or the rendering of a judgment on the offence; or in cases required for protection of people's morality, private or family life, or for the sake of underage persons, victims or witnesses; or for execution of the judgment;
- information on the state of health;
- information on the person's individual features, abilities and other strains;
- information on applications for social protection and social services;
- information on mental and physical sufferings;
- information on taxation, except for outstanding tax debts.

Information on family life of a person encompasses first of all the data on intimate life of a person. All aspects of person's intimate life are under protection. Indeed, intimate life should be understood here as a person's intimate life conducted according to laws and general moral rules accepted by the society. If the person is a prominent public figure in the centre of the society's attention, his/her unlawful relations and his intimate life in this frame cannot be protected. As relations that contradict the law, sexual relations outside of marriage, wrong relations are violations of the law, the information on violations should not be restricted.

Family information has been included into the list of personal data disclosure of which is limited. These are the following:

information on sexual life;
information on registration of acts of civil status;
information on various moments of family life;
information on adoption.

According to the legislation, as it is the case with each one of the information that has been defined as secret and has limited access, access to personal data is also limited for certain period.

Limitation of access to private information is effective for the period of up to 75 years from the date of acquiring or documenting of such information or up to 30 years from the death of the person or, when the fact of death is not verified, up to 110 years from the date of birth of this person.

Unlawful interference with a person's private life creates responsibility. In Article 60 of the Law on Mass Media it has been indicated that in case of interference with private life of citizens, as well as when persons are subjected to tracking, video, audio and photo recording and other such acts by journalists and other persons, without being informed and or against their protest, it leads to liability prescribed by law. Legal responsibility is divided into two parts: civil and criminal responsibility.

Pursuant to Article 23 of the Civil Code of the Republic of Azerbaijan if information interfering with private and personal life secret has been disseminated in mass media, then the same media outlet should refute them. If the indicated information is included in the official document, that document should be changed and interested persons should be informed about it. Besides, in case information that interferes with private and family life secret and integrity of personal and family life is untrue, a natural person may apply to court to claim the refutation of that information.

Article 155 of the Criminal Code provides for liability for violation of the correspondence secret of a person, while Article 156 creates liability for the violation of integrity of personal life. Dissemination, selling, transfer to someone else or illegal collection of the information that constitute family and private life secret, documents, audio, video records and photos reflecting such information is punished with the fine in the amount between one hundred manats and five hundred manats or community works between two hundred and forty hours and four hundred and eighty hours or correction works up to one year. When an official using his official position perpetrates these offences, as well as when perpetrated using drones (remote controlled flying objects with no pilots) the sanction for the punishment is more severe. In this case the sanction may be deprivation of liberty up to two years with prohibition of occupying certain positions together with or without deprivation of the right of engaging in certain activities.

Information envisaged for official use

One of the limitations preventing the accessibility of information is consideration of the information for official use. Nevertheless, in this case accessibility of all types of information cannot be prevented by this means. This step may be made for the information prescribed in the law. In this case the limitation should not exceed the period indicated in the law.

The following are the information considered for official use:

- a. information collected on criminal or administrative violation cases – until filing the case to a court or passing decision on termination of the case.
- b. information collected during the effecting of state control – until the respective decision is made, nevertheless, immediately after the decision is made the limitation is lifted.

- c. information that will or may impede the formation, improvement and successful completion of the state policy in case of premature disclosure – until the agreement on completion of the process is reached; - there might be some problems in the application of this provision, as the notion “formation, improvement and successful completion of the state policy” is sufficiently broad one and it should not infringe the freedom of information when applied.
- d. information that will or may endanger the effectiveness of testing or financial audit by the state authority in case of premature disclosure – until the completion of testing or financial audit;
- e. information that will or may violate the exchange of views and process of consultations at the state authorities in case of premature disclosure – until the decision is taken;
- f. information that may affect adversely the conduction of economic, monetary and credit or financial policy of the state bodies in case of premature disclosure – until completion of certain actions related to economic, monetary and credit or financial activities;
- g. information that will or may prevent the administration of justice – until a court judgment is made;
- h. documents received from foreign states and international agencies – until reaching mutual agreement on document disclosure;
- i. information that will or may endanger the environment or damage the environment components – until elimination of the reasons causing the danger;
- j. when the disclosure deteriorates the lawful interests of the information owner, or the utilization of the information for official use is provided by agreement with private legal entities engaged in exercising public functions – information on technological solutions.
- k. State bodies and municipalities, including legal persons fulfilling public functions, as well as private legal and natural persons providing services in educational, healthcare, cultural and social spheres on the basis of normative legal acts or contracts may consider drafts of decrees, resolutions and orders – until submission of decrees, resolutions and orders for approval as intended for official use in case they provide the reason for confidentiality:

Legal persons that occupy dominant position in the commodity market, or posses special or exclusive rights or natural monopoly as well as non-profit organizations that partly or fully belong to the state, extra-budgetary funds, commercial unions where the state participates or has membership in, the acts and documents related to them provided for in the law on implementation of duties – in case they provide the reason for confidentiality until the adoption or signing of these acts, they may be intended for official use until they are signed.

Intention of the information for official use may be considered legitimate if the harm from disclosure of this information exceeds the public interest to it.

All confidential information and documents should contain property details indicating their closed nature. The document that does not contain such detail cannot be considered closed document. According to the law the documents intended for official use and/or files where they are kept should be denoted by “For Official Use” words.

Documents containing private information and/or files where they are kept are to be marked as “For Official Use. Private Information”

In both cases the document and the files where they are stored should contain the dates when the limitation entered into force and when it should lose its force.

Responsibility for the organization of the access to information

Each owner of information should establish internal proceedings for the organization of the information service in its institution. Information owner should carry out control over the lawful conduct of this process and bear responsibly for this. If information service has been established then it bears responsibility for the emerged disputes; in its absence, this responsibility shifts to the information owner - official.

Information owner bears responsibility for groundless refusal to information request or for not responding to the request within the deadline prescribed by law, for non-dissemination of the information that should be disseminated according to the law or for disseminating it not according to the relevant method.

If it will be established that refusal to respond to the information request was groundless and unlawful, the information owner should, first of all, be forced to submit the requested information. Besides, if it is proved that the applicant was subjected to harm as a result of non-responding to the request, compensation for this harm may be claimed from the information owner. If the requester has undergone the judicial expenses, he/she may also claim those expenses from the information owner.

Officials of the information owner bear responsibility for not organising the access to information and unlawfully refusing the access to information. This has been provided for in the Code of Administrative Violations.

Problems observed during implementation of the Law on Access to Information

Despite all positive notes, it is clear that there are some problems related to the implementation of this Law and it will not be possible to eliminate the obstacles in the field of access to information until these problems are solved.

These problems may be divided into three groups:

- The problems existing in the Law itself;
- Problems deriving only from false commentary (interpretation) of the Law;
- Subjecting the Law to the amendments that contradict to its substance.

The problems existing in the Law itself;

When the Law was adopted, despite justified claims of the representatives of the society, some elements were not taken into account and thus certain "gaps" have been created in the Law. These are the points, that despite the fact that they have been provided for in the law, the relevant executive authorities delay their execution. They can be listed as follows:

Article 8.3 of the Law reads, "Information owner establishes and ensures the implementation of procedures for access by individuals to the private information on themselves and making adjustments, if required, under requirements of this Law" and by saying this imposes duties on information owners. Nevertheless, the requirement of this Article has not been implemented also until now. There is no rule regulating the person's acquaintance with the personal data about himself/herself adopted by the Cabinet of Ministers; attitude to this requirement of the law was indifferent.

Another serious problem that is faced in practice is refusal by information owners to reply to information requests and their referral to Article 21 of the Law for this purpose.⁹

When monitoring the procedure of replying to requests, we can see that particularly some ministries and other information owners use the following expressions in their replies to requesters: "We can not reply to your request as the information requested by you is large in volume and the execution of the request impedes the implementation of our public duties".

This is the reply given referring to Article 21.2.3 of the Law. The other indicated two paragraphs of Article 21 (impracticability to provide for the execution of the request at a time) and (execution of the request requires systematization, review and documentation of the information) allows the information owner to avoid replying to information requests under such excuse and it is not easy for the requester to challenge this in court. Inclusion of these Articles as grounds for refusing to reply to information requests is against the purpose of the Law as a whole and should be removed from the Law. The fact that the request may not be responded to at one time may not serve as a ground because this is an unlawful regulation exceeding the purpose of the Law. In fact, if to rely on the principle of maximum openness of information, if it is not possible to satisfy the information request at one time, it should be responded in two or three times, however the information of public importance may not be hidden under such pretext. This is contrary to the principle of the maximum openness of information.

Information owner should itself systematize some information of public importance, analyse it and bring it into ready condition according to its functions. This behaviour sometimes is an integral part of its public functions. Nevertheless, in practice many interesting cases occur. For instance, when an official from the Ministry of Education is asked "How many classrooms are there in Azerbaijan per student" he nervously answered that "I am not obliged neither to know this nor to answer your question, this requires the analyses of the information, and I have no such obligation prescribed by law" and this is due to the easy refusal reasons placed in the law by the legislator. This provision which is used for refusing the execution of requests is contradictory to the objectives described in the introductory part of the Law, as well as the principles of access to information; besides, it groundlessly limits the rights of access to information. Each Azerbaijani has a right to know the number of classrooms per student in his/her country. This information is necessary for obtaining certain results on the quality of education and it is information of serious public interest. Nevertheless, this provision that has been incorporated into the Law easily plays a role of an excuse serving information owners in hindering implementation of their public duties and may serve as a basis for the refusal to respond to the information requests related to the information of public interest.

Problems deriving from misinterpretation of the Law.

One of the serious problems faced in practice is the fact that some owners of public information who are dealing with management of public property¹⁰ refuse being information

⁹ **Article 21. Refusal to execute the request 21.2.3. due to the large volume of the requested information, the execution of the request impedes the implementation by the information owner of his/her public duties or causes unreasonably heavy expenses;**

21.2.4. Impracticability to provide for the execution of the request at a time;

21.2.5. execution of the request requires systematization, review and documentation of the information.

¹⁰ 2.1. Article 9. Information owners

9.1. The following are considered information owners:

9.1.1. state bodies and municipalities;

9.1.2. legal entities implementing the public functions, as well as private legal entities and individuals engaged in the spheres of education, healthcare, cultural and social sphere based on legal acts or contracts.

owners and do not reply to information requests. Unfortunately, when the requesters that cannot get responses to their requests turn to courts, the courts also support this mistake and understand the notion of information owner in a narrower framework rather than the one established by the Law.

In the monitoring conducted by the Organisation on Protection of Oil-industry Workers for measuring the transparency in the administration of the public property, requests were sent to various state companies and joint stock companies whose shares are owned by the state. The State Oil Company of Azerbaijan, unlike other institutions of its type, does not perceive itself as an information owner and does not reply to information requests.¹¹

As it is seen from the title, the State Oil Company of Azerbaijan completely belongs to the state. It conducts management of oil-natural-gas and other hydrocarbon reserves, which are the national wealth of the country and has acquired this competence following a normative act. The Head of this Company is appointed by the decree of the President. Ownership of the company belongs 100% to the state. Despite this, all information requests sent to SOCAR are answered in a same way: according to Article 9 of the Law on access to information SOCAR is not an owner of information and has no obligation to respond to your requests.

Unfortunately the courts of Azerbaijan are not capable of fully acknowledging the notion of the openness of information. In court proceedings it is observed that the “culture of secrecy” of information owners” is supported more rather than application of the law. In itself such behaviour is an attitude inhibiting public institutions, media representatives and active citizens who want to detect cases of corruption and secure transparency, and is violating everyone’s right of access to information.

Who are the information owners prescribed in the Law? When we search the answer for this question, the public institutions are unambiguously information owners, first of all, pursuant to article 9.1 of the Law. Differently from other commercial entities, SOCAR has a power to represent the state at certain times. When large oil contracts are signed, gas contracts are concluded, SOCAR and its leadership is entitled to represent the government of Azerbaijan, and this continues being a case. There are many normative acts confirming this. Taking this into account, information on ownership of SOCAR should not create any doubts as to whether it acts as a direct owner of information (public institution).

Secondly, according to the Article 9.1.2 of the Law, “legal entities implementing the public functions, as well as private legal entities and individuals engaged in the spheres of

9.2. Information owner’s obligations, established by this Law, pertain to legal entities and individuals defined in Article 9.1.2 hereof only in relation to the information produced or acquired as a result of public duties carried out, or services provided for in the spheres of education, healthcare, cultural and social sphere based on the legal acts or contracts.

9.3. The below listed are considered equal to the information owners:

9.3.1. legal entities holding the dominant position, as well as holding a special or exclusive right at the products market, or being a natural monopoly – in relation to the information associated with the terms of offers and prices of goods as well as the services and changes in such terms and prices;

9.3.2. fully or partially state-owned or subordinated non-commercial organizations, off-budget funds, as well as trade associations where the state is a member or a participant – in relation to the information associated with the use of the state budget funds or properties contributed to them.

¹¹<http://www.tezadlar.az/iqtisadiyyat/11941-neftilrin-hquqlarn-mdafi-tkilat-layihisini-baa-atdrd.html>

education, healthcare, cultural and social sphere based on legal acts or contracts” are also considered information owners. The term “legal entities implementing public functions” is an open-ended definition that lends itself to various interpretations. Hydrocarbon reserves are national wealth and officially belong to the state. Their management, extraction, selling, processing, expenditures, procurements are publicly important functions and this is the issue that directly concerns each and every individual and citizen of the state. Thus, SOCAR should be in the category of “legal persons implementing public functions”.

Article 9.2.1 of the Law clearly states that “Information owner’s obligations, established by this Law, pertain to legal entities and individuals defined in Article 9.1.2 of this Law only in relation to the information produced or acquired as a result of public duties carried out, or services provided for in the spheres of education, healthcare, cultural and social sphere based on the legal acts or contracts”. Management, extraction, selling, processing, expenditures, procurements of hydrocarbon resources belonging to the state should be considered as public function for a company that has been founded and is run by the state funds and thus treated as accessible information.

Another serious problem faced in practice is the fact that the institutions established by various normative acts and bringing together the heads or representatives of various executive powers, the institutions that create compulsory norms with binding force for the entire society with their decisions deny that they are information owners and again this behaviour is “supported” by courts. For instance, despite the fact that the Tariff Council looks as a collegial institution, in fact it is an executive body identifying the regulated price policy of goods and services in Azerbaijan whose decision has binding force. In fact the judicial possibility of challenging the decisions of this institution breaching the Law on Access to information is closed and various instance courts of Azerbaijan come together in their opinion that it is not possible to sue this institution, as it is not a relevant executive body and dismiss the claims.

In practice the limited interpretation of the law by those who are applying it reveals this picture that we observe. This, in its turn, shows that there is a need to express the notion of the term “public institutions” described in Article 9 of the Law.

Issues breaching the right of access to information and groundless restrictive norms introduced to the legislation

The amendment tendencies of the Law on Access to Information

When the Law on Access to Information was adopted it brought a number of positive norms and new relations from the viewpoint of provision of the right of access to information and access to public information.

For the first time information owners were concretely identified in the legislation, their duties were established. It was established what comprises public information. It was indicated what are the information requests, how they should be treated and responded to. Obligations on how to disseminate which information were imposed on information owners as an obligation.

The necessity of creating Internet resources and the deadline for their creation were established upon a precise calendar. It was guaranteed that other norms restricting the right of access to information might not be adopted.

One chapter in the Law has been dedicated to the control mechanisms over the access to information. Establishment of Information Ombudsman was envisaged in the transition

provisions of the last chapter of the Law. A 6-months period was allocated for the establishment of this institution.

Despite the time passed after the adoption of the Law, its implementation has been moving very slowly and this becomes one of the serious problems. In fact no deadlines indicated in the Law have been met. The process of establishment of Internet resources of central executive authorities was completed to a certain extent after 5-6 years. This process moved even more slowly for local executive authorities and courts. Nevertheless, municipalities and other information owners continue ignoring the duties envisaged for them.

Information Ombudsman was not established till after 6 years from the adoption of the Law in 2005, after which the provisions providing for this control mechanism, an entire chapter, was removed from the Law and thus, the ways on achieving the main objectives of the Law have been almost closed.

Changes and amendments made to the legislation and their legal compatibility

After the adoption of the Law on Access to Information some legislative acts were adopted with the aim of its implementation; they included both, the provisions that were serving the objectives of the Law and those that were not compatible with the substance of the Law and limited its possibilities.

One such amendment was the addition of Part 3 to Article 50 of the Constitution on 18 March 2009 through referendum "On the right of everyone to refute or respond to information that violates his/her rights or damages his/her reputation published in mass media". Despite the fact that, at first sight, it might seem that there are no problems here, when digging further into the substance of the amendments one can see that it is not required that the information that violates anyone's rights or damages his/her reputation should necessarily be a "lie". The fact that it has been required in such prominent document as the Constitution to refute the information that is true but damages the reputation of the person is not a constitutional norm and brings broader restriction to the freedom of information.

On 24 June 2011 the following Article 38.2.7-1 with the content below was introduced to the Law of the Republic of Azerbaijan on Access to Information:

"38.2.7-1. Information on perpetration of domestic violence against persons;"

The purpose of adopting this provision was to expand the scale of information that has been established as personal data in the Law and access to which has been restricted in order to prevent domestic violence according to the legislation adopted for the purpose of preventing domestic violence. Whereas, information on perpetration of violence is information of public importance on violation of the law and it can be disseminated without disclosing the name of the person. It is possible to act within the journalist ethics during the dissemination of this information in order to protect the victims and according to the Law prohibition of such information may result in hiding the serious facts of public importance from society.

It should be mentioned that previously Article 38.2.7 of the Law provided for the limitation only of "the information on mental and physical sufferings" classifying them as personal data.

With another amendment adopted by the Milli Majlis on 20 April 2012 and entered into force on 12 June 2012 the following provision was added to Article 2.4 of the Law that has the Heading Freedom of access to information:

"2.4-1. Access to information is permitted only with the condition that it does not contradict to the protection of interests of the Republic of Azerbaijan in political, economic, military,

monetary and currency policy fields, observation of public order, protection of health and morals, rights and freedoms of others, commercial and other interests, reputation and impartiality of courts, normal flow of the preliminary investigation stage of criminal cases”.

This addition contradicts to the spirit and aims of this Law as a whole. Freedom of information is enshrined in the Constitution and it has been indicated that this freedom may be restricted partly and temporarily for concrete purposes. Freedom was stressed also in the Law on Access to Information as a ground where it was mentioned that partly restrictions are possible due to concrete reasons. By saying, “Access to information is permitted only with the condition” in the new addition it has been indicated that information is not free, it is mainly restricted, and only in certain cases access to it may be “permitted”. Thus, the fundamental principles indicating the possibility of accepting freedom as a basis and applying restrictions in narrow and exceptional circumstances, which are the requirement of Article 50 of the Constitution, Article 10 of the European Convention of Human Rights, as well as Article 19 of the UN Covenant on Civil and Political Rights, have been damaged.

Besides, majority of the circumstances indicated here as basis for restrictions seriously contradict to the issues that have been formed as norms of international law in the course of many years and have acquired possibility and sphere of application by the case-law of the European Court of Human Rights. With this amendment new illegitimate purposes for the prevention of the access to information have been indicated in the law and these purposes have been articulated in an unclear language, thus creating unlimited possibility for information owners to manoeuvre while refusing the access of information, and thus went far away from such principles, as precision and clarity, which are necessary for law. Using such expressions as “protection of interests of the Republic of Azerbaijan in political, economic, military, monetary and currency policy fields” as a ground in the law for refusing the access to information is not acceptable.

The law, in any case, prescribed the type of information that may not be disclosed. These is officially classified information included into the category of secrets, as well as those envisaged for official use or included into the category of personal data. While here, creating fictitious “legal grounds” for refusing access to information under “protection of interests in political, economic, military, monetary and currency policy fields” without using the term “state secret”, or “rights and freedoms of others, commercial and other economic interests” without using the “secret of personal life” is a huge blow to freedom of information and contradicts to the international acts of international law ratified by our country, as well as the Constitution of the country.

Together with this addition, the principle of “safety and security of persons, the society and the state during provision of information” has been amended and a new abstract principle has been introduced: -“6.1.6. Access to information should not contradict to purposes described in 2.4.1 of this Law”;

Thus, artificial grounds invented for not disclosing the information were introduced as “Main principles of the access to information” and “permission with condition” was included into the law as a key principle.

The amendments that were adopted by the Milli Majlis on 20 April 2012 and entered into force on 10 May 2012 put the Law of the Republic of Azerbaijan on Access to Information far away from the purposes that were envisaged during the adoption of the law and entered into history as the most restrictive amendments.

With this amendment, the following paragraphs were removed from the Law on Access to Information: duty of an information owner to prepare reports in Article 10.5.4 (10.5.4. Prepares reports to be submitted to the Information Ombudsman); the requirement indicated in Paragraph 10.6 that these reports should be developed no less than two times per year (10.6. The reports to the Information Ombudsman – should be submitted two times per year

– in first and seventh month of each current year. If Ombudsman requires - the information owner should submit additional reports.); Article 57 indicating the term of office of the Information Ombudsman and Articles 43-55. Thus, 13 out of 14 Articles existing in Chapter 7 of the Law were removed, while Article 42 was amended as follows: “ “42.1.2. the Human Rights Commissioner (ombudsman) of the Republic of Azerbaijan carries out in the manner established by the Constitutional Law of the Republic of Azerbaijan on Human Rights Commissioner (Ombudsman)”.

By this step, a chapter dedicated in the Law to the control mechanism over the disclosure of information was lifted and the possibilities to control the disclosure of information were minimized.

Previously, the establishment of the Institution of Information Commissioner (Ombudsman) was envisaged in the Law and it brought together very important competences concerning openness of information, work with requests, behaviour of information owners according to their duties, and placement of information of public importance on internet and namely existence of these provisions in the Law resulted in the positive opinion of the international experts that were given in 2005 when the Law was adopted.

After the abolishment of the institution of Information Ombudsman which was envisaged as the guarantee of the freedom of access to information, on 24 June 2011 a part of competences prescribed for an Information Ombudsman were granted to the Ombudsman and it was introduced in the Constitutional Law of the Republic of Azerbaijan on Human Rights Commissioner as Article 13-1. Here, the competences granted to the Ombudsman were restricted to a greater extent. Thus, preventive powers of the Ombudsman were lifted. The power of receiving reports and monitoring the implementation of the law in this form was removed. Merely the complaints handling competence was preserved. The Ombudsman now may investigate not all complaints related to information owners, but only investigate whether public institutions, local self-governance bodies or official who are the information owners abided some requirements of the Law of the Republic of Azerbaijan On Access to Information or not.

After receiving the instruction of the Ombudsman the public institutions, local self-governance organs or an official who are the information owners should provide information to the Ombudsman in writing about the measures carried out within 10 days. In case of failure to provide information or fulfil the requirements of the Ombudsman, the latter only applies to the relevant higher instance body. This in fact means complaining from the party that in fact is the reason of the violation to that party.

On 12 February 2010, paragraphs 6.0.- 6.0.11 were considered correspondingly as 6.1.- 6.1.11 in the Law on Access to Information and according to the amendment made to Article 32 of the Constitution of the Republic of Azerbaijan through the referendum of March 2009, Article 6.2 with the following content was added to the Law:

“6.2. Except for operational-searching actions, following, video and photo recording, voice recording and other such actions by mass media representatives and other persons without the knowledge of a person or in spite of his/her objection, is a cause for the responsibility determined by the legislation”.

Despite from the first sight it does not seem a problematic issue, the fact that the note “related to personal life of a person” does not exist in the Article in reality leads to serious misunderstandings during the application of this regulation in practice. In fact, as the title of Article 32 of the Constitution is “protection of private life”, this existing paragraph added to the Law is understood as non-interference with the private life of a person. Nevertheless, as the details of private life and general life of a person have not been separated in this Law, the prohibition of “following, video and photo recording, voice recording and other such actions by mass media representatives and other persons without the knowledge of a

person or in spite of his/her objection” unambiguously creates a perception that even in case the person perpetrated violation, in order to conduct recording, it is necessary to inform him in advance or receive his consent. Whereas, this condition may be applied not to all circumstances, but only to the protection of private life. Thus, we face a limitation, which is not adequate to the freedom of information.

As it has been mentioned above, the eleventh Principle in the Law on Access to Information is the protection of whistle-blowers. According to this last principle, the persons who report on violations from inside of the institution should have legal protection, and legislation should take such persons under special protection. In Article 6.1.11 the Law on Access to Information provides for the principle of “non-persecution of officials for disclosing information on offences that generate public interest”. Even after certain period since the adoption of the law Article 181-3 was added to the Administrative Violations Code that was in force at that time, and it was indicated in Para 5 of that Article that Administrative liability is created “181-3.5. For the persecution of an official for disclosure of the information on the violations that are of public interest”.

Despite Article 374 of the Code of Administrative Violations that entered into force in new edition on 1 March 2016 also provided for administrative liability for the violation of the right of access to information, the previous scope was made narrower in that Article and two issues were removed from it. One of them is the responsibility of the information owner for not facilitating (organising) the access to information, while another was the provision preventing the persecution of officials by the information owners for disclosing the information on violations that created interest of the society, which was the guarantee of the principle of the protection of whistle-blowers.

Thus, in 2016 the Milli Majlis removed two more guarantees of the right of access to information from the legislation. Non facilitation (non organization) by public institutions, officials, information owners of the access to information, as well as the persecution of whistle-blowers informing about the violations of public interest remained unpunished. Thus, it promoted less transparency and sterner behaviour of information owners.

Normative acts adopted for the realization of the application of the Law on Access to Information

After the adoption of the Law on Access to Information the process of adopting some normative acts started. Within this framework, first of all, the Rules approved by the decision of the Cabinet of Ministers of the Republic of Azerbaijan No 38 of 7 February 2006 on Storage, Completion and Protection of Documents were adopted.

Another document adopted on the same date, was the Rules of the Cabinet of Ministers on Creation, storage and regular update of the register of documents No 38 of 7 February 2006. This document should regulate the issues related to the register and prescribed by the law.

Another document adopted on the same date, is the Rules on Use of the Register of Documents approved with the decision No 38 of the Cabinet of Ministers of the Republic of Azerbaijan of 7 February 2006.

One year after the adoption of these documents, the Forms and Rules on Establishment of Internet information Resources of Public Institutions and Municipalities approved with the decision No 33 of the Cabinet of Ministers of the Republic of Azerbaijan of 16 February 2007 were defined.

On 26 July 2012, the Cabinet of Ministers of the Republic of Azerbaijan with its decision No 158 approved the "List of Paid Information Services", "The Rules of Payment for preparation and provision of information", "Cases when payment for the provision of information is made in advance", "Conditions of discount that could be made during the payment" and "Conditions and Rules for satisfying information request through contracts".

When these Rules were developed the importance of the Law on Access to Information was not taken into account, obvious provisions existing in the Law were ignored and restrictive regulations were introduced. Pursuant to Article 26.2 of the Law on Access to Information no payment shall be required for the access to public information. Despite the existence of this apparent provision, in the above mentioned decision of the Cabinet of Ministers this element was not touched upon, the provision of the law on disclosure of public information free of charge in all cases was breached, public information and other type of information were not separated. Whereas, in Article 3.0.3 of the Law on Access to Information the meaning of public information is described: "public information - any facts, opinions, knowledge produced or acquired during performance of duties provided by the legislation or other legal acts.

In the above-mentioned decision of the Cabinet of Ministers the requirement of the Law on Access to Information on deadlines has been also seriously breached, the claim of the provision 24.1 "Request for information is executed as soon as practicable, but not later than in 7 working days" was not taken into account and new deadlines were included.

Deadlines provided for in the decision of the Cabinet of Ministers regulating Conditions and Rules for the Execution of Information Requests through Contracts¹² have exceeded the requirements of Article 24.1 of the Law on Access to Information.

These Rules provides for the period of 13 working days for the procedure of concluding the contract for the disclosure of information, nevertheless it has been stated that only after 13 days when the payment is made the information may be disclosed. Thus, during provision of paid information, not seven days, but 20 days have been identified as a "legal" procedure. By this, the requirement of Article 149.5 of the Constitution of the Republic of Azerbaijan has been apparently breached: "Decrees of the Cabinet of Ministers of the Azerbaijan Republic should not contradict the Constitution, laws of the Azerbaijan Republic and decrees of the President of the Republic of Azerbaijan".

- Last amendments made to the Law of the Republic of Azerbaijan on "Information, informatization and protection of information"

By the Law No 539-VQD of 10 March 2017 a number of restrictive norms have been introduced to the Law of the Republic of Azerbaijan "On Information, informatization and protection of information". There are several factors allowing claiming that these amendments have been restrictive.

First of all, when the mentioned Law was adopted in 1998, in Article 1 which is called the scope of the Law it was indicated that "The present Law regulates relations arising at

¹² 3. A person who wants to acquire paid information applies to the information owner for conclusion of the contract. Information owner prepares 2 copies of the contract within 7 days and submits to the requester for signing.

4. Requester signs the draft contracts within 3 days and returns back or expresses proposals regarding the draft contract. The information owner considers those proposals within 3 days.

5. When proposals are accepted, the contract is signed, when the proposals are not accepted the requester receives a substantiated respond.

formation of information resources based on creation, collection, processing, accumulation, storage, search, dissemination of information, at establishment and use of information systems, technology and means for their insurance and at protection of information. The Law shall establish rights of subjects involved in information processes.” Besides, it has been indicated that the present Law shall not apply to the relations that are regulated by the Laws of the Republic of Azerbaijan "On Mass Media" and "On Copyright and Related Rights”.

Nevertheless, the last amendments have added namely the changes and restrictive norms aimed at regulation of relations concerning the dissemination of information. As it is known, according to Article 3 of the Law on Mass Media the notion of mass media also encompasses Internet and the relations concerning the internet broadcasting are regulated namely by that law. Nevertheless, the Law “On Information, Informatization and Protection of Information” was regulating technical issues, protection of information and the rights of entities participating in information processes.

The new Articles and definitions that have been brought to the Law with the new amendment have changed the substance of the Law, converted it from a technical regulation into a content regulation and crudely interfered with the scope of the Law on Mass Media.

The Chapter 3 added to the Law under the heading information resources is entirely of a restrictive nature and is not in line with neither the requirements of the Constitution, nor the international legal norms to which the country is a party, nor the Law on Mass Media.

By saying in “13-1.3.the rules of registration and use of high level domain names with “az” country code, as well as the information included into the register of domain names are defined by relevant executive authorities” this article create conditions for the regulation of the domain names not with participation of the parties of the internet community, but by relevant Ministry, which contradicts international norms, including ICANN recommendations in this regard.

Article 13-2 directly has a heading “dissemination of information in internet information resource” and by this proves its interference into the scope of regulation of the Law On Mass Media.

In Article 13-2.3, in 11 paragraphs all legal and ethical issues previously existing in various laws have been listed as prohibited information and it has been stressed that their dissemination is prohibited. It has been indicated that the owner of Internet resource and domain name owner should not disclose this information and they bear responsibility for this. The most contradictory point from the legal viewpoint that attracts attention is the substance of Articles 13-2.4 and 13-2.5¹³.

According to the Article, the owner of the information resource and its domain name itself should reveal the information, the disclosure of which is prohibited or disseminated on Internet resource upon an external request and remove it without a court decision. This duty is not limited only with resource owners and domain name owners. When host provider reveals in its information systems some information, dissemination of which in internet

¹³ “13-2.4. When the owner of the Internet information resource and its domain name reveals the existence of information, dissemination of which is prohibited on that information resource or receives application about it, it guarantees the removal of such information from the information resource.

13-2.5. When a host provider reveals in its information systems some information, dissemination of which in internet information resources is prohibited or receives information about it, it should undertake immediate measures for its removal by the owner of the information resource.

information resources is prohibited or receives information about it, it should undertake immediate measures for its removal by the owner of the information resource.

When as a relevant executive authority, the Ministry of Transport, Communications and High Technologies reveals posting of information, the dissemination of which is prohibited in internet information resources or defines it on the basis of substantiated information received from natural, legal persons or public entities, it informs the owner of the information resource or the owner of its domain name and the host provider about it in written. If the prohibited information is not removed from the Internet information resource within 8 hours since the warning is made, relevant executive authority applies to the territorial court according to the location of the place (district, city) where the information resource is located for the restriction of the access to the Internet information resource.

The interesting moment here is the fact that first of all, the Ministry itself plays the role of an expert and comes to the conclusion that the information was prohibited for dissemination, and makes this step. Secondly, an application of any third person may also impose an obligation on the parties to remove the information.

One of the most disputable points is the requirement of Article 13-3.3. Thus, "In cases of existence of real threat for the lawful interests of the state and society or in urgent cases when there is a risk for life or health of people, the access to internet information resource is temporarily restricted directly by the Ministry of Transport, Communications and High Technologies. Here restriction is applied without a court order. Later application is made to the court, however the decision on closing down remains in force until the court handles the case or the decision is annulled.

Despite five-day period is allocated in the law for the judicial review of such application, restriction of the access to information resource without a court decision may be classified as illegitimate and inadequate interference with the freedom of expression and freedom of information. Besides, restriction of the access to information resource without court decision contradicts to Article 47, 50, 71, 151 of the Constitution, as well as the principle of unacceptability of censorship prescribed in Article 7 of the Law on Mass Media. Article 7 reads, "...The state organs, municipalities, enterprises, plants and organizations, public associations, officials, and also political parties have no right to require the preliminary agreement with them of the items of information and materials, disseminated in the mass media, or to prohibit their dissemination, except for cases, when they are the authors of the information or interview."

In addition, In Article 13-3.6 added to the Law describes the List of information resources where the information, dissemination of which has been prohibited, is posted; this List is created and maintained by the Ministry. Thus it becomes clear that the aim is not only to remove the information, the dissemination of which is prohibited from the resource, but rather to blacklist the whole internet information resource and fully restrict the access to it. Thus, all host and Internet providers are imposed an obligation to prevent access to these resources.

The last Article added to the Law, Article 13-4 indicates that for the violation of the provisions of Chapter 3, i.e. for posting information, the dissemination of which has been prohibited, the owner of the internet information resource, domain name owner, host and internet providers bear responsibility in the manner prescribed by law.

It is true that it will become clear only in three months what this responsibility means. In this regard, the Cabinet of Ministers has been allocated 3 months period upon the Presidential Decree for the preparation of proposals. Nevertheless, the fact that the parties responsible

for technical infrastructure bear responsibility for the content of the disseminated information is a problematic issue from the legal viewpoint and is not a legitimate approach.

Conclusion

As a result, the observation and the tendency of amendments of documents, as well as the substance of new acts adopted under the name of regulations have shown that there is a serious difference between the aim put forward when the Law on Access to Information was adopted, and where we are today. In 2005, when the Law in Access to Information was adopted, more liberal regulation was taken as an aim and the legal mechanism of reaching that aim was taken into account as much as it was possible in the text of the Law.

However, the Government that was supposed to start the implementation of the Law, committed regular delays in this direction, and despite time passed, the issues that were supposed to be settled incrementally were not solved, particularly the access to the public information listed in 34th paragraph of Article 29 of the Law was not provided; information resources of local executive authorities and municipalities were not established in line with the requirement of the law, implementation of the duties imposed by the law was delayed, in many cases, generally, implementation of lawful functions did not start, on the contrary, the efforts were strengthened in order to change the law for the purpose of adapting the law to the environment instead of adapting the environment to the law and as a result the law was sufficiently transformed and many progressive elements, including the establishment of a separate Information Commissioner (ombudsman) institution were removed from the Law.

The issue of responsibility of the parties violating the right of access to information was narrowed down from the original scope, administrative liability for not organising the access to information and for persecuting whistle-blowers was discreetly removed from legislation, the grounds for refusal from disclosing information were broadened, the list of restrictions was expanded, and the efficient control mechanisms were withdrawn from legislation.

In particular, the competence of controlling all information owners that was granted to the Commissioner on Information Issues was not granted to the Ombudsman, the scope of information owners controlled by her was greatly restricted by formulation "to state bodies and municipalities, as well as officials", while commercial organizations, legal entities, monopolists and other private persons who are information owners were moved beyond the scope of control of Ombudsman.

Besides, the preventive control mechanism – the mechanism of receiving reports from information owners twice a year that was envisaged for the Commissioner on Information Issues in the first adopted version of the law, was not granted to the Human Rights Commissioner, only complaints review mechanism was maintained in a narrow form, and despite six years have passed, this institute also does not work. Thus, the reality of unwillingness of having control over the state bodies in terms of access to information has been revealed. With this attitude, the "Purpose of the Law" provided for in Article 1 of the Law was not realised, and in fact the will of setting forth of this purpose and the will of applying this law contradicted each other.

Whereas, the true purpose of this Law was to provide access to information, and to make it accessible for everyone. Along with securing the right of natural and legal persons of access to information, the adoption and application of this law should also become a tool leading to the possession by the state the legal and democratic values and transparent administration. From the viewpoint of functionality of public institutions, it is important for the public opinion whether the authorised state bodies and officials managing them act in a lawful way or not. In this sense, information related to administration is public information and activities in this

direction should be understood as fulfilment of public duties, and transparent control mechanism over them is supposed to be provided. This, at the same time could be the indication of the loyalty to democratic principles.

Recommendations

- Proposals on changes to the laws related to freedom of information should be developed taking into account international standards, all restrictive norms introduced in the legislation later on should be cleaned from the legislation and necessary new norms in line with international legal principles, as well as the European Convention and the case-law of the European Court of Human Rights should be added to the legislation (Particularly the establishment of the Information Ombudsman should be stressed separately).
- The reasons for refusal of execution of information requests shall be brought in line with the principles of openness and accessibility of information, the term information owners shall be expressed in a broader and concrete form and taking into account the problems occurring in practice; everyone, using information resources of the state, founded by the state, whose shares belong to the state, and who has been appointed to the post by the state should be described in this scope, as well as other necessary amendments shall be made;
- Provision of practical steps towards “supporting open assemblies”, adaptation of the legislation and securing free access to state bodies, courts, and the parliament with the aim of ensuring the right of access to information;
- A normative document defining “The access to the information on functioning on the government, local and national executive authorities, municipalities, the parliament, courts, and other information owners; (identification and approval of the broad list of the information that should be disclosed should be developed taking into account the specific features of the listed institutions);
- A normative document on the grounds (a list) of the limitation of the information access to which is restricted should be adopted;
- There should be a normative document on approval of a precise list of the information access to which is restricted;
- Identification and adoption of rules in line with the requirements of laws for allowing natural persons to be acquainted with the personal data about them and if necessary to correct it;
- Adoption of a normative document on development of a system of registration and processing of the provision of information upon requests;
- All restrictive norms made to the Law of the Republic of Azerbaijan “On Information, Informatization and Protection of Information” should be rejected;
- Identification of the budgetary expenses of state bodies related to informatization as “Information expenses” should be settled; the Law on Budgetary system should be amended (“Information provision” paragraph should be added in the expenses section of the budget);
- Establishment of Public Information Centres that have been provided for in the Law, but do not exist in practice; computer and internet supply of libraries and these centres and their delivery for free usage by large layers of population; provision of the access to electronic data base and registers of documents in these places;
- Approval of the integrated list of information that should be disseminated according to the execution of the competencies and duties provided for in the Statute on Local Executive Authorities and its posting in local internet resources;
- Inclusion in the Statutes of the state bodies of the provisions on the structural units (officials) responsible for information provision and their field of functioning;

- Defining the sample list of the information that should be compulsorily placed on internet by municipalities;
- Creation of information resources and portals in various spheres should be continued with a view to provide more efficient and comprehensive access to information and presentation of those portals to larger user community should be conducted;
- Application of laws without exception and elimination of restrictions during adjudication of cases related to access to information;
- Balancing the amount of administrative fines and liability appointed to information owners for administrative violations with the amount of the similar fines paid by citizens for violation of similar rights and systematic application of the legislation;
- Serious control over the implementation of the adopted laws and acts; (application of the norms guaranteeing the control by the Commissioner, judiciary control and civil society control)
- Maximum organization and systematic monitoring of the disclosure of public information on internet information resources, securing accountability;
- Defining an integrated system for reception and responding to information requests via internet and organization of its compulsory application for all information owners (Prevention, in this case, the claim of the information that is not prescribed by the legislation and simplified organization (design) of requests)
- Defining administrative liability for the responsibility of the information owners for relevance and integrity of information;