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# The right to information in the legislation of the Azerbaijan Republic

Ramil M. Aslanov \*

Department of Constitutional Law, Baku State University, Baku, Azerbaijan

## A B S T R A C T

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The notions of “transparency” and “democracy” of the governmental policies are considered a necessity in the fight against irregularities (corruption, fraud, etc.). The question of Right to Information is especially acute for Central Asian countries. This article presents a detailed analysis of the domestic acts providing the right to information, as well as relevant international instruments in this field, to which the Azerbaijan Republic joined after gaining its independence. The Constitution of the Azerbaijan Republic contains such norms as “freedom of information”, “freedom of thought and speech,” “personal privacy”, etc. The right of citizens to information is one of the most important political and personal rights of man and citizen. The Constitution of the Azerbaijan Republic in the Article 50 states that everyone has the right to seek, receive, transmit, produce and disseminate information by any legal means. The comparison of the content of Article 10 of the European Convention on Human Rights and Fundamental Freedoms adopted in 1950, and the provisions of the Constitution of the Azerbaijan Republic give reason to note that these acts have no fundamental differences. The results of the analysis identify the drawbacks in legislation that are similar for the countries of the region.

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## 1. Introduction

The basic principles of legal regulation of information law set forth in the fundamental international instruments and, as shown by analysis, are recognized and prioritized in the development of information legislation. The most important step for the development of legislation in the field of information was made with the adoption and proclamation of the Universal Declaration of Human Rights on December 10, 1948, by the UN General Assembly. Articles 12, 19, and 26 of this document established the right of everyone to freedom of expression, thought, conscience and religion, the right to education as well as the right to hold opinions without interference and the right to seek, receive and impart information and ideas through any media and regardless of frontiers.

The provisions fixing the information rights and freedoms were further developed in the Convention of the Council of Europe for the Protection of Human Rights, Fundamental Freedoms adopted in 1950, and the International Covenant on Civil and Political Rights adopted in 1966. These acts state that the freedom to receive and impart information is realized without any interference by the public authorities, regardless of frontiers, and applied to all kinds of information (Article 10 of the Convention, Article 19 of the International Covenant). The information rights and freedoms were further developed as fundamental human rights.

Thus, the right to information stipulated in this form in the international human rights instruments is not a new subjective personal right in the field of information and expression of the traditional freedoms of thought and speech. In fact, the impact of ideas related to freedom of information as the

\* Department of Constitutional Law, Baku State University, 23 Academician Zaxid Khalilov Street, Baku AZ 1148, Azerbaijan. Fax: +99412 430 31 10.

E-mail address: [ramilaslanov.m@mail.ru](mailto:ramilaslanov.m@mail.ru).

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embodiment of the information powers of citizens affected the development of freedom of information. Basic principles that set limits to invasion of privacy by the state, organizations, businesses and individuals were also enshrined in the Universal Declaration of Human Rights, and conventions adopted by the UN and the Council of Europe.

The Constitution plays an important role in providing the right of citizens to information. Legislation in the field of information security was based on the Constitution of the Azerbaijan Republic (AR Constitution). This was adopted through a popular vote on 12 November 1995. It is based on freedom of speech and freedom of the media.

The system analysis of legal groundwork for information security requires analysis of the constitutional and legal norms.<sup>1</sup> Today the Constitution could be considered as a direct guide to action, as the most important piece of legislation, which must be used to protect the rights of citizens.<sup>2</sup>

Constitutional provisions related to information security are fundamental and have binding legal effect in the system of legislation. Article 147 contains very important provisions related to the solution of any issue related to the rights of citizens. It stipulates that the Constitution of the Azerbaijan Republic shall have supreme legal force and direct effect.<sup>3</sup>

Specific attention should be paid to the constitutional norms that contain fundamental human rights and freedoms in the field of information security. The Constitution recognizes and guarantees fundamental human rights and freedoms. Almost any constitution in the world includes the system of human rights. The Azerbaijan Republic has a similar system which is mainly reflected in the Chapter 3 of the Constitution. Human rights are stipulated not only in this chapter (Articles 24–71), but also in relevant provisions directly or indirectly related to human rights, which can be found in other articles of the Constitution (in particular, Article 12, etc.).

The Constitution of Azerbaijan covers almost all internationally recognized human rights and freedoms, which is a positive fact. The Constitution declares the natural-law concept of human rights. The positive sense of these rights and freedoms is essential for their adequate protection at the national legal level. The Constitution of the Azerbaijan Republic includes a number of rights that do not have equivalents in the relevant ratified international agreements. The fact that the Constitution of the Azerbaijan Republic “exceeded” the internationally recognized list of human rights should be generally welcomed; however, some human rights in the Constitution of Azerbaijan are not fully reflected as compared with international agreements. Article 47 of the Constitution can display derogation from the permissible limits of international standards.

According to Article 47 of the AR Constitution:

- Everyone has the freedom of thought and expression;
- No one may be compelled to express his thoughts and convictions or to reject them;

<sup>1</sup> V. Lopatin, *The concept of legislative development in the field of information security*. Moscow: The State Duma publication, 1998.

<sup>2</sup> A. Aliyev, *Human rights*. Baku: Juridical literature, 2013.

<sup>3</sup> Z. Askerov, *Constitutional law*. Baku: Baki Universiteti nyashriyyaty, 2011.

- Agitation and propaganda that incite racial, national, religious and social discord and animosity are not permitted.

According to part three of this article, “Agitation and propaganda that incite racial, national, religious and social discord and animosity are not permitted”. In the international agreements ratified by the AR, the wording of this right does not include the term “social discord and animosity”. The author believes that it could be interpreted ambiguously. It is well-known that international law does not “favour” the term “social”<sup>4</sup>. It is noted that this formulation can serve as a limitation of freedom of expression.<sup>4</sup> The same problem is also typical for section three of Article 25 of the Constitution. This section states that “. . . the state guarantees equal rights and freedoms”. It is prohibited to restrict the rights and freedoms of man and citizen on the basis of the social set-up.

One of the international bodies – the Human Rights Committee – notes that the discrimination cases referred to in Articles 2.1 and 26 of the International Covenant on Civil and Political Rights, sometimes are not fully reflected in the constitutions and other legislative acts of the States. Parties, and the latter, must explain the reason of this gap. Provisions guaranteeing non-discrimination are enshrined in separate legislative acts of the Republic of Azerbaijan (for example, Article 6 of the Criminal Code, Article 11.2 of the Criminal Procedure Code, Article 7 of the Code of Administrative Offences, Article 8.2 of the Civil Procedure Code, Article 16.1 of the Labor Code, etc.). In the above-mentioned articles of the AR Constitution (25.III and 47.III), the principles of non-discrimination are specified in the same way as in the International Covenant.

However, in the sectoral legislative acts, this point is expressed by the words “. . . irrespective of other circumstances . . .,” which is quite right in the author’s opinion. Keeping in mind the dynamic development of social relations, other grounds for non-discrimination may occur. It is not possible to list all the features defined by the legislation as the basis of discrimination, as the circle of these features is changing at different stages of development. Therefore, it is inappropriate to assume that the list of signs of non-restriction of the rights and freedoms enshrined in Articles 25 and 47 of the Constitution is comprehensive. The author believes that the formula “. . . irrespective of other circumstances . . .” used in different legislative fields should be enshrined in the articles of the Constitution.

Presently, when the AR started its democratic development, the international legal norms are no longer an abstract concept for a citizen of Azerbaijan; they should be regarded as a direct guarantee of the rights of citizens. After gaining its independence in late 1991, the AR entered into a new legal space – the international legal system. As a result, to date, Azerbaijan has a solid “baggage” of international rights and obligations. The international human rights standards have a special status in the international agreements ratified by the Azerbaijani Parliament.

Pursuant to Article 12 (II) the constitutional rights and freedoms shall be applied on the basis of international treaties of

<sup>4</sup> L. Huseynov, “The Constitution of the Azerbaijan Republic, human rights and international law,” *International law*, vol. 2, pp. 16–46, 2002.

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