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“THE LAW ON ACCESS TO INFORMATION” AS THE SOURCE OF INFORMATION LAW

Key words: *information law, source of information law, access to information, information security, restrictions on access to information*

Açar sözlər: *informasiya hüququ, informasiya hüququnun mənbələri, informasiyaya çatımlılıq, informasiya təhlükəsizliyi, informasiyaya çatımlılığın məhdudlaşdırılması*

Ключевые слова: *информационное право, источники информационного права, доступ к информации, информационная безопасность, ограничение доступа к информации*

In modern times, access to information is one of the key elements of freedom of thought and speech. The article reflects the methods of obtaining information and their comparison with international law. Access to information may be restricted in a number of cases. The article deals with the role of the Law of the Republic of Azerbaijan "On Access to Information" method of get information. At the same time, the article analyzes the restrictions on access to information and their reasons.

Introduction

The most common feature of our time is this: the world is globalizing and socializing. That is, general processes dominate people's lives, the interests and needs of the majority come to the fore. Scientific and technical innovations are mainly at the service of these two closely related development trends. In the course of globalization, general technical progress crosses the borders of countries and states without any obstacles. This is reason of a continuous flow of information. Comprehensive exchange of information, which is characteristic of the information society, is very important for effective social management and normal life activities of people. The information flow in itself has both advantages and disadvantages. For this reason, like all relations in a social society, information legal relations need legal regulation. As we know, legal regulation in the field of information technology is aimed at ensuring the highest level of human and civil rights and freedoms, public interests. Provision of complete information should be considered as one of the most important components of public policy in any field.

Freedom of speech and expression is one of the cornerstones of democracy. Democracy is a system in which society chooses its own course of government and governance. (Alasgarova, 2017:165) In order to have complete information, you must first have access to information. As we know, Article 50 of the Constitution of the Republic of Azerbaijan deals with freedom of information. According to paragraph 1 of Article 50 of the Constitution of the Republic of Azerbaijan, "everyone has the right to seek, receive, impart, prepare and disseminate information legally." (From defining the legal basis for ensuring the right to access to information in a free, unimpeded and equal manner for all, based on the principles of an open society and a democratic state governed by the rule of law, as well as The Law of the Republic of Azerbaijan "On Access to Information" was adopted on September 30, 2005 for the purpose of legal regulation.

As we have noted, access to information is the basis of freedom of thought and expression. This is because it is very difficult to comment on any topic unless complete and complete information is obtained and the issue is approached from a general context. Owners of information are state bodies, municipalities, individuals and legal entities, regardless of property rights. Access to information should not be limited to access to information about individuals. At the same time, it is important to note the availability of information available and stored in government agencies. Searching for and obtaining information is regulated by law. It should be noted that the Azerbaijani legislation meets the necessary requirements in this regard. As mentioned above, one of the owners of information is the state. When we want to get information from government agencies, we can apply to the government agency with inquiries. Article 13 of the Law of the Republic of Azerbaijan "On Access to Information" defines two types of methods of submitting a request, oral and written. Initially, a request made to the information owner's official directly or by telephone is considered an oral request. Submitting a request to the owner of the information in person or by mail, fax or e-mail is considered a written request.

The legislation of the Republic of Azerbaijan defines the obligation of the owner of information to assist the applicant, and this duty is reflected in the Tromso Convention on Access to Official Documents adopted by the Council of Europe. Analyzing our legislation, we see that the identity of the applicant (surname, name) must be indicated in the written request. Unlike the legislation of the Republic of Azerbaijan, the Tromso Convention recognizes the states to right of anonym applicants. I think that the absence of this provision in our legislation is aimed at preventing abuse and repeatedly sending the same request by the same applicant. (Alasgarova, 2017:166)

According to Article 24 of the law, the information request is to be executed as soon as possible, and in general, not later than 7 days. The Tromso Convention stipulates that the request must be executed within a reasonable time. 7 days is quite a reasonable time.

Sometimes inquiries are not addressed to the right body by citizens. As a result, the public authority is unable to respond to the request due to the lack of the information sought. When this situation arises, Article 23 of the law defines two options for the state body. In the first case, the state body sends the request to the relevant body no later than 5 working days and informs the applicant. In the second case, the state body may not send the request accordingly. In this case, the applicant must be notified no later than 5 working days. The provisions of the Azerbaijani legislation on the procedure for refusing to comply with an information request are more specific than those in the Tromso Convention. Thus, in accordance with the legislation of Azerbaijan, the Tromso Convention allows for a clear or implicit statement of refusal, if the refusal is required to be clear and justified.

As mentioned above, anyone can legally obtain, transmit, prepare and disseminate the information they want. No one can stop it. However, there is some information that is generally not available to users. This information is considered a state secret. This issue is regulated by the Law of the Republic of Azerbaijan on State Secrets. Article 5 of the Law on State Secrets contains information constituting a state secret. Information constituting a state secret shall be protected by the relevant executive authority within the powers established by the legislation of the Republic of Azerbaijan. As noted, access to this information is prohibited and is subject reason to criminal liability under Article 284-1 of the Criminal Code of the Republic of Azerbaijan. The law also contains information that is not considered a state secret. The receipt, storage and transmission of such information within the framework of the law may not be restricted. Unlike Azerbaijan, a number of countries have banned access to the Internet, as well as many social networks, for various reasons at different times.

The most obvious example of this is Turkey. Access to Twitter and YouTube has been blocked at various times. This time some people apply to ECHR in 20 July and 27 December 2010. These people are Serkan Cengiz, Yaman Akdeniz ve Kerem Altıparmak. With the decision of the Ankara Magistrates' Court dated 5 May 2008, paragraph (1) of the first paragraph of Article 8 of the Law No. 5651 on the Arrangement of Publications and Combating Crimes Committed in the Internet (hereinafter referred to as "Law No. 5651") Based on paragraphs 3 and 9, it decided to block access to the site <http://www.youtube.com> and the IP 208.65.153.238-208.65.153.251 addresses that provide access to this site. The Ankara Magistrates' Court's concluded in particular that it violated the Law No. 5816 on Crimes Against Atatürk due to the content of the ten pages (ten video files) on the site in question. On 21 May 2010, Cengiz appealed against the decision to block access on 5 May 2008, based on his right to freedom of information and opinion, and requested that the measure be lifted. Akdeniz and Altıparmak also contested the Ankara Magistrates' Court's decision to block access on 5 May 2008, as a YouTube user, on 31 May 2010. They demanded that the measure be lifted, claiming that there was public interest in accessing YouTube and that the blocking in question seriously damaged the core of their right to freedom of information and opinion. But claims` applications are rejected by Ankara Magistrates` Court 9 June 2010. Also by Ankara criminal court of first instance in 2 July 2010.

But The European Court of Human Rights ruled on 1 December 2015 that there had been a violation of Article 10 of the Convention;

Also I think this means restricting people's right to information and at the same time freedom of thought and speech.

However, access to information may be restricted at sometimes. This situation serves to ensure national security. Freedom of information is mainly restricted by legal grounds in the fight against terrorism. Disclosure of one category of information on terrorist acts in Azerbaijan is also limited. During counter-terrorism operations, information on terrorist acts shall be provided to the public in the form and volume determined by the Chief of Operations Staff or the Public Relations Officer of the operational headquarters. The main reason for this is to ensure the security of the state and the nation. In modern times, any information can be transmitted via the Internet and websites and social networks. Informants can harm the state, albeit unintention-

tionally, through the information they share. On the other hand, often transmitted information does not reflect reality and is used to collect ratings. These reports cause a certain panic among the nation, disturb the peace and moral anxiety. For example, shares are shared on social networks from any battle zone, or the number of soldiers killed without accurate information is posted. These shares are shared not only by the citizens of that country, but also by the citizens and soldiers of the opposite country. As a result, it leads to both political problems and moral damage.

For this reason, I consider it a positive thing to restrict access to and transmission of information in the event of a terrorist attack or war.

Result

As a result, freedom of information is enshrined in both domestic law and international instruments such as the European Convention on Human Rights. However, access to information is not as easily enforced as it seems at first glance. Access to information may be legally restricted through the disclosure of confidential or confidential information. However, in any case, prohibiting or restricting the dissemination of information by law must have a legitimate purpose and be necessary in a democratic society. Failure to comply with these conditions will result in a violation of freedom of thought and expression. In the field of access to information, the state has a negative obligation not to impede the transfer of information from one person to another and not to interfere in this process, and a positive obligation to share the information and respond promptly and fully when a request is received. Each of these obligations must be legally fulfilled by public authorities.

In general, the main goal should be to enable individuals to exercise their right to information legally in a balanced manner and to ensure that this right is properly enforced.

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“İnformasiya əldə etmək haqqında” Azərbaycan Respublikası qanunu informasiya hüququnun mənbəyi kimi

Xülasə

Müasir dövrdə məlumat əldə etmək, informasiyaya çatımlılıq fikir və söz azadlığının əsas ünsürlərindən biri kimi çıxış edir. Məqalədə informasiyanın əldə olunması üsulları və onların beynəlxalq qanunvericilə müqayisəsi öz əksini tapır. İnformasiyaya çatımlılıq bir sıra hallarda məhdudlaşdırıla bilər. Məqalə informasiyaya çatımlılıq və onun əldə olunmasında “İnformasiya əldə etmək haqqında” Azərbaycan Respublikası qanununun rolundan bəhs edir. Eyni zamanda məqalədə, informasiyaya çatımlılığa qoyulan məhdudiyyətlər və onların səbəbləri təhlil edilmişdir.

Закон азербайджанской республики о праве на информацию как источник права на информацию

Резюме

В наше время доступ к информации, является одним из ключевых элементов свободы мысли и слова, в статье отражены методы получения информации и их сравнение с международным правом. Доступ к информации может быть ограничен в ряде случаев. В статье рассматривается роль Закона Азербайджанской Республики «О доступе к информации», способ получения информации. В то же время в статье анализируются ограничения на доступ к информации и их причины.

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