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NATIONAL LEGAL FRAMEWORK FOR INTERNATIONAL INFORMATION AND MEDIA RIGHTS IN AZERBAIJAN

The national law and legislative system on protection of human rights of most countries, including Azerbaijan, were formed by taking the provisions of the International Bill of Human Rights. In this regard International Bill of Human Rights plays as the significant criteria of making precedent practice by national courts in the sphere of human rights [1, 32]. Therefore, some authors consider that, the States never gave a negative feedback against the Universal Declaration of Human Rights in their own declarations or constitution or laws, vice versa, they use the provisions of the Declaration. This fact creates convenient conditions to become the international customary law of the Declaration of 1948 [2, 47].

These facts let us say that the membership to universal and regional human rights bodies is always considered as one of the most successful achievements for the international relations of Azerbaijan. Providing various benefits to the young Azerbaijan government, these organizations introduce opportunities what help to establish political stability in Azerbaijan. On the other hand the international mechanisms supports democratic reforms in Azerbaijan assisting in the development of civil society ensuring human rights, namely, right to information too. For example, by joining the Council of Europe in 2001, Azerbaijan took a responsibility to “accept the principles of the rule of law and of the enjoyment by all people within jurisdiction of human rights and fundamental freedoms” and undertook an obligation to “guarantee freedom of expression and the independence of the media and journalists and to “exclude the use of administrative measures to restrict the freedom of the media” [6, art. 3]. These circumstances affected domestic law of Azerbaijan too.

The Republic of Azerbaijan follows the international treaties of the Republic of Azerbaijan persistently, in accordance with the international law norms. According to the principle of fulfillment the international treaties honestly, Azerbaijan makes efforts for other State Parties’ fulfillment the commitments occurred from the bilateral and multilateral international agreements that Azerbaijan participates in. Proper executive bodies and institutions belonging to the government ensure the fulfillment the commitments that Azerbaijan undertakes on the problems adjusted by the international treaties of Azerbaijan and related to their competence [5, 98].

The Constitution of the Republic of Azerbaijan, adopted on 12 November 1995 boosted start up and implementation of reforms in various fields of life

[8]. Nonetheless, there was a need to conduct reforms in the sphere of the protection of human rights, as an integral part and logical continuation of the above mentioned reforms. In the light of the end of old Soviet totalitarian system of relations, it was a time, when the country experienced creation of a new system of relations, formation of market economy, and establishment of new forms of property. The Constitution also generally establishes key fundamental provisions of right to information in domestic law. Covering primary features of the right it guarantees freedom of information in different aspects. Article 47 establishes that each person has the right to freely express ideas. The Constitution also provides that everyone is free to look for, transfer, prepare and distribute information. Article 50 guarantees freedom of mass media prohibiting state censorship in mass media, including press. Additionally, with the aim to ensure right to information Article 57 constitutes that individuals have the right to appeal personally and also to submit individual and collective written applications to State bodies. Each application should be responded to in an established order and term. Going further, Article 71 introduces grounds for restrictions of rights at war time, time of emergency and mobilization but taking into account the international obligations of Azerbaijan.

In this context the Constitution Law of the Azerbaijan Republic on the Regulation of the Implementation of Human Rights and Freedoms adopted on December, 24, 2002 has great importance too. It aims to accommodate the implementation of human rights and freedoms in Azerbaijan with the European Convention on of human rights and freedoms protection. In this law it is mentioned about restriction of human rights and freedoms that, the human rights and freedoms intended in the Constitution of the Azerbaijan Republic and in the international treaties that the Constitution of the Azerbaijan Republic seconds can be restricted only by law. Restriction of human rights and freedoms shall not change the essence of those rights and freedoms. Restriction of human rights and freedoms shall be aimed at legal purpose intended in the Constitution of the Azerbaijan Republic and in this Constitution Law, and shall be commensurate with that purpose. Beside the grounds demonstrated in the III part of article 71 of the Constitution of the Azerbaijan Republic (war, martial law, extraordinary situation, mobilization), human rights and freedoms can be restricted in order to guarantee the fulfillment of the rights and freedoms of other people and to protect them. In the field of human rights on the problem of the implementation of international law norms to Azerbaijan legislation courts play an important role.

The implementation of international human rights standards has affected the national codes too. Articles 155 – 156 of the Criminal Code establish punishments for the disclosure of private conversation by phone, email and private life secrets [10]. Respectfully, Article 163 aims to prevent the infringement to the professional journalistic activity by refusing to give or disseminate information or using force. Article 202 – 203 of the Code contains

provisions prohibiting disclosure of commercial and state secrets. The Code of Administrative Offences also includes specific sanctions for violations of legislation on access to information [9]. Articles 39-50 of this Code provide penalties on propaganda materials during election periods, prohibits dissemination of false information about deputies, establishes punishments for the media rights violations during elections, for violation of use of state information system and information collections. Articles 181-192 create a special chapter devoted to the violations against right to information and information protection. As right to information is one of the essential elements for civil relations, the Civil Code overviews it too [7]. In its Articles 1 - 6 the Code protects one's honor and dignity saying unlawful interference to personal life is prohibited as a principle. However, the legislator has not given an explanation of terms such as "honor and dignity" here. The Civil Code also establishes that one may apply to the courts if disseminated information on him/her is untrue and without evidences. With this purpose Article 23 puts an obligation on the media body which disseminated untrue information, to reject such data by giving official announcement. Nevertheless, the Code has failed to create certain penalty or punishment for guilty persons.

Another legal act bringing European standards of freedom of information is the Law on Access to Information [14]. The Law contains 58 provisions and it provides legal ground for the control body in this field - the Office of the Information Ombudsman. The adoption of the Law was widely welcomed by international and domestic organizations as an important first step towards making freedom of information a reality for everyone in Azerbaijan. The Media Rights Institute commended the law as "a legislative base that will provide true freedom of information" [3]. In the comparative legal survey of 2008, Toby Mendel called the Law as "a progressive piece of legislation which improved throughout the drafting process, demonstrating positive political will" [14, p. 43]. Substantially, the Law on Freedom of Information [1] and the Law on Mass Media [12] also plays basic roles for freedom of information. The legislator highlights limits and restrictions on freedom of expression by introducing the Law on State Secrets [13].

Summarizing all aforementioned opinions and legal statements about theoretical and practical features on the implementation of media and information rights via international human rights norms of international law, one can conclude that the legislation of the Republic of Azerbaijan responds to all of modern calls. It also could be concluded that, the international treaty mechanisms on human rights protection have significant importance in realization of human rights, thus, most of the organizational mechanisms on the realization of human rights were created on the basis of these treaties and their activity are regulated by such treaties and documents.

Literature

1. Delbrück J. Safeguarding Internationally Protected Human Rights in National Emergencies: New Challenges in view of global terrorism, FS Ress, 2005, f. 35.
2. Dixon M. Textbook on International Law. Second edition. London: Blackstone Press Limited, 1993.
3. Media Rights Institute. «How Does the Law «On Obtaining of Information» Work In Azerbaijan?» 13 August 2008 <http://www.mediarights.az/index.php?Lngs=eng&id=8> accessed on 15.01.2017
4. Mendel, Toby. Freedom of Information: A Comparative Legal Survey, 2008, p. 43 <http://www.mediarights.az/index.php?lngs=eng&id=8> accessed on 15.01.2017
5. Nowak M. U.N. Covenant on Civil and Political Rights: CCPR Commentary. Kehl: N. P. Engel, 1993.
6. Statute of the Council of Europe, 1949.
7. The Civil Code of Azerbaijan, 2000. http://azpromo.az/uploads/legislation/Civil_code_eng_51b1e34e863c1.pdf accessed on 01.01.2017
8. The Constitution of the Republic of Azerbaijan, 1995. <http://en.president.az/azerbaijan/constitution> accessed on January 15.01.2017
9. The Code of Administrative Offences, 2000 http://www.taxes.gov.az/uploads/qanun/2011/mecelleler/inzibati_xetalar_mecellesi_eng.pdf accessed on 15.01.2017
10. The Criminal Code of Azerbaijan, 1999. Chapter 16: Crimes against peace and security of humanity. http://www.carim-east.eu/media/legal%20module/natfr/AZ_1.2%20Criminal%20Code%20of%20AR_EN.pdf accessed on 15.01.2017
11. The Law on Freedom of Information, adopted in June 1998 and amended in 2000, 2003, 2004 and 2006 <http://www.commission-anticorruption.gov.az/upload/file/Law%20on%20%20freedom%20of%20information.pdf> accessed on 08.01.2017
12. The Law on Mass Media, adopted on 7 December 1999, last amended in April 2009. http://www.azerbaijan.az/portal/Society/MassMedia/massMedia_e.html accessed on 11.01.2017
13. The Law on State Secrets, adopted on 7 September 2004. <http://cis-legislation.com/document.fwx?rgn=7434> accessed 07.01.2017)
14. The Law of the Republic of Azerbaijan on Access to Information, 2005. http://www.stat.gov.az/menu/3/Legislation/information_rules_en.pdf accessed on 15.01.2017