

**Supplementary Human Dimension Meeting
on Freedom of the Media:
Protection of Journalists and Access to Information
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Session I

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Access to Information

It would be naive to think that closeness left over as a legacy from totalitarian and authoritarian regimes that existed for years, and the situation when people were deprived of the right to know about whereabouts of the rulers is over in Azerbaijan or will improve soon. At the same time, it is necessary to at least come out of this merciless vicious cycle in countries like Azerbaijan where there are high levels of corruption. The best way to achieve this is to make information of public interest transparent, and it is very important that the government takes necessary steps in this regard in the near future.

I will cite a few examples in order to give you a general idea of problems existing in the sphere of freedom of information. Several years ago, a journalist asked the Mayor who prided himself on the renovation of streets and construction of new roads in Baku city: "How much money is spent on this work and where does the money come from?" The man replied in presence of numerous journalists: "Dear, what have you got to do with my pocket?", refusing to answer the question. Unfortunately, the culture of regarding the state budget as one's own pocket and information available to one as their own home secret still prevails in many state institutions.

Even the Azerbaijani Parliament does not observe rules of openness of public information. It is not easy to obtain draft laws debated in Parliament. Drafts are not posted on the Parliament's web site. Under the Azerbaijani Constitution, draft laws are considered adopted after they pass three readings in Parliament. Draft laws are publicised neither in the beginning nor after the subsequent readings. Since drafts are distributed to members of Parliament before the third reading, it is possible to obtain them from MPs anyway. However, it is not possible at all to obtain drafts, which have passed the third reading. These drafts that have already been adopted are not distributed to MPs and are sent to the President for signature. It is not possible to obtain these drafts until after they are signed and published. Even MPs, whom we interviewed, are unable to obtain drafts that passed the third reading and were sent to the President.

For a long time now an NGO has been unable to obtain information about how MPs vote on issues. Information about how a specific MP votes at Parliament's open sittings remains secret. The draft normative laws drawn up by government agencies are also not disclosed to the public until they are adopted and published. It is not possible to obtain information about the budget of individual state agencies, how that budget is spent and how the property given away by the government to individuals. For example, information about to whom state-owned flats in Baku city are given and under what procedures is not disclosed to anyone. Complaints submitted to courts about state agencies not providing routine information have not been successful. Courts pass rulings in favour of state agencies.

Naturally, journalists, too, can feel the heavy burden of problems with obtaining public information. Written requests for information submitted by journalists, especially journalists and newspapers known for their critical articles, are often left unanswered. Whether verbal questions will be answered or not often depends on who the journalist is, which media outlet he works for and how close he is to the official. It is impossible to verify answers received due to a lack of access to official documents. Journalists do not file suits because courts in such cases rule in favor of state agencies that hid information and because spending has to be made on legal proceedings. The newspaper “Mukhalifat”, which is known for its critical articles, did not receive any answer when it asked a member of Parliament about his annual income for work in parliament and in an institute of the National Academy of Sciences. The journalist went through the courts of all instances, but still did not receive an answer to the question.

Police demanded that Fikrat Huseynli from the “Azadliq” newspaper, which is known for its criticism of the government, disclose his sources of information. The journalist refused to do so and received threats. Police failed to obtain information from the journalist and learnt from a local mobile phone operator numbers that the journalist spoke to and found out the sources that he used. This incident was discussed in the press for a long time, but unfortunately nothing was done about it.

Problems with journalists’ access to open meetings persist. Information about the timing of and venue for open meetings of state agencies is not disclosed. Usually, journalists or newspapers are informed individually about this. For example, meetings of the National TV and Radio Council, which is a self-regulatory agency in the sphere of TV and radio, are almost always held without journalists informed and present. Meetings of the Broadcasting Council of the Public Broadcasting Service are also held without journalists knowing about it. Sometimes only a part of accredited journalists is told about the timing and topic of meetings of parliamentary committees.

The adoption of a new law on access to public information increased hopes that information will be disclosed. The law was adopted in 2005. NGOs operating in the sphere of media rights, the OSCE office in Baku, the Office of the Representative for the Freedom of the Media and the Council of Europe closely participated in the development and advocacy of the law. It can be stated that except for a few points, this law conforms to international standards in the sphere of freedom of information. All state agencies must systematise information available to them and reply to requests for information within seven days. A large part of public information must be posted on constantly updated web sites as soon as it is obtained or prepared. Under the law, all state agencies must create their own Internet resources by the end of 2006 and ensure that they operate non-stop.

However, there is a need for special steps to ensure implementation of this law. The law also envisages the establishment of a special institution – the Commissioner on Information to oversee the access of information. The Commissioner will be appointed by Parliament, which will choose from among three candidates nominated by the country’s president. Under the law, the Commissioner must be appointed within six months after the adoption of the law. Although the six-month period has already expired, the Commissioner has not been appointed. Candidates for the post of Commissioner have not been identified either. Interestingly, there is no transparency in the identification of candidates for an agency which is to ensure transparency of the operation of state agencies. Nothing is known about potential candidates. No discussion is being held about them.

Although the law gave state agencies one year to post a large part of public information on the Internet, top state institutions such as Parliament, the Office of the President, the Cabinet of

Ministers and even other ministries have still not posted even a small part of information required by the law on their web sites. Perhaps, posting information that was available previously takes time. However, latest reports are not posted on the web sites either.

After seven months have passed since the law was adopted, no departments to deal with issues of access of information have been set up not only at state agencies of a lower level, but even at ministries, nor has anyone been put in charge of this task. The efficient provision of access to public information requires such persons to be appointed soon and then trained. Judges who will pass rulings on issues of information also need to receive training in this area.

Most citizens are unaware of advantages and opportunities that come with freedom of speech. They have no idea about the new law and the benefits it can provide. The government aiming to ensure the efficient implementation of the law and transparency of the work of state agencies and public organisations should conduct a large-scale awareness campaign. Unfortunately, such work is still not being done, except some efforts by a few NGOs.

No legal responsibility has been identified for state officials refusing to reply to requests for information, giving incorrect or incomplete answers and failing to publish information required by the law. The atmosphere of impunity allows officials to decline to provide information whenever they want without fearing anything and to remain indifferent to inquiries.

Another trial over a refusal to provide a journalist with information took place recently. For the first time the court approved a claim filed by a journalist known for his articles critical of the government. The court passed a ruling ordering the Azerbaijan Airlines State Company to provide the journalist with information which it had initially refused to do so. Surely, this is a very positive sign.

The government should speed up the process of taking necessary steps to ensure the efficient operation of the law “On obtaining information” in order to ensure a true freedom of information. To this end, the transparency of the nomination and appointment of candidates to the post of Commissioner on Information should be ensured, the appointment should be speeded up, and the necessary organizational and financial measures should be taken for the full operation of the institution of Commissioner and state agencies’ departments and senior officials in charge of information issues. Necessary training courses on freedom of information should be organised to the office of the Commissioner, officials in charge of issues of access to information as well as to judges. Public awareness campaigns on the right to obtain information should be conducted.

Changes should be made to legislation to identify types of legal responsibility for failing to disclose public information and reply to requests for information, and the atmosphere of impunity in this area should be eliminated.