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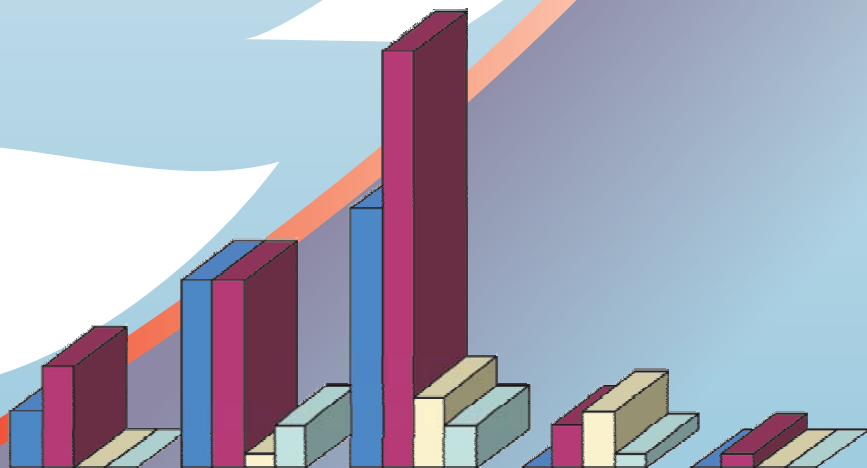
**Citizens' Labor Rights
Protection League**

OBTAINING INFORMATION IN AZERBAIJAN REPUBLIC LEGISLATION AND PRACTICE

***Report on Results
of Monitoring***



«Azərbaycanın
mərkəzində»
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REPORT ON RESULTS
OF MONITORING

Baku – 2006

The author and general editor:
Sahib MAMMADOV

***The personnel, implementing
the monitoring:***

Sahib Mammadov (lawyer/project coordinator)
Yuliya Gureyeva (sociologist)
Irada Javadova (lawyer-advocate)
Shahla Ismayilova (Editor)
Leri Garifulin (lawyer)
Safar Huseynov (lawyer)
Maherram Zulfugarly (journalist)
Nigar Orujova (journalist)
Konul Niftaliyeva (journalist)
Heyran Askerova (Editor)
Laman Javadzadeh (volunteer)
Togrul Memmedli (volunteer)
Aytekin Ismayilova (translator)
Elnur Aliyev (translator)
Hemid Khalilov (financial manager)
Gulu Askerov (technical assistant)

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Citizens' Labor Rights Protection League

Address: Baku, Az1007, Koverechkin
str.30, III floor, office¹ 6 Tel: (99 412) 440 06 57; (994 50) 314 49 14
E-mail: clrpl@bakinter.net; smamedov@rambler.ru www.clrpl.org

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CONTENTS

Introduction

4

The analysis of legislative
and normative acts, ensuring the
information access

9

Obtaining information through visiting the buildings of institutions of state and
local governing and meetings with officials

21

The written inquiries of the organization

24

The submission of
journalists' inquiries

28

Monitoring of the press

31

Survey on the access to the state
informational resources, governmental
and municipal bodies

33

Final opinion on the
monitoring on obtaining information
from the institutions of state
and local governing and availability
of the access to governmental information resources

41

The reasons, causing the prevention
of getting information, which
were determined in result
of monitoring

50

Recommendations

52

Supplement

55

INTRODUCTION

The main indicator of the transparency of governmental bodies and their desire to make public report is the existence of availability and simple methods of getting information from these bodies, which is of public and individual importance. The transparency of governmental bodies and giving the information to the concerned parties is also the indicator of high level of democracy and, at the same time, the low level of corruption in the country.

The right to access and spread of information is a particularly important one among other rights and freedoms. There are lots of institutions in the society where we live and all of these institutions keep the information bank, which is significant to the public. A member of the society has a right to obtain the information, important to his/her interests in full and timely manner.

It is not occasional that the information is called the "oxygen" of democratic society.

Every institution of state and local governing, running its activity on the basis of public processes, is obliged to share the information of public interest with the society. Unfortunately, it should be noted that

the institutions of state and local governing are not interested in providing the concerned representatives of the society with the information, which is supposed to be of free access. They do it only when they are forced by civil society and by laws with perfect mechanisms.

In order to ensure freedom of speech and information and to provide free information access to all the people, regardless their affiliation, every democratic government must, first of all, set up proper norms and mechanisms.

The legislative base, essential for ensuring freedom of information and individual access, has been created in Azerbaijan Republic and the process still continues. In order to ensure this fundamental freedom, the country has become a party to main international norms, which set a number of state commitments; the national constitution has reflected the right for everyone to obtain and spread the information. There has been adopted a number legislative acts and normative documents, ensuring this freedom in the country.

Along with this, there still remain serious

problems with obtaining information in the country. The level of corruption has reached inconceivable rates.

A number of institutions of the country, including public organizations and mass media outlets, consider the adoption of more complete laws to be the solution of the problem. As a project implementing organization, we believe that the improvement of legislation is an important issue. However, the existence of perfect norms only is not enough to ensure complete freedom of information in the conditions, where the high level of nihilism rules in the country, where the high-ranking officials continue to have slighting approach to the laws, where the officials of governmental bodies do not have the culture and tradition to provide the information and where the population of the country is unaware of the rules and laws related to obtaining the information.

For this very reason the Citizens' Labor Rights Protection League realizes the project titled "The situation on obtaining the information in Azerbaijan Republic. Organization of monitoring and campaigns", financed by the Budapest office of the Open Society Institute-Assistance Fund.

The first 4 months of the project were devoted to the conduct of monitoring of the level of readiness of institutions of state and local governing to provide the information in accordance with the existing legislation. During the monitoring there were used numerous evaluation tools. As a result, there was obtained a full picture of reality of institutions of state and local governing - "Transparency of the Government".

The applied monitoring tools were as the following:

Analysis of legislation

There was made the analysis of legislative acts, ensuring the freedom of information and obtaining information. Among the analyzed normative acts and laws were the Articles 50 and 57 of the Constitution of Azerbaijan Republic, laws of Azerbaijan Republic on Freedom of Information; on Information, Information Formation and Protection of Information; on Access to Environmental Information, on Mass Media Outlets, on State Secret, on Anti-Corruption Struggle; Criminal Code and Code on Administrative Offenses of Azerbaijan Republic as well as other laws, decision and decrees. These norms were analyzed on the basis of parallel comparison with international norms, which Azerbaijan had become a party to. As a result of analysis, there were determined the gaps and the clauses in the national legislation, which either do not meet or contradict the international standards. Among the analyzed norms was **the Law of Azerbaijan Republic on Obtaining Information**, which had recently been adopted by Milli Mejlis (National Parliament). On the basis of this analysis there will be prepared a pack of suggestions to improve the legislation, which will further be submitted to governmental bodies.

Visiting the buildings of institutions of state and local governing

The organization concluded labor contracts with 3 journalists, 1 person, acting as ordinary citizen and a few volunteers to visit the institutions of state and local governing on systematic basis and to attempt obtaining open type of information.

These people also observed the situation in reception rooms of these institutions, rules of entering the building, the officials'

attitude to the reception time and rules. All the observations were registered in the special blanks, prepared in advance.

Getting received by officials

Being at the institutions of state and local governing, the above-mentioned people tried to get received by the officials to get the open type of information directly from them. Everything, happening in such cases, was registered and the conclusions were made.

Sending the written inquiries

The organization sent the written inquiries to the institutions of state and local governing, requesting the open type of information.

At the end of the letter it was noted that the requested information was of open type and there were made the references to the articles of the Constitution, international norms and laws, ensuring this right. The main purpose of the reminder was to educate the officials.

Making journalists' inquiries

The journalists, attracted to the monitoring by the organization, had been working in active and leading press outlets. For 2 months they were making the written and verbal inquiries to the institutions of state and local governing, requesting the open type of information, registering the submitted inquiries and preparing the final report on the basis of results.

As a result of inquiries it was revealed the level of openness of these bodies to the press.

The monitoring of press

3 leading press outlets of the country were monitored for 3 months. These news-

papers were - "Azadlig" newspaper, which has a staunch pro-opposition position, independent newspaper "525-ci qazet" and independent newspaper "Echo", which is published in Russian language. For 3 months there was held monitoring of articles, published in these newspapers, which were devoted to the activity of institutions of state and local governing. During the monitoring there were registered the total number of all the articles, devoted to the activity of institutions of state and local governing, the information about if these data were received from the institutions of state and local governing themselves or were received as a reply to journalists' inquiries; which of them were received from other sources as well as if institutions of state and local governing confirmed the information or refused to do it; there was prepared a final conclusion on the basis of the registered information.

Organization of sociological poll among the journalists, heads of NGO-s and experts

The experienced sociologists held a poll among the representatives of leading mass media outlets, heads of NGO-s, independent experts as well as the responsible employees of institutions of state and local governing. There was prepared a final document one each of the used tools, which were reflected in the final report of monitoring. At the same time, there was prepared a common opinion report, covering all the directions of monitoring.

The current book also includes the suggestions, prepared on the basis of monitoring results. We think that the implementation of the project is very topical in this very time for the following reasons:

- There was adopted the Law on

Struggle against Corruption in the country and the president made a special decree on application of the law. The most effective way of struggle against corruption is to ensure the transparency of institutions of state and local governing, the legislative basis of obtaining information from these bodies must be improved and these institutions must start practicing to pass the information to public.

● One more Law on Obtaining Information is been recently discussed at the legislative body of the country – Milli Mejlis. This caused lots of public discussion; OSCE, Article 19, relevant structures of the Council of Europe analyzed and made their opinions on the .

There was determined a strategy on the basis of the monitoring results. In accordance with the strategy the following activities are supposed to be implemented after the project completion:

Juridical activity. The core of this activity will be **strategic litigations**. The institutions of state and local governing and the officials, which haven't relied to the written inquiries for open type of information or haven't made it in correct and timely form, will be lodged a complaint; through the courts there will be made attempts to commit these institutions and officials to give the information. There will be formed the precedents of satisfying the claims in the courts, that will create a habit for these institutions and officials to respond to the inquiries of natural and juridical persons.

Public activity. Within the framework of this activity, it is supposed to hold round tables, conferences, including press confer-

ences, to highlight these events in mass media outlets and, in this way, to make the problem of getting the information public.

Political activity and lobbying. Within the framework of this activity, it is planned to submit the suggestions for improving the existing norms and imperfect practice to the president of the country, parliament and separate members of the parliament; there will be conducted the work for determining the partners to adopt the suggestions.

Awareness-raising activity. As a matter of fact this activity started from the first stage of the project. Within the project framework the written inquiries were sent to institutions of state and local governing and at the end of the letters the officials were reminded about the open type of information and about the norms which commit them to give the requested information.

According to the preliminary results of monitoring, it was determined that there is unawareness of rules on getting the information not only among the general population, but also among the people, who are active in public and political life. At the same time, most officials are unaware of their commitments to give the information on the legal and financial sides of the activities of the institutions of state and local governing, where they are working. Taking into account such cases, within the project framework it is supposed to prepare and publish 3 types of commemorative booklets with large circulation. One type of booklet will be prepared for journalists, another type for natural and juridical persons (who are not journalists) and the last one was for officials. The first two types of booklets will contain the rights of people - journal-

ists, natural and juridical persons, who want to obtain some information; the rules of obtaining the information will be reflected in the booklets too. The third booklet is supposed for officials of institutions of state and local governing. The booklet will contain the fragments from the norms, committing them to give the information as well as comment about it.

The geography of the project

The project covers mainly Baku city and surrounding area. But the activity to be implemented in accordance with the results of monitoring will cover a few regions too.

Thus, the main goal of the project, implemented by the Citizens' Labor Rights Protection League is to help ensuring the

open access to information by journalists, all the natural and juridical persons (who are not journalists) who want to receive the information from the institutions of state and local governing; forming the practice of these institutions to give the information; educating the subjects, who are asking for information, and information objects as well as raising their awareness.

We express our deep gratitude to the Budapest office of Open Society Institute - Assistance Fund and its staff members for their financial assistance as well as to the personnel and experts, taking part in project realization, Polish Helsinki Foundation for Human Rights and mass media outlets.

Sahib Mammadov

THE ANALYSIS OF LEGISLATIVE AND NORMATIVE ACTS, ENSURING THE INFORMATION ACCESS

The legislative system of Azerbaijan Republic

The Constitution of Azerbaijan Republic (Article 148) contains the description of legislative system of the country. The system is in the below-given form:

I. 1. Constitution, 2. Referendum acts, 3. Laws, 4. Presidential decrees, 5. Decisions of the Cabinet, 6. Normative acts of the bodies of central executive power.

II. The International Norms, which Azerbaijan Republic has become a party to, are component of the legislative system of Azerbaijan Republic.

III. The Constitution and the laws of Nakhichevan Autonomous Republic, the decision of the Cabinet of Nakhichevan Autonomous Republic, functioning on the territory of Nakhichevan Autonomous Republic.

IV. Normative acts of institutions of state and local governing

Thus, according to the Constitution, the laws must not contradict the Constitution;

the presidential decrees must not contradict the Constitution and laws; the decisions of the Cabinet must not contradict the Constitution, laws and presidential decrees; the normative acts of institutions of state and local governing must not contradict the Constitution, laws, presidential decrees and the decisions of the Cabinet. The Constitution, laws and normative acts of institutions of state and local governing of Nakhichevan Autonomous Republic must not contradict the legislation of Azerbaijan Republic.

According to the Article 151 of the Constitution of Azerbaijan Republic, the international norms, which Azerbaijan has become a party to, have a right for superiority over other normative acts, except the Constitution and referendum acts; and when there is created a coalition between acts of legislative system and international norms, the international norm is applied.

In accordance with the II clause of the Article 147 of the Constitution of Azerbaijan Republic, the Constitution of Azerbaijan Republic has a direct primary legal force. In this regard the majority of

the Constitution has self-executing force. According to the VI clause of the Article 71 of the Constitution, human and civil rights and freedoms have direct force. Along with this, the protection of human and civil rights and freedoms, reflected in the Constitution, has both constitutional and legislative provision.

International and National norms, ensuring the freedom of information and access to information

The Constitution of Azerbaijan Republic

The freedom of information is ensured by the Article 50 of the Constitution of Azerbaijan Republic, which was adopted in November of 1995:

Article 50. Freedom of information

I. Everyone is free to seek, obtain, transfer, prepare and distribute information.

II. Freedom of mass media is guaranteed. State censorship is prohibited in mass media outlets, including press.

The Article 57 of the Constitution reflects the right of the citizens to appeal to the state bodies personally.

Article 57. Right to appeal

I. Citizens of the Azerbaijan Republic have the right to appeal personally and also to submit individual and collective written applications to state bodies. Each application should be responded in the defined order and term.

II. Citizens of the Azerbaijan Republic have the right to criticize the activity or work of state bodies, their officials, political parties, trade unions, other public bodies as well as the activity or work of individuals. Prosecution for criticism is prohibited. Insult or libel shall not be regarded as criticism.

Though these clauses, reflected in the Constitution, correspond to the standards of the international norms, joined by Azerbaijan, the concrete mechanisms of obtaining information are not described. At the same time, according to the clause III of the Article 71 of the Constitution, human and civil rights and freedoms may partially and temporarily be restricted in the situation of war, military situation, emergency and mobilization. However, according to the clause III of the Article 71 such restrictions and deviation from principles can be implemented on the basis of international commitments of Azerbaijan Republic. Thus, human rights and freedoms, reflected in the Constitution, Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention of Human Rights and Fundamental Freedoms can also be restricted in certain cases. In addition, these international documents permit the restriction of rights and freedoms at emergency cases, but the Constitution does not contain concrete mechanisms and rules of restricting human rights and freedoms.

However, the Constitutional Law of Azerbaijan Republic "On Regulating the Implementation of Human Rights and Freedoms in Azerbaijan Republic", dated on 24 December 2002, contain the cases, restricting human rights and freedoms reflected in the Constitutions as well as the freedom of information, reflected in Article 50.

The International Norms, which Azerbaijan Republic has become a Party to

Azerbaijan Republic has been a participant of the "**International Covenant of Civil and Political Rights**" since August

1992. According to the Article 19 of the Covenant:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either verbally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals".

The Article 10 of European Convention for the Protection of Human Rights and Fundamental Freedoms:

1 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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for

the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In the case *Leander v. Sweden* the European Court on Human Rights defined in court decision that the right for obtaining the information "**prohibits the government to restrict the receipt of information, provided to a person by others**"

Orhus Convention

Azerbaijan Republic ratified the Orhus Convention in March 2000. This Convention sets the commitment for member states to provide the access to environmental information, promote public participation in adoption of the decisions related to environment and make the legal guarantee for public to access to court decisions related to the environment.

In order to ensure the implementation of the Convention on 12 March 2002 there was adopted the Law of Azerbaijan Republic "On Obtaining Environmental Information".

Thus, the international norms, which the country had joint to and the presidential decrees, adopted by the court and quasi-court bodies on the basis of these norms should have played serious role in preparation of the norms on this field. However, it must be noted with regret that a number of legislative acts and other norms do not fully meet the international standards and in the majority of cases make the collision with one another. The article number 151 of the national Constitution - about the application of international norms in case of variance of laws with international norms - has a declarative character. In the national court

practice, there are almost no cases when an international norm is referred to during the trial.

Below, let us get acquainted with the brief analysis of main norms, providing or in certain cases, restricting the receipt of information and freedom of information.

National norms ensuring the freedom of information and access to information

Above, we showed the relevant clauses of Constitution and international norms, joined by Azerbaijan, ensuring the information access. Though these clauses have direct legal force, there is big necessity to adopt legislative and normative acts ensuring the full implementation of the clauses.

There have been adopted a number of normative-legal acts, providing concrete mechanisms for the freedom of information and possession of information. However, in general, the provision of the right to obtain information remains problematic for the following main reasons:

1. Relevant legislative acts are not perfect enough and there are no concrete mechanisms. For this very reason, a of new law is currently a point for discussion in Milli Mejlis. At the same time, the sanctions to be applied are non-influential and remain to be "dead norm".
2. The institutions of state and local governing and the officials, working in these bodies, have no practice or desire to pass the information to the society.
3. The society itself has poor initiative to obtain information from the institutions of state and local governing. The slight improvement in this field is felt only in mass media outlets, although every person has a right to obtain information.

Types of information

According to the law of Azerbaijan Republic on Information, Distribution of Information and Protection of Information, the information is divided into two types for the ways of obtaining the information: open information and information with restricted access. In its own turn, the information with restricted access is categorized into two sub-types: state secret information (the detailed description of state secret information is given in the law of Azerbaijan Republic on State Secret) and the information to be kept secret for the sake of protection of citizens, institutions and organizations. The law also determines the rules of documenting the information, creating the certain categories of information, possessory right to information and the rules of its protection. According to the law, the subjects which have the right to obtain the information, also have the right to get state information. Moreover, these subjects have the rights to get the information about them, to make the improvements on it and to get information on who was asking for this information and with what purpose.

The law of Azerbaijan Republic on Freedom of Information

This law, adopted on 19 June 1998 and amended on 1 February 2000, had lots of serious disadvantages. The absence of concrete mechanisms on obtaining the information and the abstract character of numerous clauses turned this law to the declarative document. At the same time the law determines the main principles of obtaining information. The principles are:

- the provision of freedom of information;
- the freedom of openness and exchange of information;
- the objectiveness, completeness and truthfulness of the information;
- the legality of searching, obtaining, using, distributing and protecting information;
- the secrecy of private and family information;
- the protection of security of individual, society and the government.

These principles correspond to the international standards and the reflection of these principles in legislation is a positive indicator. However, the provision of these principles has not been reflected in the legislation concretely. The Article 6 of the law specifies the provisions for information access. These provisions have declarative character; and other norms do not suppose any serious punishment for not providing the information. If we analyze the provisions paragraph by paragraph, the following conclusions can be made:

According to the above mentioned law, obtaining of information is provided through the following ways:

- through the information on the activity of governmental bodies and municipals as well as on the taken decision;
- through the creation of information services in the governmental bodies for obtaining information;
- through unrestricted usage of statistics, library, archive, funds of museums as well as information systems;
- through providing the population with the immediate information on

emergency cases, which are dangerous for life and health of citizens, natural disasters, accidents;

- through providing the population with the immediate information on emergency cases, dangerous for state security;
- through liquidating state censorship in mass media outlets, including the press;
- through bringing the normative legal acts to the attention of population in accordance with the rules of legislation.

The responsibility of governmental bodies and officials, which are not implementing the clauses of this law, is not determined in other normative legal acts in a serious way - that makes the law meaningless and, in general, turns the law into 'dead norm'. For example, according to the first clause of the Article 6 the state bodies and municipal must give the information about their activity and the taken decisions. But the existing practice of the country is that these bodies hide their information and the adopted acts from the public.

The majority of these bodies do not have a web page and if they have, the major part of the information is deliberately not placed on the web.

At the same time, according to the law "there can be appealed to the court for not providing the information. The responsibility of proving the legality of not giving the information falls on the defendant".

The law also determines the rules of collecting and using the private information. However, during the practical application of the law there were revealed numerous gaps in it.

The Law of Azerbaijan Republic on Obtaining the Information

As it was mentioned above, the law on Freedom of Information has a declarative character in many cases, for that reason it was necessary to adopt a new law. The new law, just recently adopted by Milli Mejlis, had been discussed by national, foreign and international organizations.

It should be noted that adopted law much differs from the initial version of the law and the changes were positively. The version, adopted after the third reading, also reflects the suggestions of international organizations and national NGO-s. The newly adopted law covers the principles of obtaining the information, duties of information keepers, register of documents, forms of obtaining information, types of information, provision of inquiry for information, refusal cases, issues of responsibility in a more perfect way with concrete mechanisms in comparison to the laws of previous years. The law also regulates the terms, rules, forms and restrictions of obtaining information, as well as the possible grounds for refusals by the side of official.

The law regulates the restrictions on information access, rules of releasing and presenting the information, which were not regulated by any other law as well as the rules of governmental control over the process of obtaining information. The law contains the clauses about submitting the information inquiry and forms of obtaining information. **Along with this, there are no enough serious mechanisms for a direct contact with the official or for making a phone call to him to make verbal inquiry. At present time, in most cases it is impossible to get in touch with the official of**

so-called information-keeping institutions neither personally nor by telephone.

The bodies which are in charge of giving the information (mainly press services) are often unaware of the inquired information, or provide it partially or avoid giving it under different pretexts. Thus, the clause 13.1.1. of the article 13 is declarative. The way of "submitting the inquiry to the information keeper personally or by post, fax or e-mail in written form", reflected in 13.1.2. is more realistic in comparison with other ways. Basing on existing practice it can be noted, that the officials of institutions of state and local governing do reply to the written inquiries in most cases. But still the replies are often not satisfactory.

In comparison with previously adopted laws, the article 14 of the law has more concrete **mechanisms on forms of obtaining the information. Along with this, in most cases the basis of refusals provides the information-keeper with pretexts to refuse the inquiry. The case in clause 19.1.2. of the article 19 (the point of having or not having the information in the information resources) gives the information keepers broad opportunities.**

According to the clause 17.2. of article 17 in case of not keeping the requested information, the applied information keeper should help the inquirer to find the information in the relevant source. At the same time, the clause 20.1.3. of the article 20, the information keeper must-redirect the inquiry, which is not in his area, to the relevant body.

Although these clauses create the opportunities to obtain the information, the clauses 21.1.2. and 21.1.3. of article 21, reflecting the cases of refusals during execution of information inquiry - give grounds for the

information keeper not to address the inquiry to relevant information body.

The timeframe for execution of the information inquiry is 7 days. If the information gets meaningless during this period, the inquiry must be immediately replied; if it is not possible then not later than 24 hours. According to the law, in the cases of danger to a person's life, health or freedom, the requested information is provided within 48 hours (except the holidays and the week-ends), when its search and preparation need certain time. In certain cases, the timeframe of the execution of the inquiry can be extended to 7 more days and the inquirer must be notified about this within 5 days. The law allows the possibility of chargeable service for providing the information, but it is not applied to public information.

In addition to the information, provided in response to inquiries, the law reflects the rule of releasing the information without any inquiry. The article 29 of the law defines the duty of the information keeper to release the information. According to the article 29.1. in order to ensure the public interest in a more operative and easy way and to reduce the numerous information inquiries, the information keepers must release the information they possess or the information they obtained during their public work. The law lists the information to be released. If the requirements of this clause of the law are implemented, it will significantly reduce the number of inquiries, sent to the information keeper. The information must be available through the internet information resources, mass media and official publications.

The listed information must be released by means of creating opportunity to get acquainted with the documents at libraries, public information centers, and other places

of public use as well as by any other means defined in the legislation. This part of law can really create possibility of obtaining the information in the country.

However, this law and other relevant existing normative documents don't set any serious commitments with concrete mechanisms upon the information keepers; they don't suppose any serious sanction for those, who violated the law.

The law commits the governmental bodies and municipalities to create the web-based information resources for making the public information available. According to the transitional clauses of the law, the information keeper must create their web-based information resources maximum within 1 year after the adoption of the law. The article 34 of the law gives the classification of the information. It must be noted that the law includes the clauses on types of information, reflected in other existing laws. According to the law, the information can be on 2 types: open information for common use and the information with restricted access. The information which is not restricted for access is open information. According to the legal status, the information which is restricted for access on the basis of legislation can be secret and hidden (confidential).

The law also determines the basis and rules of classifying the information to the separate for-service-use category. The law contains the list of such information. It should be noted that these abstract clauses existing in the list gives the opportunity for responsible officials of governmental and municipal bodies to attach the information which is unlikely to be released for the public - to the for-service-use category. For example the clause 35.2.5. of the law says that the information, the preliminary release

of which can or may break the opinion exchange and the consulting process, can be considered the information for-service use until the final decision is made.

It is not doubtful that the officials will misuse these abstract clauses. Along with this there were set some restrictions for supposing the information to be for-service-use in the and the law contains the list of such information. Besides, the law contains the possibility of considering the information for-service-use and restricting the individual access to information; such information listed in the law as well.

One more main difference between the new law and the previously adopted existing ones is its containing the control mechanisms of the execution of the law. According to the article 42 of the law, the control of the execution of the law by the information keeper can be conducted on the level of administrative service, higher ranked institution or by the Authority on Information Issues in the way, defined in the law. The law determines the requirements toward the Authority on Information Issues, the rules of his/her election, status, power, duties, rights as well as the rules of considering the complaints, authority decrees and the rules of executing the decrees.

The creation of the special body to control the process of obtaining information is a positive phenomenon; nevertheless the effective work of this institution is doubtful for the restricted powers, absence of concrete mechanisms to execute the duties. On the contrary, the institution is more likely to turn to a bureaucratic body.

The Law of Azerbaijan Republic on Obtaining the Environmental Information

This law does not cover all the requirements of the Orhus Convention on the pro-

vision of environmental information and the access to courts at refusals. But according to the national constitution, the international norms, which Azerbaijan has become a party to, are more superior than national laws and have direct force. In addition, this law is more improved and progressively balanced that the law on freedom of information.

The law gives the right to get information on environment, including the land, atmosphere and living organism. The person, asking for information, must not be inquired about the purpose of this information. According to the law, the environmental information is divided into 2 types for the way of getting: the information with the restricted access and the open information. Except the information with the restricted access every person has a right to get the environmental information regardless time and without terms.

According to the law, the written inquiry must be given to relevant institution of state and local governing. The submitted inquiry must be replied within 1 month. If the inquiry is complicated and the response needs extra research, the party responsible for the response must send a preliminary reply, extending the term of answer for one more month.

If the requested information gets meaningless at later response, the response is given immediately or if it is impossible within 24 hours. According to the law, if the institution of state and local governing, which is supposed to give the information, refuses to do it, it must reply to the inquirer within 10 days, explaining the reasons for refusal. There can be lodged complaints against refusals in the court. In general, the law includes the detailed description of rules and mechanisms of information pro-

vision by institutions of state and local governing. According to the law, governmental bodies must regularly (the law shows the timeframes) provide the mass media outlets with the information on environmental situation, produce annual reports and possess the electronic data base, which is open to the public. On the whole, this law meets the minimal standards, reflected in the Orhus Convention and other international norms, joined by Azerbaijan Republic; and in a number of cases it determines the standards, which are more superior to the international norms. Along with this, the law does not provide absolute conditions for getting environmental information, because it practically does not suppose any serious sanction toward institutions of state and local governing and officials, which approach to the requirements of the law depreciatingly.

The law of Azerbaijan Republic on Mass Media Outlets

The law was adopted on 7 December 1999 and was partially amended at different times. The law prohibits any censorship on mass media outlets and creation of any state institution with this purpose. The Article 8 of the law secures the information right of mass media outlets. *Mass media outlets have the right on true, correct and immediate information about the economical, political, public and social situation; about activity of governmental bodies, municipalities, administrations, enterprises, organizations, public unions, political parties and officials.* This body or official can release the information upon the inquiry or by means of press conference or in any other form.

The inquiries can be made in written or verbal form. The written inquiry for infor-

mation must be replied within certain timeframe and formed in accordance with the relevant legislation. If the inquired information loses its immediacy, it must be answered within 24 hours. The law contains the provisions for protection of information sources. According to the law the editorial office and journalists must not name the source in the news and materials if that information was provided with the condition to keep the source secret.

The representatives of mass media outlets have a right to make complaint in a relevant legislative way of the governmental and municipal bodies, institutions, enterprises, organizations, public unions, political parties or officials - which refused to provide them with the information.

There can be applied civil, administrative and criminal sanctions toward persons, who prevented transfer of information to mass media outlets and who applied censorship illegally.

The Law of Azerbaijan Republic on State Secret

The law was published on 7 September 2004 with the goal to ensure security of the country. The law regulates the relations connected with classifying the information to the state secret category, protecting and using the information, making or unmaking it secret.

In the law the information is categorized as state secret information if it is connected to military, foreign, political, economical, secret-service, counterespionage, immediate-surveying activity of the country, which is protected by the government and the distribution of which can cause harm to the security of the county. The article 8 of the

law determines the level of secrecy of the information. According to the level of secrecy the information is categorized as "particularly significant", "top secret" and "secret" information.

The article 5 of the law contains the list of information which is of state secret. The provided list is often not concrete and has a general character. And practically this makes it possible to attach any information into the state secret category in this or other form. This form of law gives the institutions of state and local governing broad opportunity not to give the information. Moreover, it makes possible to apply criminal and administrative sanctions against the people who obtained and spread the information.

The article 7 of the law contains the list of information which is not state secret. However, the list does not include all the information types, which are of open character, which again makes it possible to categorize the information, not specified directly in the law, as the information belonging to the state secret category.

In order to improve the application of this law the president of the country signed a special decree in 2002, which sets extra responsibilities upon the mass media outlets. Thus, the head of mass media outlets or the editorial office must send the inquiry to the relevant governmental body to specify if the information belongs to the category of state secret information; the information can be made public only after the agreement of that body. The inquired body must reply to the inquiry within 7 days. If the information is categorized as state secret, then the editorial office must inform the relevant body about the source of information. These conditions make the implementation of the law impossible. Thus, the governmental bodies gain the opportunity to blame

any mass media outlet in spreading information of state secret category. Though there are certain attempts to improve the law, there is no big difference between the newly submitted s from the current law. On the whole, the law restricts the freedom of information in the country and in many cases it contradicts the relevant clause of the Constitution as well as the international commitments of the country.

The law of Azerbaijan Republic on Struggle against Corruption

Milli Mejlis of Azerbaijan Republic adopted the Law "On Struggle against Corruption".

The law, entering into force since January of 2005, can be considered one of the main measures for organizing the campaigns on struggle against corruption. It should be noted that the adoption of the law and entering it into force was one of the commitments Azerbaijan had taken before the accession to the Council of Europe.

Having studied and analyzed the articles of the law, it can be concluded that the law is more of declarative character. We assume that the application of the law cannot turn to a strong tool that can impact the struggle against corruption. There is almost no institutional base of the crimes, related to corruption. The current Procedural Criminal Code of Azerbaijan Republic determined the common frames for investigating all types of crimes, including corruption-related crimes. The law-enforcement bodies of the Republic cannot cope with their responsibilities connected with the struggle against corruption. We consider, that one of the reasons is the weak coordination between them and the fact that their attention is directed more to the results of cor-

ruption, rather than to its sources.

The article 4.2. of the law says that the commission on struggle against corruption under the Administering Council of State Service fulfills the function of the institution, specialized in the field of preventing corruption. The commission consists of members, appointed by executive, legislative and court authority bodies.

According to the article 5 of the Law of Azerbaijan Republic against Corruption, the officials must submit the information in the way, determined by the commission. The information must contain the sources, type and amount of officials' income.

At the same time, the article 5,2 of the law violates the transparency principles and the right to get the information by prohibiting to disclose publicly the financial declaration of officials. The submitted information is equalized to the commercial and bank secrecy. The people, spreading this information are attracted to responsibility in the way, determined by the law. According to the law, the declarations on income and property must be submitted to the specially created commissions on struggle against corruption, instead of being submitted to the tax body; this will create the opportunities to manipulate the existing information for keeping the necessary level of transparency in the work of commissions. We assume that the people, preparing the law, did not completely realize how much harm the corruption can make to the security and stability of the society.

The people get disappointed at the law, when the ideas of openness and transparency, declared by the government, are not realized; and the people's disbelief toward the corrupted officials undermines the support of society to the government.

The public support is a very significant

factor for struggle against corruption. This is why the measures, taken for increasing the support of the society should be the main part of all anticorruption arrangements.

The corruption creates acute problems and danger to the stability and security of the society; it makes lots of harm to the activity of institutions, sustainable development and follow up the rules. Taking into account that danger, the UNO adopted the Convention against Corruption on 9 December 2003. Every state, joined to the Convention, has to prepare and implement the anticorruption policy in accordance with internal legal system. The principles of participation, truthfulness, transparency and responsibility of the society must certainly be taken into account for implementation of this policy. Taking into account the necessity of struggle against corruption, according to the article 10 of the Convention, every state must take measures for increasing the transparency of the struggle, relying on basic principles of internal legislation. The following measures can be considered appropriate:

- simplification of application procedures to decision-making authoritative bodies;
- adoption of procedures to inform the population about the activity and decisions of these bodies

We assume that the law on struggle against corruption does not properly meet the requirements of international legal documents for ensuring the transparency of decisions, made by responsible bodies and getting the information.

The responsibility for preventing the receipt of information and for not giving the information

Having analyzed the laws, adopted at different times, which are directed to ensure the freedom of information, reflected in the relevant articles of the Constitutions of Azerbaijan Republic and international norms, which the state has become a party to, we have determined, that the majority of the clauses in these laws, ensuring the information access, do not possess the concrete mechanisms; and the application of the reflected mechanisms to practice is extremely problematic. Currently the new law, adopted by Milli Mejlis and the law of Azerbaijan Republic on obtaining environmental information have relatively improved mechanisms. Nevertheless, the improved laws do not solve all the problems. It is particularly important to apply serious sanctions during the application of these laws in practice for preventing the willfulness of officials. It should be noted with regret that there are not supposed any serious punishments for the officials, who create the obstacles in getting the information, refuse to give the information without any reasons, or do not provide the information in full and timely manner. In general if the information has not been given to any citizens, natural or juridical persons, and the legislation does not suppose any direct punishment for this. The exception is only the punishment applied when mass media outlets or journalists are not given any information or are created obstacles in receiving it. But even these clauses, reflected in Criminal Code and the Code on Administrative Offences of the country do not work or get applied in reality.

For example, the Criminal Code of the

country includes only the article on "preventing the legal activity of the journalist" and this article is supposed for forcing a person to refuse the distribution of information by applying the violence or threatening to apply the violence.

According to the article 186.1 of the code of Azerbaijan Republic on Administrative Offences, "the one, who has not replied to the journalist's inquiry within the time-frame, determined by the legislation,

- is fined in the amount from 40 to 70 times of standard financial unit.

186.2 Except the information, protected by the legislation, the one who restricts the journalists' access to information or refuses to provide the information

- is fined in the amount from 60 to 90 times of standard financial unit".

It is not determined if the official is still obliged to provide the information after being punished in administrative or criminal order. As a matter of fact in many countries the application of the punishment does not release the official from his commitments to give the information, quite the contrary - according to the legislation the official must immediately give the previously refused information after being punished.

If to take into account that there exists the neglect to the laws from the side of officials of institutions of state and local governing, then even the perfect law without serious punishment will not bring to serious changes in the current practice.

OBTAINING INFORMATION THROUGH VISITING THE BUILDING OF INSTITUTIONS OF STATE AND LOCAL GOVERNING AND MEETING WITH OFFICIALS

The monitoring, conducted for getting information directly through visiting the institutions of state and local governing revealed existing problems of this field in an obvious way. For 2 months the journalists and ordinary citizens, attracted by the organization to this work, visited the offices of different institutions of state and local governing and tried to get an open type of information. During the visit to institutions of state and local governing, these people also observed the situation in the reception rooms of these institutions, rules of entering the building, the officials' attitude to the reception time and rules. All the observations were registered in the special blanks, prepared in advance. The people, holding monitoring, used 2 ways to obtain information during the visit to these institutions. One of the ways was to get the information from any of the structures of this institution (e.g. general department or any specialized department). The second was to get the information directly from the official. In total there were selected 40 institutions of state and local governing and the commercial structures serving for people's interests

(e.g. monopolist institution, engaged in sale of electric energy). These organizations were the following:

1. The Ministry of Communication and Information Technologies
2. Baku city Office of Registration of Technical Inventory and Property Rights
3. The Ministry of Health of Azerbaijan Republic
4. The Ministry of Education of Azerbaijan Republic
5. Binəgedi district Executive Power of Baku city
6. The Ministry of Culture of Azerbaijan Republic
7. Yasamal district Municipality of Baku city
8. Yasamal district Executive Power of Baku city
9. The Department of Entrepreneur Development in the Ministry of Economic Development of Azerbaijan Republic
10. Sumgayit district Office of Barmek Azerbaijan Electric System
11. Sumgayit city Executive Power
12. Sumgayit city Municipality

13. Azerbaijan State Medical University
14. Azerbaijan State Oil Company
15. Milli Mejlis of Azerbaijan Republic
16. The Ministry of Ecology and Natural Resources of Azerbaijan Republic
17. State Committee on Securities of Azerbaijan Republic
18. The Ministry of Transport of Azerbaijan Republic
19. The State Customs Committee of Azerbaijan Republic
20. The Constitutional Court of Azerbaijan Republic
21. Baku city Executive Power
22. Yasamal district Military Commissariat of Baku city
23. State Committee of Azerbaijan Republic on Affairs of Azerbaijanians, Living Abroad
24. State Committee on Religious Affairs of Azerbaijan Republic of Azerbaijan Republic
25. The Ministry of Labor and Social Protection of the Population of Azerbaijan Republic
26. The Ministry of Agriculture of Azerbaijan Republic
27. The Ministry of Justice of Azerbaijan Republic
28. The Ministry of Finances of Azerbaijan Republic
29. The State Oil Fund of Azerbaijan Republic
30. The Court on Heavy Crimes of Azerbaijan Republic
31. The Institute of Geology of National Academy of Sciences of Azerbaijan Republic
32. Sabail district Executive Power of Baku city
33. The Center of Seismological Service of Azerbaijan Republic
34. Yasamal district Center of Hygiene

- and Epidemic Sciences of Baku city
35. Supreme Court of Azerbaijan Republic
36. The Ministry of Internal Affairs of Azerbaijan Republic
37. The Ministry of Taxes of Azerbaijan Republic
38. The Prosecutor office of Azerbaijan Republic
39. "Azertunel" Constructive Joint-Stock Company
40. Azerbaijan State Administration of Marine Navigation

The analysis of obtained materials shows that the most closed institutions to the public are urban and rural executive power bodies. The security policemen do not permit to enter into the offices or collect the information; the replies to all the inquiries are made in a rude manner.

For example, the monitoring group, which had applied (verbally to Yasamal district executive power of Baku city, faced the rude and unethical replies from the side of police. The results of the researches showed that the municipalities were more open to the monitoring group in comparison with governmental bodies and the municipalities approached the inquiries with more responsibility.

There were received only 19 replies to the submitted 40 verbal inquiries for open information from the officials. The rest 21 cases were either refusals to respond or reference to the other date to answer, but there was no further feedback. 19 inquiries were accepted: 17 of them were replied in time, 2 of them were replied after the date to respond. In 12 cases the replies contained the complete requested information, in 7 cases - the provided information was partial.

During the monitoring, there were obstacles (police post or special security) in 80% of the visited bodies. In 40% of these institutions it is necessary to get special permission in order to enter the building after passing through the obstacle. In 60% it is possible to enter the building by getting the permission from the police or security representatives, standing at the entrance. In the second case, the police and special representatives often ask the visitors about the reasons for the intention to enter and they are not satisfied with the answers, they do not allow the person(s) to enter. In most

cases, the special permission is received over the phone from the official, who is to be visited. In the overwhelming majority of cases the official does not answer to internal phone call or the people under his obedience (e.g. assistant, secretary, etc.) answer to the phone call. In the most institutions of state and local governing the situation with receipt of citizens is not satisfactory. Though the high rank governmental bodies (e.g. ministries) have nice reception rooms, the majority of local (or lower) structures of the bodies do not have the receptions at all.

THE WRITTEN INQUIRIES OF THE ORGANIZATION

During July-August the Citizens' Labor Rights Protection League sent written test inquiries to the institutions of state and local governing. The inquiries requested the information keeper to provide the open type of information. The inquiries were sent on the official blank of the organization and were stamped. The inquiries were worked out in a very careful way and requested concrete information. At the end of the letter it was noted that the requested information was of open type and there was given the list of norms, providing the organization with the right to obtain the information (Constitution, relevant international norms, concrete articles of relevant laws).

Totally, the written inquiries for obtaining information were sent to 27 addresses. The inquiries were sent to 14 bodies of central and executive power, including the Presidential Machinery and the Cabinet, Milli Mejlis of Azerbaijan Republic (1 letter), Baku city executive power, 6 district courts of Baku city and 5 district municipalities of Baku city. The inquiries were made with the reference to the article 10 of the European Convention on Human Rights, article 19 of the International Covenant on Civil and Political Rights, Orkhus Convention, the laws of Azerbaijan Republic on Obtaining Environmental Information, on Considering the Citizens' Applications, on Freedom of Information. The appealed institutions were as the following:

1. The State Road Police office of the Ministry of Internal Affairs of Azerbaijan Republic
2. The State Customs Committee of Azerbaijan Republic
3. "Azersu" State Company
4. The Ministry of Labor and Social Protection of the Population of Azerbaijan Republic
5. The Ministry of Health of Azerbaijan Republic
6. Machinery of Milli Mejlis of Azerbaijan Republic
7. Baku city Executive Power
8. The Ministry of Ecology and Natural Resources of Azerbaijan Republic

9. The Ministry of Transport of Azerbaijan Republic
10. The Ministry of Communication and Information Technologies
11. The Presidential Machinery of Azerbaijan Republic
12. The Ministry of Finances of Azerbaijan Republic
13. The State Social Protection Fund of Azerbaijan Republic
14. The State Committee on Land and Mapmaking of Azerbaijan Republic
15. The Executive Administration of Court Decision of Azerbaijan Republic
16. The Ministry of Ecology and Natural Resources of Azerbaijan Republic
(for the second time)
17. Nasimi district Municipality of Baku city
18. Sabail district Municipality of Baku city
19. Narimanov district Municipality of Baku city
20. Khatai district Municipality of Baku city
21. Binegedi district Municipality of Baku city
22. Binegedi district Court of Baku city
23. Nasimi district Court of Baku city
24. Yasamal district Court of Baku city
25. Sabail district Court of Baku city
26. Narimanov district Court of Baku city
27. Khatai district Court of Baku city

The written inquiries were submitted directly to the above listed bodies and the copy was confirmed about the acceptance of the document. The person, making the inquiry registered the observations on the rules of accepting the inquiries. The results were as the following:

The written inquiries were replied in the written form	No reply was received	The written inquiries were replied verbally
17	8	2

The quality of provided information in the replies
Totally 17 replies

The requested information was completely provided	The requested information was provided partially (not given in the complete form)	The reply contained indirect refusal	The submitted information was re-sent to the relevant body
9	4	3	1

The timeframe of replies to inquiries
Totally 17 replies

The replies were received within the timeframe, defined by the legislation	The replies were received after the timeframe, defined by the legislation
13	4

The Ministry of Communication and Information Technologies was requested for 2 different data in the inquiry letter. The Ministry replied to the organization within the supposed timeframe. The reply contained the information for one question and for the second question the organization was referred to the other governmental body, which possesses that information. The inquiry sent to the Ministry of Finances was referred to the relevant body and the organization was notified about it in written form. The inquiry sent to the Ministry of Transport was responded twice by two different departments.

The State Road Police Office invited a representative of the organization to the office, specified the content of the requested information and submitted the written reply to the organization within the timeframe, determined by the legislation.

"Azersu" State Company made a phone call to the organization to give the partial reply verbally and noted the necessity for extra time to prepare the requested information as soon as it was ready. However the organization did not receive any further information from them. The Presidential Machinery of Azerbaijan Republic made a phone call to the organization connected with the inquiry and informed that the requested information would be published at the end of the year.

There was observed a serious problem at submitting the inquiries. Though the information was sent to the organizations within the timeframe, determined by legislation; the organization received the replies much later. Although the distance was quite little, the reply-letters were kept in the post office for a while and then sent to organization. The newly adopted law does not specify how to calculate the timeframes either. In

other words, it is still an open question if the timeframe must be calculated from the moment when the organization sent the inquiry or from the moment when the inquiry for information reaches the addressee.

The 16 of the written inquiries were sent to the central and local executive power and Milli Mejlis, 6 inquiries - to courts, 5 - to the institutions of state and local governing. In the first case from 16 inquiries - 10 were replied; in the second case from 6 inquiries - 2 were replied; in the third case from 5 inquiries - 3 were replied. The reply to the inquiry, received from Baku city executive power is to be remarked. The reply was written in a rude and illiterate manner and there was indirect refusal for information.

The results of the written test inquiries, made by the organization itself differed from other inquiries (made by journalists and citizens). The institutions of state and local governing approached more seriously to the inquiries of the organization and the replies contained more comprehensive information. According to the experts' opinion the reasons are: literate content of inquiries, image of the organization and the reminder at the end of the letter about the legal right of the organization to get the information.

As it was mentioned above, the written inquiries were submitted through visiting the building of the institutions of state and local governing. It was impossible to submit the inquiry personally only to 6 district courts of Baku city. The courts refused to accept the written inquiries, therefore, the letters were sent by post.

The inquiries, submitted to the municipalities were accepted without any problems. Only the Binegedi district Municipality of Baku city did not accept the inquiry,

explaining "we do not accept the letters from public unions and do not reply to them". However there was received a written reply to the inquiry, sent by post and it contained indirect refusal to provide the information.

There is no registration or acceptance of the letters in Milli Mejlis of Azerbaijan Republic. The letters are thrown to the special box.

In the Cabinet, the acceptance of the letters of citizens, natural and juridical persons is organized very badly. The reception

is small and without proper conditions.

The Binegedi district court of Baku city treats the people particularly rudely while accepting the inquiries.

The acceptance of inquiries at Presidential Machinery is organized properly.

Some of the ministries have not specified structure or person, who is in charge of accepting the inquiries. In such institutions, as a rule, the police representative, standing at the entrance is accepting the inquiries.

THE SUBMISSION OF JOURNALISTS' INQUIRIES

During August-September two journalists, attracted by the organization to the monitoring process, submitted verbal and written inquiries to different institutions of state and local governing with the goal to obtain open type of information, which did not belong to the legally categorized information with restricted access, including state secret information.

The journalists were the employees of pro-oppositional newspapers. The attraction of the journalists of pro-oppositional press outlets was aimed at determining the approach of officials of institutions of state and local governing toward mass media outlets in regards with their political standpoint. Indeed, the results of monitoring gave enough grounds to conclude that in Azerbaijan Republic the officials of the institutions of state and local governing make discriminations even at times of giving information. These officials cooperate closely with pro-governmental mass media outlets and, on the contrary, have unfriendly relations with the mass media outlets of non-governmental position and, regardless of law violation - they do not provide them with the requested information.

The written inquiries were sent to the following bodies:

1. The Ministry of Ecology and Natural Resources of Azerbaijan Republic
2. The Presidential Machinery of Azerbaijan Republic
3. The Ministry of Health of Azerbaijan Republic
4. The Ministry of Justice of Azerbaijan Republic
5. The Office of Passport Registration in the Ministry of Internal Affairs
6. The Ministry of Defense of Azerbaijan Republic
7. The State Statistics Committee of Azerbaijan Republic
8. Baku Underground
9. The State Road Police office of the Ministry of Internal Affairs of Azerbaijan Republic
10. The State Customs Committee of Azerbaijan Republic
11. The Ministry of Agriculture of Azerbaijan Republic
12. Yasamal district Municipality of Baku city

- | | |
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| <ol style="list-style-type: none"> 13. Nasimi district Municipality of Baku city 14. Sabail district Municipality of Baku city 15. Narimanov district Municipality of Baku city 16. Binegedi district Municipality of Baku city 17. The Standing Committee on Regional Affairs in Milli Mejlis of Azerbaijan Republic 18. The State Commission on Emergency 19. Baku Sanitary Quarantine Revision 20. The State Committee on Land and Mapmaking of Azerbaijan Republic 21. The Association of Blind Handicapped 22. The State Frontier Service 23. The Republican Center of Hygiene and Epidemic Sciences of the Ministry of Health 24. The Cabinet of Azerbaijan Republic 25. The Ministry of Finances of Azerbaijan Republic 26. Baku Sewerage Service 27. Baku Heating Administration 28. The Ministry of Foreign Affairs of Azerbaijan Republic 29. The Consulate Department of the Ministry of Foreign Affairs 30. The Ministry of Communication and Information Technologies 31. The Manufacturing Union of Baku Telephone Communication of the Ministry of Communication and Information Technologies 32. The Department on Struggle against Corruption 33. Baku city Executive Power 34. Yasamal district Executive Power of Baku city 35. Nizami district Executive Power of Baku city 36. Khatai district Executive Power of Baku city | <ol style="list-style-type: none"> 37. Azizbeyov district Executive Power of Baku city 38. Nasimi district Executive Power of Baku city 39. The State Committee of Construction and Architecture 40. The Ministry of Taxes of Azerbaijan Republic 41. National Bank of Azerbaijan Republic 42. "Azerigaz" State Close Corporation <p>The written inquiries were sent to the following institutions:</p> <ol style="list-style-type: none"> 1. The Ministry of Labor and Social Protection of the Population of Azerbaijan Republic 2. Baku city Executive Power 3. Baku Underground 4. The State Oil Company of Azerbaijan Republic 5. The Ministry of Health of Azerbaijan Republic 6. The State Committee on Statistics of Azerbaijan Republic 7. "Azersu" State Company 8. The State Frontier Service 9. Yasamal district Municipality of Baku city 10. Nasimi district Municipality of Baku city 11. Sabail district Municipality of Baku city 12. Narimanov district Municipality of Baku city 13. Binegedi district Municipality of Baku city 14. Binegedi district Court of Baku city 15. Nasimi district Court of Baku city 16. Yasamal district Court of Baku city 17. Sabail district Court of Baku city 18. Narimanov district Court of Baku city 19. Khatai district Court of Baku city |
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The results are absolutely different from the results of written inquiries, sent by organization. For example, only 4 of the written inquiries, sent by journalists, were replied within the legal timeframe. 2 of these replies were satisfactory, in one case there was verbal reply to written inquiry and in the other case there was no reply under the pretext of not possessing the requested information. In one more case, the reply was received after the timeframe, determined by the legislation and the reply was not satisfactory.

In all other cases, the inquiries were not replied at all. Although the officials must either provide the inquirer with the information or the give well-grounded refusals. For example, Ali Akhundov - an employee of the Ministry of Labor and Social Protection of Population was submitted the written inquiry about the provision of the disabled with the flat and there was no reply for further 2 months. The written inquiry for open type of information was submitted to Ali Akhundov personally on 4 August 2005. Having waited for the reply within a month (until 31 August 2005) we made phone call on 30-31 August to learn the reason of silence, but nobody in the ministry wanted to speak over the phone. There were no replies or refusals received from Baku city Executive Power, Chief Administration of Architecture and Town-Planning, Baku Underground, the Ministry of Health, the State Oil Company, "Azersu" State Company and others, which had been sent written inquiries.

It should be noted that none of the inquiries, addressed to district courts, were responded. By the end of September there had not been received any reply from Binegedi district court (to the inquiry dated on 13.09.2005), Nasimi district court (to the inquiry dated on 14.09.2005), Khatai district court (to the inquiry dated on 14.09.2005), Yasamal dis-

trict court (to the inquiry dated on 13.09.2005) and Sabail district court (to the inquiry dated on 13.09.2005). Thus during the monitoring period a very few, i.e. 4 written replies were received in response to 19 written inquiries of the journalists. 2 of them were detailed and long, one did not completely cover the inquiry, the forth reply contained refusal to give the information. The big percentage of inquiries (both immediate and to be replied maximum within 1 month) were not responded at all.

There were also serious problems related to the 42 verbal inquiries of journalists. The typical problems of verbal inquiries are absence of officials at their work places, no reply to phone call, impossibility to get received by the official. In a number of ministries, especially force ministries, the information can only be received from the press services. Even if the apply is made to the district departments of the ministries, the local officials recommend to apply to the press service of the ministry for some information. But the press services of these ministries either do not possess the requested information, or find different pretexts not to give it. During the verbal inquiries period it was determined that the majority of governmental bodies do not have telephone at all or have only internal communication telephone. During the monitoring period, from 42 verbal inquiries: 9 were completely responded, 5 were partially responded, 6 were refused for information without any serious grounds. In other cases the inquiries were accepted, but it was impossible to get in touch with the responsible person for the reply further on. 10 of the inquiries were immediate ones, i.e. getting meaningless at delayed reply. None of these inquiries were responded within 24 hours, supposed by the legislation.

MONITORING OF THE PRESS

Another monitoring tool, applied during the monitoring process of obtaining information from governmental institutions of state and local governing and availability of access to governmental information resources, was the monitoring of press. For 3 months, 3 leading press outlets had been monitored and the information of activities of institutions of state and local governing, published on the pages of that outlet, had been registered.

The following press outlets were monitored:

1. "525-ci qazet" - is a daily newspaper, the circulation on the work days is 2525, on weekend - 4325. It has the web page. It is the independent newspaper.

2. "Echo" - is a daily newspaper, the circulation on the work days is 6000, on weekend - 9000, is published in Russian language. It has the web page. It is the independent and neutral newspaper.

3. "Azadlig" - is a daily newspaper, the circulation is 6746. It has the web page. It is the independent newspaper from juridical standpoint. The position is pro-oppositional.

The monitoring started on 2 August 2005 and ended on 31 October 2005.

During this period, the monitored newspapers totally published 784 articles on the activity of institutions of state and local governing. The breakdown of the materials is as the following:

"525-ci qazet" newspaper - 341

"Echo" newspaper - 197

"Azadlig" newspaper - 246

The information, received directly from the institutions of state and local governing

These materials, published in press outlets, were obtained from the institutions of state and local governing by means of verbal and written inquiries. During the monitoring period the total number of such information, published in these newspapers were 347. The breakdown is as the following:

"525-ci qazet" newspaper - 156

"Echo" newspaper - 123

"Azadlig" newspaper - 68

105 of the materials, published in the monitored newspapers, were received from other institutions. The breakdown is as the following:

"525-ci qazet" newspaper - 19

"Echo" newspaper - 12

"Azadlig" newspaper - 74

332 of the materials, published in the monitored press outlets, were the information transferred or made public in some form by the institutions of state and local governing. The breakdown of these materials is:

"525-ci qazet" newspaper - 166

"Echo" newspaper - 62

"Azadlig" newspaper - 104

19 of 105 materials, received from other institutions, were inquired for confirmation in the relevant institutions of state and local governing directly before being published. The breakdown is:

"525-ci qazet" newspaper - 5

"Echo" newspaper - 1

"Azadlig" newspaper - 13

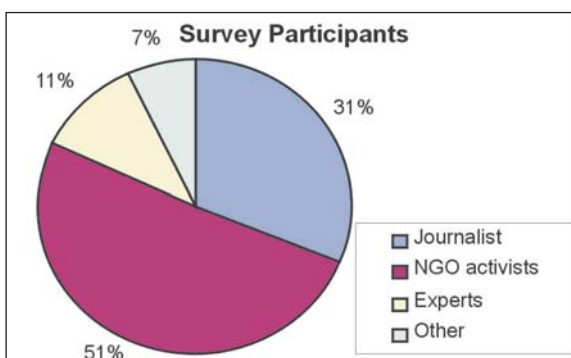
5 of the inquiries, sent for confirmation to the relevant institutions, were not replied.

As a result of monitoring it was determined that a significant part of the published materials, related to the activity of institutions of state and local governing have news nature. The monitoring showed that only 19 of 105 information were requested for confirmation from the relevant institution for the reason of non-governmental sources of information (in some cases the source prefers to be kept secret).

In addition, the monitored press outlets contained lots of incoming complaints of the activity of institutions of state and local governing. However, within the framework of this monitoring, these types of materials were not registered. There are reflected subjective thoughts on officials' willfulness and illegal actions of some institutions in such materials.

SURVEY ON THE ACCESS TO THE STATE INFORMATIONAL RESOURCES, GOVERNEMENTAL AND MUNICIPAL BODIES

In the survey conducted by the Citizens' Labour Rights Protection League on October 10-16, 2005, participated 99 people. Out of the survey participants there were 31 journalists, 50 activists of non-governmental organizations, 11 experts and 7 representatives of other professional occupations. All the survey participants have experience in applying for information to the governmental and municipal bodies. At the same time all of them have their own experience in acquisition of information, which as showed our survey differs first of all depending on the respondents' professional occupation.



Hence, the differences in approaches were identified at the beginning of the sur-

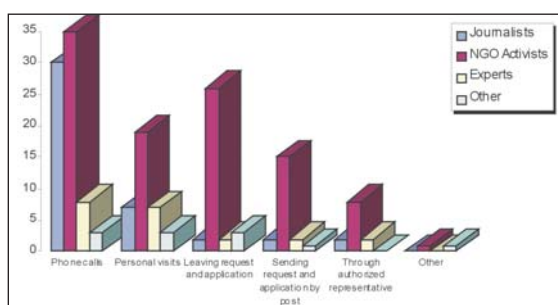
vey in relation to the methods, which are used by respondents to get information from governmental and municipal authorities. According to the survey, journalists prefer to request information by phone calls (69%), then to attend governmental and municipal bodies personally (16%), to leave requests and applications personally (5%), to send them by post services (5%) and send an authorized representative (5%).

Differently from journalist, NGO activists do not give the great preference to some particular method, they more frequently use phone calls (34%), leaving requests and applications personally (25%), personal visit to the governmental and municipal bodies (18%), requests and applications sent by postal services (14%), acquiring information through trustworthy representatives (8%), one person had experience in using electronic mail to apply for information. One of the NGO activists indicated that he gets important information through personal networks or by paying bribes.

Experts in their turn give almost equal preference to the phone calls (37%) and

personal visits (33%). Rarer they leave requests and applications personally or send them by post and use authorized intermediaries.

Among the representatives of the different professions equal preference was given to the phone call methods (28%), personal visits (27%), requests and applications left personally (27%), one person applied for information by post and another person by electronic mail.



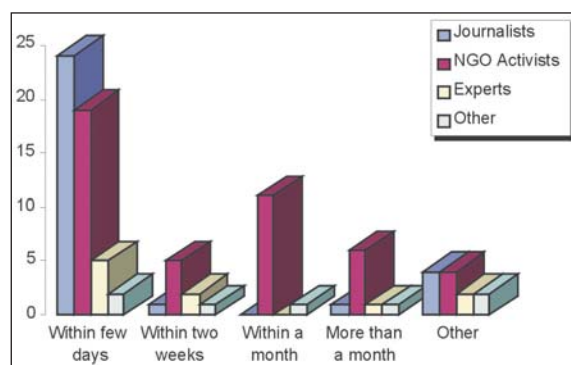
The majority of the respondents (81% from the total number of the survey participants) pointed out that information received by them from governmental and municipal bodies was incomplete. Only 7% of the respondents consider the received information to be in a full volume. However, 12 % of the survey participants noted that they were denied of information.

From the comparative analyses of the responses about quality of information received from governmental and municipal bodies, one may notice, that the most satisfied by its quality were experts (18%), whereas the least satisfied are journalists

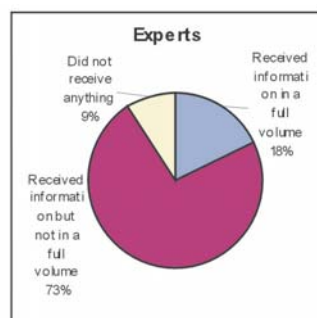
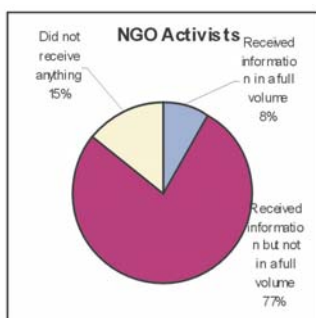
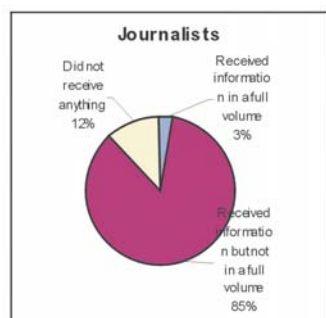
(3%). The attempts of the experts to get information were turned down rarer than those of the rest of the survey participants (9%). The more frequent rejections from governmental and municipal bodies were addressed to the activists of the NGOs (15%). At the same time all representatives of the other professions (7 person) indicated that they were able to receive only incomplete information.

The next question, which showed variety of the respondents' opinion grouped in accordance with occupation, was touching upon the time wasted to acquire information.

The majority of the journalists - survey participants usually spend several days to get the requested information (81%), only two journalists stated other versions: one of them usually waits for 2 weeks, the other more than a month.



Contrary to them, NGO activists did not expressed solidarity while answering this question. So, 43% of NGO activists receive



answers usually within several days, 11% within 2 weeks, 23% within a month, 13% of NGO activists have to wait for more than a month. Experts usually get info within a few days (50%). Several experts (3 persons) noted that they have to wait for two weeks and more than a month.

13 % of the total number of respondents showed their own version of the answer. More often sounded variant was that, the time spent for getting information from governmental and municipal bodies depends mainly on the nature of the information (9 persons), on the environment of the governmental and municipal bodies (3 persons). One of the journalists stated that, if officials are willing to disclose information, it takes several minutes, but very often it is totally concealed.

The variations in the answer to the question about time spent for information enquiry is directly connected with question about the methods used for acquiring information. As it was described above, journalists prefer request information by phone and seldom visit officials personally and apply for information in written form. Using this first preferable method it is possible to get information within several minutes, even if it will be not in a full volume, what was mentioned in the answer to the question #6 by 85% of journalists. The similar situation was identified with experts - participants of the current survey. As they give preference to phone calls and personal visits, it takes them from several days to two weeks to get the required information.

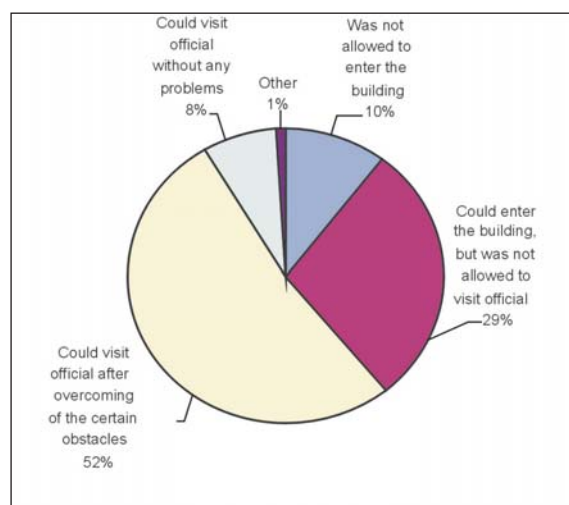
Taking into account the fact that NGO activists often use applications and requests, which are passed either personally or by postal service to the governmental and municipal bodies, the most frequent sounded versions on the timeliness were:

one month (24%), more than a month (13%), two weeks (11%).

Representatives of other professions usually get information within several days. In the equal share sounded answers that information is given within two weeks, one month and more than a month. This picture is directly connected with answers to the question about methods, when representatives of other occupations claimed to prefer phone calls, personal visits and sending requests, applications.

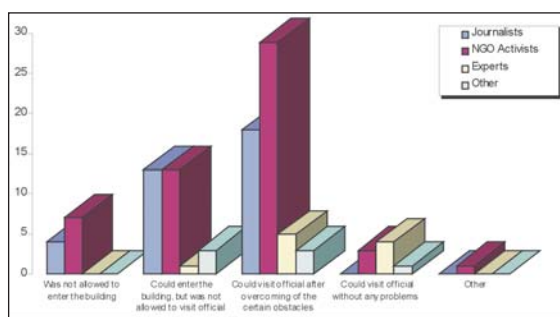
At the same time the answers to the question: "How accessible are governmental and municipal authorities when you visit them personally?" are overlapping irrespective of the professional occupation of the survey participants. In total 10% of the respondents claimed that usually they are not allowed to enter the building, 29% showed that they could enter the building, but were not allowed to visit official, 52% finally managed to be accepted by the official, but after overcoming of the serious obstacles, and only 8% of the participants stated that they are attending officials without any problems.

One of the representatives of the non-governmental organization noted his own answer: "If the state institution is 'closed'



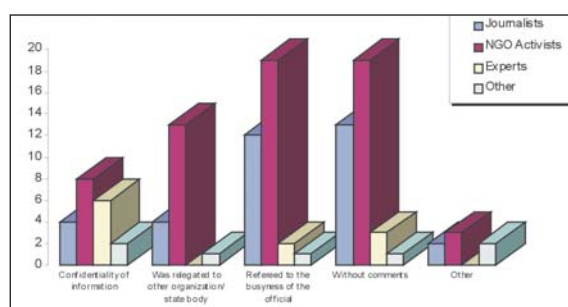
for visits, I try to apply there with written requests, in the 'opened' institutions I try to use official reception hours".

As it is shown in the table below, the percentage is approximately proportional irrespective of the respondents' professional occupation. The only exception are experts, the majority of whom claimed that they can visit officials after overcoming of the certain difficulties (50%) and (40%) visit official without any problems. None of them did face any problems with access to the building and only one expert could not attend official.



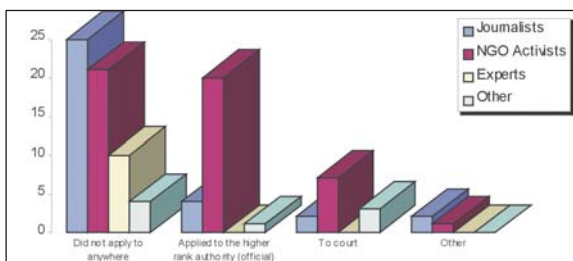
The answers about motivation of the denial of information also to great extent overlap irrespective of the professional occupation of respondents. 17% of the survey participants could not get the required information as it was claimed to be of a confidential character, 16% were referred to the higher rank institutions and officials, 30% could not get information because of the busyness of the officials, and 31% were denied of information without any comments. In the mean time experts more often get negative response grounded on the confidentiality of information, but NGO activists were more frequently referred to other institutions. Two representatives of the non-governmental sectors showed that they never were turned down while applying for information. Other variations of the own answers to this question are the fol-

lowing: "some officials demand permission of the higher rank official to disclose the information", "officials try to shuffle off the responsibility to another officials", "depending on the mood of officials may provide information or not", "officials express different groundless causes in order not to give information". The table below shows the comparative data on denial of information to the representatives of different sectors.



Very interesting picture was revealed in the answers to the question whether respondents applied somewhere to restore their right to information in case of negative response from the governmental and municipal authorities. The majority of the respondents (60%) declared that they did not apply to anywhere. However, the more active in this direction were activists of the NGOs, 43% of them applied to the higher authorities, 14% to the court. To compare only 12% of journalists applied to the higher authorities and 6% to the court, and non of the experts participants of the survey considered that their rights might be restored. Other variations of the answer included application to the press, police, however, neither of them gave positive results. Two of respondents indicated that applications are not giving any effects and they "do not believe that it will bring any results". This opinion is confirmed by the answer to the next question about success-

fulness of the applications to the court. As follows from the answers of respondents none of them could achieve restoration of their right to information.



Also respondents expressed interesting variations of the opinions about the relationships between officials and citizens. Only one person from each group noted that any citizen could get any information upon request. However, the other variants of the answer were not so unanimous among representatives of different professions.

Hence, journalists consider that citizen more likely will not get any concrete information - 44%, 38% connect this to the personal attitude of the officials, 9% consider that information is given depending on the social status of the applicant.

Unlike them NGOs activists see the problem first of all in discrimination of the citizens based on their social status (39%), 29% of the activists do not believe that citizens get any concrete information, and 27% consider that different officials approach citizens differently.

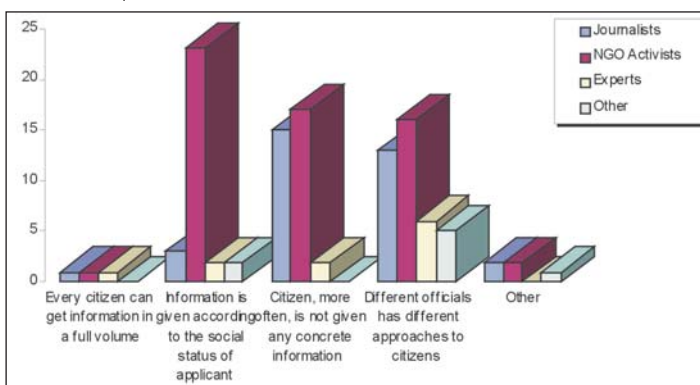
Experts, first of all, put responsibility on officials and on their personal attitudes to the citizens (55%), and equal number of the experts noted variants that citizens usually are not provided with any information and that information is given depending on the social status of the applicant.

Opinions sounded among the own variants of the answers indicated that: "Officials provide only that information, which is in their own interests", "Officials try not to disclose any information to be on a safe side", "More often you get from officials disinformation". Two respondents agreed that the relationships between officials and citizens are non-friendly and unequal: "Officials look upon the citizens from upside down".

The next question was about the relationships between officials and people, who have to apply for information because of their professional occupation (journalists, NGO activists and experts).

The majority of journalists agreed that these relationships might be characterized as non-friendly (28%), equal share (23%) was given for partnership and officially restrained. 23% of journalists did not know the answer and one person presented his own variant of the answer that: "Officials don't want to have any kind of relationships with journalists".

The majority of the employers of the non-governmental sector (28%) consider that the relationships between them and officials might be evaluated as officially restrained, 26% of them think relationships are non-friendly, 22% believe that they might be characterized as partnership relations. And 20% of the NGO activists



expressed difficulty in answering the question. Other variations of the answers of the representatives of the non-governmental sector were the opinions that "relations depend on the personal linkages with the applicant" and "relations are of non-official character".

The majority of the experts consider that the current relationships are non-friendly (37%), 18% stated they are based on partnership, 9% consider them to be distantly formal. However, 27% experts had difficulties in answering this question. As other variant of the answer, one of expert noted that: "Relationships are not fully established yet, but I wish them to be on the partnership level".

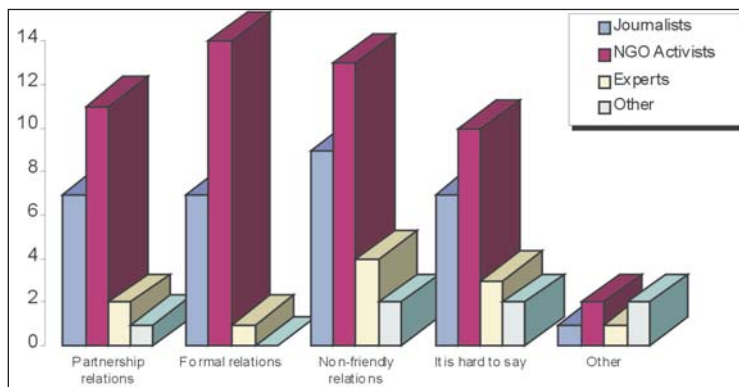
The majority of the representatives of other professions consider the relationships to be non-friendly. One person noted variant that relationships are of a partnership character. Other variations of the answers included followings: "They (officials and journalists, experts, NGO activists) show the mutual interest to each other", "Everything depends on the personal features of the parties".

select answer from the given variants or present their own. And the majority of the respondents chose the last option and used this opportunity to express their own opinion.

Half of the journalists-participants consider that the main obstacle to cooperation is inclination of the officials to conceal the existing facts. 29% of the journalists consider as a problem personal characteristics of the state officials, 15% showed the regulations from the higher authorities to avoid such meetings and 3% of journalists consider as a problem non-professionalism of the applicants themselves. Among their own variations of the answers sounded opinions that "officials still thinks about Mass Media in the terms which dates back to 1980th", and "officials try to conceal all the facts especially, if they are negative".

Opinions of the representatives of the non-governmental sector almost in equal share distributed around the following variants of answers: 27% -personal features of the officials, 28% - obstacles are inclination of the officials to conceal the existent facts, 28% - instructions of the higher rank

authorities on undesirability of the contacts. 12% of the NGO activists consider that the problem is non-professionalism of the applicants themselves. One of the NGO activists showed that development of the relationships is hindered by the sum of all above-mentioned factors. Other variations of the answers were the followings:



Other key question of the current survey touched on the causes, which impede cooperation between officials and people, who apply to them for information. While answering this question respondents could

"The relationships can not be build up as there is no trust and no initiative from the officials to establish it", "There are no civil relationships established yet, there is no equality, observation of the laws and equal

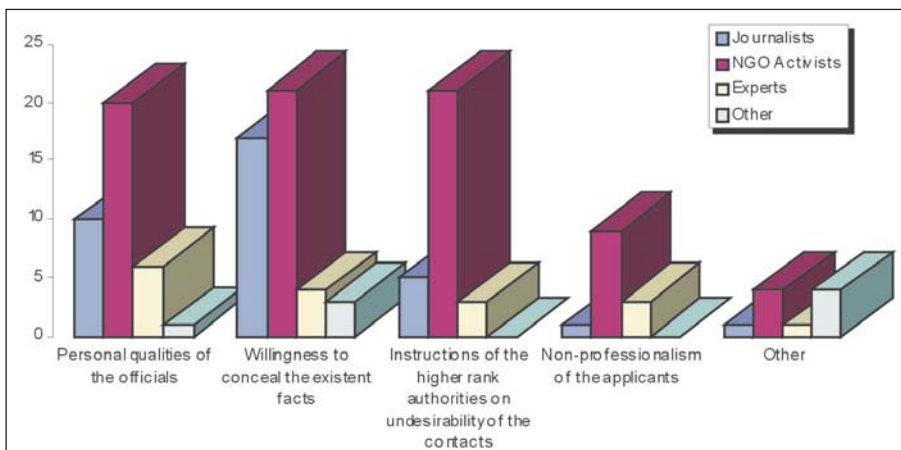
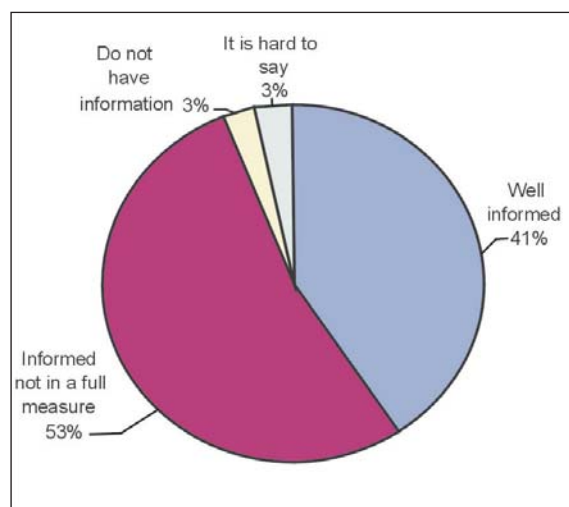
accountability before the court", "The greatest problems are the authorities".

Experts consider as an obstacle, in the first place, personal characters of the officials (34%), then willingness to conceal the existent facts (24%), instructions of the higher-rank authorities to avoid the unwanted contacts (18%) and finally non-professionalism of the applicants for information (18%). One of the experts noted that "sometimes officials are not ready to answer the given question".

Representatives of other professions noted only two variants of the answers given in the questionnaire. The majority of them considered that the biggest concern is willingness to conceal the existent facts, less of them pointed to the personal characteristics of the officials. One person stated that he does not know the answer to this question. Other own variants of the answer were the followings: "The cause is non-professionalism of the both sides", "Everything depends on the information and how it will be further used".

(53%). 40% stated that they do not have the complete information about this, 3% do not have information at all and 4% had difficulty in answering this question.

However, when the answers are considered separately based on the occupation of the respondents, the picture is that the biggest share of the respondents, who are aware of the mechanisms are NGO activists (66%). 24 % of the representatives of the non-governmental sector admitted that



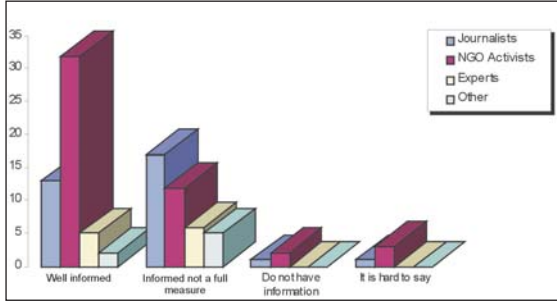
have incomplete information, 4% did not have any information and 6% had difficulty in answering the question.

Differently from NGO sector journalists, experts and representatives of other professions

While answering the next question about acquaintance with the existent mechanisms of requesting information from governmental and municipal authorities, the majority of the respondents responded positively

acknowledged that they do not have complete information (53%, 55% and 71% accordingly). 41% of journalists noted that are sufficiently acquainted with existent mechanisms. One journalist admitted

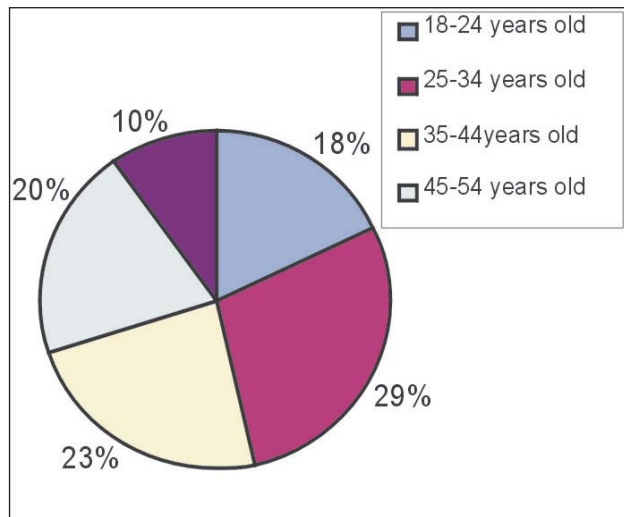
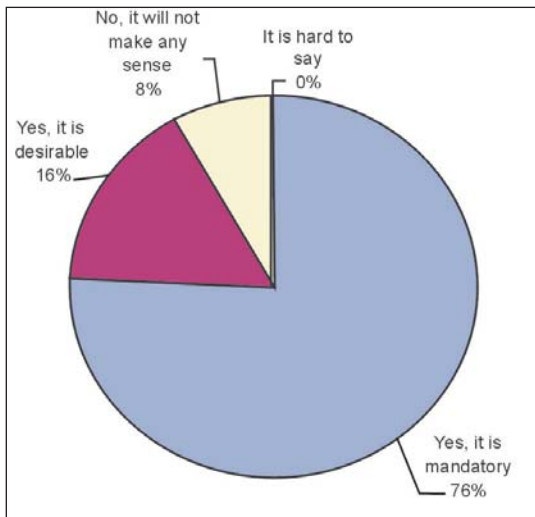
that he did not have information, and another journalist had difficulty in answering the question. None of the experts and representatives of other professions pointed that they do not have information on this issue.



Respondents irrespective of professional occupation generally agreed on the importance of the enforcement of the existent

legal mechanisms and creation of the new ones, to protect citizen's right to information from governmental and municipal authorities. Hence, 76% of respondents replied "Yes, very important", 16% consider that these legal guarantees are desirable, and only 8% of the respondents consider that it is not important as will not make any real changes.

The survey was conducted among 99 respondents, out of whom 33 were women and 66 men. The majority of the participants (29%) were in between of 25 and 34 years old, 18% were from 18 to 24 years old, 23% from 35 to 44 years old, 20% from 45 to 54 years old, and 10% of respondents were above 55.



FINAL OPINION ON THE MONITORING ON OBTAINING INFORMATION FROM THE INSTITUTIONS OF STATE AND LOCAL GOVERNING AND AVAILABILITY OF THE ACCESS TO GOVERNMENTAL INFORMATION RESOURCES

The results of the monitoring, conducted due to various tools, were included to the monitoring report separately. The results reflect the conducted research objectively and, in this regard, the obtained results do not contain much information on the evaluation of the results of existing situation. Therefore, below we bring to your attention the lawyers' generalized opinion on the results of researches, conducted by different monitoring groups.

The article 50 of the Constitution of Azerbaijan Republic reflects everyone's right to obtain the information freely. It makes sense to note that this clause is not declarative, because first of all, this Constitutional clause has direct legal force; second, there exists a number of legislative and normative acts, containing the concrete mechanisms on this law.

During the implementation of the monitoring on evaluation of the access to information, kept by the institutions of state and local governing in the country - the study of the existing situation was realized mainly in two directions. One of them was learning

the real situation of existing legislation, including its correspondence to the international standards; and the second, to evaluate **the access to information, kept by institutions of state and local governing** in the country.

At the same time, the existing situation on obtaining information, reflected both in legislative acts and in practice was evaluated within the framework of principles, which had been defined on the basis of modern standards. These principles are as the following:

- Availability and openness of information for public access;
- Provision of security of an individual, society and the government during obtaining; preparing, transferring and distributing the information;
- Public awareness of the activity of institutions of state and local governing;
- Legality of obtaining, transferring and spreading the information;
- Reliability, completeness and objectiveness of the provided information;

- Protection of the right for information.

These very principles were the basis during the evaluation of monitoring results, conducted in all the directions.

During the monitoring process, there were observed cases of restriction of information in illegal and groundless way (or in the way contradicting the international standards) during **creation of law and norm** or **application of law and norms**. The observations show that certain procedures and rules, maximum restricting the information access, are deliberately included into the relevant laws and norms even at the stage of preparation and adoption. The second case occurs during the application of the law and normative act. The existing law or norm is either not applied correctly or is deliberately violated.

As a matter of fact, the conducted monitoring covers not the first, but the second case or period, therefore the preparation and adoption of the laws and normative acts haven't been the objects of research.

Analysis of the legislative and normative acts

Within the monitoring framework there was made analysis of legislative and normative acts, ensuring the information access, as a result of which there was considered the level of provision and application of the above mentioned principles in comparison to norms. Having generalized the results, it can be concluded:

- The existing legislation and normative acts do not ensure the concrete mechanisms for making the free access to and openness of public information for all the concerned. The law on freedom of information is declarative and creates

favorable conditions for officials not to give the information. Though the law on Mass Media Outlets relatively contains some mechanisms, the conducted monitoring showed that any institutions of state and local governing if they do not want to give the information, can easily ignore both the verbal and written inquiries, including those, requesting immediate information. They not only refuse to reply the inquires of journalists and editorial office without any grounds, but also in most cases do not accept the inquiry at all; sometimes they do not reply at all, even if the reply contains the refusal. In such cases, they are not exposed to any administrative punishment or public reprimand. Though the law on Environmental Information relatively meets the standards of Orphus Convention, the officials can easily violate the requirements of the law during its application and therefore, even the law with concrete mechanisms does not guarantee the access and openness to information. It is not occasional that the environmental information is among the most closed types of information. The local, foreign and international experts repeatedly noted the imperfectness of the law on state secret. This law helps the officials not to give even the open type of information. The law on struggle against corruption, which started to be applied since the beginning of 2005, does not meet the international standards and the law makes it possible to hide certain information from the public and from broad population. Other relevant norms don't fully ensure the availability of access to public information and its openness. Unluckily, the law on obtaining information, newly adopted by the

parliament, which meets some of international standards, including the relevant international norms, joined by Azerbaijan - does not create proper conditions for full information access.

● It was determined during the legislative analysis, that the principles of "openness" and "secrecy" were not clearly defined on the level of legislative and normative act. As a result, the normative acts do not fully ensure the security of an individual, society and the government during the time of obtaining, preparing, transferring and spreading of information. The law of freedom of information includes the principles "keeping the secrecy of everyone's private and family information", "protecting the security of individual, society and government" in a very declarative manner. However, there were taken serious measures connected only with the security of state information and the special law was adopted.

● A newly adopted law (the Law on Obtaining the Information) defined certain rules for making the information about the activity of institutions of state and local governing available to the public.

● According to this law any person can appeal to the institutions of state and local governing to receive the information. The law partially defines the rules and procedures of applying for and obtaining the information. The law also set the tasks for institutions of state and local governing. According to the clause of the law, the information keepers must release the information they possess or the information they obtained during their public work in order to ensure the public interest in more immediate and

easy way and to reduce the numerous information inquiries. The law lists the information to be released and defines the rules of doing it. According to these rules, the information must be available through the internet information resources, mass media and official publications. Along with having this law entered into force, other legislative acts must suppose punishment for officials. If it happens the official who is to share the information will approach to his /her duty with more responsibility. The supposed responsibility must rely on concrete mechanisms and have more serious sanctions. The national Constitution ensures the freedom for everyone to seek, obtain, transfer, prepare and spread the information in a legal way. And the existing legislation defines the concrete mechanisms and rules of implementing this Constitutional clause. However, the gaps in some norms, which are supposed to ensure the legality of obtaining, transferring and spreading the information, particularly in the law on state secret, make the legality of getting the information doubtful.

● The relevant legislative acts as well as the law on obtaining the information - newly adopted by the parliament, do not ensure the reliability (its being correct and objective) of the information to be provided by the information keeper in response to the inquiry or released in accordance with the legislation. It means that if the information keeper distorts the information deliberately while passing the information, there are no concrete responsibilities, supposed for checking the information for reliability as well as against the official and institution, which deliberately made the distortions. The

official must ensure the reliability of the information and must be responsible for its reliability. The existing legislation does not fully regulate such cases.

● One of the important issues, revealed during the analysis of the legislation, is the lack of measures in the legislation, directed to protection of the right to get the information. If the rights of the person, who requested information, are violated, he/she can appeal to the court. However, the Code on Administrative Offences and the Criminal Code does not suppose serious punishment for illegal restriction or violation of the right to get the information.

The opinion about the practical parts of monitoring

The attempts of representatives of organization to obtain the open type of information by means of visiting the institutions of state and local governing or sending the written inquiries, the activity of organization to obtain the information through submitting the written inquiries, journalists' written and verbal inquiries - can be considered the activities, directed to practical part of monitoring. It should be noted that the application of this type of monitoring tools gave extremely serious results. The application of these tools raised the objectiveness of monitoring results. The tools, applied in this direction, in some way has refuted not only the thoughts, formed in the country for many years, but also the analysis and reports of various international and local organizations; and revealed different truth, existing in this field. Among these tools - the written inquiries, sent by the organization to various institutions of state and local governing gave unexpected

results.

A number of governmental bodies seriously approached the inquiries of organization and sent the detailed and perfect information to the mailing address of the organization within the legal timeframe. For example, the inquiry sent to the Ministry of Transport was replied by two different departments of the ministry and the replies tried to satisfy the organization's inquiry. In order to provide the organization with the requested information properly, the State Road Police of the Ministry of Internal Affairs invited a representative of the organization to the office, consulted with him and submitted the requested information first in verbal, and then, in written form.

8 of 27 institutions, which had been sent test inquiries, did not reply to the organization at all. Nevertheless, the written responses of 17 institutions are evaluated very positively, although a part of these replies were not satisfactory.

The written inquiries, sent by the organization, were prepared by high professionalism and at the end of every letter the addressee-institution was reminded that the requested information was of open type and that institution had a legal obligation to provide the information. For this very reason, a number of high level governmental bodies seriously approached to the inquiry. The written test inquiries of the organization revealed a number of issues, which were not registered up to that time.

They were mainly the following:

● Though in many cases the problems of access to information, kept by the institutions of state and local governing are related to gaps and disadvantages of the legislation; in addition to this problem and even more serious than this

problem is the weak tradition and practice of obtaining and releasing the information in the country.

- The majority of inquiries, sent or submitted to the institutions of state and local governing are not composed literately. The person, addressed for information cannot often understand what concrete information he is asked for. The level of skills on requesting the information is also very low in the country.

- The institutions of state and local governing differentiate who is asking for the information. The requested information can be easily given to an organization, individual, journalist or editorial office and at the same time, the others can be refused to get the same information. The officials take into account the status of the information inquirer in the society. They treat differently the inquiries of representatives of mass media outlets, depending on the pro-oppositional or pro-governmental position.

- The majority of the representatives of institutions of state and local governing do not realize the importance of the kept information for the society. At the same time, the most officials of institutions of state and local governing, especially low ranking regional officials, are unaware of their legal duties and, therefore, do not have a feeling of responsibility. Among the institutions, which approached ignorantly to the written inquiries of the organization, the courts and municipalities should be particularly emphasized. The unawareness of municipalities of the existing legislation is commonly admitted, but the juridical illiteracy of the courts was really unexpected.

Thus, none of the written inquiries, submitted to the district courts of Baku city were accepted. The organization had to send the letters by post. Only 6 of the inquiries, sent to courts, were replied.

The number of replies to journalists' inquiries is even less. The critical pro-oppositional position of mass media outlets, where the inquiring journalists were from, influenced the results too.

The attitude toward the citizens' inquiries was more miserable. In many cases, the representatives of the organization, acting as ordinary citizens, were not allowed to enter the building of institutions of state and local governing at all; and they were exposed to offences. The ordinary citizens have fewer chances to get received by an official or to make a phone call to him, in comparison with representatives of mass media outlets and NGO-s. In addition, the officials misuse the people's unawareness of the legislation. The requirements of the law on Considering the Citizens' Appeals are seriously violated. But the citizens' possibility of any legal action against the official to restore the broken rights is very limited.

According to the existing laws on Freedom of Information, on Obtaining the Environmental Information and on Mass Media Outlets as well as the law on obtaining the information, newly adopted by the parliament, the content of the replies to be provided by the official in response to the inquiries can be as the following:

- the inquirer is provided with the information
- the inquirer is refused the information
- the inquirer is notified about the extension of timeframe for providing the information.

The relevant laws have the requirement on each of the variants. The law on Obtaining the Information, newly adopted by Milli Mejlis, gives the right to information keeper to refuse the provision of information in certain cases. For example, according to the law, if the inquirer requests the legally defined restricted type of information, then he/she may be refused in its provisions. The legislation reflects other reasons for refusals too. But in all the cases, the information keeper should reply to the inquirer, explaining the reason of the refusal in accordance with the legislation.

According to the new law, in some cases the information keeper can extend the timeframe for responding the inquiry. The information keeper must justify the reason of incapability to respond to inquiry within 7 days and must inform the inquirer about it within 5 days. According to the law, "if the information keeper receives too many inquiries and if for this reason he/she needs additional time to prepare the information, or to study numerous documents for clarifying the information, then he/she may extend the period of execution to extra 7 working days". Thus, if these days coincide with holidays, including the weekends, the period can be 9 days.

The phrase **if the information keeper receives too many inquiries**, reflected in the law, gives the opportunity to officials to extend the timeframe of response to any inquiry. The inquirer has not possibility to check if the information keeper really extended the timeframe for the reason of receiving "**too many**" inquiries, and therefore, the legislation openly creates the conditions for officials' willfulness. In reality, the failure to respond the inquiry in time for the reason of receiving too many inquiries is a technical issue and the provision of

institutions of state and local governing with such a right on legislative level - cannot be considered a normal phenomenon.

In reality in Azerbaijan Republic there is the fourth variant of practice connected with obtaining the information from institutions of state and local governing. Regardless of being illegal, this variant is quite wide spread. All the monitoring tools, applied during practical part of the conducted monitoring, demonstrated it with objective indices. 72 of 128 inquiries, totally made in all forms within the monitoring framework, were replied at all. 43 of non-replied inquires were journalists' inquiries. Therefore, it can be concluded that the officials are more unlikely to answer the inquiries of mass media outlets. And the main reason of it is highlighting the information in mass media outlets, in other words, making it available for broad public. Another reason, revealed during this monitoring, is the pro-oppositional standing of the press outlets, where the journalists were from. It should be noted with regret that such kinds of press outlets highlight and comment the obtained information in accordance with the standpoint of their editorial office.

Thus, having generalized the practical parts of monitoring, let us evaluate how closely the institutions of state and local governing follow the principles of legislation and practice:

- The existing conditions are practically not favorable for citizens, organization and press outlets to access the public information and the release of these kinds of information is not available for the mentioned groups. The reaction of officials to the submitted inquiries relies on their views, instead of principle to respect the law. In other words, if one of

the institutions of state and local governing replies to the inquiry in perfect form, the rest do not reply at all. For example, the content of inquiries, sent to courts and municipalities was the same. However, some of the courts and municipalities replied to inquiries in satisfactory form, while others approached the inquiries in particular neglected manner. It is incorrect to explain the existence of such cases by imperfectness of existing legislation. There is no guarantee of non-occurrence of similar cases after the adoption of the new law. The official can easily violate any law and he/she is not supposed to get punished for that.

● During the monitoring there was not registered any case when the inquirer had been refused for the sake of interest of an individual and society. However, none of the journalists' inquiries to the Ministry of Defense was replied, though the requested information was of open type. In general, in the majority of cases the force ministries of the country attempt to explain the refusal for security and military secret reasons, when they are uneager to give the information.

● During the monitoring, all the representatives of the organization, submitting the inquiries as ordinary citizens, journalists or on behalf of organization, directly to the institutions of state and local governing, also made observations inside and outside the building (mainly in reception and in general departments, accepting the documents). In the majority of cases there were no special information corners, boards or other informational tools in these institutions for informing the public. Only some institutions (e.g. Ministry of Justice) placed some information (e.g. rules of register-

ing the juridical persons in the Ministry of Justice) in the reception rooms. Almost none of the institutions of state and local governing prepared or spread the guiding booklets or brochures on their activity. The majority of institutions do not have the web-pages either, or when they have there is not information placed for the interest of broad public. For example, there is not board of tariffs of directly paid services, provided by the State Road Police of the Ministry of Internal Affairs at the places. The web page of this institution contains only the tariff of technical service of the automobiles. The State Customs Committee uses all the means to hide the information which is directly within the population's interest, including the information on custom tariffs. There was not observed any information boards on local taxes, prices of the land for rent or prices for services in any of the institutions of state and local governing. Thus **the level of people's awareness of activity of institutions of state and local governing is extremely low.** The existence of this phenomenon creates big possibility for non-transparent activity and wide-spread corruption in these institutions.

● During monitoring the rights of organization's representatives to obtain the information was rudely violated in a number of institutions of state and local governing. Thus, the courts refused to accept the written inquiries at all and treated the representatives of the organization who brought the inquiry, in a very rude manner. In Binegedi district municipality, the inquirer was treated badly because he was a representative of NGO and he was told that there would not be

given any information to such organizations. A worse attitude was applied to people, acting as ordinary citizens. The representatives which wanted to enter the building of institutions of state and local governing to get received by any official or just to get some information from the relevant structure, faced irony or offence in the majority of cases and were not allowed to the building. Baku city Executive Power should be particularly emphasized in this regard. This institution even replied to the organization's inquiry in a very illiterate and ironic way (e.g. "it would be good if you read the laws"). Thus, during the monitoring, **in a number of cases the institutions of state and local governing neglected the legality of the right to obtain the information and therefore, seriously violated the existing legislation.**

● As it as shown below, the legislation does not ensure the reliability of the responses, received to the inquiries. This phenomenon is openly observed in the practice. During the monitoring period there were the cases when the organization made several inquiries for the same information. In many cases, the reply given to the written inquiry of the organization and those of journalists, were absolutely different. It shows that the officials can provide incorrect and non-objective information by making it distorted. Unfortunately there are no serious mechanisms in the legislation or practice to prevent such cases.

● During monitoring period there was observed the neglect in the high structures of institutions to the information about the lower structures, which refused to give the information. For

example, not having received any reply from the district executive powers of Baku city, the Central Executive Power of Baku city was informed about this ignorance, but it did not react either. Regardless of being complained of the court bodies, which had violated the law in an open and rude manner, the Court Juridical Council did not explain such actions. The frozen state of court system of the country cannot prevent the violation of the right to obtain the information. The citizens of the country cannot use any serious effective method to protect their rights, when they don't receive the information on their interest. Therefore, the **protection of the right to obtain the information** remains to be non-provided both in legislation and in practice of the country.

A poll among the experts

One of the most important tools for monitoring was a sociological poll, conducted among the experts with the purpose to **determine the level of possible access to governmental information resources and the possibility to get the information from governmental institutions of state and local governing.**

The poll was held by experienced sociologists and respondents were the experienced experts. The results of the poll coincided in many points with the practical part of monitoring. The results of the survey showed that imperfect legislation is not the only factor preventing the obtaining of information. Similarly to the results of other monitoring tools, the poll confirmed that the practice and tradition of obtaining and giving the information is too weak in the country. Moreover, the results of the

poll, like other monitoring tools, show that it is often impossible to find or make a phone call to the official, who possesses the information. And this proves once more the existence of the reason preventing the access to information. This reason is the structural problem. There is not a common structure or responsible person, keeping all the data, in the majority of institutions of state and local governing - this is a serious obstacle for getting the information. Besides, the results of the poll confirm that the officials are not interested in providing the journalists with the information.

The monitoring of the press

Another tool for evaluation was the monitoring of the press. Within the current project the monitoring of press is not considered to be a main tool for objective evaluation. The results of monitoring were just applied for strengthening the results of other evaluation tools. Still, the monitoring of press could reveal a number of issues.

One of the revealed facts is the different approach of the institutions of state and local governing toward different press outlets and in the majority of cases this approach is crucial in the decision to give or not to give the information or in what form to give it.

The analysis of the materials of monitoring of press allows concluding that in some cases there was no necessity to get the information confirmed, in other cases there was neglect of journalists or editorial office or the preliminary awareness of impossibility to specify the information.

Most journalists explain their non-application to relevant the institutions of state and local governing to specify the information, received from the other source - by the difficulty or even impossibility to do it. Indeed

this thought is confirmed by other tools of monitoring. The majority of officials are unlikely to answer the inquiries; or it is impossible to make a phone call or get received by them. In other cases, there is only one centralized body for obtaining the information (e.g. the Press Service of MIA) and this body does not possess the information on the incidents, happening in other structures.

Another serious problem is the problem of reliability and transparency of the information provided by the institutions of state and local governing themselves or highlighted in mass media outlets.

In many cases the relevant body makes purposeful distortion while releasing the information and in reality, incorrect information is spread. Or different bodies release different information, sometimes even contradicting to one another, on some events. For example, the information on landslip cases, occurring in mountainous parts of Baku was given by different governmental bodies so differently even contradicting to one another, that it made the population confused about the issue. Unfortunately, in such cases it is very difficult to determine which of the spread information is correct. Such cases are quite frequent even concerning the information on people's health, security and environment. The gaps in the law on mass media and in other laws cannot prevent the distribution of non-reliable non-transparent information. One more problem is the issue of passing the collected information to the people by the press bodies. The monitoring revealed that sometimes the same information is highlighted differently by various press outlets depending on their affiliation. The existence of such cases makes one doubt about the reliability of the information.

THE REASONS, CAUSING THE PREVENTION OF GETTING INFORMATION, WHICH WERE DETERMINED IN RESULT OF MONITORING

The monitoring, conducted within the project framework, determined not only the general situation with the possibility of obtaining the information from the information keeper - the institutions of state and local governing, but also revealed the reasons, causing the existing obstacles for getting the information. The majority of the reasons are specific. These reasons are typical not only for Azerbaijan, but also for a number of other countries, living in similar conditions.

The determined reasons are the following:

Legal reasons

- During the preparation of national norms, there were not used the universal and all-European international documents, including the numerous relevant resolutions and decisions of the Commission of Ministries and Parliamentary Assembly of the Council of Europe, the decisions of European Court, made on the basis of article 10 of the Convention. As a result the national

norms do not fully meet the international standards.

- The lack of perfect and correct mechanisms, ensuring the information access to be reflected in relevant legislative acts.
- The non-existence of serious punishments toward the information keepers and officials, when they do not give the information without any grounds

Structural and organizational reasons

In a number of cases, the institutions of state and local governing could not respond to the inquiry of the organization though they wanted to respond. It happened for the reason that there is no common structure in most existing institutions of state and local governing, especially the lower ranked bodies, which would collect all the information. The bodies do not have the organizational capability or have a very weak capability to reply to citizens inquiries or to make the information public, when there is no inquiry.

Only the central institutions have press services, which cooperate only with mass media outlets and cooperation is not on high level. The institutions of state and local governing do not have the internet-based information resources. The new law, adopted by the parliament creates certain opportunities to resolve this problem.

**The problems
of procedural character**

The procedures of making or answering the inquiry which are reflected in the norms and existing in practice, are extremely complicated. For example, the existing practice of circulating the document within the office is residual of socialist period. That practice was supposed for a closed society and, therefore, does not meet the current requirements. This practice delays the circulation of all the incoming and outgoing correspondence, including the circulation

of the documents necessary for informational access.

**The reasons of cultural,
political and public character**

Though these reasons do not get much attention of experts, they are still the serious obstacles to get the information. On the whole, similarly to the low level of "culture of openness" and the "culture of secrecy", there is not tradition of making the inquiry and answering the submitted inquiry. At the same time, basing on the results of monitoring, it can be noted that information keepers take into account the affiliation of the inquirer while giving the information. The existence of split in the society, low level of political dialogue, confrontation between the authority and political opposition, the split of mass media to pro-governmental and pro-oppositional outlets - all this negatively impacts the process of giving and spreading the information.

RECOMMENDATIONS

The personnel, conducting the monitoring as well as the lawyers, attracted to the implementation of the project, prepared recommendations for resolving the problems, which had been revealed as results of monitoring. The recommendations are directed for changing and improving the legislation and improper practice. At the same time, the situation for obtaining information cannot be completely changed only by perfect legislation and practice. That is why the recommendations are also addressed to the structures of civil society and mass media outlets.

- There should be made supplements and amendments to a number of legislative and normative acts, connected with obtaining the information. First of all, the Criminal Code and the Code on Administrative Offences must be supplemented and amended. Currently the codes do not suppose any sanctions for the groundless refusals in information provisions. The supposed sanction must be applied for groundless refusals to give the information not only to journal-

ists, but also to all inquirers.

- The cases, when an official can be charged in administrative order, must be specified in the Code of Administrative Offences, when the official is charged in administrative order for violating the right to obtain the information, he should not be released from his duty to provide the requested information.
- The official, who is charged and punished in administrative order, should immediately satisfy the requirements of the inquirer. The code should contain a special clause about it.
- If the official violates the right to obtain the information rudely more than once and if this violation brings serious harm to the inquirer, then he must be punished in accordance with the Criminal Code, which should be included the new clauses about it.
- The acceptance, work and response to inquiries in precise and timely manner will remain problematic unless there are realized the measures for improvement of stationery activity within the office.

Therefore, there should be applied the rules approved by the decision of the Cabinet, which will be directed to the balance of issues, related to consideration and response of inquiries in the institutions of state and local governing. These rules should reflect the concrete mechanisms and procedures providing the information, requested in the inquiries.

- In institutions of state and local governing there should be organized a specified structure or appointed person, responsible for accepting the inquiries and providing the information - this would be effective measure.

- The special trainings on the rules of giving the information should be organized for officials of the institutions of state and local governing, there should be held the work on juridical education for the officials. For this aim, the special training program should be worked out and realized.

- In a number of cases the inquiries do not apply to the institutions, related to the requested information. In such cases, according to the legislation, the institutions, which received the inquiry must re-send it to the relevant body and must notify the organization about it. Relying on the results of monitoring it can be said that the majority of institutions of state and local governing do not know which body possess the requested information, which themselves do not have. As a result, the requirement of the law is violated. There should be conducted the arrangements for information exchange between the governmental institutions of state and local governing.

- The special governmental programs,

targeted at raising the culture of obtaining the information in the country would meet the goal. The program should contain the instructive and educational arrangements through extensive cooperation with civil society structures and mass media outlets. The acquaintance with international practice would give positive results for effective activity in this field.

- There should be determined common standard rules for creation of web-based information resources of institutions of state and local governing and there should be prevented any cases of spontaneous action during the creation of internet information resources.

- The court bodies should play serious role in preventing the violation of right to obtain the information. The independence of courts and the judges' well awareness of the national and international norms can be a serious guarantee for ensuring the right for freedom of information.

- There should be realized the relevant arrangements for extending the legal possibilities for all the inquiries (mass media, individuals, organizations)

- There should be created proper conditions for receiving the citizens, representatives of mass media outlets and organizations in the institutions of state and local governing. For this purpose, there should be organized reception rooms with normal conditions in the offices. The inquirers who want to get the information directly from the official should be provided with maximum conditions for free entering the building, when it is not possible there should be organized regular reception days.

The recommendations for civil society institutions and mass media outlets

● Non-governmental organizations and mass media outlets should use the court mechanisms, when they do not get the replies to the inquiries in time and when they get incorrect reply. In all the cases, the institutions of state and local governing invited to the court proceedings, will have more careful approach to further inquiries. At the same time, the activity of these bodies will be formed in the nearest future and the Authoritative Institution on Informational Issues will focus on it.

● While making inquiries, especially written inquiries, it is very effective to remind the official the type of requested information and the duty of the body to provide the information. During the conduct of monitoring our organization sent the inquiry in ordinary way and with reminders and the results were different.

● There should be organized public actions within the legal framework toward the institutions of state and local governing, which repeatedly approached the inquiries with neglect (for example, to determine the nominations of the

most closed institution, the most unreachable official, etc)/

● The mass media outlet should not distort the information obtained from the institutions of state and local governing. If the information given to the journalist is doubtful for being correct and reliable, then the information should be cross-checked from other sources or the information keeper should be charged for not giving the precise information.

● The NGO-s and mass media outlets should hold awareness-raising and instructive work on the theme of obtaining the information; they should contribute to the creation of culture, tradition and practice of obtaining information in the country.

The international institutions should not rely on the information taken only from one organization, while writing the report on the situation of freedom of speech, freedom of information exchange, which can cause non-precise and non-objective information.

The international and foreign organizations should help to propagandize and advocate the experience of advanced foreign countries to ensure full freedom of information in Azerbaijan.

SUPPLEMENT

Survey on the access to the state informational resources, governmental and municipal bodies

1. You age:

- a) 18-24
- b) 25-34
- c) 35-44
- d) 45-54
- e) above 55

2. Gender

- a) male
- b) female

3. Professional occupation:

- a) Journalist
- b) NGO activist
- c) Expert
- d) Other (please specify) _____

4. Does your professional occupation require you to apply for information to state and municipal authorities of dif-

ferent ranks?

- a) Yes
- b) No

5. Which method of acquisition of information from governmental and municipal authorities do you use more frequently?

- a) Phone calls
- b) Personal visits
- c) Leaving request and application
- d) Sending request and application by post
- e) Through authorized representative
- f) Other:

6. Please, evaluate quality of the informational services provided to you by governmental and municipal authorities.

- a) Received information in a full volume
- b) Received information but not in a full volume
- c) Did not receive anything

7. Please evaluate timeliness of information receipt

- a) Within few days
- b) Within two weeks
- c) Within a month
- d) More than a month
- e) Other:

8. How accessible are the governmental and municipal authorities when you visit them personally?

- a) Was not allowed to enter the building
- b) Could enter the building, but was not allowed to visit official
- c) Could visit official after overcoming of the certain obstacles
- d) Could visit official without any problems

9. In case you were denied of information, which cause was brought up as a ground for denial?

- a) Confidentiality of information
- b) Was relegated to other organization/state body
- c) Refereed to the busyness of the official
- d) Without comments
- e) Other:

10. In case you were denied of information, connected with the activities of the governmental and municipal authorities, have you applied for restoration of your right and, if yes, then where?

- a) Did not apply to anywhere
- b) Applied to the higher rank authority (official)
- c) To the court

d) Other:

11. In case of application to the court, have you succeeded in restoration of your right to information?

- a) Yes
- b) No

12. How you will evaluate existing relationships between officials and population?

- a) Every citizen can get information in a full volume
- b) Information is given according to the social status of applicant
- c) Citizen, more often, is not given any concrete information
- d) Different officials has different approaches to citizens
- e) Other:

13. How you will evaluate existing relationships between officials and people, who have to apply for information because of their professional occupation (journalists, experts, NGO activists)?

- a) Partnership relations
- b) Formal relations
- c) Non-friendly relations
- d) It is hard to say
- e) Other:

14. What, in your opinion, hinders cooperation of the officials and people, who have to apply for information because of their professional occupation (journalists, experts, NGO activists)?

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- a) Personal qualities of the officials
 - b) Willingness to conceal the existent facts
 - c) Instructions of the higher rank authorities on undesirability of the contacts
 - d) Non-professionalism of the applicants
 - e) Other:

15. How well are you aware about the existent mechanisms of the information delivery by the governmental and municipal authorities of different rank?

- a) Well informed
- b) Informed not in a full measure

- c) Do not have information
- d) It is hard to say

16. Do you consider necessary legal enforcement of the existent mechanisms and creation of the new ones to ensure citizen's rights to information from governmental and municipal authorities?

- a) Yes, it is mandatory
- b) Yes, it is desirable
- c) No, it will not make any sense
- d) It is hard to say