



“Rezonans” Youth Public Union

The Council on State Support to NGOs
under the Auspices of the President of the
Republic of Azerbaijan

Implementation of the measures envisaged in 2th direction (Ensuring the acquisition of information) of the National Action Plan for 2016-2018 on Promotion of Open Government

MONITORING REPORT

(April 2016 - October 2017)

Baku - 2017

This report has been developed within the framework of the Project of “Monitoring of 2nd direction (ensuring the acquisition of information) of “National Action Plan for 2016-2018 on Promotion of Open Government”” implemented by “Rezonans” Youth Public Union with the support of Council on State Support to NGOs under the Auspices of the President of the Republic of Azerbaijan.

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ANNOTATION

This report focuses on identifying progress and challenges in implementation of measures envisaged by 2nd direction of the National Action Plan. Monitoring group described developments and infirmities in implementation of 5 items on 2nd direction of national Action Plan and identified recommendations.

Studies conducting in the course of monitoring showed that significant progress has been achieved in recent 10 years to ensure freedom of information, the application of legislation related to freedom of information, and facilitating the access of citizens to information.

Ensuring the freedom of information, establishing relevant mechanisms for the access of the citizens to information were noted as one of the important components of the state program and action plans on promotion of “open Government” to ensure human rights and freedoms, increase transparency and fight against corruption.

By the Order No.2292 of the President of the Republic of Azerbaijan dated on July 28, 2017, ensuring the freedom of information was noted as one of the main principles of increasing transparency and fighting against corruption in the Approved National Strategy on increasing transparency and fighting against corruption and Action Plan for 2007-2011 in connection with its implementation: - “Except for information restricted by law, public authorities should inform the public about their activities. Public authorities take necessary measures to obtain information about persons’ mass media’s and civil society institutes’ activities”.

Item 10 of Action Plan for 2007-2011 of Strategy covers taking measures on “Improving Access to Information Freedom”.

The National Action Plan for 2012-2015 on Promotion of Open Government plans to ensure the freedom of information, implementation of 9 measures on increasing the level of information disclosure in the activities of the public authorities:

- Preparation of annual report and publication of them on web pages of state bodies about their activities
- Conducting press conferences and public events of state bodies in the form of direct communication with public authorities
- Compiling a simple-language version of legislative acts governing the activities of state bodies, guidelines and promotion of these guidelines among the citizens
- Establishing internet portals covered by state programs

- Defining a single exemplary form and minimum conditions in accordance with modern standards of web pages of the state bodies.

Item 4.16 of “National Action Plan in the field of increasing efficiency of protection of human rights and freedoms in the Republic of Azerbaijan” adopted in 2011 intends implementation of measures on “Awareness-raising activities and effective ensuring the acquisition of information related to the explanation of the legislation of Azerbaijan “About to obtain information”.

As a result of these measures, the following results were achieved:

- Normative-legal base which meets international standards in connection with ensuring the freedom of information, application of legislation related to information freedom, and simplifying Access of the citizens to the information have been created
- “Information Responsible” has been created in state bodies.
- “Internal Activities Rules related to the freedom of information” has been developed and approved in the public institutions.
- Internet information resources, internet webpages belonging to state bodies and state have been established and improved.
- "Open government information portal” (www.data.gov.az) has been created
- Official internet resource of Azerbaijan state bodies has been created (www.gov.az)
- Single information portal of state services has been created. (www.dxr.az)
- The level of information disclosure of state bodies has been increased.
- It is observed to the requirements of the legislation related to previous disclosure information
- Official internet webpage and resources of state bodies turned into main information source.

In 2016 it was conducted monitoring related to “Information disclosure of state bodies” by the Multimedia Center. 70 Central Executive Bodies and 68 Local Executive Power Bodies were analyzed. According to the results of the monitoring the medium information disclosure indication on 70 Central executive bodies was (56% in 2015, 39% in 2013, 33.5% in 2012) 61.5%. In the current year, more than 70 state agencies were able to overcome the 50% limit in 60 information

disclosure. In 2015, only 55 entities were able to pass a 50% limit, in 2013 totally the indication of disclosure of 21 entities was above 50%.

The average disclosure indication for local executive authorities (city and region) was 14.5% (15% in 2015, 12.7% in 2013).

The results of the current monitoring showed that, as the progress in the implementation of the measures envisaged in the 2nd direction of the National Action Plan (MFP):

Finishing the procedure of the preparation of mobile version of the official web pages of the central executive authorities

Improving the practice of widespread use of social networks and starting to use it actively as a way of disclosing information by the central and local executive authorities;

Preparation of proposals to strengthen control over the implementation of tasks arising from the requirements of the Law of the Republic of Azerbaijan "On acquisition of Information";

Implementing measures to improve the mechanisms for early registration of real estate and establishment of appropriate mechanisms;

Improving the functioning of the "161-hotline" of Anti-Corruption Directorate under General Prosecutor of the Republic of Azerbaijan, publication of statistical and analytical information

The Problems regarding to the effective application of the legislation in the implementation of control over the fulfillment of the tasks arising from the requirements of the Law of the Republic of Azerbaijan "On Acquisition of Information", as the main problems;

Non-preparation of mobile versions of websites of local executive authorities;

Creating legal assistance mechanisms on acquisition of information, conduction of specialised trainings and awareness-raising activities can be mentioned.

In general, it should be noted that the implementation of the 5th item of the National Action Plan NAP on the 2nd direction was executed 73% from April 2016 to October 2017.

THE PURPOSE OF THE MONITORING:

The purpose of the monitoring is to provide each of the interested parties with the independent assesment regarding to improvements in the implementation of measures considered in 2nd direction of National Action Plan (NAP). The

monitoring group described the development and weaknesses of the implementation of the item 5 of the National Action Plan on the 2nd direction of the NAP and identified recommendations.

ON NAP

On April 28, 2016 the next National Action Plan in relation with the Promotion of the Open Government for 2016-2018 approved by the relevant decree of the President of the Republic of Azerbaijan. The plan covers 59 measures grouped across 11 directions.

In paragraph 5 of the decree of the President of the Republic of Azerbaijan in relation with the approval of National action Plan has been recommended that, the civil society institutions should be involved to the process of implementation of measures and assessment. At the same time, one of the main principles of the Open Government Partnership is the involvement of civil society institutions in the assessment of the Action Plan.

The current monitoring execution focusing on the assessment of the implementation status of the measures envisaged by the 2nd direction of the MFP in 2016-2017. The National Action Plan envisages the implementation of 14 events in 2016-2017 ; 4 in 2016, 2 in 2017, 37 in 2016-2018, 2 in 2017-2018. The 16th of that Measures envisaged in the MFP should be completed by 2017. (Table 1)

Number of events	2016	2017	2018
4			
14			
2			
37			

Table 1: The grouped measures on implementation years of NPA.

MONITORING METHODOLOGY:

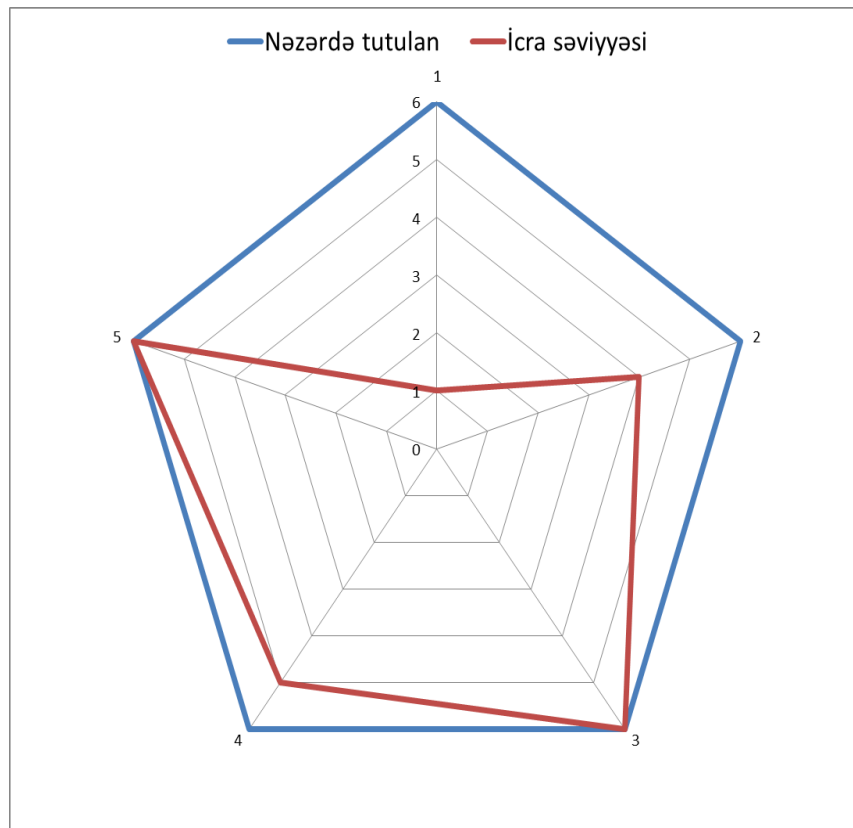
The monitoring methodology of National Action Plan was developed by the experts of Transparency International - Russia Anti-Corruption Initiatives and Research Center by the order of Public Association for Combating against Corruption.

This methodology was applied within the framework of the "Azerbaijan Transparency Partnership" Project implemented through Transparency Azerbaijan Anti-Corruption Public Union Funded by the US Agency for International Development during the Monitoring of the Implementation of the National Action Plan on Combating against Corruption for 2012-2015.

SUMMARY OF MONITORING RESULTS

The implementation of the measures envisaged in the 2nd direction of the NAP in 2016-2017 was estimated from the April of 2016 and until October of 2017.

The purpose of the group implementing of the monitoring was an assessment of the progress made in the implementation of measures under by these 5 item.



Graphics 3.

In the graphics 3 illustrated the progress being made in the implementation of the 2nd direction of the implementation of NAP in the period from April of 2016 to October 2017. The red line is an indication of the performance of each component. The inside of the red line is close to the blue line on the outside is a good indicator of the relevant direction.

EXECUTION STATUS OF 2ND DIRECTION OF THE NAP IN ACCORDANCE WITH THE ARTICLES

This part of the report describes the progress in the implementation of the events envisaged by 2nd direction of NAP, covering the period from April 2016 to October 2017. According to the methodology, it is possible to evaluate the performance of each event from zero to six.

2.1. Implementing measures for strengthening oversight capacities of the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan over the exercising of obligations arising from the requirements of the Law On Access to Information

Executed by: **Human Rights Commissioner**

Execution period: **2016-2017**

Evaluation criterions: **Information on provided resources and implemented strengthening measures**

The Law No. 1024-IIQ of the Republic of Azerbaijan "On Access to Information" dated 30 September 2015 envisaged the establishment of a Commissioner Institution on Information Issues in order to ensure control on implementation of the law. The Commissioner had to be selected among the three candidates nominated to the parliament by President. However, these provisions were excluded from the legislation without the establishment of a Commissioner Institution on Information Issues and in 2011 some of its statutory powers were delegated to the Human Rights Commissioner (Ombudsman) 3.

According to the changes made to the Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan dated June 24, 2011, the Commissioner supervises over execution of duties by the information holding state bodies, municipalities and state officials in accordance with the requirements of the Law of the Republic of Azerbaijan "On access to information (Article 1.3)ⁱ.

Under the new mandate given to the Commissioner by the Constitutional Law dated 24 June 2011, Article 13-1 of the Constitutional Law "Features of Consideration of Complaints on the Right to Obtain Information" has been added. As it is seen from the title of this article, it is clarified that only in the case of a complaint; the information provided by the complaint is investigated by information authority, local self-governing body or official for compliance with the requirements of the Law on Access to Information:

The Commissioner investigates the circumstances reflected in the complaint related to the violation of the right to obtain information within 10 work days. If the complaint requires specification or additional explanation and documents are needed for investigation of the complaint, with prior written notice to the complainant the Commissioner can extend the time of consideration of the complaint for 10 work days.

The Commissioner shall not consider the following complaints:

- if the complaint is not related to the activities of the state body, municipality or state official holding the specific information;

- if there is an in-force court decision related to the case;

- if the applicant did not effectively enough use the opportunities provided by the information holding state body, municipality or state official for the purposes of obtaining the information.

While investigating circumstances of the complaint related to the violation of the right to obtain information the Commissioner clarifies compliance of the information holding state bodies, municipalities or state officials with the following provisions of the Law of the Republic of Azerbaijan "On access to information":

- registration of the request for obtaining information (hereafter -information request);

- satisfaction of the information request within the period and the method envisaged by the law;

- compliance of rejection to execute the information request with the requirements of the law;

- clear and full compliance with the obligation to make the information public;

compliance with the obligation to create an Internet database of information.

determination of restrictions on access to information in the manner prescribed by law.

In respect of a complaint related to the violation of the right to obtain information the Commissioner can require the information holding state bodies, municipalities and state officials to remedy the violation.

The information holding state bodies, municipalities and state officials shall report on undertaken measures to the Commissioner in writing within 10 days. In case of failure to provide feedback or to react in accordance with the Commissioner's requirements the Commissioner can address the relevant higher authority.

Article 1.3 of the "National Action Plan for 2012-2015 on the Promotion of the Open Government" reflects the improvement of the structure of the Office of the Commissioner in 2013-2014, measures to involve relevant employees in specialized trainings, as well as implementing measures for strengthening oversight capacities of the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan over the exercising of obligations arising from the requirements of the Law On Access to Information in Article 2.1 of the "National Action Plan for the Promotion of the Open Government" for 2016-2018. Providing information about resources provided by the NAP and the implemented strengthening measures is recommended to the Commissioner.

The Commissioner said in his/her annual reports, as well as in his/her appeals to the Cabinet of Ministers and the Ministry of Finance, that there was a need to speed up the implementation of this measure.ⁱⁱ

In February 2013, The Human Rights Commissioner of the Republic of Azerbaijan agencies made a suggestion in the discussions with the heads of state-owned information on analyzing and summarizing references for the implementation of the tasks envisaged by the Law on Acquisition to Information by the state bodies, sending to the Commissioner's address and placing on the Ombudsman's website.

In the annual report for 2016 of the Human Rights Commissioner (Ombudsman) "On the provision and protection of human rights and freedoms in Azerbaijan": Article 1.3 of the "National Action Plan for 2012-2015 on the Promotion of the Open Government " reflects the improvement of the structure of the Office of the Commissioner in 2013-2014, measures to involve relevant employees in specialized trainings, as well as implementing measures for strengthening oversight capacities of the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan over the exercising of obligations arising from the requirements of the Law On Access to Information in Article 2.1 of the "National

Action Plan for the Promotion of the Open Government" for 2016-2018 and providing information about resources provided by the plan and the implemented measures is recommended. The Commissioner said in his/her annual reports, as well as in his/her appeals to the Cabinet of Ministers and the Ministry of Finance, that there was a need to speed up the implementation of this measure.

In recent years, a series of consultations have been held with representatives of government agencies and civil society institutions, media rights experts and future cooperation issues with government agencies, non-governmental organizations and mass media in the field of ensuring the right of the acquisition of information were discussed.

The received appeals for the acquisition of information have been analyzed, inquiries were sent to relevant agencies, measures were taken to resolve those appeals within the framework of the authorities, and in most cases it has been resolved. However, there are still some problems in answering citizens' information inquiries. "

Evaluation according to the item: **1 point maximum of 6 points**

2.2. Creating legal assistance mechanisms on access to information, conduction of specialised trainings and awareness-raising activities

Executes: **Human Rights Commissioner**

Execution period: **2016-2018**

Evaluation criteria: **Number of legal assistance mechanisms, trainings and awareness-raising events**

Implements the Twinning project, "Supporting to the Strengthening of the Commissioner of Human Rights (Ombudsman) of the Republic of Azerbaijan" with the support of the European Union, starting in 2016. One of the four components of this project is the component of strengthening the Ombudsman's capacity to implement the Third Project Law on the Acquisition to Information. Head of Office for Human Rights Commissioner (Ombudsman) Aydin Safikhanli and a group of employees have exchanged experience in the framework of EU Twinning project in Germany.

In November 2016 within the framework of the Twinning project "Support to the Strengthening of the Commissioner of Human Rights (Ombudsman) of the Republic of Azerbaijan", implemented with the support of the European Union, The Commissioner together with the Council of Europe organized a training on the Acquisition to Information for Ombudsman's Office, other relevant government

agencies and a number of media representatives. Juan Barata Mir, the expert of the Council of Europe, made a report on "The standards of the Council of Europe and the European Convention for Human Rights on the Acquisition to Information" and Alesker Mammadli, independent expert on "Legislation of the Republic of Azerbaijan on Acquisition to Information", as well as work in groups related to practical issues and excavations has been done.

In response to the inquiry from the Office of the Commissioner for Human Rights of the Republic of Azerbaijan, it was stated that 5 trainings were organized within the framework of the Twinning project, Support to the Strengthening of the Commissioner of Human Rights (Ombudsman) of the Republic of Azerbaijan".

Evaluation according to the item: **4 points maximum of 6 points**

2.3. Creating unified information base of prescriptive documents regarding flats of multi-story apartments which are under-construction or constructed or accepted for exploitation, in this regard implementing measures on improving pre-registration mechanisms of real estate

Executes: **State Committee on Property Issues, Ministry of Justice**

Execution period: **2016-2017**

Evaluation criteria: **Creation of unified information base and new mechanism**

Pre registration - registration of the building on the basis of relevant documents, if the construction of the property is not completed yet. Mechanism has some advantages. So, one flat will not be sold to several people. The possibility of being named by several citizens in a residential or non-residential area located in a multi-storey building, built in advance, is canceled. At the same time, pre registration provides for a range of economic and legal transactions. One of the most important issues is that it is possible to perform such processes as mortgages, forgings, pledges, without extract. In other words, citizens can mortgages for unfinished houses.

Mechanism also prevents situations such as showing area of the bought house large. It allows to calculate accurately the area of the sold flat or facility in the manner specified by the legislation. At the same time pre-registration ensures official calculation of the amount paid by citizen for the flat and eliminates tax evasion efforts. Moreover, implementation of the mechanism allows citizens to own a flat with mortgage.

The purpose of pre-registration is to ensure protection of property rights of individuals and legal entities on flats by means of pre-registration of their rights, effective use of property that they acquired or built, unrestricted ownership. In addition, it is also the main purpose of the mechanism to eliminate law violations that may occur during the purchase and sale, to increase the number of legal properties in the market, and to provide citizens with a more operational extract in the future.

Throughout the mechanism, all categories of property - individual housing, house gardens, multi-story residential buildings, apartments, property complex, installations in that building can be registered in advance. Even commercial properties of a citizen can be pre-registered before construction or construction is incomplete.

Article 17 of the Law on the State Register of Real Estate determines the cases of pre-registration, as well as the documents required for registration. Citizens can carry out pre-registration of their property by submitting permits, schemes and other required documents. Unlike the usual registration of title right, the pre-registration is formalized with reference, not with the extract from the state register of real estate.

The reference also provides the necessary information on different types of real estate. For example, the reference to the pre-registration of ownership of a multi-story residential building along with other information indicates the number of floors, entrances, the number of apartments, the total area of the building, including residential and non-residential premises. This information is taken from building permit documents. For flat reference, the location of the flat, the number of rooms, the total and the living space are indicated. Later, on the basis of this reference and loan agreement, a mortgage agreement is signed in favor of the creditor bank. This contract shall be registered in notary form and registered in the state register.

Evaluation according to item: 6 points maximum of 6 points

2.4 Developing the mobile versions of the websites of public institutions, opening accounts in social networks and ensuring their active operation

Executes: Central and Local Executive Authorities

Implementation period: 2016-2018

Evaluation Criteria: Information about mobile versions and implemented activities

During the monitoring, it became clear that the mobile version of the websites of 6 ministries out of 18 ministries has not been developed yet. Table № 1

Mobile version of websites of 4 committees out of 9 state committees has not been developed.

Mobile version of websites of 3 state agencies out of 8 state agencies has not been developed.

Mobile version of websites of 2 chambers out of 3 chambers has not developed.

There is a mobile version of the State Examination Center website.

Mobile versions of websites of local executive power authorities have not been developed.

Evaluation according to item: 5 points maximum of 6 points

RECOMMENDATIONS

The research carried out during the monitoring process shows that significant improvements have been made in the past decade to ensure freedom of information, the application of legislation related to freedom of information, and facilitating the access of citizens to information.

However, there are a number of problems. Firstly, problems arising from the effective application of the legislation in the implementation of control over the fulfillment of the tasks arising from the requirements of the Law of the Republic of Azerbaijan "On Access to Information";

Non-development of mobile versions of local executive authorities websites;

Lack of sufficient dynamics in the establishment of legal assistance mechanisms for obtaining information, implementation of specialized trainings and awareness raising activities;

Problems related to providing information in accessible and processable form by information holder;

Not responding information requests in time especially in electronic form or refusing to respond;

It is worth noting that the process of establishing "open government" databases is slow.

To achieve these goals, the following recommendations are offered:

- Taking steps to commence the implementation of tasks arising from the requirements of the Law of the Republic of Azerbaijan "On Access to Information" of the Commissioner for Human Rights of the Republic of Azerbaijan (Ombudsman), solving relevant material and technical issues;
- Monitoring of Ombudsman's response to information inquiries and publishment of annual reports;
- Identifying new requirements for disclosure of information in accessible and processed forms by adding and amending the Law on Access to Information;

- Adoption of reporting disclosure standards by state authorities, local self-government bodies, state-owned companies, legal entities;
- organization of trainings on modern standards and requirements related to information disclosure for information holders;
- Development of official internet pages of local executive authorities and taking into account modern standards.

¹<http://www.e-qanun.az/framework/1407>

² Annual Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for 2016 - <http://www.meclis.gov.az/?/az/report/84>