



PRELIMINARY VERSION

# Opinion No.222

## Implementation of the Council of Europe Commitments in the field of fundamental freedoms in Azerbaijan

Institute for Reporters' Freedom and Safety

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# Summary

The Assembly considers that Azerbaijan is moving towards a democratic, pluralist society in which human rights and the rule of law are respected, and, in accordance with Article 4 of the Statute of the Council of Europe, is able and willing to continue the democratic reforms initiated in order to bring its entire legislation and practice into conformity with the principles and standards of the Council of Europe.

Opinion No. 222 (2000)<sup>1</sup>

Twelve years after accession, the Council of Europe remains an important organization for Azerbaijan. The Council of Europe gives Azerbaijan the opportunity to participate fully, and on an equal footing with other member states, in European co-operation in the field of human rights, the rule of law and democracy.

Accession has above all enabled Azerbaijan to take part in debates and to have its voice heard. Through accession, Azerbaijan has been offered the opportunity to share its experience with the other countries and to participate closely in the definition of norms with regard to human rights, rule of law and democracy at the European level.

Despite hopes that accession to the Council of Europe in 2001 would have had a significant influence on the development of fundamental rights within the country, Azerbaijan's people continue to suffer diverse forms of repression and human rights violations that violate nearly the entire spectrum of their human rights.

The Azerbaijani authorities continue to act in blatant disregard of their commitments, which were the basis of Opinion No.222 (2000) on Azerbaijan's request for membership.

On June 28, 2000 the Council of Europe Assembly adopted Opinion No. 222(2000) on Azerbaijan's request for membership of the Council of Europe. On the basis of a list of commitments entered into by Azerbaijan, signed by the President of Azerbaijan and the Speaker of the Azerbaijani Parliament, and a number of expectations formulated by the Assembly, it was recommended that Azerbaijan be invited to become a member of the Council of Europe.

The Assembly took its decision on the basis of specific commitments undertaken by Azerbaijan in a document signed by the President of Azerbaijan and the President of the Azerbaijani Parliament, and a list of clearly formulated expectations.

The Institute for Reporters' Freedom and Safety (IRFS) notes with dismay that the Azerbaijani authorities have since acted in blatant disregard of their commitments. The repressive measures taken against the media and critical voices, and the adoption of draconian pieces of legislation that contradict international standards have cast severe doubt on their good faith.

The current document is a preliminary (pilot) version of the groundbreaking review of the implementation of the Council of Europe commitments vis-à-vis fundamental freedoms in Azerbaijan. The final version of the report will be launched in October, during fourth session of the Parliamentary Assembly of the Council of Europe (PACE).

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<sup>1</sup> Parliamentary Assembly of the Council of Europe Opinion No.222 (2000) Azerbaijan's application for membership of the Council of Europe, available at <http://bit.ly/1aK0Tlv>

# Asks

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I.

*Statute of the Council of Europe, Chapter II, Article 3*

Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

*Statute of the Council of Europe, Chapter II, Article 8*

The Council of Europe must demand that the Azerbaijani authorities strictly respect the commitments and meet the expectations set out in Opinion No. 222 (2000), and that the Azerbaijani Parliament act accordingly, in order to continue enjoying the privilege of the membership in the Council of Europe.

Taking into consideration Azerbaijan's commitments before the Council of Europe, the PACE must compel the Azerbaijani government to:

- Embark on the judicial reform in Azerbaijan to ensure that the courts can operate freely and independently.
- Honor its commitment to release all political prisoners, including journalists, bloggers and human rights defenders in prison or detention in connection with exercising their right to freedom of expression, and to stop using the courts to imprison critics and opponents.
- Fulfill its commitments to freedom of expression and take immediate, concrete steps to create an environment conducive to freedom of expression in Azerbaijan. End all forms of impunity for violence against journalists and ensure that all cases are adequately investigated and those responsible are brought to justice. Reverse regressive amendments to freedom of information legislation aimed at limiting the activities of journalists and media outlets. Remove defamation provisions from the Criminal Code.
- Implement the Concluding Observation of the UN Committee on Human Rights (August 2009) and the UN Universal Periodic Review recommendations (February 2009).
- Implement the Council of Europe recommendations and resolutions, and namely, Resolution 1456 (2005)<sup>2</sup>, Resolution 1545 (2007)<sup>3</sup>, Resolution 1614 (2008)<sup>4</sup>, Recommendation 1641 (2004)<sup>5</sup>, Resolution 1917 (2013)<sup>6</sup>

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<sup>2</sup> <http://bit.ly/19y6fil>

<sup>3</sup> [bit.ly/1aIXByK](http://bit.ly/1aIXByK)

<sup>4</sup> [bit.ly/14UQLDZ](http://bit.ly/14UQLDZ)

<sup>5</sup> [bit.ly/14UQSzp](http://bit.ly/14UQSzp)

<sup>6</sup> [bit.ly/146SEwd](http://bit.ly/146SEwd)

- Take effective measures to ensure that the Ombudsperson's Office is in practice a functioning, independent body, in compliance with the Paris Principles, relating to the status of national institutions of human rights.
- Respect freedom of assembly, association and the right to religious freedom in legislation and in practice. Reverse draconian amendments to the freedom of assembly law providing for steep fines for organizers and protesters of unsanctioned protests. Repeal regressive amendments to the NGO law and other laws restricting the ability of independent NGOs to operate.
- Immediately start dialogue with civil society to discuss major human rights concerns.

# Human Rights Ombudsman

(...) to adopt, within one year of its accession, the law on the Ombudsman.

Opinion No 222 (2000), paragraph iii e.

The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) was signed into law on December 28, 2001. The Ombudsman is mandated to defend and promote human rights and freedoms, envisaged in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party.

However the decisions made by the Azerbaijani Ombudsman are of a recommendatory nature which reduces the effectiveness and efficiency of the Ombudsman's activity. The annual human rights reports produced by Ombudsman's office only criticize low-ranking officials. The reports highlights minor issues such as bureaucratic governance and practices. The complaints of citizens about mass violation of their rights are not included in these annual reports.

In accordance with the amendments and additions made to the Constitutional Law on Ombudsman, the Commissioner for Human Rights was given the competence to fulfill the supervision over implementation of requirements envisaged in the Law on Access to Information. The Presidential Decree was issued on August 8, 2011 in this regard.

Upon Article 1.3 of the Constitutional Law, the Commissioner supervises over execution of duties by the information owning state bodies, municipalities and state officials in accordance with the requirements of the Law of the Republic of Azerbaijan "On access to information".

However the Information Commissioner is in fact nonfunctional. When any complaint is made to the Information Commissioner over the governmental agencies' failure to respond to appeals or information requests, the Information Commissioner does not take any steps to investigate or eliminate the problem. In other words, neither the Human Rights Commissioner nor the Information Commissioner performs their functions properly. These are just formal structures.

# Silencing Whistleblowers

(...) to adopt, within one year of its accession, a law on combating corruption and, within two years of its accession, a state program on combating corruption

Opinion No 222 (2000), paragraph iii f.

In its December 2012 report, *The honoring of obligations and commitments by Azerbaijan*, the Monitoring Committee of the Council of Europe highlights “the progress achieved in the introduction of a legislative framework aimed at fighting corruption and organized crime<sup>7</sup>”. **IRFS strongly disagrees with this statement and questions the objectivity of the rapporteurs.**

On 13 January 2004, Law of the Republic of Azerbaijan on Combating Corruption was approved by President Ilham Aliyev. In 2005, Azerbaijan ratified the United Nations Convention Against Corruption,<sup>8</sup> thereby undertaking the obligation to take measures to enhance transparency in public administration. Furthermore, Azerbaijan is a participating state in the Open Governance Partnership (OGP), and adopted a national action plan on OGP in September.<sup>9</sup>

But, as has been widely demonstrated, a government’s commitment to anti-corruption is almost directly related to the independence and freedom the news media enjoys in that country. So while Azerbaijan may have signed onto an important accord, a vital domestic resource that would normally hold the government accountable – a watchdog press – has been silenced.

The Azerbaijani government has developed sophisticated judicial machinery that stifles critical and independent reporting. Take an example of a regressive series of amendments to the Law on the Right to Obtain Information, the Law on the State Registration of Legal Entities, and the Law on Commercial Secrets introduced in June 2012. The amendments permit commercial entities to keep their registration information secret, including information about their ownership and structure. These amendments contradict international standards for freedom of information and will make it more difficult for journalists to investigate and report on corruption.

The authorities continuously resort to violence, abductions, torture, beatings and the illegal detention of journalists in blatant violation of international human rights and freedom of expression standards. Such practices have led to an increasing sense of insecurity and a high incidence of self-censorship within the media community.

The government’s tight control over print, broadcast and Internet media severely restricts the growth of the independent media as a critical source of information. Restrictions on advertising revenue, printing and distribution, as well as an

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<sup>7</sup>Report | Doc. 13084 | 20 December 2012, *The honoring of obligations and commitments by Azerbaijan*  
<http://bit.ly/18cRBze>

<sup>8</sup><http://bit.ly/bRoybt>

<sup>9</sup><http://bit.ly/SG9I97>

acute lack of private investment, suffocate the handful of relatively successful independent publications.

The overall environment in which the Azerbaijani media currently operates prevents it from holding those in power to account; nor does it provide citizens with quality independent news reporting. When the media is unable to fulfill such intrinsic functions, society cannot properly voice its concerns or canalize its discontent through peaceful, institutionalized means. Until this fundamental right is guaranteed, a more democratic Azerbaijan remains a distant prospect.



# Legal repression of free expression

(...) to guarantee freedom of expression and the independence of the media and journalists, and particularly to exclude the use of administrative measures to restrict the freedom of the media;

Opinion No 222 (2000), paragraph IV d.

(...) to re-examine and amend the law on the media, within two years of its accession at the latest;

Opinion No 222 (2000), paragraph IV e.

Azerbaijan's freedom of expression record remains extremely poor, with the regime employing both crude and sophisticated tactics to silence critical voices in an attempt to distract the public from widespread government corruption, anti-government protests, and other social issues in the country.

Despite Azerbaijan's commitment to respect and protect the right to freedom of expression through its accession to major international human rights treaties and as provided for in the national legal framework, in practice the authorities do not respect this right. Instead, they use the law to silence criticism and repress dissent. The mere existence of some laws – such as criminal defamation provisions – has a chilling effect on the media community, contributing to the widespread practices of self-censorship in the country.

## ***Restrictions on freedom of information: A Throwback to Soviet period***

On 6 July, President Aliyev signed into law amendments, known as the “corporate secrecy amendments”, limiting disclosure of information by corporate entities, which had been adopted by Parliament on 12 June. Strongly criticized by pro-transparency groups, the changes curtail public access to information about the ownership of commercial entities, the amount of their charter capital, ownership structure, and other similar data.

Amendments to the 2005 law on commercial information prohibit government officials from distributing information about companies if doing so “contradicts the national interests of Azerbaijan in political, economic, and monetary policy, the defense of public order, the health and moral values of the people, or harms the commercial or other interests of individuals.” The reforms also make release of information contingent upon receiving permission from all individuals named in the records.

The laws on the right to obtain information and the state registration of legal entities were also amended. The amendments extend the scope of “legitimate public interests” protected in Article 3 of the Constitutional Law of the Republic of Azerbaijan on Regulation of the Exercise of Human Rights and Freedoms, and use language that lacks precision and clarity.

The amendments to the law on state registration of legal entities makes secret the registration information of commercial legal entities, including information about their founders and shareholders. Such information can now only be disclosed on the basis of an inquiry to the courts and investigative bodies, to the subjects of operational search activities in cases specified by law, and to financial monitoring bodies in the cases and manner specified by the law “on the struggle against legalization of funds or other property obtained through criminal means and financing of terrorism.” According to the bill, this information can only be disclosed to relevant bodies, lawyers, and third parties following the consent of the information owner.

The amendments contradict Article 10.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates: “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.” The amendments also contradict provisions of the UN Convention against Corruption and the UN’s Global Counter-Terrorism Strategy.

The amendments can be viewed as an action by the Azerbaijani government to reject the obligations it has previously undertaken before the Azerbaijani people and international community to fight corruption. They increase restrictions on freedom of information and breach the principles of transparency and public control over the activity of legal entities. From now on, it will be difficult for journalists to investigate instances of corruption, as they may face punishment under these new amendments.

### **Defamation**

Among the most longstanding legal provisions problematic to freedom of expression are the defamation provisions that remain in Azerbaijan’s criminal code. At present, defamation remains a criminal offense, carrying a penalty of up to three years in prison. Defamation provisions are not used as frequently to imprison journalists as in previous years, but they are still in use.

IRFS underlines that existing defamation provisions provide for sanctions, which cannot be regarded as proportionate to the legitimate aim, and thus they are contrary to the Azerbaijani Constitution and the National Action Program to Raise Effectiveness of the Protection of Human Rights and Freedoms. Above all, these provisions are incompatible with the requirements of European Convention on Human Rights and the standards of the Council of Europe and European Court of Human Rights, and are therefore posing serious threat to the freedom of expression in Azerbaijan.

The Council of Europe’s Resolution 1577 (2007) Toward Decriminalization of Defamation<sup>10</sup> states:

*‘As established in the case law of the European Court of Human Rights (the Court), Article 10 of the European Convention on Human Rights (ETS No. 5) guarantees freedom of expression in respect not only of “information” or “ideas” that are favorably received or regarded as inoffensive or as a matter of indifference, but also of those that offend, shock or disturb’.*

Azerbaijan is a member of Council of Europe and is bound by its provisions.

### **Criminal defamation online**

The existing draconian penalties for criminal defamation and insult have been extended to online content, including Azerbaijan’s vibrant social networks, and public demonstrations<sup>11</sup>.

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<sup>10</sup> <http://bit.ly/yOMFcq>

<sup>11</sup> [bit.ly/14gKMce](http://bit.ly/14gKMce)

## Detention of journalists, bloggers and human rights defenders

The Azerbaijani authorities have a proven track record of using detention as a means of pressure to stifle dissent and protest. Recent years have seen a shift of imprisonment on charges clearly linked with journalists' professional activities – such as defamation – to imprisonment on a wide range of other charges that seem at first glance to be unconnected with their work, but are intended to make an example of critical journalists, bloggers, and human rights defenders. These charges have included hooliganism, drug possession, weapons possession, inciting hatred, supporting terrorism, tax evasion, extortion, and appealing for mass disorder.

On 23 January, the Azerbaijani delegation was successful in defeating a key resolution at the Parliamentary Assembly of the Council of Europe on “The follow-up to the issue of political prisoners in Azerbaijan.”<sup>12</sup> The resolution failed to pass with a vote of 79 in favor and 125 against. Human rights defenders viewed the defeat of the resolution as a failure by the Council of Europe to hold Azerbaijan accountable for its obligations as a member state. The Azerbaijani authorities appeared to view it as *carte blanche* to continue arresting persons for politically motivated reasons, including in connection with freedom of expression.

As of June 2013, there were seven journalists in detention or prison for politically motivated charges in connection with freedom of expression:

1. **Nijat Aliyev**, editor-in-chief, [www.azadxeber.net](http://www.azadxeber.net)
2. **Araz Guliyev**, editor, [xeber44.com](http://xeber44.com)
3. **Fuad Huseynov**, freelance journalist
4. **Hilal Mamedov**, editor-in-chief “Tolishi Sado”
5. **Faramaz Novruzoglu**, freelance journalist
6. **Tofiq Yagublu**, correspondent, *Yeni Musavat* newspaper
7. **Avaz Zeynalli**, editor-in-chief, *Khural* newspaper

In addition to the cases involving journalists, at the end of the quarter, two human rights defenders remained in prison on politically motivated charges in connection with freedom of expression. **Ilham Amiraslanov**, an activist with Kur Civil Society, is serving a two-year prison sentence on weapons possession charges after he accused local officials of misappropriating funding intended for victims of the 2010 Kura river floods. Human rights lawyer **Bakhtiyar Mammadov** is serving an eight-year prison sentence on charges of large-scale extortion, combined with a previous fraud conviction. He was targeted after he represented families who were forcibly evicted from their homes to make way for the construction of Crystal Hall, the venue for the 2012 Eurovision Song Contest.

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<sup>12</sup> <http://bit.ly/W8aE6d>

# State control over broadcast media

(...) to turn the national television channel into a public channel managed by an independent administrative board;

Opinion 222 (2000), paragraph IV f

For the recent years, the government has strengthened its hold over broadcast media, through regulations, direct ownership or indirect economic control. The nine national channels work in a top-down manner, with one-way communication between the state and citizens. A number of news items on the nationwide broadcast media are presented in a conspicuously similar manner raising questions over editorial freedoms of these channels. It is alleged that television channels' editorial decisions are determined by the president's office. Many believe that this form of control is done through coercion, given the fact that television managers are closely linked with the country's political elite and are thus willing partners of the ruling regime.

Of the nine national television channels, as many as three are still state-owned. Unlike most of the post-Soviet countries which have privatized state media or transformed them into public-service media, the Azerbaijani government appears to have taken a different approach. In addition to state funded AzTV, it has launched two more state broadcasters (Idman Azerbaijan and Medeniyyet Azerbaijan) in the last three years.

According to the "Law on Television and Radio Broadcasting" there are four forms of broadcasting in Azerbaijan: state, public, private and municipal. In addition, Article 5.2 of the Law on TV and Radio Broadcasting that a "natural or legal person may be the founder (co-founder) of only one TV and radio broadcaster". However, the Azerbaijan Television and Radio Broadcasting JSC is the founder of three television channels (AzTV, Idman Azerbaijan and Medeniyyet TV) and one radio channel (Radio Azerbaijan) which is in conflict with the above mentioned provisions of the law. To date, the National TV and Radio Council has not taken any action to deal with this violation of the law. Thus, instead of fulfilling its obligation<sup>13</sup> before the Council of Europe, Azerbaijan has opened two more state televisions, making the number of state-owned TV channels three.

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<sup>13</sup> [bit.ly/1aJZ2NO](http://bit.ly/1aJZ2NO)

# NGO ‘Witch Hunt’

(...) to re-examine and amend, at the latest within one year of its accession, the rules governing registration of associations and appeals procedures;

Opinion 222 (2000), paragraph IV h

Local and international NGOs working on democracy and human rights in Azerbaijan are increasingly becoming the targets of government interference. This can take the form of harassment, or more seriously, of legal pressure. Critical NGOs face particular difficulty when attempting to register as official legal entities, often being repeatedly denied registration on claims of minor technical problems with their applications.<sup>14</sup> As many as 1,000 NGOs are estimated to remain unregistered in Azerbaijan. Amendments to the NGO law in 2009, followed by a governmental decree in March 2011, required NGOs to register their grants with the Ministry of Justice before implementing the funded activities, and made it more difficult for foreign and international NGOs to establish branches in the country.

The Azerbaijan Human Rights House was ordered to cease operations, without warning and despite the fact that the NGO had complied with all relevant legal requirements. The Baku office of the National Democratic Institute was also shut down several times as it did not have registration despite the fact that it had applied for registration several times since 2006.

On 11 March 2013, President Ilham Aliyev approved the amendments<sup>15</sup> adopted by Azerbaijani Parliament to the Law on Grants and the Law on Non-Governmental Organizations by a majority vote. They stipulate that NGOs receiving donations in any form of a value greater than 200 AZN (approximately 255 USD or 190 EUR) without a formal agreement could face massive fines and confiscation of property.

The already alarming freedom of expression situation in the country became even direr when Presidential Administration Head Ramiz Mehdiyev gave an interview to state media, accusing foreign donors of “unlawfully” financing Azerbaijani NGOs. IRFS believes that these comments, along with other recent worrisome actions, indicate the government is setting the stage for a larger move against independent NGOs by claiming they are part of a foreign plot to destabilize the country. Mehdiyev’s “landmark” anti-NGO speech certainly raised to new heights the level of hostility towards the West and towards the ruling regime’s domestic opponents.

Mehdiyev’s speech followed President Aliyev signing into law regressive legislation that will minutely regulate NGO activities, management and finances, severely restricting their operations and making it easy to harass or close them down on technical grounds if the authorities dislike their activities.

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<sup>14</sup> International Partnership Group for Azerbaijan, *Running Scared: Azerbaijan’s Silenced Voices*, March 2012, pp. 27-28. Available at <http://bit.ly/QLHoPi>

<sup>15</sup> [bit.ly/10zUraz](http://bit.ly/10zUraz)

# Conclusion

The Council of Europe member states have undertaken to respect fundamental freedoms. Despite these binding obligations stemming from the Council of Europe membership, some of the Council of Europe's member states are continuing to demonstrate authoritarian tendencies, particularly in persecuting any form of dissent. Azerbaijan is in particularly serious and constant breach of its binding and fundamental commitment to ensure freedom of expression, assembly and association. IRFS states that all three fundamental freedoms have been curtailed in recent years, and particularly this year in connection with presidential election.

As a member of the Council of Europe, Republic of Azerbaijan has committed to respect basic freedoms, human rights and democracy. In spite of this commitment, human rights violations continue to be numerous and widespread and occur on a systematic basis.

Despite these attacks on the right to freedom of expression, assembly and association by Azerbaijan, which is a member of the Council of Europe, the Assembly has in no case taken any action to suspend or threaten to suspend the membership, even though it has openly recognized that fundamental human rights are being violated in Azerbaijan.

IRFS calls on the Council of Europe as such, as well as the individual Member States which form it, not to turn a blind eye to the human rights crisis in Azerbaijan and denounce the serious and persistent breaches of fundamental human rights and freedoms in this country.

IRFS condemns the authorities of Azerbaijan for having unjustifiably failed to fulfill Azerbaijan's human rights obligations before the Council of Europe. IRFS calls on the Assembly to take a tough line with member states who fail to fulfill obligations. If member states are allowed to get away with blatant violations and fail to comply with the Council of Europe rules and treaties the organization, as such, loses both respect and influence.