

# **Legislative framework for media freedom in Azerbaijan**

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## **Introduction**

This report is a publication of the Institute for Reporters' Freedom and Safety (IRFS), an independent, non-profit organization dedicated to promoting freedom of expression in Azerbaijan and the International Media Support (IMS) whose main objective is to support media development. One of the main activities of IRFS and IMS is monitoring of Azerbaijan's media legislation and preparing recommendations for elimination of provisions leading to restriction of the freedom of expression.

The report has been produced within the IMS' project "Change in the Air: Monitoring and Promoting Media Pluralism in Azerbaijan" funded by the European Union and implemented in partnership with IRFS.

One of the main goals of the project is to support independent and impartial reporting in Azerbaijan as one of the factors of strengthening democracy and increasing professional standards of Azerbaijani media.

The report consists of introduction, brief summary, recommendations, five chapters and conclusion. The first chapter analyzes international legislative framework in the field of media. The second chapter examines Azerbaijan's broadcast media legislation to find out gaps. The third chapter includes analysis of legislation on print media. The fourth chapter addresses the issue of legal regulation of online media.

## **Executive Summary**

Azerbaijan is portrayed as a democratic country to the local and world community, when it is not true in reality. The power which has passed from father to son is maintained by Aliyev family for 20 years. Though during these years Azerbaijan has ratified important human rights agreements, provisions of these documents remained on paper. As such, since the formation of the current government in 2003, pressures on media freedom strengthened. The editor-in-chief of Monitor magazine Elmar Huseynov, who was highly critical of the authorities, was murdered with gun in 2005. Writer and journalist Rafiq Tagi died in 2011 after being deadly stabbed. The number of jailed journalists wavered between 1 and 10 since 2003, and currently 10 journalists are behind bars on trumped up charges. Azerbaijani authorities have put legislative, economic and other kind of impediments to the activity of broadcast, print and online media and strangled the development of independent media. Based on findings of the monitoring conducted by IRFS, 10 national, as well as the regional television channels and radio stations operating in Azerbaijan do not function independently and carry out propaganda of the current regime. Situation of the print media is not encouraging either. The authorities are in search of new legal means to regulate/control online media. Although Azerbaijan's laws governing media are normal, the amendments made to them over the past 3-4 years contradict the international documents ratified/signed by Azerbaijan in terms of the freedom of expression. The amendments made to the Constitution, the Law on Access to Information and the Law on Freedom of Information constitute flagrant violation of the right to freedom of expression enshrined in the European Convention on Human Rights, Universal Declaration of Human Rights and the International Covenant on Political and Civil Rights. Azerbaijan government does not fulfill its international commitments related to human rights, particularly freedom of expression.

## **Recommendations**

1. Remove defamation provisions from the Criminal Code.
2. Cease the excessive use of defamation lawsuits to hinder the ability of critical newspapers to operate.
3. Reverse the ban prohibiting foreign broadcasters from accessing national frequencies.
4. Repeal the amendments to the Law on Access to Information that restrict the activity of the independent media
5. Fulfill media freedom commitments undertaken before international organizations
6. Bring the media law into line with international standards
7. Add a sanction to the law for failure of the National Television and Radio Council to fulfill its duties
8. Make an amendment to the law on extension of period of broadcast license to 10 years
9. Establish the position of Information Commissioner
10. Amend the provisions of the Election Code on election campaigning through mass media
11. Make it mandatory for the state-funded television and radio broadcasters to provide conditions for election campaigning
12. Amend the law on mass media, by adding the notion “online media” and giving its definition
13. Charge the National Television and Radio Council with the duty of monitoring media coverage of elections
14. Repeal the procedure of appointment of the National Television and Radio Council members by the president
15. Transform the state television AzTV into a public broadcaster
16. Remove the provision on municipal broadcasters from the law
17. Revise the rules for granting a broadcast license
18. Amend the rules for electing General Director of Ictimai Television (public broadcaster) and take away this authority from the Broadcasting Council of Ictimai Television
19. Charge the National Television and Radio Council with the duty of announcing competitions for broadcast licenses at least twice a year
20. Immediately and fully implement European Court decisions on freedom of expression

## **International Legal Framework and obligations**

Freedom of the media and, generally speaking, freedom of expression, which are provided for in the local legislation are also reflected in international documents signed by Azerbaijan. Azerbaijani Government has also undertaken human rights obligations before international organizations, some of which relate to the freedom of expression.

The following **international instruments** determine standards for the protection of the right to freedom of expression:

**Universal Declaration of Human Rights<sup>1</sup> (1948), Article 19.** The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations on 10 December 1948 and provides human rights standards accepted by all member states. The UDHR represents the normative basis that led to formulating the standards for freedom expression. Article 19 states that “Everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

At the regional level, freedom of expression is protected **under Article 10 of the European Convention on Human Rights** (ECHR). The participating states are bound to comply with the ECHR (which it ratified in 2002<sup>14</sup>) and with the jurisprudence of the European Court of Human Rights (ECtHR). According to the Court, freedom of expression is one of the preconditions for a functioning democracy, and States must ensure that private individuals can effectively exercise the right of communication among themselves. Moreover, the Court has stressed that States are required to create a favorable environment for participation in public debate by all persons concerned, enabling them to express their opinions and ideas without fear. Despite this recognition, there are still many outstanding problems in the implementation of ECtHR judgments in Azerbaijan<sup>2</sup>.

Article 10 of the ECHR states that:

*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 interferences by public authority and regardless of frontiers.*

**International Covenant on Civil and Political Rights<sup>3</sup>(1966), Article 19.** The International Covenant on Civil and Political Rights, also known by its abbreviation ICCPR, entered into force in 1976. It elaborates the principles laid out in UDHR and is legally binding on all states who have signed and ratified its provisions. Article 19 of the ICCPR stipulates that: "(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 orally, 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 (*order public*), or of public health or morals”.

**UN Special Rapporteur on Freedom of Opinion and Expression.** The office of the UN Special Rapporteur on Freedom of Opinion and Expression was established by resolution of the UN Commission on Human Rights in 1993. The mandate of the Special Rapporteur requires that information be gathered from governments, NGOs and others on the discrimination, violence or harassment of persons, including professionals, in the exercise of their right of freedom of opinion and expression. The Rapporteur submits an annual general report plus country reports on site visits, and makes recommendations on the better promotion and implementation of these rights. The Special Rapporteur focuses on both broad thematic

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<sup>1</sup>Universal Declaration of Human Rights. General Assembly res. 217A (III), 10 December 1948

<sup>2</sup> See Committee on Legal Affairs and Human Rights, States with major structural/systemic problems before the European Court of Human Rights: statistics, AS/Jur/Inf (2011) 05 rev 2, 18 April 2011

<sup>3</sup> International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

issues as well as individual cases in which he intervenes through urgent actions and communications. The rapporteur is able to visit countries for on-site assessment at the invitation of the government in question. The guarantees of freedom of expression in the Universal Declaration and ICCPR are very general and the Special Rapporteur has sought to clarify the precise nature of this right, by making a number of statements and declarations, often in conjunction with other human rights mechanisms, containing authoritative interpretations of these articles.

### **The Organization for Security and Co-operation in Europe (OSCE)**

Since its inception in the Helsinki Final Act of 1975, the Organization for Security and Co-operation in Europe (OSCE) has been firmly committed to the promotion and protection of human rights. This commitment is enshrined in many other OSCE documents, such as, inter alia, the 1990 Copenhagen Document, the 1990 Charter of Paris for a New Europe, and the 1991 Moscow Document, which are politically binding on the organization's 56 participating States.

The commitments undertaken by participating States span a wide range of human rights issues. An exhaustive list is provided in the OSCE publication, *OSCE Human Dimension Commitments*. The Copenhagen 1990 document contains among the most detailed description of participating States' commitments to respect and protect freedom of expression and freedom of the media:

(9) The participating States reaffirm that

(9.1) — everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.

The full list of freedom of expression commitments undertaken by participating States may be found in the OSCE publication, *Commitments: Freedom of the Media, Freedom of Expression, Free Flow of Information*<sup>4</sup>.

### **European Union commitments:**

#### **European Parliament resolution of 17 December 2009 on Azerbaijan: freedom of expression**

In 2009, freedom of expression significantly deteriorated in Azerbaijan. In the run-up to the 2009 municipal elections, the government employed many tactics to undermine the role of independent mass media. Changes and amendments made to the Constitution and other legislative acts served to restrict the work of media.

As of 1 January 2009, foreign radio broadcasters – including the BBC, Radio Free Europe/Radio Liberty (RFE/RL), and Voice of America – were banned from Azerbaijan's airwaves.

On 17 December 2009, the European Parliament adopted the strongly worded resolution RC-B7-0266/2009, on the freedom of expression situation in Azerbaijan. The resolution pointed to “the deterioration” of media freedom in Azerbaijan and “deplored” the practice of arresting, prosecuting and convicting opposition journalists on various criminal charges. The resolution called on the Azerbaijani authorities to release the imprisoned journalists immediately.

### **Implementation update:**

The Government of Azerbaijan continued to arrest journalists because of their work. As of May, 2014, there were 10 journalists behind bars in Azerbaijan: azadxeber.net website editor-in-chief Nijat Aliyev,

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<sup>4</sup> Available at <http://www.osce.org/fom/31232>

xeber44.com editor Araz Guliyev, freelance journalist Fuad Huseynov, Tolishy Sado newspaper's editor-in-chief Hilal Mammadov, freelance journalist Faramaz Novruzoglu, Yeni Musavat newspaper correspondent Tofiq Yagublu, Khural newspaper chief editor Avaz Zeynalli, Zerkalo newspaper's political commentator Rauf Mirgadirov, Bizim Yol newspaper correspondent Parviz Hashimli and Nota Bene newspaper editor-in-chief Serdar Alibayli.

### **European Parliament resolution on Azerbaijan: the case of Ilgar Mammadov – June 2013**

The criminal case against human rights defender and opposition leader Ilgar Mammadov generated a serious reaction in Western capitals, and underscored serious shortcomings of the Aliyev regime in fulfilling Azerbaijan's international human rights commitments.

On 11 June 2013, the European Parliament adopted resolution B7-0297/201354 to express "serious concern" over reports by human rights defenders and domestic and international NGOs about the alleged use of fabricated charges against politicians, activists and journalists. The resolution condemns any intimidation, arrest, detention or prosecution of opposition party leaders or members, activists, journalists or bloggers solely "because they have expressed their views and exercised their fundamental rights and freedoms in accordance with international standards."

### **Implementation update:**

Despite these calls, Tofiq Yagublu and Ilgar Mammadov were sentenced to 5 and 7 years in prison respectively.

The Resolution unequivocally calls on the Azerbaijani Government to respect freedom of the media both offline and online, and guarantee the freedom of expression.

**Implementation update:** The authorities and all state officials subordinate to the central government who have to respect freedom of the press and media, by refraining from targeting journalists and media outlets in their speeches, or suing them for defamation, have failed to do so. Instead, they should cooperate with the press and media representatives, by providing them with requested information and helping them improve public transparency. However, the Ministers of Emergency Situations and Internal Affairs, the son of the Minister of Transport, the former head of the Baku Metro, and other persons close to the authorities, claimed exorbitant sums of compensation from Azadliq and Yeni Musavat newspapers, which have been partially awarded by courts. As a result of steep court-ordered fines, Azadliq has encountered severe financial problems; the newspaper owes a significant debt to the publishing company, which continues to cause problems for the newspaper's publication.

### **UN commitments:**

At its Universal Periodic Review held on 30 April 2013, Azerbaijan received a total of 162 recommendations. It rejected four recommendations from Armenia, claiming they were "not within the scope of the UPR."<sup>5</sup> The final outcome of the review was adopted by the Human Rights Council during its twenty-fourth session from 9 to 27 September. The Azerbaijani government accepted the remaining 158 recommendations.

During the second Universal Periodic Review, the following recommendations on freedom of expression were put forward:

- Take adequate measures for the safety of civil society, including political activists and journalists; conduct impartial, thorough and effective investigations

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<sup>5</sup><http://bit.ly/11CX65F>



into all cases of attacks, harassment, and intimidation against them and bring perpetrators of such offenses to justice (Canada);

- Ensure the full enjoyment of the right to freedom of expression in line with country's international commitments (Slovakia);
- Guarantee the rights to freedom of expression, association and peaceful assembly particularly by allowing peaceful demonstrations in line with the obligations stemming from the International Covenant on Civil and Political Rights (Switzerland);
- Put in place additional and fitting measures to ensure respect for freedom of expression and of the media (Cyprus);
- Expand media freedoms across print, online and, in particular, broadcast platforms, notably by ending its ban on foreign broadcasts on FM radio frequencies and eliminating new restrictions on the broadcast of foreign language television programs (Canada);
- Put an end to direct and indirect restrictions on freedom of expression and take effective measures to ensure the full realization of the right to freedom of expression and of assembly (Poland);
- Ensure the full exercise of freedom of expression for independent journalists and media, inter alia, by taking into due consideration the recommendations of the Council of Europe Commissioner for Human Rights (Italy);
- Ensure that journalists and media workers are able to work freely and without governmental intimidation (Germany);
- Ensure prompt, transparent and impartial investigation and prosecution of all alleged attacks against independent journalists, ensuring that the media workers do not face reprisals for their publications (Slovakia);

As can be seen, a number of democratic countries made recommendations to improve the current difficult situation in the field of freedom of expression in Azerbaijan. Instead carrying out these recommendations, the government amended legislation extending criminal defamation provisions to online content, and jailing two critical journalists and three social media activists on bogus charges.

### **OSCE commitments:**

Since its inception in the Helsinki Final Act of 1975, the Organization for Security and Co-operation in Europe (OSCE) has been firmly committed to the promotion and protection of human rights<sup>6</sup>. This commitment is enshrined in many other OSCE documents, such as the 1990 Copenhagen Document, the 1990 Charter of Paris for a New Europe, and the 1991 Moscow Document, which are politically binding on the organization's 56 participating States.

The commitments undertaken by participating States span a wide range of human rights issues. An exhaustive list is provided in the OSCE publication, *OSCE Human Dimension Commitments*<sup>7</sup>.

Azerbaijan is failing to implement many of these commitments, in particular, the fundamental freedoms of expression assembly and association.

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<sup>6</sup><http://bit.ly/191q2Et>

<sup>7</sup><http://bit.ly/18fm4a9>

The Copenhagen 1990 document contains among the most detailed description of participating States' commitments to respect and protect fundamental freedoms.

The participating States reaffirm that

- Everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.

Instead of fulfilling its commitments undertaken before the OSCE, the government did not tolerate the attitude of the OSCE Office in Vienna, which frequently draws attention to the media freedom in Azerbaijan that shrinks and deteriorates a little more every day, and in order to “punish” the OSCE, downgraded the mandate of the organization's Baku Office to the status of a coordinator.

### **Council of Europe commitments:**

Azerbaijan undertook a set of obligations upon accession to the Council of Europe. According to the document **Opinion No. 222 (2000)**<sup>11</sup> **Azerbaijan's application for membership of the Council of Europe**<sup>8</sup>, Azerbaijan has 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.

For over 10 years of its membership in the Council of Europe, the government has not fulfilled obligations relating to freedom of expression and the media, and the media situation worsened even more. More than eleven journalists and bloggers, seven social media activists and three human rights defenders have been arrested for expressing criticisms. Steep fines have been levied on opposition newspapers, and defamation law has not been adopted.

Moreover, Azerbaijan has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms when becoming member of the Council of Europe. But although the government is bound to fulfill the Convention's provisions, for many years, flagrant violations of these rights, particularly the right to freedom of expression, occur in the country. The European Court of Human Rights has issued decisions against Azerbaijan in which it stated violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In terms of taking the steps required as part of execution of these decisions, only the first step was taken fully; the second step was taken partially and the third one was not taken at all. Under the first step, the persons, whose rights were violated, have been paid the specified compensations. However no initiative has been taken to bring those responsible for the violations to justice, under the second step, which encouraged the continuation of this trend. Most importantly, no attempt has been taken, under the third step, to reconsider the legal rules leading to violation and bring them in line with the Convention. Moreover, steps that restrict the freedoms set forth in Article 10 have been taken, media laws have been tightened instead of being liberalized, and criminal defamation has been retained and extended to internet speech.

The Council of Europe's Resolution 1577 (2007) Toward Decriminalization of Defamation<sup>9</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.'*

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<sup>8</sup>Opinion No. 222, Azerbaijan's application for membership of the Council of Europe <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EOP1222.htm>

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

Although adoption of defamation law was envisaged in the "National Action Plan for the Protection of Human Rights" of 2012, defamation provisions - the overt tool of pressure against media - have not been removed from the Criminal Code, to the contrary, their scope was extended to include internet speech. The only positive development was the adoption of the [Decision](#) "On Submission, within the initiative procedure to the Milli Madjlis of the Republic of Azerbaijan, of proposals to amend the Criminal Code of the Republic of Azerbaijan" by the Azerbaijani Supreme Court Plenum on 21 February 2014.

In order to adapt libel laws to the standards of the European Court of Human Rights (ECtHR), the Plenum presented to Milli Madjlis the draft amendments to the Criminal Code Articles 147 (slander) and 148 (insult).

'The Plenum, while relying on the position of the European Court highlighted that the preference should be given to the imposition of sanctions not related to imprisonment, considered appropriate the provision of only sentence of fine in Article 147.1 an 148 of Criminal Code', reads February 21 Decision of the Plenum of the Supreme Court.

However, the proposed reform is only partial, as (retained) provisions of the Article 147.2 of the Criminal Code envisage, inter alia, up to three years imprisonment for libel *committed through accusation of a person in having committed a serious or especially serious crime*'. In practice, Article 147.2 of the Criminal Code is applied more broadly and the serious form of libel discourages journalists. This aspect seems to be retained in the bill. Besides, there have been no discussions on removal of Article 323 of the Criminal Code, which aims to protect the President's honor and dignity from libel and insult and provides for a maximum of 5 year imprisonment.

## **Broadcast media legislation and gaps**

In Azerbaijan the broadcast media is regulated by the Law on Mass Media and the Law on Television and Radio Broadcasting. According to the body supervising application of the special law regulating the television and radio broadcasting, the National TV and Radio Council (NTRC), Azerbaijan has 9 national, 13 regional and 10 cable television stations, and 16 national and regional radio stations.

Article 3 of the Law on “Radio and TV Broadcasting” states that “In its activity broadcaster is guided by comprehensiveness, fairness, entirety, correctness of information, freedom of thought, ideological and political pluralism, impartiality, non-interference in privacy, protection of national and moral values, obeying professional conduct and moral norms, high quality of programs.” We believe that this provision of the law should be changed. Because this provision is not imperative, the broadcasters do not consider it important to comply with it. In such a case, NTRC does not pay attention to whether these norms are conformed with or not.

One more norm, which should be imperative, is Article 16.5 of the Law on “Radio and TV Broadcasting” – “Corresponding executive power body and the body holding the tender publish the list of frequency on mass media no less than once a year.” In practice, NTRC does not publish the list of frequencies, and does not disclose them even in response to information inquiries.

According to Article 22.1 of the Law on TV and Radio Broadcasting<sup>10</sup>, the license for broadcasting is issued for six years, if the application form does not specify a shorter period. If the use of the selected frequency in these terms is technically not possible, the license may be issued for a shorter period. However, the law does not specify the term of license for state and public broadcasters. To date, no action has been taken to deal with this loophole.

There is also a problem in the practical application of the provisions of the Law on “TV and Radio Broadcasting”. Article 5.1 of the Law on TV and Radio Broadcasting stipulates that a single TV and radio broadcaster, as well as its structural subdivision, may not engage in the transmission of more than two television and three radio channels, except for cable network broadcasting and broadcasting to foreign countries.” In addition, Article 5.2 of the law delineates 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 NTRC has not taken any action to deal with this violation of the law.

### **Violation of the principles of the “Law of Azerbaijan Republic on Public TV Radio Broadcasting”**

Following joint recommendations from the Council of Europe and the OSCE Representative of the Freedom of Media, a public service broadcaster (Public TV or ITV) was established.

The rights and responsibilities of the Public Broadcaster are stated in Articles 7 and 8 of the Law on the Azerbaijan Republic on Public TV and Radio Broadcasting.<sup>11</sup> From august through November of 2013, IRFS conducted monitoring of news programs of Ictimai TV and Radio, among others. The monitoring revealed that events and demonstrations organized by political

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<sup>10</sup> The Law on TV and Radio Broadcasting, downloadable version <http://bit.ly/1sLRtSt>

<sup>11</sup> The Law on the Azerbaijan Republic on Public TV and Radio Broadcasting <http://bit.ly/T0q9fw>

parties and public associations are seldom covered in news programs, except for those organized by the ruling party. This is not in line with Article 8 of the Law on Public TV and Radio which stipulates that the public broadcaster should provide unbiased and neutral news concerning activities of government organs, political parties, social movements, religious confessions and financial and commercial structures. Only during elections, Ictimai TV and Radio provided free airtime to candidates and opposition parties.

At the present time, ITV receives most of its funds directly from the state budget<sup>12</sup> which raises questions about its independence.

Ictimai does not comply with its public service remit as stipulated by various international standards and good practices.<sup>13</sup>

Ictimai does not serve the public interest or ensure pluralism, failing to provide balanced and varied programming for all sectors of the population as required through its membership in the European Broadcasting Union (EBU). Since its establishment in 2005, Ictimai serves the interests and propaganda of the government. In terms of news reporting, this channel does not function independently. Ictimai gives only brief – and often one-sided – information about significant events in the country, such as the activities of political parties or public associations. When presenting wrong information about someone or organization, ITV does not give them opportunity to respond/comment.

### **Media regulator**

The lack of certain provision in the legislation to regulate particular areas of broadcasting, problems with the implementation of existing legislation and the monopoly in the broadcasting market retards the development of national broadcasting. The National Television and Radio Council (NTRC), which has to supervise the implementation of the law on TV and Radio Broadcasting, is not independent of the government and there is no transparency in its activities. All of the members of NTRC are appointed by the President, and this appointment is based on the criteria of nepotism instead of professionalism. Therefore it fails to solve existing problems.

The state has full control over broadcast media. The granting of licenses is highly political, biased, and non-transparent. In its current composition, the NTRC consists of seven acting members appointed directly by the president and is fully funded and thus dependent on the state budget. The current system of appointing NTRC members as well as its funding and means of operation do not provide guarantees for NTRC to be an independent and credible media regulator. Broadcast media outlets not sponsored or linked with the state are unable to obtain licenses. For example, Objective TV, an independent TV station which has been critical of the authorities in its reporting, has repeatedly been unsuccessful in its attempts to acquire a terrestrial license and is thus forced to operate on the Internet. According to the NTRC, the winner of the tender (competing for the same frequency as Objective TV) was the newly established Golden Price which had no experience in broadcasting sphere. It meant that this company would broadcast Araz FM radio. It later came out that this radio's general director is Shamkhal Hasanli, son of Ali Hasanli, head of the Socio-Political Department of the Presidential Administration. Shamkhal's mother – Ali Hasanli's wife – Sona Veliyeva is a member and deputy chairman of the NTRC. In other words, she granted the license to the organization headed by her son. Objective TV's application (documents) was once again rejected in a competition for TV license

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<sup>12</sup> See interview with NTRC Chairman <http://bit.ly/W6cl24>

<sup>13</sup> See inter alia the Council of Europe Recommendation 1641 (2004) at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/errec1641.htm>

in 2013 and an illegal hindrance was put to its participation in the contest. Analysis reveals that while announcing competitions NTRC violates the law.

Article 3.2 of the Rules on Competition for Special Permit (License) for TV and Radio Broadcasting says that applications must be submitted to the Council in person or via mail. However the NTRC says it accepts applications only in person and thus violates the law. In breach of Article 1.9 of the Rules, NTRC did not provide list of frequencies, licence's validity period and deadline for consideration of applications and announcement of results for the TV license competition. At the same time, the Rules state that until announcement of the competition's results, no information is provided on mass media about the contenders. However the NTRC violates this rule.

Moreover, the government has recently minimized the number of tenders for new and potential broadcasters to get available frequencies. Until 2010, the NTRC reasoned its refusal to grant new licenses with a lack of available frequencies. The fact that the NTRC refused to publicize the list of available frequencies runs counter to the Article 16.5 of the law on TV and Radio Broadcasting.<sup>14</sup> In 2012 the NTRC admitted having available broadcast frequencies but opined that there was no need for so many television channels in such a small country. The NTRC has further suggested that the appearance of new television channels would negatively affect the advertising incomes of the existing channels which might have an adverse impact on the quality of their work.<sup>15</sup>

Under the pretext of transition to digital broadcasting, the NTRC has put serious pressure on regional television stations founded even before the NTRC itself (NTRC was formed in 2003), requiring them to make significant investments, and thus has been able to put them out of action. Unable to withstand the economic difficulties and political pressures, the regional television stations such as Qutb TV based in Guba, Kapaz TV and Alternative TV based in Ganja, Lankaran TV based in Lankaran, Simurq TV based in Tovuz and Aygun TV based in Zagatala either have stopped their activities (such as Alternativ TV and Aygun TV) or fallen under control of an indefinite group through change of founder or company name (Lankaran TV – Janub TV, Simurq TV – Turkel TV). Since the information about the founders of legal entities and their shares in the charter capital has been included in the category of “limited information” under the 2012 amendment made to the Law on State Registration of Legal Entities, the names of the owners of these television stations are not disclosed. According to the journalists, who work or used to work for these televisions, these stations are under political control of the Heydar Aliyev Foundation, while financial support is provided by State Oil Company (SOCAR).

## **Legislative framework for regulation of the print media and current situation**

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<sup>14</sup> Law of the Azerbaijan Republic on Television and Radio Broadcasting, doc. version available here: <http://bit.ly/1jnDoQ2>

<sup>15</sup> See the interview with the NTRC chairman at: <http://deyerler.org/52723-nusirevan-meherremlieni-telekanaldandanisdi.html>

Azerbaijan's legal system is modeled on Continental European law, with some holdover elements from the previous Soviet communist system remaining. After the collapse of the Soviet Union, Azerbaijan took some steps towards establishing a free economy and a pluralistic political system, and towards protecting human rights. However, some of the old traditions remain. Due to a lack of rule of law in the country, there are no effective mechanisms protecting citizens' ability to exercise their civil and political rights.

The Constitution of the Azerbaijani Republic was adopted in 1995.<sup>16</sup> Amendments were made through referendums in 2002 and 2009.<sup>17</sup> The Constitution protects human rights and fundamental freedoms, including *inter alia* the right to freedom of thought and expression (Article 47) and the right to access information (Article 50).

**Access to Information** is a fundamental right envisaged in the Republic of Azerbaijan's Constitution. According to Article 50.I, "Everyone is free to look for, acquire, transfer, prepare and distribute information<sup>18</sup>." In addition, Article 57 of Azerbaijan's Constitution guarantees citizens "the right to appeal personally and also to submit individual and collective written applications to state bodies<sup>19</sup>."

The Law of the Republic of Azerbaijan on Access to Information was adopted in 2005 and was positively evaluated by international experts. But unfortunately, the Institute for Information Commissioner, one of the main points envisaged by the law that gave it a positive quality, was never established. In 2012, very strict and restrictive changes were introduced to the law. The biggest change to the law was the removal of a full chapter, i.e. 14 articles, from the law<sup>20</sup>. In lieu, only one article has been added to the Constitutional Law of Azerbaijan Republic "On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan", in which the execution of the powers of Information Commissioner were very limitedly assigned to the Commissioner<sup>21</sup>. The amendments to the Law of the Republic of Azerbaijan "On Access to Information", which have unmistakably distanced the law far away from its intended purposes and have gone down in history as the most stringent and restrictive changes, were adopted by Milli Majlis (Parliament) in 20 April 2012 and entered into force on 10 May 2012. The envisaged Information Commissioner's Office combined very important powers with regard to openness of information, handling of information requests, information owners' compliance with their duties and placement of public information on the Internet and this was the reason the experts from international organizations gave a positive assessment of the Law in 2005 when it was adopted.

One of the serious problems of the new amendments is the Article 13-1.3 of the Constitutional Law of the Republic of Azerbaijan On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan. Here the Commissioner's right to examine complaints against all information owners is limited. While in Article 9 of the Law on Access to Information the range

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<sup>16</sup> <http://www.e-qanun.az/print.php?internal=view&target=1&docid=897&doctype=0>

<sup>17</sup> <http://www.e-qanun.az/print.php?internal=view&target=1&docid=897&doctype=0>

<sup>18</sup> Constitution of the Republic of Azerbaijan. Article 50.I. <http://en.president.az/azerbaijan/constitution/>

<sup>19</sup> Constitution of the Republic of Azerbaijan. Article 57.I. <http://en.president.az/azerbaijan/constitution/>

<sup>20</sup> Articles 43-55 have been removed by the Law #323-IVQD of Azerbaijan Republic, dated 20 April 2012 ("Azerbaijan" newspaper, 12 May 2012, № 103, Collection of Legislation of the Azerbaijan Republic, 2012, № 05, Article 405).

<sup>21</sup> Article 13-1 has been added by the Constitutional Law #163-IVKQD of Azerbaijan Republic, dated 24 June 2011 ("Azerbaijan" newspaper, 10 August 2011, № 174).

of information owners and those considered equal with them is pretty broad, here, by saying *"During the investigation of the cases stated in the complaint about violation of the right of access to information, the Commissioner checks to see whether information owners- state body, local self-government body or official complied with the requirements of the Law of Azerbaijan Republic on Access to Information"* the amendment has narrowed the scope of information owners to **"state body, local self-government body or official"**. Whereas, in Article 9 of the Law on Access to Information, legal entities and individuals implementing the public functions, private legal entities, subjects holding dominant position and exclusive rights at the market, natural monopolists and commercial organizations founded or jointly owned by the state are considered information owners. This means that the Commissioner has a narrower area of control. In general, abolition of the office of information ombudsman that was very important in guaranteeing the right of access to information, elimination of the Commissioner's ability of strict control, removal from the law of the provision on presentation of reports to the Commissioner by information owners, elimination of the special procedures for handling complaints concerning access to information, and cancellation of the Commissioner's privileges to require information not provided in information requests and to present it to the requester and the public by this amendment has led to serious problems in the application of the law.

### **The current state of print media**

In experts' view, currently 99% of the media market is made up by state, pro-government, several independent and several opposition newspapers.

There are a few factors that affect the independent functioning of the media. One of them is development of the advertising market.

The research conducted by Turan Agency has defined certain contours of the market<sup>22</sup>.

A research conducted in 2007 study found the market for 2006 in the range of \$25 million, of which only \$2 million was invested in the print media and online media. The vast majority of funds from advertising are settled in TV and radio companies. Due to the sharp increase in oil production, until the beginning of 2009, the amount of advertising on TV grew to \$100 million. In other types of media situation has little changed.

After the crisis of 2008 and a significant decline in oil prices, TV advertising market declined by almost half. In recent years, there is growth of advertising on the Internet, where the market volume reached \$8 million; but even here the situation is under control and the advertising is placed only on the loyal sites. And in this case it becomes legitimate means of support for the pro-government online projects thanks to strong funding, improved access to information and involvement of personnel potential, media get a lot of benefits. An example of non-commercial approach to the placement of advertising is the lack of advertising on the websites of the newspaper "Azadlig", "Yeni Musavat". These resources are well ahead in terms of the volume of audience of readers of the sites funded by the government.

We believe that for the elimination of monopoly in the field of advertising a separate body on advertising should be established. This body should ensure provision of advertising based on the volume of circulation of newspapers and IPs of website, thus putting end to unfair competition in advertising market.

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<sup>22</sup>See the article, <http://wap.contact.az/docs/2013/Analytics/071800042922en.htm>



Another factor hampering functioning of the independent print media is the financial assistance allocated to newspapers by State Fund on Support to Mass Media. Media experts believe that there must not be such assistance. This aid must be made to NGOs. Favorable conditions must be created for the development of media in Azerbaijan. So today, the advertising market must be approximately \$ 150 million in order that the media can operate independently.

In 2013, the situation worsened in the print media. Gasid press distribution firm's failure to pay its debts to newspapers, closure of Metroservis Company and multiple problems that came along with news press kiosks extremely complicated the process of distribution. At the same time, steep court fines levied on Azadliq newspaper after complaints of state officials paralyzed the newspaper's activity and it has to suspend publication for a while.

## **Legal regulation of online media and current situation**

State control of televisions and dire state of print media led to growth in popularity of online media. However, it also resulted in determination of a number of legal procedures in the field of online media.

In Article 3 of the Law on Mass Media, internet is included among means of mass media. However the concept of “internet”, mentioned in general terms, was not completely clarified. As is known, across the globe “new media” implies combination of online journalism, social media and blogging. In different countries it has different status. In our law, generalization of everything under the word “internet” causes some confusion.

Note that, according to Article 7 of the Law on Freedom of Information, “Sources of information are documents and other media, media reports and public speeches reflecting the information provided for in the legislation.” This Article does not explain whether information distributed by internet mass media is considered “media products” as specified by the relevant law.

Article 9 of the same Law follows that obtaining public information is ensured through:

- internet information resources;
- official publications;
- providing access to documents in libraries, public information centers and other publicly accessible places;
- provision of such information to physical and legal entities;
- other forms stipulated by law.

It is true that there is the word "Internet information resources" in this article, but at the same time, along with it there is the word "through dissemination on mass media". Most probably, here “internet” is not used in the sense of mass media, but rather official internet pages of separate bodies.

However the government of Azerbaijan says there is a need for regulation of internet media in order to keep it under control.

### **Nushirevan Maharramli, Chairman of National Television and Radio Council**

In his [interview](#) with one of local news agencies on January 10, head of the National Television and Radio Council Nushiravan Maharramov [called](#) it ‘unfair’ that, unlike traditional TV channels, online televisions enjoy license free functioning. In his view, broadcasting as a whole must be licensed. If cable TV licenses its operations and pays legal costs for this, it should also apply to the Internet, he said. Maharramov added that there is no regulatory framework for such media, and this makes it impossible to control.

On February 14 2013, a commission was set up under the Azerbaijan Press Council, with the mandate to handle citizens’ complaints about ethical violations online, hacker attacks on web pages and other issues related to online media. The newly-established commission is headed by online media expert Elnur Baimov. Press Council chairman Aflatun Amashov has recently [told the press that](#) the purpose in establishing this commission is to increase professionalism of online media outlets. According to Amashov, great number of complaints about online media outlets that the Press Council received was one of the main reasons for the establishment of the new commission. However Elnur Baimov’s opinions suggest that the commission was created to keep online media under control. “Activity of new media should also be regulated by legislation. Concrete steps must be taken in this direction, because it is necessary to enhance the responsibility of online media. Once online media has a claim to be considered media, it must share the same legal responsibility” Elnur Baimov said. Moreover the Press Council restricted

the activities of several critical newspapers by including them in its blacklist and declaring that they were “rackets”. All of the above mentioned facts suggest that establishment of the Internet regulatory body under the Press Council could be a calculated step aimed at ruining online media.

In February 2013 chairman of the Parliament’s Social Policy Committee Hadi Rajabli [told the press](#) that a draft bill is underway to protect children from viewing harmful material online. Rajabli said that similar restrictions are applied in Russia and some other countries, and it is not prohibition, but introduction of restrictions by age. However, once adopted, the new bill will grant the government broad new powers to restrict online content, ostensibly to protect children from pornography and other harmful material. In authoritarian regimes introduction of such restrictive laws is followed by technical censorship of the internet. Often government organizations prepare blacklists of prohibited sites; as a result of it citizens’ access to these sites is blocked. For example, [Single Register of domain names of Роскомнадзор \(Russian Federal Service for Supervision of Communications, Information Technology and Mass Media\)](#), which was established last November, deprived Russian internet users of access to YouTube and BlogSpot services of Google for several times, including them in blacklist. Although, at first, the Russian government explained this blocking by its intention to protect children from harmful contents such as child pornography, narcotics and conspiracy, later it stated that it resulted from technical mistake and restored access to these services. Azerbaijani government apparently wants to follow the example of Russia.

In 2014, A bill is being prepared on “Psychological safety of Information” in Azerbaijan. The information was made known by Rabiya Aslanova, head of the Human Rights Committee in the parliament. According to Aslanova, adoption of such a law by the Parliament is necessary. “This law will keep both the media and internet under control. However to realize a full control is impossible”, said Aslanova. “Although suspension of a website sounds pretty simple, indeed, it’s a very hard and lengthy process. Nevertheless, in order to be in line with international legal norms, Azerbaijan should also take some steps in this direction. If we grasp the real essence and content of every data to offer a strong national-moral resistance, then every threat against individuals, the society and the state will be prevented. Today Azerbaijan receives threats from different places. Everybody should know that besides protecting the borderline of our country, defense of our moral borders and national values are very vital for us. We cannot be cosmopolite. Because cosmopolitanism is the point which leads our country to its doom, and turns our national sovereignty to online reality. This is why I believe that adoption of such a law will be very important.”

### **Criminal defamation online**

On 4 June 2013, Azerbaijani President Ilham Aliyev signed into law amendments to the Criminal Code passed by parliament that would criminalize “defamatory and offensive views” posted on the Internet. The amendments allow for the initiation of criminal cases against online activists who post such statements, with penalties of up to three years in prison. The first conviction came two months after the President approved the law – just two weeks after it took effect.

There are currently several factors hindering the development of internet freedom. Main factors include inadequate development of internet audience, expensiveness and poor quality of the internet, personnel problem, lack of state support, weak development of advertising market, technical and technological problems (hosting, domain, language, etc).

## **Situation regarding application of media norms related to election**

During the election campaign period, candidates are in great need of the media.

Mass media are not just carrying out election propaganda. They are also bodies ensuring transparency of the electoral environment. Mass media outlets can freely ensure transparency of

election, carry out an observation mission, organize contest among candidates and shape the image of the conducted elections.

The rights and obligations of the media during the election come forth from Articles 19 and 21 of the Universal Declaration of Human Rights. These articles provide for everyone's right to freedom of expression and information, as well as their right to participate in governance of their country directly or through independently elected representatives. These rights are also secured by the European Convention on Human Rights (Article 10, Protocol 1 Article 3) and the International Covenant on Civil and Political Rights.

While implementing the ECHR, the European Court of Human Rights issued important decisions on political reporting and the media's role in elections. According to the Court, there must be media freedom in order to provide society with information.

Freedom of the media is one of the best means to shape public opinion about their leaders' ideas and approaches. In particular, it allows political figures to reflect public opinion and comment on them; in turn, it gives the right to everyone to take part in debates, which constitutes the core of the concept of democratic society.

In 1999 the Committee of Ministers of the Council of Europe prepared a recommendation for the member states. This recommendation puts forward measures needed for ensuring "fair, balanced and impartial" coverage by member states' broadcast media and editorial independence of all media. Private print media should have the "right to express any political choice", while the state-owned print media must be fair and balanced and "should not discriminate against any political party or candidates".

Both state and private broadcasters should cover electoral campaigns in fair, balanced and unbiased manner, and should not give advantage to state officials in its programs.

The Recommendations also includes measures on protection of the media from state interference during election period, as well as protection against attacks, intimidation or other unlawful pressures on the media. In a nutshell, there exist comprehensive and broad standards on media coverage of elections both on European and global levels. These standards are also reflected in Azerbaijani legislation.

Article 77 of the Election Code, speaks about basic duties of the mass media during the pre-election campaign. Public Television and radio companies or periodicals that are founded by state bodies and organizations, or funded by the state budget, shall create equal conditions for registered candidates, political parties and blocs of political parties to conduct their election campaign using funds allocated from the government budget. No election campaign is conducted by the TV and Radio companies that belong to the state.

The TV and radio companies and periodicals which air programming or are distributed in half of the territory of the Republic of Azerbaijan or more obliged to create conditions for pre-election campaigning for registered candidates for Presidential elections, for political parties or blocs of political parties with registered candidates in more than 60 single mandate election constituencies.

Article 77.1 of the Election Code should be amended and the state-funded AzTV must equally cover the election campaign so that the attitude towards candidates is equal.

At the same time, the National Television and Radio Council must systematically monitor the media in connection with coverage of elections.

Ictimai Television (public broadcaster) should allocate more than 3 hours of airtime for pay-free promotion (election campaign), and assign 1/3 of this airtime for debates and the rest of this time should be put at voluntary disposal of the parties and all the parties must be given equal space.

Furthermore, AzTV should prepare election related programs with the condition to include all political forces, and regional TVs should increase amount of time allocated to election.

At the moment, the new media also plays important role in the coverage of the electoral process. In 2013 presidential election, television channels did not participate in election campaigning, except for legally bound, obligatory allocation of free airtime by the Ictimai Television.

In 2013 election, social networks surpassed television and radio stations in activeness. This activeness can be attributed to Facebook, Twitter and Youtube.

## **CONCLUSION**

The issues discussed above demonstrate that the problem does not lie in the laws, but in their application. However the important point for the moment is the loopholes in the laws, which the authorities have effectively used to their advantage. The important thing is to eliminate the

loopholes in the Law on Television and Radio Broadcasting and the Law on Mass Media, to bring these laws into line with international standards, to adopt a defamation law and to repeal the restrictive amendments made to the information and media laws.

Once complied by the government, the recommendations put forward in this report will be an important step towards development of the media. Besides, in this way Azerbaijan will have fulfilled its international commitments.