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18 March 2023

**Stakeholder Submission
to the UN Human Rights Committee
in Advance of the 44th Session (October-November 2023) of Universal Periodic Review
(4th cycle) of Azerbaijan**

Justice for Journalists Foundation and Media Rights Group are pleased to offer this submission to the 44th Session of the Human Rights Council Working Group for the fourth cycle of the Universal Periodic Review of Azerbaijan.

Justice for Journalists Foundation (JFJ) is a British non-governmental organisation (Registered Charity 1201812) created in 2018. JFJ has been monitoring, analysing, and publicising attacks against media workers¹ that took place since 2017 in 12 post-Soviet states, including Azerbaijan. The monitoring is based on data collected by content analysis of open sources. In addition, expert interviews with media workers are used to monitor cases that have not been publicly reported. All information is verified using at least three independent sources. JFJ also funds journalistic investigations into violent crimes against media workers and helps professional and citizen journalists to mitigate their risks.

Media Rights Group (MRG) is an Azerbaijani non-governmental organisation created in 2014. The organisation is led by a media lawyer Khaled Aghaly. Mr. Aghaly has been working in the field of media law in Azerbaijan since 2002. He is one of the founders of the Media Rights Institute (MRI Azerbaijan), which was forced to suspend its activities in 2014. The organization was unlawfully listed in the criminal case opened by the General Prosecutor's Office of Azerbaijan in 2013 targeting some local and foreign organizations. As a result, the bank accounts of the organization were seized, the organization had to terminate its activities and the head of the organization had to leave the country. MRI was one of the main NGOs promoting the right to freedom of expression in Azerbaijan and providing continuous support to journalists and media. MRG is the successor of the MRI.

Executive Summary

The submitting organisations welcome the opportunity to contribute to the fourth cycle of the Universal Periodic Review (UPR) of Azerbaijan. This submission focuses on the persecution of media workers and media outlets since the consideration of Azerbaijan's third periodic report in May 2018 and Azerbaijan's compliance with its obligations enshrined in Articles 7, 9,10,12, 14, 15, 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR).

The submitting organizations will raise concerns in connection to the following issues:

- Persecution of media workers and media outlets;
- Safety of journalists;
- Arbitrary arrests and arbitrary detentions of journalists, and allegations of torture and cruel, inhuman and degrading treatment in detention;
- Forced closure and harassment of independent media outlets;
- Legislative restrictions to freedom of expression.

¹ In this submission, the term "media workers" refers to journalists, camerapersons, photojournalists, and other employees and managers of traditional and digital media, as well as bloggers and online activists.

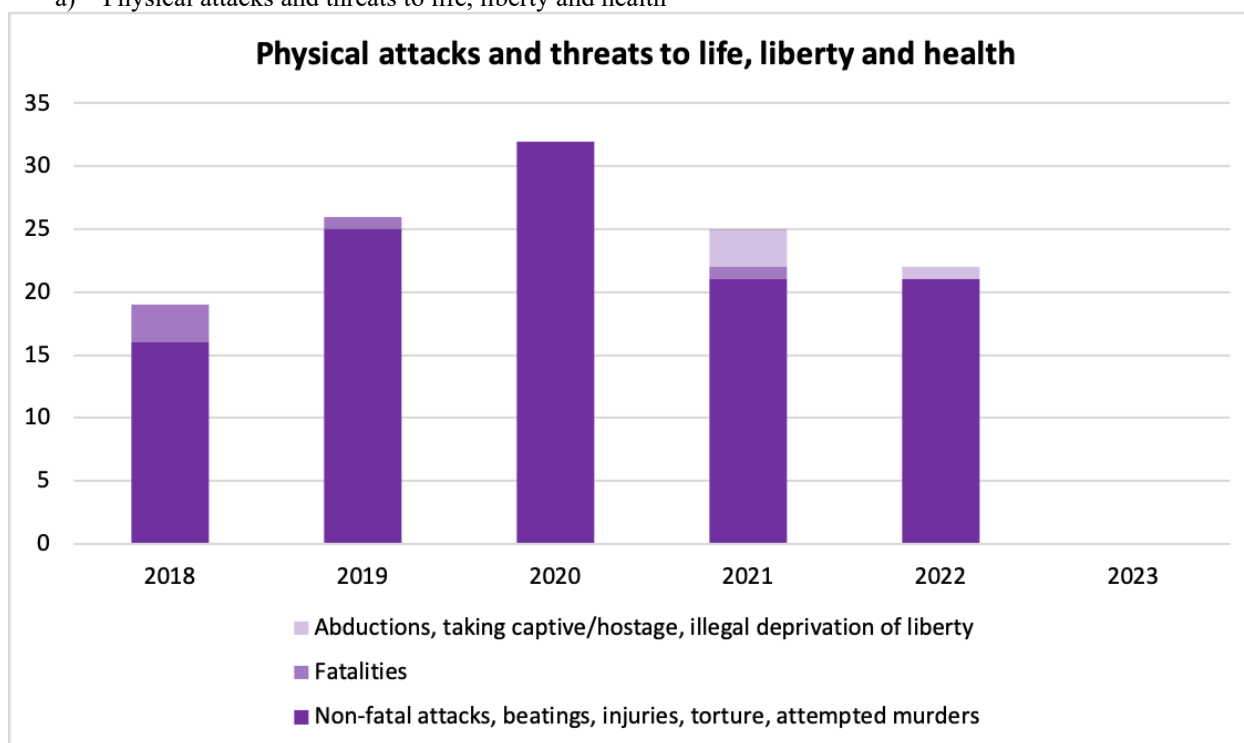
Persecution of media workers and media outlets

Since consideration of Azerbaijan's previous periodic report in 2018, some positive changes have been observed in connection to the environment for media but negative developments continued to raise concern. In four years, the country has gained 9 positions in Reporters Without Borders' World Press Freedom Index and currently ranks 154 out of 180 countries as opposed to 163 out of 180 in 2018 during the previous periodic report.² Freedom House's Internet Freedom Score for Azerbaijan has deteriorated though, moving from 40 ("partly free") to 38 ("not free").³

In 2018-2022, Justice for Journalists Foundation documented 878 cases of persecution of media workers and media outlets. 124 of them were physical attacks and threats to life, liberty and health, 150 – non-physical attacks and cyber-attacks and threats, and in 604 instances, judicial and economic means were used to exert pressure. In an overwhelming majority of cases (about 72%), the perpetrators were representatives of the authorities. The main targets were media outlets that criticise the government, independent media workers, their relatives and loved ones.

The graphs below illustrate the consistent distribution of cases over the years and the most widely used types of persecution within each category:

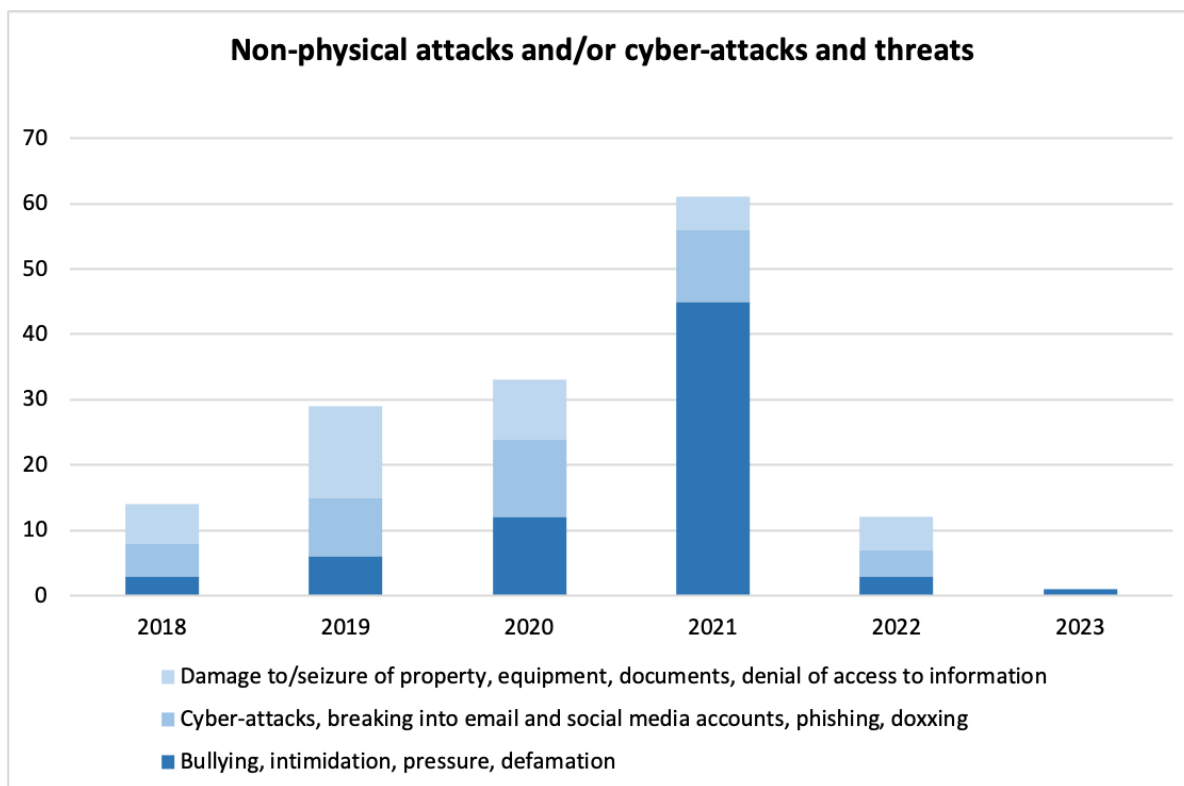
a) Physical attacks and threats to life, liberty and health



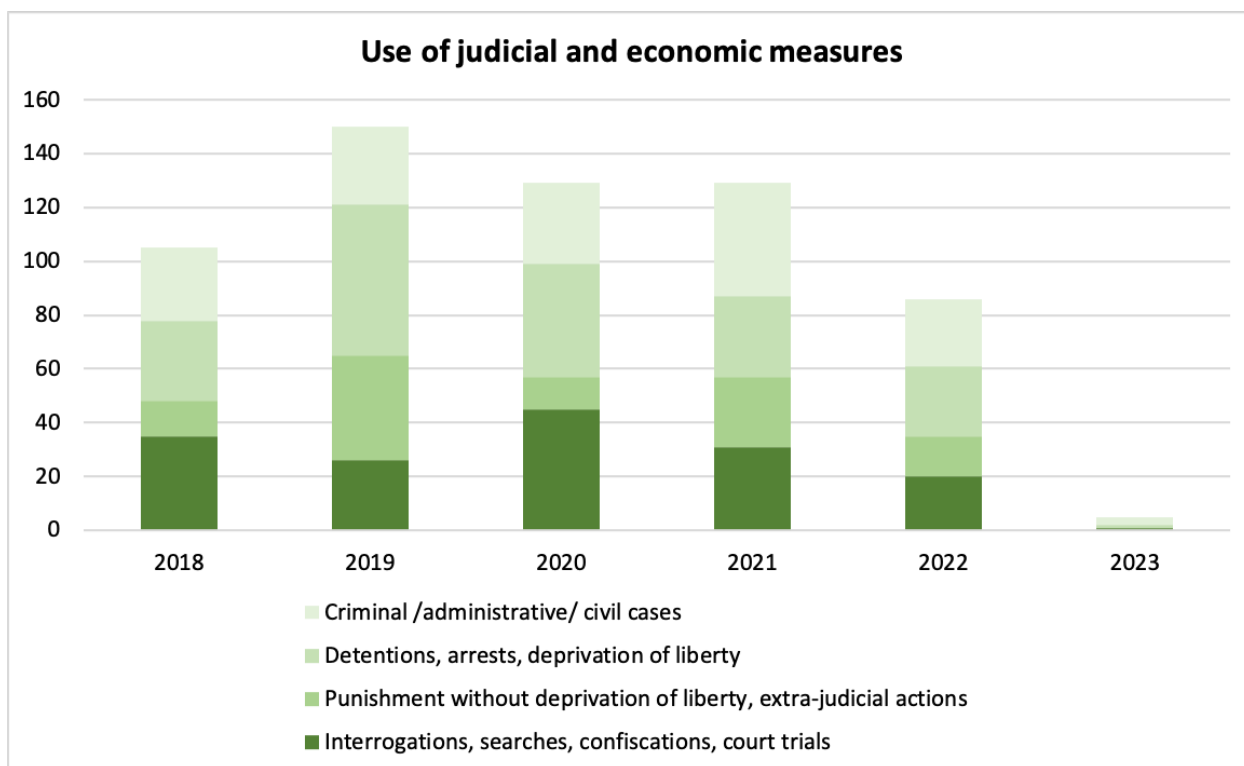
b) Non-physical attacks and/or cyber-attacks and threats

² <https://rsf.org/en/country/azerbaijan>

³ <https://freedomhouse.org/countries/freedom-net/scores>



c) Use of judicial and economic measures



In 2023, at least 6 cases were documented: 1 non-physical attack, and 5 instances of judicial and economic attacks have been documented as of 17 February 2023.

Attacks on media workers are rarely effectively investigated. While Article 163 of the Criminal Code prohibits “obstruction of the lawful professional activities of journalists”. However, that article is not even used, in the last 4 years that article has not been applied even once. However, only in 2022, journalists who performed their professional activities faced more than 40 different repressions, most of them complained to the prosecutor's office to open a criminal case based on Article 163 of the Criminal Code. However, in no case was a criminal case opened, and in the decisions made by the prosecutor's office, the opening of a criminal case was refused. These decisions are based only on the statements of the policemen, the explanations of other persons who were participants and observers of the events complained of by the journalists were not received. Since the domestic courts considered the decision of the prosecutor's office to be legal, the journalists had to appeal to the European Court.⁴

Safety of journalists

During the review period, the Azerbaijani Government had not followed the recommendations related the safety of journalists, conducting impartial, thorough and effective investigations into all cases of attacks harassment and intimidation against them, and bringing perpetrators of such offences to justice. Thus, there is still total impunity for the March 2005 murder of *Monitor* magazine editor-in-chief Mr. Elmar Huseynov, as well as for the November 2011 murder of prominent writer and journalist Mr. Rafiq Tagi.

Relevant Recommendation from the last round of UPR:

- 141.51 Continue ensuring that human rights defenders and journalists are protected from any act of intimidation or reprisal or any other impediment to their work (State of Palestine) (Supported; A/HRC/39/14/Add.1, Paragraph 20);
- 141.32 Release all activists, journalists and bloggers held on politically motivated charges, and dismiss the criminal charges against those individuals that have already been released (Australia) (Noted; A/HRC/39/14/Add.1, Paragraph 21-24);
- 141.38 Immediately and unconditionally release all individuals in custody for exercising their fundamental freedoms, including the rights to freedom of expression, association, assembly and religion (United States of America) (Noted; A/HRC/39/14/Add.1, Paragraph 21-24);
- 141.44 Create the environment for a free and independent media and take effective measures to ensure that the press and media can work free from oppression, intimidation or reprisals (Slovakia) (Noted; A/HRC/39/14/Add.1, Paragraph 27-28);
- 141.54 Take measures to guarantee the safety of journalists, in conformity with resolution 33/2 of the Human Rights Council, and ensure prompt, impartial and thorough investigations (Chile) (Noted; A/HRC/39/14/Add.1, Paragraph 27-28);
- 141.80 Ensure effective, prompt and independent investigations of all cases of harassment and violence against journalists and human rights defenders and bring perpetrators to justice (Austria) (Noted; A/HRC/39/14/Add.1, Paragraph 19).

During the past 4 years, no steps have been taken to hold those involved in the murders of Mr. Elmar Huseynov and Mr. Rafiq Tagi accountable. The Prosecutor General's Office of Azerbaijan decided to suspend the criminal case related to the murder of Mr. Rafiq Tagi. The decision was based on the failure to identify the person who should be involved as an accused person. In 4 years, it was not possible to identify the killers of Elmar Huseynov and bring them to court. The European Court of Human Rights decided on the ineffective investigation of the journalist's death and the violation of his right to life. Although the decisions of the ECHR are the basis for a new investigation, the law enforcement agencies did not take the necessary steps to eliminate the problems caused by this decision and renew the investigation.

⁴ https://aihmaz.org/wp-content/uploads/2023/03/MRG_Media_Annual_Analysis_2022.pdf - LEGAL ENVIRONMENT FOR MEDIA in AZERBAIJAN 2022, Annual Analysis

Recommendations

- Encourage to investigate criminal, administrative and disciplinary cases for attacks and other forms of persecution of media workers since the previous periodic report and bring to justice those responsible, either directly or carrying supervisory responsibilities, and explain the open cases with no one brought to justice;
- Enact measures to ensure the safety of journalists, such as ensuring impartial, speedy, thorough, independent and effective investigations, that also seek to bring masterminds behind attacks to justice, and providing victims and their families with access to appropriate remedies, in particular in the cases of Mr. Elmar Huseynov and Mr. Rafiq Tagi.

Arbitrary arrests and arbitrary detentions of journalists, and allegations of torture and cruel, inhuman and degrading treatment in detention

Relevant Recommendation from the last round of UPR:

- 141.84 Investigate allegations of arbitrary arrests of human rights defenders and journalists and ensure that freedom of opinion and expression is not unduly restricted on grounds of extremism, defamation or "humiliation of honour" (Czechia) (Noted; A/HRC/39/14/Add.1, Paragraph 20); and
- 141.86 Ensure prompt, effective, independent and impartial investigations into all allegations of arbitrary detention, torture and ill-treatment of human rights defenders, civil society activists and journalists (Ireland) (Noted; A/HRC/39/14/Add.1, Paragraph 19).
- 141.55 Ensure freedom of expression and media freedom, including by promptly and thoroughly investigating all allegations of the torture and ill-treatment of journalists, human rights defenders and youth activists, and prosecute perpetrators (Estonia) (Noted; A/HRC/39/14/Add.1, Paragraph 20);
- 141.78 Investigate all allegations and prosecute perpetrators of torture and ill-treatment of journalists and political opponents, and strengthen the training of relevant public authorities and staff on human rights (Republic of Korea) (Noted; A/HRC/39/14/Add.1, Paragraph 19);
- 141.81 Enhance efforts to investigate all allegations of torture and ill-treatment, in particular against human rights defenders, journalists and members of religious groups, and hold perpetrators accountable (Brazil) (Noted; A/HRC/39/14/Add.1, Paragraph 19);

Arbitrarily arrested and detained journalists and bloggers, include:

Currently, at least 4 journalists engaged in regular journalistic activities are serving sentences in prison. Mr. Elchin Mammad, the head of "Yukselish Namina" newspaper and yukselish.info news resource, has been in prison since March 2020. Last year the blogger Mr. Aslan Gurbanov, who was arrested by the State Security Service, was deprived of freedom for 7 years. Mr. Polad Aslanov, founder and editor of "Xeberman.com" and "Press-az.com" information websites, was detained in 2019 on suspicion of treason and sentenced to 16 years in prison. The Supreme Court reduced his sentence from 16 years to 13 years. Kim TV internet channel host Mr. Abid Gafarov was sentenced to 1 year in prison on charges of slander and insult. In addition to those mentioned, Mr. Rashad Ramazanov, known as a blogger, was also arrested in May 2022. Also in May 2022, blogger Mr. Eyvaz Yahyaoglu, host of Shirvan TV internet channel, was arrested administratively. In June 2022, local courts found guilty of insult Mr. Ilham Aslanoglu, who became famous after his blog about alleged crimes in the army, and sentenced him to 6 months in prison⁵.

In addition to these, critical journalists who performed their professional activities in 2018-22 were repeatedly detained, taken to police stations, and released after questioning. In 2020 alone, journalists were subjected to such pressure at least 26 times, they were prevented from performing their professional activities. The law enforcement agencies did not satisfy any of the complaints submitted by the journalists for a legal evaluation of the violations they suffered⁶.

- Additionally, the family members of journalists living in Azerbaijan and abroad have also been targeted:

⁵ https://aihmaz.org/wp-content/uploads/2023/03/MRG_Media_Annual_Analysis_2022.pdf

⁶ https://jfi.fund/report-2020_1/#az

The family members of the blogger Mr. Mahammad Mirzali, who emigrated from Azerbaijan to France, living in Azerbaijan, faced repression several times in 2018-2022. His father and other close relatives were repeatedly taken to the police station, they were threatened because of the contents spread by the blogger. The blogger's sister's wife was arrested for 30 days. Intimate images of M. Mirazli's family members were secretly filmed, then some of them were spread on social media, and they were threatened with some of the images. The close relatives of Mr. Ordukhon Teymurkhan, another blogger who emigrated from Azerbaijan to Europe, were also repeatedly detained and taken to the police. Blogger's nephew was sentenced to 2 months in prison. Another nephew and brother were arrested for 30 days on trumped-up charges. The family of blogger Mr. Tural Sadiqli, who lives in Germany, was also subjected to raids, his brother Mr. Elgiz Sadiqli was administratively arrested on a suspicious charge.⁷

The following journalists have claimed to be ill-treated in custody:

Journalists Mr. Elchin Mammad, Mr. Elchin Ismayilli, Mr Afgan Mukhtarli, Mr. Polad Aslanov, Mr. Afgan Sadigov, who were imprisoned in 2018-2022, stated that they were ill-treated in the penitentiary and repressive rules were strictly applied. Journalists were punished several times by being placed in penalty cells.

While performing their professional activities, journalists were detained and taken to the police stations - Meydan TV employee Ms. Aytaj Ahmadova, Turan TV employee Ms. Fatima Movlamli (now with Toplum TV), MikroskopMedia employee Ms. Elnara Gasimova, independent journalist Mr. Anar Abdulla, argument.az employee Mr. Elmar Aziz, Voice of America correspondent Mr. Tapdig Guliyev announced that they were ill-treated by police officers.

Recommendations

- Take specific steps to release media workers detained or imprisoned for exercising their right to freedom of expression; cease physical attacks and all other forms of persecution of media workers and media outlets; counter impunity; and ensure that media workers can carry out their legitimate work in a safe and enabling environment without fear of harassment, prosecution, threats or acts of intimidation of any kind;
- Immediately and unconditionally release all persons arbitrarily detained for exercising their rights to freedom of expression, and, where applicable, quash their convictions and remove restrictions on their freedom of movement;
- Fully implement the recommendations of the UN Working Group on Arbitrary Detention following its 2016 country visit, in particular to investigate promptly, thoroughly and impartially all allegations of arbitrary arrest and detention of human rights defenders, journalists, political opponents and religious leaders, and prosecute and punish appropriately those found guilty and provide victims with redress;
- Ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated and that perpetrators are prosecuted and brought to justice while victims are provided with effective remedies and full reparation, including appropriate compensation;
- Conduct necessary reforms to ensure that regular monitoring and inspection of all places of deprivation of liberty is carried out by an independent and effective mechanism, and consider involving NGOs in such a process.

Travel ban

Released journalists are commonly facing further threats, their convictions are not quashed, they remain under surveillance, face travel bans, and ongoing harassment. For example, prominent investigative journalist, Ms. Khadija Ismayilova, was released after 16 months' detention in May 2016, after the Supreme Court commuted her sentence of 7.5 years' imprisonment for the absurd charge of "incitement to suicide" to a 3.5 year suspended sentence. Ms. Ismayilova was allowed to travel only after five years of travel ban had expired, but her criminal convictions had not been quashed despite the ECHR judgement. In its decisions regarding several other journalists who were previously deprived of their freedom on dubious charges – Mr. Sardar Alibeyli, editor-in-chief of "Nota Bene" newspaper, Mr.

⁷ <https://toplum.tv/siyaset/tural-sadiqlinin-qardasi-saxlanilib>

Avaz Zeynalli, editor-in-chief of Khural newspaper, and Mr. Ali Hasanov, editor of Ideal newspaper, the late, concluded that their punishment was bloodless, but those decisions not fully implemented. Although several years have passed, none of the journalists has been acquitted.

Number of journalists were banned from leaving Azerbaijan in 2018-2022 (18 in 2019), some without prior notification. Some of the journalists under travel bans have filed complaints in local courts to have the blocks lifted, saying they considered them illegal with no justice served. A few later filed complaints with the European Court of Human Rights (ECHR). Currently, several journalists are still banned from leaving the country. Journalists distinguished by their critical positions - Saadat Jahangir, employee of Azadlig newspaper, Mustafa Hajibeyli, head of basta.info website, Mr. Vugar Gurdganli, editor of blocked 24saat.org website, were banned from leaving the country. The journalists' statements were obtained as witnesses in various criminal cases, and the ban was based on those criminal cases. However, involvement as a witness is not considered a legal basis for such a ban.

Recommendations

- Drop the criminal charges against all persons for exercising their right to freedom of expression, Ms. Khadija Ismayilova and Mr. Sardar Alibeyli, editor-in-chief of Khural newspaper Mr. Avaz Zeynalli and editor of Ideal newspaper, late Mr. Ali Hasanov (after his death).
- Ensure to lift travel ban imposed on journalists without legitimate reason or the court decision regarding Ms. Saadat Jahangir, Mr. Mustafa Hajibeyli and Mr. Vugar Gurdganli.

Forced closure and harassment of independent media outlets, blocking of websites

Relevant Recommendation from the last round of UPR:

-141.36 Ensure the right to freedom of expression, including by revoking its decision from 2017 to block the websites of several independent and opposition media (Sweden) (Noted; A/HRC/39/14/Add.1, Paragraph 20);

-141.46 Ensure full respect for freedom of expression in line with its international commitments, including by ensuring that all journalists may work freely and without fear of retribution, allowing foreign media broadcasts without undue restrictions, ensuring unfettered access to the country for journalists and ending the travel restrictions against independent journalists, NGO leaders and opposition members (Greece) (Noted; A/HRC/39/14/Add.1, Paragraph 20);

In the period under review, the majority of independent media outlets remained closed or operated in exile, with those still inside the country subject to police raids, financial pressures, and prosecution of journalists and editors on politically-motivated charges. Where media outlets have been forced to stop print publication and publish only online, their sites became subject to periodic blocking by the authorities.

Meydan TV, an independent online media outlet reporting on human rights abuses and government corruption, was forced to close its Baku office in December 2014. Since then, it continues operation from its headquarters in Germany. The continuous harassment and state-level blocking of the site since May 2017 still carries on. In August 2015, the Azerbaijani Prosecutor General's Office launched a criminal case in relation to Meydan TV's activities under Articles 213.2.2 (evasion of taxes in a large amount), 192.2.2 (illegal business) and 308.2 (abuse of power) of the Criminal Code. In April 2016, 15 individuals were named in the criminal investigation, with Ms. Aynur Elgunash, Ms. Aytaj Ahmadova, Ms. Sevinj Vagifgizi, and Mr. Natig Javadli faced travel bans. Journalists associated with Meydan TV have been repeatedly summoned for interrogations by the Prosecutor's Office. The travel ban imposed on journalists cooperating with Meydan TV two years ago has been lifted, but the criminal case against Meydan TV is still open, and the prosecutor's office does not respond to inquiries about the outcome of the criminal case. Keeping such criminal cases open has become a bad practice, and in general, it is playing the role of a chilling effect for the media and journalists.

Access to foreign media outlets remains restricted, notwithstanding the government's acceptance of a specific UPR recommendation to expand media freedoms across broadcast platforms, including by ending its ban on foreign broadcasts on FM radio frequencies as well as restrictions on the broadcast of foreign language television programmes. A 2009 ban imposed by NTRC (based on Article 13 of Law of the Republic of Azerbaijan on Telecommunication), remains in place, preventing foreign entities from accessing national frequencies, which

effectively took the BBC, Radio Free Europe/Radio Liberty, and Voice of America, off the air.

Recommendations

- Support an independent and pluralistic media sector, with guarantees for the editorial independence of media actors;
- Refrain from extra-legal pressure or unlawful interference with the independence of media outlets, including through the harassment of their staff;
- Cease the regulatory and judicial harassment of independent media outlets, their editorial staff and journalists, including by dropping criminal charges against Meydan TV and by restoring the license of independent media;
- Amend Article 13 of Law of the Republic of Azerbaijan on Telecommunication and lift the ban prohibiting foreign entities from broadcasting on national frequencies, including the BBC, Radio Free Europe/Radio Liberty, and Voice of America to permit broadcasting by foreign outlets.

Legislative restrictions to freedom of expression

Relevant Recommendation from the last round of UPR:

- 141.41 Remove libel and defamation as criminal offences and take further steps to ensure journalists may work freely and without fear of retribution (Australia) (Noted; A/HRC/39/14/Add.1, Paragraph 20);

- 141.53 Repeal the recent legislation that restricts freedoms of expression, peaceful assembly and association, and ensure a safe environment for journalists, activists and human rights defenders (Spain) (Noted; A/HRC/39/14/Add.1, Paragraph 26)

Azerbaijan is a state party to major international human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. Freedom of expression is guaranteed by Article 10 ECHR and by Article 19 ICCPR. The Constitution of Azerbaijan also guarantees the supremacy of international law upon national legislation in Article 151 of the Constitution. However, despite being a signatory to the international covenants and the commitments undertaken by the government to uphold the principles and provisions of these conventions, the government continued to introduce new laws with harsh restrictions and failed to amend those that were recommended during the previous round of review.

In 2020, Azerbaijan introduced harsh restrictions under the pretext of COVID-19.⁸ The legitimacy of adopted measures was disputable: the country's legislation allows for the application of such measures in the event of a state of emergency; however, a state of emergency was not declared. Moreover, the authorities misused COVID-19 measures to further target media workers. We documented at least one physical attack on a media worker connected to COVID-19 and 23 instances of persecution using judicial and economic means.

According to the investigation published by OCCRP, Forbidden Stories and Amnesty International in July 2021, the Azerbaijani authorities may have used Pegasus software for surveillance on journalists and activists. At least more than 20 Azerbaijani journalists were on the leaked Pegasus list, indicating that they were potential targets of the software.⁹ In 2022-2023 total of eight court cases have been launched in connection with the Pegasus case and all of them have been dismissed by the court. Five of these cases are filed with the European Court of Human Rights. Although most of the journalists subjected to surveillance complained to the relevant law enforcement agencies and courts to investigate the violations they suffered and punish those who committed violations in relation to them, none of their complaints were satisfied, and the journalists had to complain to the ECHR.

⁸ <https://www.icnl.org/covid19tracker/?location=8&issue=&date=&type=>

⁹ <https://cdn.occrp.org/projects/project-p/#/countries/AZ>

In 2017, the Law “On Information, Informatisation and Protection of Information” was amended to allow the Ministry of Communications to extrajudicially block websites deemed to pose a danger to the state or society. These amendments were used to block dozens of websites, including those of independent media outlets *Radio Azadliq*, the *Azadliq* newspaper, the *Azərbaycan saati* programme, *Meydan TV*, and the *Turan* internet television channel. The Ministry of Communications is demanding that not only these websites be blocked but all internet resources distributing the content of these media outlets, including social media.

In 2017 and 2021, the amendments to the Law "On Information, Informatization and Information Protection" opened up a wide range of possibilities for blocking information resources to the Ministry of Communications. Immediately after the amendments made in 2017, dozens of websites, including independent Radio Azadlig, the Azadlig newspaper, the Azerbaijan Hour program, Meydan TV, and the Turan internet television channel, which are the most watched and reliable sources of information in the country, were banned by court decisions as well as blocked without court orders. The changes to the law define at least 11 grounds for blocking any internet media. These grounds give the relevant government agency unlimited opportunities to block online media. For example, any news related to suicide incidents, intellectual property infringement, or pornography, gambling, or any news deemed to be offensive or defamatory may be a legal basis under domestic law to block online media.

The blocking procedure established by the law is also very problematic, court orders are not the only tool for blocking online media. The Ministry of Communications can block an online media resource on its own initiative without a court order. Legislation has established a fairly common regulation in this regard. In "cases where there is a threat to the interests of the state and society protected by law or there is a real threat to people's life and health", the ministry itself can block any site before the court, opening wide doors to the main abuses specified in the law. In other cases, blocking is carried out by a court decision.

The Ministry of Communications is also taking steps to apply the practice of closing social network accounts of blocked Internet resources based on the Law "On Information, Informatization and Information Protection". It is not clear how such an experiment will be created, but the Ministry sued Radio Azadlig, the Azadlig newspaper, the Azerbaijansaat program, Meydan TV, and the Turan internet television channel to block their resources on social networks, as well as all other resources that provide access to those blocked media. applied. That case has been on appeal since 2021.

On 15 November 2016, the Azerbaijani Parliament approved amendments to Articles 148 and 323 of the Criminal Code, creating a new offence of “slander or insult” through “fake user names, profiles or accounts”, as well as increasing penalties for “smearing or humiliating the honour and dignity” of the Azerbaijani president where the offence is committed online.(40) The government has not acted on its 2011 proposal to decriminalize defamation,(41) which currently carries a sentence of up to 3 years in prison. This is in spite of accepting a recommendation at the 2nd UPR cycle to abolish defamation provisions in the criminal code, and to “refrain from initiating defamation lawsuits against civil society activists and journalists”.

On 10 March 2017, the Parliament passed new amendments to the laws on “Information, Informatisation and Protection of Information” and “Telecommunications”, extending government control over online media.(42) The amendments establish obligations for website owners or hosts to delete within eight hours, on notice from the authorities, unlawful content.(43) Prohibited content includes any information criminalised under national laws, including broad “extremism” and “defamation” provisions. If the content is not removed, authorities can apply for a court order to block the website, though websites with information considered “a danger for the state or society” can be blocked without a court order, subject to subsequent judicial review.

Between March and April 2017, access to a number of online new sites with content critical of the government were blocked in Azerbaijan.(44) Contrary to the provisions in the above laws, neither the hosts or owners of these outlets were informed about the blocks in advance. On 12 May 2017, a Baku Court ruled to impose an official ban on five independent media websites deemed harmful and dangerous for national security. Along with Meydan TV, Azadliq newspaper, Radio Free Europe/ Radio Liberty Azerbaijani Service, Azerbaijan Saati website and video channel, and Turan TV video channel have all been blocked.(45)

- In September 2017, access to the website of the Organised Crime and Corruption Reporting Project (OCCRP) was blocked inside Azerbaijan after they published the “Azerbaijan Laundromat” – a series of reports that uncovered high level corruption by Azerbaijani officials and implicated European and other diplomats and politicians.

The implementation of the new Law on Media, which was hastily discussed and adopted in December 2021 by the parliament and entered into force with the approval of the head of state in February 2022, especially its provisions related to the establishment of the Media Registry, poses concerns as related to freedom of expression and media. The new legislation intends to establish a single register of media and journalists. The rules for keeping the register were approved by the Decree of the head of the country dated September 26, 2022.

The new bill signed into law in early 2022 is a clear case of overregulation in a legislative environment which was already very restrictive. As it was also specified by the Venice Commission, the Law leaves no room for any self-regulation and thus limits the potential for responsible journalism to exist in its own right, with the Media Development Agency taking on the role of a Ministry of Media. The Law does not contain any provisions on facilitating the work of journalists, for example as regards their access to government information or the promotion of their freedom of expression, nor on the duties of the state in safeguarding the safety of journalists to carry out their work in Azerbaijan. After the establishment of the Media Register, the Media Development Agency, a regulatory body, refused to include more than 40 media outlets that have been operating for a long time in the register citing technical reasons, and dozens of media outlets and journalists were warned. Both this and the stage after the formation of the Register create the danger of termination of activity of 100s of media for not being in the Register. Currently, unregistered media and journalists are not even allowed to attend open sessions of the parliament, obstacles are created for journalists to carry out their professional activities in the regions of Azerbaijan.

The Venice Commission came to the conclusion that in the context of an already extremely confined space for independent journalism and media in Azerbaijan, the Law will have a further “chilling effect”. Many provisions are not in line with European standards on freedom of expression and media freedom and do not allow the media to effectively exercise its role as a “public watchdog”. Therefore, the Law should not be implemented as it stands ¹⁰

Along with the content of the law, its application is also inconsistent with the Constitution of Azerbaijan. According to Article 149 of the Constitution, laws must not contradict the Constitution. According to that article, the force of normative legal acts that improve the legal status of individuals and legal entities, eliminate or alleviate legal liability is applied retroactively. The provisions of the law "On Media" regarding the media register are applied without exception to both newly created and active media established before the adoption of the law. However, in no case can it be said that these provisions "improve the legal status, eliminate or alleviate legal responsibility".

The new law, assessed by the Venice Commission as "such a law cannot be applied in the European space", will come into effect in full force after April 2023. The formation of the media registry will be completed by then. The process of creating a registry is already revealing the serious challenges the law poses to media freedom. The formation of the register is carried out closed, the regulatory state body does not disclose information about the media and journalists included in the register or refused to be included. More than 40 media outlets have been refused entry into the register, including both online and print media entities and individual journalists. Most of the refusal decisions are based on formal grounds, the main reason being the non-sustainability of the activities of the applicant media (the condition of publishing at least 20 private news items per day). All these decisions are illegal. For example, the refusal to include the newspapers "Mingachevir Ishiglari" and "Gündam-Khabar" in the media register was explained by the non-sustainability of the activities of the media that applied. However, the condition of "continuity of activity" stipulated in the law applies to online media subjects. The inclusion of some journalists in the register individually was also refused. For example, Aziz Karimov is a photojournalist. For more than 10 years, he has been continuously cooperating with many local and foreign media, especially with the independent "Turan" Agency. Karimov's official request was verbally refused. 2 grounds for refusal were indicated - "lack of minimum three-year work experience as a full-time journalist with a media editorial office" and "a photographer is not considered a journalist." Several other journalists were refused entry into the register individually on the basis that their journalism experience was less than 3 years. However, those journalists have been engaged in this profession for at least 10 years.

Most of the key provisions of the media law are confusing, diffuse, and open wide opportunities for abuses during state regulation. The legal status of print and online media entities established after the creation of the single registry, which is one of the most noticeable reactionary regulations established by the law, was clearly stated in the law: they had to apply to the regulatory state body before starting their activities; if they do not apply, the regulatory state body files a lawsuit in court to assess whether their activity is legal or not. The legal status of print and online media subjects operating before the new law comes into force is not clear in the light of the text of the law. According to the law, those media had to apply to the regulatory state body within 6 months from the date of

¹⁰ [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)009-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)009-e)

formation of the Media Register. According to the official statements regarding the application of the law, after the 6-month period established for the establishment of the register, the court will decide whether the activity of the media, which did not apply for registration and whose applications were rejected, is legal or not. This clearly states that the media registry is a state regulation equivalent to licensing, such a regulation completely contradicts the criterion "...registration or licensing of journalists is not in accordance with Article 19 of the UN Universal Declaration of Human Rights" contained in General Comment No. 34 of the UN Human Rights Committee.

Recommendations

- Repeal the excessive restrictions on the establishment of media entities the Media Law, including as regards foreign ownership and foreign funding, in order to foster media pluralism;
- Remove the provisions of the Law "On Media" regarding the establishment of the registry and repeal the accreditation scheme for journalists; amend the Law to ensure that the restrictions on content are compatible with the case-law of the Court on Article 10 ECHR; amend the Law by complementing the right of journalists not to disclose their sources of information, with clear provisions indicating that a court can only order disclosure if all reasonable alternative measures have been exhausted and the legitimate interest in disclosure is of a sufficiently vital and serious nature, responding to a pressing social need, which outweighs the public interest in non-disclosure;
- Amend the provisions on suspension and termination of the licenses of audiovisual media and on the suspension and termination of print and on-line media entities, to ensure that such sanctions are proportionate (i.e. limited to situations that would justify such an exceptional measure), progressively applied by an independent regulatory authority and provide for a transparent and fair procedure in which the license holder is heard and can have the decision on suspension / termination rev the definition of a journalist in Article 1 of the Law would need to be broadened and defined in line with the "public watchdog role" of journalists;
- The categorical prohibition on the use of secret audio and video recordings and photographs without the consent of the person concerned or a court order would need to be replaced by a provision that allows for such use in cases in which there is a clear public interest in the publication of such material, provided the rights of third parties are protected;
- Reform the laws on "Information, Informatisation and Protection of Information" and "Telecommunications" to remove reference to prohibitions on content that do not comply with international human rights law on freedom of expression, and to ensure that websites are only blocked on the basis of an independent court order and are strictly proportionate to the aim pursued;
- Decriminalise defamation fully, including by reversing the introduction of heightened penalties for online forms of defamation, repealing Articles 148, 148-1, 323.1, and 323.1-1 of the Criminal Code.
- Bring the situation with blocking of media websites since the previous periodic report in compliance with Azerbaijan's obligations under the ICCPR.
- Ensure the investigation of cases of surveillance of media workers with the use of Pegasus software to bring the situation in compliance with the obligations of the country under the ICCPR.