



Center for Legal Initiatives - Azerbaijan

31/18 Khagani Street, Baku, AZ1000, Azerbaijan

www.legal.org.az

Email: clipu.ngo@gmail.com

Compliance of the Republic of Azerbaijan with the International
Covenant on Civil and Political Rights

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Introduction

Submitting Party

Center for Legal Initiatives (CLI) is an independent NGO, founded by lawyers in Azerbaijan. The organisation was established in 2009 and has not been registered yet. The aims of this organisation are to promote rule of law, strengthen the protection of civil and political rights and support young lawyers through human rights education activities.

This alternative report on the implementation of the International Covenant on Civil and Political Rights (ICCPR) has been prepared by CLI and underlines the issues covered by the Fourth periodic report of the Republic of Azerbaijan (CCPR/C/AZE/4). This Report includes information on the observance by the Republic of Azerbaijan of the provisions of Article 19 of the ICCPR.

Chapter I. Legislation on Mass Media

Tendency on amending legislation on mass media has continued between 2015 and 2016 as well as in previous years. Dominant content of amendments to the laws was restrictions to convenient environment for mass media.

Amendments to the law on mass media

The Law on Mass Media was subject to most of the amendments.

During the past year and a half, this law was amended for 4 times. These amendments were made in December 2014, in October and December 2015. The amendments were mainly related to establishment and liquidation of mass media.

Before, the existence of another mass media with identical name was a cause for denial of establishment of a new one. Pursuant to the latest amendments, not only identical but also the existence of a mass media with a similar name is accepted as a cause for denial of registration of a new one.

According to the amendment to Article 19 of the 'Law on Mass Media', in cases that a mass media is financed by an illegal resource, relevant bodies are entitled to appeal to the court with a claim of its liquidation.

In addition, if a mass media was charged by court twice a year for biased publications, Ministry of Justice is entitled to appeal to the court claiming the termination of its registration.

The addendum to this law in 2015 has established a necessary legal procedure about the establishment of religious print publications that opinion of relevant executive body shall be attached to the documents and this addendum violates the principle of simplified registration of mass media. Official authority, opinion of which is required, is State Committee on Affairs with

Religious Associations as described in the decree № 682 of the President of the Republic Azerbaijan issued on 20 November 2015.¹

As a result of the amendments made to the Law on Mass Media in October 2015, right to appeal to court about disproof and rectification of information was given to the authorities who take charge of procedural aspects of preliminary investigation or carry out preliminary investigation. According to the amendments, if any false or perverted information about the gist and results of preliminary investigation of criminal cases is published in mass media, the authorities who take charge of procedural aspects of preliminary investigation or carry out preliminary investigation are entitled to appeal to court with a claim of disproof or rectification of the information.

Prior to this amendment, they were furnished with this right only in the case of transmission in mass media of the information humiliating honor and dignity of natural and legal persons of slanderous and offensive nature². Giving this power also to investigatory bodies will restrict opportunities of mass media in terms of carrying out alternative investigations and putting forward different versions about boisterous crimes that attract public interest, and will unable journalists to practise their right to give an observation in these cases.

Television and radio laws

Within a year and a half, amendments have also been made to Law on Television and Radio Broadcasting. The amendment made in February 2015 was about extension of the powers of National Television and Radio Council (hereinafter “the NTRC”).³ Prior to the amendment the legal norm in force established that if television and radio broadcaster did not pay the license fee within definite period of time, the relevant executive body may appeal to the court for the suspension of the application of a special agreement (license). Along with the latest amendments, this power has been given directly to relevant state body in television and radio broadcasting – National Television and Radio Council.

With regard to further amendments, the provision in Article 23 of the Law on Television and Radio Broadcasting which covers suspension or expiration of the term of a special agreement (license) has been revised and extended.

Prior to the amendments, for the suspension or expiration of the term of the license the NTRC had to appeal to court. The amendment enabled the NTRC to suspend or liquidate the broadcasting even when there is no court decision. According to the amendment, the regulatory organ may also suspend the broadcasting for a month. According to the amendments, “if a television and radio broadcaster supports and creates conditions for the propaganda of the forceful overthrow of a state system, the violation of the territorial integrity and security of the country, the kindling of the national, religious and ethnic conflicts and the urge to excite mass unrests and

¹ <http://scwra.gov.az/docs/150/1/>

² The Law of the Republic of Azerbaijan on Mass Media: Ch. VI., Article 44 (2002),

http://www.azerbaijan.az/portal/Society/MassMedia/massMedia_e.html/

³ <http://www.ntrc.gov.az/az/content/news/15.html>

terrorism, special agreement (license) may be terminated with the decision of the court on the grounds of a claim of a relevant state body controlling television broadcasting⁴.”

Administrative norms related to media

During the years 2015 and 2016, administrative liabilities for violations have been aggravated. Article 383 and 384 of Code of Administrative Offences which establish liabilities for violations of Law on Television and Radio Broadcasting have been amended. Administrative penalties have been increased by 4 or 5 times.

Penalty fines of 2 thousand manats embodied in those articles have been increased up to 8 thousand manats. The previous articles before amendments determined 50 and 90 manats as penalty fines for impeding dissemination of mass media products in a way established by law and for the violations of the rights of journalists.

Access to information

The Law on Right to Obtain Information has also been subject to amendments. In October 2015, addendums which hinder the access to information have been made to the Law on Right to Obtain Information.⁵

According to the amendment, access to information is only allowed in the cases when “it is not contrary to protection of political, economic, military, financial, credit and currency interests of Azerbaijan Republic, preserving public order, health and morality, as well as rights and freedoms of other persons, commercial and other economic interests, the purposes of securing reputation and impartiality of the court and proper continuance of preliminary investigation on criminal cases.”

Amendments have also been made to the Law on Right to Obtain Information about inclusion of financial transaction data into category of private information and restrictions to access to them.

Prior to the amendment described above, another amendment was made to the laws of state register of legal persons and to the Tax Code about inclusion of information about founders of commercial legal entities and commercial stakes to the category of confidential information.

Accreditation of journalists

Legal acts regulating accreditation of journalists were also amended. Commission of Ministry of Foreign Affairs endorsed Regulations on Accreditation of Foreign Mass Media in Azerbaijan Republic in 2015.⁶

The terms established by the regulations for accreditation of journalists are too long and not adequate. According to the regulations, applications about the accreditation of foreign mass media

⁴ The Law of the Republic of Azerbaijan on the Television and Radio Broadcasting: Ch. IV., Article 23.2.5 (2002) http://www.azerbaijan.az/portal/Society/MassMedia/massMedia_e.html?massMedia_02/

⁵ <http://e-qanun.az/framework/31289>

⁶ http://www.mfa.gov.az/files/file/Administrative_regulation_03.07.2015.pdf

representatives even for a short-term visit are examined within 30 days. For electronic applications such period of time is 14 days.

Defamation knot

Serious shortcomings in the laws on defamation still remain. Criminal liability for slander and insult remains. Though it was expected that law on defamation would be adopted after a long time, it did not happen. In fact, penalties for slander and insult have been aggravated.

In 2013, with an amendment to the Criminal Code,⁷ the concept of slander was extended. By adding “in mass media” and “in internet information resource, if published for public” to the article, internet and social networks have been encompassed.

Sanction part of the article has also been amended. Penalties have been aggravated. Previously established public labour penalty up to 240 hours has been increased to 480 hours of public labour, and the penalty of restriction of liberty established as subsequent to it has been completely removed from the article, but there is still imprisonment penalty for 6 months.

In the second part of the article, slandering with accusation of committing serious or especially serious crime is deemed as aggravating factor. Prior to the amendments, judge had three options between sanctions of this paragraph: ordering public labour up to 2 years, restriction of liberty up to 2 years and finally, imprisonment up to 3 years.

The middle one of the sanctions known to judges has been removed from the article and subsequent to direct application of public labour, there still remains imprisonment up to 3 years. Thus the last version of the article has aggravated the penalties.

“Internet information resource” has also been included to Article 148 of Criminal Code which establishes criminal liability for insult. The same addendums as in slander have been made to the sanction part of this article. Duration of public labour has been extended by twice.⁸

Protection of resources of journalists

During the past years, no necessary measure was taken for the protection of confidentiality of resources of journalists. Protection of the resources of journalists is established by law in Azerbaijan. Article 11 of the ‘Law on Mass Media’ determines special cases in which resources of journalists are not allowed to disclose. Today’s practice shows that this article is unable to guarantee the protection for absolute confidentiality of resources. During the last years, journalists have faced the risk of disclosure of resources for many times. Staff of “Gundalik Azerbaijan” and “Realniy Azerbaydjan” newspapers and members of “Azadlig” and “Yeni Musavat” newspapers have been questioned before the courts about their information resources in different times. Minister of Ecology and Natural Resources brought a claim before the court against “konflikt.az” website demanding the disclosure of resources of articles about the Ministry. The hearing on that claim is still going on.

⁷ <http://www.e-qanun.az/framework/26928>

⁸ <http://e-qanun.az/code/11>

Journalists have no legal mechanism that is able to guarantee adequate protection against such questioning. Adoption of Law on Protection of Resources of Journalists would play the role of such legal mechanism. However, there have been no discussions or initiatives in this regard. Government does not the initiatives put forward before

Chapter 2: Economic situation of media

Due to the decrease in economic activity and devaluation of manat during 2015 and 2016, economic situation of media deteriorated further. Financial condition of media was already in crisis, entrance of the state to the economic crisis shook the fulcrums of the economic conditions of media too. Even those medias which are under control of the government have begun to face financial hardships. Some of them have to either stop their activity or reduce number of employees.

According to official information it is also confirmed that economic situation of media worsened. Beforehands government either did not survey financial situation of media or did not unfold the statistics of these researches. However, since 2015 this approach has changed, State Committee on Statistics has begun to investigate the advertisement income of media and to share this information. Statistic information of the above mentioned Committee expresses economic situation clearly.

According to the official statement of the Committee,⁹ in 2015 general turnover of the main source of income of the media, advertising market, went down 13,3 percent. In 2014 advertising market consisted of 72,5 million manats. Which menas, advertising market decreased to 62,8 million manats in 2015. If we express it n dollars, deterioration will be 35%.

The overall income of media advertising was approximately 26 illion manats. In manats it may be seen that there was increase of 3%, although in US dollar there was decrease of 22,8% in advertising market.¹⁰

TV channels got 19,836 million manats (in 2014 it was 22665 million manat), radio channels obtained 3,094 million manats (it was 1,376 million) and internet media goy 1,565 million manats (in 2014 it was 775000 manats) from overall advertising market. The share of printing media was 1,408 million manats (it was 244000 in 2014).

The television and radio broadcasting which consist of 10 central channels is under supervision of the government, and amount that enters there provides the existance of these broadcasting, but little income delays the improvement of them.

Today there are roughly 300 real and online media in Azerbaijan. It means share of every media was about 8,5 thousand dollars annually or 708 dollar monthly. But in reality, the vast majority of them do not receive any advertisement order, only minority of them have some 10 thousand advertisements and this is not enough for legal salary and maintaining of big staff for a month.

⁹ <http://www.stat.gov.az/source/catering/>

¹⁰ <http://contact.az/docs/2016/Analytics/072100162993az.htm#.V96uBPI96M8>

The main indicator of free and propitious economic development of media in the world is quota of media advertising market in gross domestic product of the country. This indicator has to be more than 1%.

Till world economic crisis which began in 2008, this index has been almost in all countries with free economy. Balance was broken during crisis years, but according to the final results of 2015, this indicator was not more than 50%. The USA is exception, as there 1% share of advertising market in GDP was secured.

In Azerbaijan share of media advertising market in GDP was 0,047%.¹¹ It is a little more than the results of 2014 (0,034%). However, this index is less than the indicator of 2005. At that time indicator was 0,14%. In 2005 the amount of advertising market was 25 million dollar and GDP was 19,9 billion dollar.

About circulation and other problems

Decrease is observed in the circulation of newspapers and journals. The maximum volume of daily sales in retails consist of 2000 copies. It is 3-4 times less than 5 years ago. The circulation of press which sprawl out by subscription is considerably high, but it happens because of the support of government – budget organisations are forced to subscribe some newspapers and journals which are backed by government or state.

The serious deterioration in retails of press has begun at the end of 2000s. At these times state started to forbid the sales of press at subway stations and streets, moreover, to limit the sales at kiosks. The number of kiosks that sold press materials continued to go down too. At this stage as comparison we want to note that while in Europe there is 1 kiosk for 1500 people, in Azerbaijan it is 1 kiosk per 17000 people. Another problem is related to the coercion of newspapers to stay afloat on circulation sales as there is no advertisements. Because of this situation prices went up three times at last 3 years and the cost per copy is 0,60 manat. This cost is very expensive as it deviates potential readers.

Low income also influences the quality of product in a serious manner – the level of professionalism of articles and information goes down. On the other hand, it deviates readers from buying newspapers too.

Low-quality printing is another serious problem of the press. Only state newspapers are printed colorful in the country, all other newspapers are printed in black and white.

There is no solid grounds to connect deterioration of circulation to the development of internet. The experience of neighbor countries such as Georgia and Armenia shows it. In neighbor countries newspapers are thought as lucrative and attractive field for advertising.

¹¹ <http://wap.contact.az/docs/2016/Analytics/072100162993az.htm>

The daily circulation of Georgian newspaper “Kviris Palitra” is 30000, “Alia” is 12000, “Sitkva isaqme” – 10000, “Rezonansi” – 7000. Advertisements cover 50% of these newspapers.

The reasons of difficult economic situation

There are objective and subjective reasons for severe economic situation of media. We can summarize these reasons as follows:

- *Economic crisis of the country can be considered as the main reason. Because if we express GDP in dollars, there is decrease of 29,5%;*
- *Economic development of the country is not balanced. In GDP the share of energy products is 30%. In budget portion of energy resources is more than 65%. The main burden of export is also on energy- it is more than 85%. Above all, the share of small and medium enterprises which should play the main role as an advertiser in tax structures consists of 5%.*
- *The next objective barrier is great illegal economic layer, monopoly in the non-oil sector, weak class of small and medium producers of products and services.*

As for subjective reasons, deliberate acts of government to throttle media economically by preventing advertising revenues should be noted. There is a pressure on advertisers for not giving orders to independent and opposition medias. As a result of this action, an end is putted to existence of free media.

With the help of State Fund of Support for Development of Mass Media officially 2,6 million manat is allocated to approximately 34 newspapers.¹² As a result of economic dependence, mass media is still tool for propaganda and already lost its function which is stated in legislation on Mass Media and The Code of Professional Conduct of Journalist. The main principles of abovementioned Code are service to the truth, precision and objectivity.

The formation of advertising market of media according to international standards can be possible only under circumstances where there is high economic freedom and fair and high competition between small and medium enterprises that are engine of economy of especially developed countries. The independent media which is one of the vital institutions of state can not exist without democratic governance. In Azerbaijan government is not ready for changes and tries maximumly to maintain status quo.

¹² <http://www.azadliq.info/147498.html>

Chapter III. Freedom of information

Laws

Domestic law guarantees the frames of right to access to information. This right is embodied in Article 50 of the national Constitution. Article 50 acknowledges everyone's right to seek, receive, transmit, prepare and impart information. The law adopted in 2005 on the Right to Obtain Information has opened up vast opportunities in terms of improving and guaranteeing this right. Despite many amendments made between 2010 and 2012,¹³ the law is nevertheless keeping its role as a sufficient legal basis of guaranteeing the right to obtain information. The Law on the Right to Obtain Information guarantees "any person's" (nationals, foreign citizens and stateless people) right to apply directly or via his (her) representative to the information owner and to choose the type and form for obtaining the information. Everyone has equal right to obtain information – information owners shall give any information they deem it necessary in public society and open to public therefor, regardless whom is going to obtain it. There is no restriction of this right based on profession, age or on other traits. Further, it does not matter on what purposes the information is obtained. Public information shall be kept open to public irrespectable of commercial or non-commercial purposes the information is obtained on.

All state authorities responsible for public duties and functioning in the fields that public curiosity is justified are considered owners of necessary information. State authorities (executive, legislative and judicial branches, legal entities empowered by state, dominants of commodity markets, natural monopolies and so on) and municipalities are obliged to keep and disclose the information they produced or acquired as a result of their activities open for public. Information owner should maintain the reporting and register of the documents he owns and guarantee free access both to information and records of documents in the registration bank. Information owner should keep the documents during the period of time established by law and preserve them from deterioration or being obliterated or perverted. Information owner should organize the process of access to information and explain clearly the rules, conditions and means of it to requestors. Information owner should disclose the information, about which he is obliged to give to the public under the procedures established by law and in time, and inform the public permanently about fulfilling his public functions. Information owner is responsible for accuracy and reliability of the given information.

All documents produced or acquired by information owners should be recorded in electronic register, in order to facilitate free access to information. Any register of documents in information owner should be open for public and uploaded to internet. Law on Right to Obtain Information establishes maximal transparency of free access to information. In particular, freedom of access to information may only be restricted on legitimate purposes, such as for protection of public interests. Conditions for obtaining information are equal for everyone. No distinct access regime to the same information shall be imposed on private individuals or particular groups either by any

¹³ <http://e-qanun.az/framework/23517>

legal or regulatory act, or in practice. Access to information should be guaranteed as soon as practicable and under the most appropriate method. In addition, access to information should be guaranteed in the most economical and easiest way. Thus the law requires classification and filing of documents information owner has, and establishing electronic register and information resources. Disclosure of information via internet, delivery of them via fax or e-mail are one of the ways to guarantee the most practicable access to them.

The law imposes an obligation on information owners to respond to information requests promptly and with fairness. Despite the law establishes 7 work days limit to process information requests, information owner should execute these requests within this period of time, but without delay. Requests should be thoroughly investigated and executed in a way which will meet the demands of a requestor as maximum as possible. Government should give a preference to employment of those methods and means that facilitate the access to information, and also stimulate the increase of alternative information services. Information owners should protect the security of individuals, public and state while they are disclosing any information. Information owner should be careful and employ all the legal means in order to prevent dissemination of any information, disclosure of which is unacceptable, thereby can harm the interests of private individuals or public in general. Although the opportunities created by the Law on Right to Obtain Information are vast enough, the execution of the law is problematic for about 8 years. Application of the law in practice is not pursuant to the hopes that came along with it when adopted. The law adopted in 2005 has not yet become a means to compel the government to report and to encourage the media to cover the topics more deeply that are interesting for public.

Problems

It is possible to approach the problems in the execution of the law or generally in the access of media to information from a number of points.

- According to the Law on Right to Obtain Information, for facilitating providing information service, state authorities or municipalities who are information owners as well, should appoint an official or establish a department on information matters. The official on information matters or the department should organize preparation of information, make decisions after investigating the requests, respond to the requests under the procedures established by the law and supervise providing information service;

- The authorities of department who was explaining the reasons why information requests are not responded in time said so. It is obvious from the responses to requests about the structure of information departments that they contain only a few people and have no special budget. As a result of absence of sufficient base for departments, most of the requests are responded not by information departments, but chiefs of particular departments under the office of information owner. Current situation in government bodies standing in a higher rank is as described above. In municipalities, executive bodies, courts, police offices and other authorities who are information

owner at the same time, the situation is rather different – in most of these bodies information departments do not even exist;

-State authorities do not respond to the information request thoroughly, in time and in a relevant way. The execution level of 50 information requests monitored between 2015 and 2016 is as follows:

40 requests addressed to information owners were monitored. Only 9 of them were responded. 8 of those responses were given only after 7 days' period of time established by law expired. One request was responded in time. Only 2 of 9 responses to information requests were pursuant to the requested information. The rest of the responses were incomplete, in most of the cases, information owners expressed unjustifiably that they did not have requested information or implicitly denied. Information owners have not even responded to the rest of the requests.¹⁴

Journalists are entitled to apply to Commissioner of Human Rights (Ombudsman) or courts for remedy when their right to access to information is violated. Journalists usually prefer to apply to courts because Ombudsman Office has not proved to be effective yet. However, courts do not provide sufficient support to eliminate the violation of right to access to information. 7 claims were brought before court between 2015 and 2016. But the courts have not satisfied any of the claims. Administrative Court № 1 has rejected two claims of “Turan” information agency on the grounds that information relative to the execution of the budget can be kept undisclosed. However, the laws states that such information is open to public and should be uploaded to websites.¹⁵

-Online transparency of information owners is also problematic. According to the law, state bodies and municipalities, all public agencies, entities and organisations, including natural and legal persons if established as such under specific cases by the law should create internet resources, keep the information they produced or acquired as a result of their activities open to public and disclose them via internet resources. State bodies include all bodies under executive, legislative and judicial branches and bodies that are not under direct subordination of these branches of power. Information owners standing in a higher rank have created websites, but there are serious problems with the content of the websites. Relevant information concerning public interest, specifically the information that is deemed open to public by the law is not uploaded to the websites. Average online transparency rate of state authorities is 25-30 %. Information transparency rate of the bodies standing in a lower rank in the hierarchy is much less.¹⁶

-Strict impediments exist in the access of independent, critical media journalists to events, meetings and activities with public and political importance. Accreditation system in state bodies mostly results in discrimination against dissident and independent media journalists. Between the years

¹⁴ <http://www.anspress.com/siyaset/18-05-2010/azerbaycanda-informasiya-azadliginin-durumu>

¹⁵ <http://mfp.ombudsman.gov.az/az/view/pages/61>

¹⁶ http://www.mi-news.az/az/content/olkede_ve_dunyada/964/MH%C4%B0-D%C3%B6vl%C9%99tqurumlar%C4%B1n%C4%B1n-Onlayn-%C5%9E%C9%99ffaf%C4%B1q-hesabat%C4%B1n%C4%B1a%C3%A7%C4%B1qlad%C4%B1.htm

2015 and 2016, journalists have faced such kind of discrimination for a lot of times. Members of “Turan” information agency or Azadlig newspaper are not allowed to participate in such events. They are even facing impediments while trying to acquire information from parliament, accreditation of the journalists is denied.

-Bans imposed against journalists in parliament since 2006 are still in force. Journalists are banned to enter the parliaments with a camera. A censorship exists against the broadcasting of hearings and actions in the parliament. Strict impediments also exist against participation of foreign journalists in events taken place in Azerbaijan.

In general, opportunities for media and journalist to access to information are quite rare. In spite of the legal mechanisms that exist, it is difficult to practise them. Functioning of the Law on Right to Obtain Information is problematic. Information owners do not have specific departments that will provide operative and effective processing of information. This is one of the factors in the root of problems relative to access to information. Transparency of information in municipalities, executive bodies and courts is much more deplorable, in comparison with the state bodies standing in a higher rank.

Serious problems also exist in responding written and verbal requests. On average, only one of 30 requests are responded in compliance with the laws. In most cases even the completeness of the content of responses are arguable. Websites of information owners are not in compliance with standards established by law. Online transparency rate is 25-30 % - this is the rate of the most transparent authorities.

Chapter IV. Litigations against media

In Azerbaijan, criminal liability for defamation (slander and insult) still exists in the Criminal Code. However, in fact, imprisonment penalty is not imposed on journalists for defamation. During the last half a year, as it was the same in 2015, there has not been any case involving imprisonment of journalists on the grounds of their publications. Journalists were charged with these prosecutions, but no decision was issued on more than 10 complaints brought before the courts under special prosecution procedure.

There is a slight decrease in the number of cases examined before courts on freedom of expression. Since 2005, the number of the cases on freedom of expression was about 70. During the last half a year, the number is about 20.

Main part of cases contains complaints and claims for defamation brought before courts under special prosecution procedure. During the first half of 2016, at least 24 claims (complaints) have been made against media on the grounds of slander, insult and disclosure of information with private life content.

15 of the claims were made through civil procedure. In those cases, plaintiffs claimed penalty fines, disproof of information and pardon from respondents.

The plaintiffs claimed 1.210.000 AZN (Azerbaijani manats) of compensation from media and journalists for moral damage. As a result of these claims, over 95.000 AZN of compensation charge was decided against media and journalists.

Defamation claims and complaints have been mainly against online media.

- Rauf Aslanov, Counsellor of Chief of Writers Associations of Azerbaijan, v. Ramig Naghiyev, former Chief of Nakhchivan Sports Committee, and v. “Reyting” newspaper. Claims are 50.000 manats of penalty fine against R.Mukhtar, author of the publication, and disproof by the newspaper. The claim is currently being examined by Narimanov District Court.
- Television critic Qulu Maharramli has brought a lawsuit before the court against journalists İlhama Novruzova and Rauf Rajabov under the special prosecution procedure. Imprisonment penalty was claimed for both journalists. Complaints brought under special prosecution procedure were found admissible by Nasimi and Sabail District Courts. But the plaintiff withdrew his complaints on National Press Day.¹⁷
- Arif Alishanov, Chief of Azerbaijan Television and Radio Broadcasting Closed Joint Stock Company (CJSC), has brought a lawsuit against Qulu Maharramli,¹⁸ former editor-in-chief of “Seher”¹⁹ programme in AzTV under both civil and special prosecution procedures at the same time. The complaint is being examined by Yasamal District Court. Chief of AzTV claims 100.000 AZN compensation and Qulu Maharramli’s imprisonment.
- Vusal Novruzov, Chief of Baku Customs Department has brought a lawsuit against “aztoday.az” website and its editor-in-chief Elmidar Aliyev. The plaintiff claims imprisonment of the journalist and 100.000 AZN of penalty fine against the website.
- Rafil Huseynov, Chief of Masallı District Executive Department, brought a lawsuit against Miralam Hashimov, staff member of “cenubnews.com” under civil procedure. Chief of the Executive Department claimed 5.000 manats of penalty fine against the journalist. Masallı District Court has accepted the claim in part and put an onus on the website about disproof of the news and payment of 2.000 manats of compensation. Shirvan Appeal Court has decreased the amount of the compensation from 2.000 to 500 manats.²⁰
- Colonel Nushiravan Safarov, Chief of State Traffic Police Department under General Police Department of Baku City, has brought a lawsuit against Elnur Maharramli, Chief of “azpolitika.info” website under civil and special prosecution procedures. The Chief of

¹⁷ <http://news.lent.az/news/237806>

¹⁸ <http://apa.az/xeber-az/hadise/arif-alisanovun-qulu-meherremliy-e-qarsi-iddiasi-esasinda-mehkemebaslayib.html>

¹⁹ <http://www.azadliq.info/127612.html>

²⁰ <http://strateq.az/media/57623/aztoday-az-saytinin-bas-redaktorum%C9%99hk%C9%99m%C9%99y%C9%99-verildi.html>

Police Department claims Elnur Maharramli to be charged under Article 147 (§2) and 148 of the Criminal Code.²¹

- Aydın Mammadov, Chief of Department of “Azerishıq” in Calilabad, has brought a lawsuit against “region-xeber.info” website under civil procedure, claiming 100.000 manats of compensation, and against journalist Murad Huseynov under special prosecution procedure. Calilabad District Court has found the second claim brought under special prosecution procedure inadmissible.²²
- Elmira Aghayeva, Deputy-chief of Shirvan City Executive Department has brought a lawsuit against “xalqxeber.az” website and journalist Peyman Sadiqov under civil procedure. The claim was 100.000 manats of penalty fine against the website and the journalist.²³
- Deputy Ayten Mustafayeva has brought a lawsuit against “strateq.az” website and Taleh Shahsuvarov, editor-in-chief of “Gundelik-Teleqraf” newspaper. She claimed 100.000 manats of compensation and disproof by the newspaper.²⁴
- Tofiq Sadiqov, Chief of Education Department of Beylagan District, has brought a lawsuit against “AzeriNews.tv” information agency and journalist Fikrat Farhadoghlu. The claims are 50.000 manats of penalty fine against the website and the imprisonment of the journalist on slander and insult.²⁵

The amount of the compensations for moral damage claimed against web portals with small budget is fantastic. Pursuant to the litigations, compensations over 600.000 manats were claimed from web portals for moral damage.

Plaintiffs of defamation claims and complaints are not ordinary nationals. All of the plaintiffs and special prosecutors are public figures. They are state officials standing in a higher rank, deputies, monopolist entity owners related to state officials with the highest ranks, chancellors of higher education entities and popular singers.

Reforms in accordance with international experience about criminal liability for slander and insult and its application are still pending. In Azerbaijan, there is no Law on Defamation which can regulate the defamation-related cases in detail and create a guidance for courts, and no serious action is taken for the adoption of the law.

²¹ <http://azpolitika.info/?p=185719>

²² <http://xeberdar.net/4925-cellabdllar-dlgr-hesab-eden-aydn-qaga-jurnalste-qarsh-qaldrdg-dda-red-edldvdeo.html>

²³ <http://xalqxeber.az/gudem/15423-jurnalst-yashadigi-sheherden-didergin-salinib.html>

²⁴ <http://www.xural.com/%EF%BB%BF-deputat-ayt%C9%99n-mustafayeva-1-jurnalisti-v%C9%99-1-saytim%C9%99hk%C9%99m%C9%99y%C9%99-verdi-100-min-t%C9%99zminat/>

²⁵ <http://bolgexeber.com/index.php?newsid=19054>

Criminal Code still establishes harsh punishments for slander (Article 147) and insult (Article 148) including imprisonment. Today's practice shows that these articles aims to threaten the journalists and stifle the freedom of expression.

On the contrary, tendency of aggravating criminal laws for defamatory content is observed. During the first half of 2013, Azerbaijani parliament made retrogressive amendments to the articles of Criminal Code which establishes criminal liability for slander (Article 147) and insult (Article 148). Pursuant to the amendments, punishment of public labor determined for slander and insult increased from 240 hours up to 480 hours, and further, the scope of application of article 147 and 148 was extended to the information imparted via internet. Aggravation of punishments for practising freedom of expression is a violation of state's responsibilities taken for amending the laws which establishes harsh criminal penalties for expressions.

Practice of domestic courts in Azerbaijan is too far away from progressive standards on freedom of expression, especially from criteria of European Court of Human Rights. (ECtHR). Neither of the decisions related to freedom of expression referred to the practice of ECtHR, and the major part of court decisions is issued by violating the requirements of precedent law rules of ECtHR.

Implementation of criminal punishments for defamation should be utterly ended. The government should enact a law deriving from a comprehensive social consent, and completely abolish criminal liability for defamation by removing articles from the Criminal Code which establish criminal liability for slander and insult. However, the government should not be satisfied solely with that, and they should impose a moratorium on state officials' bringing defamation lawsuits before the courts and take urgent measures to determine rational limits for civil damage and penalties.

Judicial practice on defamation and in general, freedom of expression should be improved. The government should be attentive in improving the knowledge of judges about the standards of the European Court and encourage judge corps who are willing to refer to the practice of the European Court.

Chapter V. Conviction of journalists and bloggers, criminal penalties

As indicated in the beginning of the report, criminal liability for defamation (slander and insult) still exists in the Criminal Code of Azerbaijan. However, in fact, imprisonment punishment was not ordered about journalists for defamation for a long time. Since 2012, no case has been recorded concerning the imprisonment of the journalists for their publications. Journalists have been charged with such prosecutions, but courts issued no decisions in response to the complaints brought under a special prosecution procedure.

However, obviously, non-implementation of the criminal laws on defamation has not affected the number of the journalists in prison seriously. With regard to the statistics of the first half of 2016, 11 journalists, bloggers and critic publishers who criticized the government, its particular figures,

decisions and local governmental agencies severely and sometimes by impelling the limits of freedom of expression are in prison.

During the last year, a few journalists and bloggers were released pursuant to the court decisions and pardon rescript of the President. They are as follows:

- Mirqadir Rauf Habibulla – well-known political commentator, staff member of “AynaZerkalo” newspaper.
- İsmayilova Khadija Rovshan – worked at several media agencies as a journalist for about 20 years. When imprisoned, she was a dictator of public-political program broadcasted at the Baku Bureau of Azadlig Radio.
- Yagublu Tofiq Rashid – staff member of “Yeni Musavat” newspaper, as well as VicePresident of dissident Musavat political party.
- Hashimli Parviz Kamran – staff member of “Bizim Yol” newspaper and Chairman of “moderator.az” website and Center for the Protection of Civil and Political Rights which is a legal protection organisation.
- Hilal Mammadov, editor-in-chief of “Talışı Sado” newspaper issued in Talysh language.
- Mammadov Omar Elyar – one of the active members of “NIDA” movement. He was one of the active users of Facebook and one of the founders and admins of the satiric Facebook page “AzTV-den seçmeler”. He is also the founder of “Akhın” movement.
- Karimli Sirac Ragif – blogger. He was the founder and admin of website of Musavat political party and Facebook group “İstefal!” with about 350.000 users.

Journalists and bloggers in prison are as follows:

Abdul Abilov – admin of popular “Yaltaqlara Dur Deyek” Facebook page and further several critic pages on other social networks. He also created a page on Facebook about the election forgeries after President elections in 2013 and monitored the page until his imprisonment; photo and video materials, and further documents proving the forgery in elections were published on this page in detail. On November 22, social media activist was arrested by the members of Main Organized Crime Department of the Ministry of Internal Affairs and taken to that Department, preventive measure of remand in custody for 3 months was ordered about him. He was charged with Article 234 (§4.3) of the Criminal Code (illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics and psychotropic substances if committed in a large amount). The police claimed that while carrying out an investigation at his home, narcotic substance - 4 grams of heroin was found in the pocket of his coat. Abilov stated that he was detained for his posts and publications on Facebook. Baku Court on Grave Crimes according to its judgment on 27 May 2014 ordered his imprisonment for 5 years and 6 months.

Araz Guliyev, editor of www.xeber44.com website – regional journalist Araz Guliyev was charged with causing disorder in Masalli folklore festival and detained in September 2012. The

journalist who was popular with publications with religious content, was then charged with 5 prosecutions: illegal storage of fire-arms (Article 228 (1) of the Criminal Code); organization of actions promoting infringement of a social order (Article 233 of the Criminal Code); excitation of national, racial or religious hostility (Article 283 (1) of the Criminal Code); resistance to government official; and offensive acts against the National Flag or State Emblem of the Azerbaijan Republic (Article 324 of the Criminal Code). The Court affirmed these prosecutions and judged an imprisonment of the journalist for the term of 8 years.

Nijat Aliyev, editor-in-chief of www.azadxeber.org website – being famous with his publications with religious content, Nijat Aliyev was detained with prosecutions of illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics (Article 234 (1) of the Criminal Code) in September 2012. 8 months after his detention, N.Aliyev was charged with three other prosecutions: manufacturing, import, selling and dissemination of religiousbased literature and goods - Article 167-2 (§2.1); public appeals to violent capture of the state authority – Article 281 (§2); and the calls directed on excitation of national, racial or religious hostility – Article 283 (§2.3). Hearings of the journalist is going on. His advocates claimed that prosecutions against him were false and insincere and he was slandered for his publications. Baku Court on Grave Crimes judged an imprisonment of the journalist for the term of 10 years with its judgment on 9 December 2013.

Seymur Hazi – commentator of “**Azadlig**” newspaper, dictator of “Azerbaycan saatı” programme, and young activist of Azerbaijan Popular Front Party (APFP). He was charged on the grounds of Article 221 (3) - hooliganism committed with application of subjects used as a weapon. He was arrested on 29 August 2014. In Ceyranbatan borough, a person called Maharram Hasanov approached and asked S.Hazi the reason why S.Hazi did not reply to his question on social network and attacked him without “waiting for his answer”. Then after a few minutes S.Hazi was arrested by the police who came to the site the incident happened in. On 30 August 2014, Absheron District Court decided a preventive measure of remand in custody on S.Hazi for the term of 2 months. On 29 January 2015, Absheron District Court judged his imprisonment for the term of 5 years.

Hasanov Tofiq Xasay – satiric publisher. His satiric poems have widely spread in the social networks. He was charged with Article 234 (§4.3) of the Criminal Code which is illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics, psychotropic substances when committed in a large amount. Tofiq Hasanli was arrested on 12 October 2015. The preliminary investigation is going on.

Faraj Karimov – was an admin of www.musavat.org.az website of dissident Musavat political party. Further, he was a social media activist and an admin of “İstefa” group which has more than 100.000 users and closed later. He is also a founder of “Basta” group with about 116.000 users whose aim is criticize the government. Faraj Karimov was arrested on 23 July 2014. He was charged with Article 234 (§4.3) of the Criminal Code which is illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics, psychotropic substances when committed in a large

amount. On 6 May 2015, Baku Court on Grave Crimes judged his imprisonment for the term of 6 years and 6 months.

Rashad Ramazanov, blogger – prior to his arrest by the members of Main Organized Crime Department of the Ministry of Internal Affairs in May and detention period thereafter, Rashad Ramazanov posted severe comments against the government and even in a way impelling the limits of freedom of expression. With regard to the news imparted during his detention period, he was exposed to torture at the Main Organized Crime Department of the Ministry of Internal Affairs (MIA MOCD). According to his advocates' comments, Rashad Ramazanov refuses the prosecutions he was charged with, and states that the reason for his detention was his critic posts on social networks directed at the government. He was charged with Article 234 (§4.3) of the Criminal Code which is illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics, psychotropic substances when committed in a large amount. According to the judgment of Baku Court on Grave Crimes on 13 November 2013 he was imprisoned for the term of 9 years.

Ilkin Rustamzadeh, social media activist – I.Rustamzadeh was prosecuted with hooliganism because of taking active part in shooting “Harlem Shake” video which was widely spread in social network websites and he was imprisoned on that ground. He was more popular with organizing protest acts of young activists. According to the declaration of his advocates, the hooliganism prosecution against the young activist was related to his participation in the shooting of the “Harlem Shake” video. The video concerned lasts only 30 seconds. In this video shot in 2013, a group of young people are dancing extraordinarily in the centre of Baku – at the National Park. He was found guilty with Article 28 - Preparation to a crime, Article 220 (1) - the organization of a mass disorders accompanied with violence, breaking, arsons, destruction of property or participation in such disorders, Article 221 (2.1) – hooliganism committed by a group of persons or repeatedly, Article 221 (2.2) – hooliganism committed with resistance to representative of the authority, acting as on protection of a social order or stopping infringement of a social order or with resistance to other person and imprisoned for the term of 8 years.

Qahramanli Fuad – Commentator of “Azadlig” newspaper and Vice-President of Azerbaijan Popular Front Party (APFP) was imprisoned on 8 December 2015 for the posts and comments about Nardaran incidents he shared on his Facebook page. He is prosecuted with Article 281 (public appeals against the state), Article 283 (excitation of national, social, racial and religious hostility) and Article 220 (2) (appeals to active insubordination to legal requirements of representatives of authority and to mass disorders) of the Criminal Code of the Republic of Azerbaijan.

Arshad Ibrahimov – former regional reporter of “Azadlig” newspaper. He was imprisoned in June 2014. He was prosecuted with Article 182 (3.2) (extortion) of the Criminal Code. His advocates together with him refused all the prosecutions. Ganja Court on Grave Crimes ordered his imprisonment for the term of 11 years. Later then Ganja Appeal Court relieved the punishment

by one year. In June 2016, the Supreme Court decreased the term of his punishment from 10 to 5 years.

Fikrat Faramazoglu – editor-in-chief of “jam.az” website and “24 saat” newspaper. He was arrested by members of Main Organized Crime Department of the Ministry of Internal Affairs on 30th of June. He was prosecuted with Article 182 (extortion) of the Criminal Code. On July 2, Narimanov District Court decided a preventive measure of remand in custody about the editor-in-chief of “jam.az” website Fikrat Faramazoglu for the term of 3 months. Prior to his imprisonment, Fikrat Faramazoglu was summoned to the procurator’s office for a few times and warned about his publications.

Journalist-bloggers with other criminal penalties and ongoing investigative acts about them

Shirin Jafari, founder of “Gundem Xeber” newspaper was exposed to stable repressions and defamation claims for the critic content of the newspaper, and in 2012 criminal proceedings were instituted against the founder of the newspaper with Article 213 (§2.2) – evasion from payment of taxes, and Article 308 (§1) – abusing official powers. The Court found the journalist guilty with each of the Articles: conditional condemnation punishment for the term of 3 years was decided. Having not satisfied with that the Court ordered the claim of 71.000 AZN (Azerbaijani manats) to be paid by her for the evasion from the payment of taxes. Because of the journalist’s inability to pay the penalty fee part of court decision, she is sued in this regard. Hearings are going on.

Mehman Huseynov, photo-rapporteur – being popular with photo-rapportages expressing the violences of members of law enforcement agencies during public protest acts, the young social media activist is prosecuted with hooliganism – Article 221 (2.2) of the Criminal Code. According to the official prosecution, in May 2012 the photo-rapporteur resisted the police during the public protest acts while preparing a photo-rapportage. M.Huseynov and his advocates refuse the prosecution. The journalist has been banned to leave the country. He cannot even own his national identification card and passport.

Elchin Hasanov, journalist, vice-editor of “Yukselish namine” newspaper – the journalist has been punished with criminal penalty for hooliganism. In 2015 E.Hasanov complained of the repressions by Jafar Jafarov, chairman of “Asiya” news agency. Later then this complaint was turned to himself. In March this year criminal proceedings were instituted about him with Article 221 (1) of the Criminal Code. But later the prosecution was replaced with a more aggravated one – under Article 221 (3), hooliganism committed with application of a cold weapon. However at Nizami District Court application of the cold weapon was not proved. He was punished with corrective works for the term of one year. In July 27 the jury at Baku Appeal Court with chairmanship of Aflatun Gasimov kept the judgment in force.

Elnur Maharramli, journalist, chairman of “AzPolitika.info” website - Colonel Nushiravan Safarov, Chairman of State Traffic Police Department under General Police Department of Baku City, has brought a lawsuit against Elnur Maharramli, Chairman of “azpolitika.info” website under

civil and special prosecution procedures. The Chairman of Police Department claims Elnur Maharramli to be charged under Article 147 (§2) and Article 148 of the Criminal Code. Khatai District Court found Elnur Maharramli guilty with Article 147 (§2) and Article 148 of the Criminal Code and decided a penalty of corrective works for the term of a year and a half with a further condition of deducting 15 % of his salary for the benefit of the state budget.

The studies of the repressions

Existence of safe atmosphere is a fundamental point for the media in order to be able to fulfil its duties. However, there is no grounds to say that this fundamental condition is followed. Critic media representatives fulfilling their duties are worried about their private life and security. Because within last years, investigation statistics of the complaints of the journalists faced with repressions is very disappointing – these complaints do not lead to punishment of the guilty.

Repressions to the journalists who fulfil their duties at meetings and actions with public interest are the most observed situations within last 6 months. Since 2015 journalists have faced impediments to work in most of the public meetings in Baku and other cities. Impartial and faithful media institutions – such as “Turan” information agency, “Azadlig” newspaper, MeydanTV have been exposed to repressions for many times when they are trying to collect information from publicly-important events. The environment is not convenient to work for journalists with critic publications. These journalists are exposed to threats, intimidations and psychological repressions periodically.

Within the last years, a fair trial of physical and psychological repression facts against journalists is deadlocked. The case of Khadija Ismayilova, staff member of “Azadlig” radio who was intimidated and whose information about private life was intervened, the case of journalist Idrak Abbasov who was brutally beaten by the staff members of State Oil Company while fulfilling his professional duties, the case of Natig Adilov whose information about private life was disclosed have not been subjected to fair trial yet. The courts did not issued even one judgment finding a person guilty for repressing the journalists. The journalists have applied to European Court of Human Rights with these cases.

Likewise the international agreements Azerbaijan has joint, domestic laws also prohibits repressions against the journalists who fulfil their duties. The laws necessitate adequate interrogation and preliminary investigation upon such repressions. However, indeed, serious concerns exist when these repressions are not investigated. According to the findings of Media Law Institute as a result of their studies since 2005, journalists have been exposed to about 500 repression facts. These facts include the incidents with the most terrible endings such as a murder of the journalist (Elmar Huseynov, editor-in-chief of “Monitor” journal), death (Alim Kazimli, staff member of “Yeni Musavat” newspaper), brutal attack (Baheddin Haziyevev, editorin-chief of “Bizim Yol” newspaper), and abduction (Aydin Guliyev, editor-in-chief of “Bakı Xeber” newspaper). Only 4 of over 350 repression facts has been investigated, the persons repressing the journalists have been punished. However, there are even serious doubts about the fairness of two

of the investigations (murder of photo-rapporteur Rasim Aliyev and assassination case of Agil Khalil, staff member of “Azadlig” newspaper who was compelled to leave the country).

Investigation of death facts of the journalists

The investigation of homicides of journalists has never been successful. In Azerbaijan the murderers of the journalists are still free. The murderers of Elmar Huseynov, editor-in-chief of “Monitor” journal who was killed in 2005 have not been found yet. For 11 years, the relevant bodies persist that the investigations are going on. The investigation of criminal proceedings instituted upon the homicide of satiric publisher Rafiq Taghi in November 2011 are also deadlocked.

Hearings of the case of photo-rapporteur Rasim Aliyev killed in 2015 has been over. Rasim Aliyev was beaten on 8 August 2015 and died at the hospital on the next day. The case of his homicide contains 6 persons, as well as, Javid Huseynov, player of “Gabala” Football Club. The case of Javid Huseynov was examined at Sabail District Court under separate proceedings. On May 31, Sabail District Court judged the imprisonment of Javid Huseynov for the term of 4 years with prosecutions of Article 307 (1) – not informing about a known preparing crime and Article 307 (2) of the Criminal Code - concealment of a crime. The other 5 persons were charged with attacking and punching Rasim Aliyev and punished with a long-term imprisonment. The reason for lethal attack and the death of the journalist is his critic post about Javid Huseynov. Advocates of Rasim Aliyev suppose that the trial was not fair and the murderers did not get their legal punishments.

Furthermore, during 2015 and 2016:

- Journalists have been repressed at least for 33 times. Journalists have faced illegal interferences with their professional duties such as attacks, arbitrary detentions, extortion of their professional equipments (dictaphone, video and photo camera), destruction of the recorded materials, intimidations and threatening with death by phone, disclosure of false information with the content of private life. The number of the repressed journalists was 21.
- The major part of the repressed journalists has been members of critic media. The repressors are state officials - police, officials of executive authorities, representatives of security service, as well as court inspectors, ordinary people and anonymous persons.
- One of the most common ways of repressions against journalists is a restriction of their freedom of movement. Some of the journalists, especially with a critic publishers are inhibited to leave the country. The journalists suspected to have a link with MeydanTV which is broadcasted from abroad – Natig Javadli, Sevinj Vagifgizi, Ayten Farhadova, Aytaj Ahmedova, Aynur Elgunash, Izolda Aghayeva, Aysel Umudova (though only her prohibition was suspended later) are inhibited to leave the country. In addition, wellknown journalist of “Azadlig” radio, Babak Bakir has also been inhibited to leave the country. Although the journalist is suffering from health problem, he is not allowed to leave the country for therapy for 2 years.