



Free Expression Under Attack: Azerbaijan's Deteriorating Media Environment

Report of the International
Freedom of Expression Mission
to Azerbaijan
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Executive Summary

From 7 to 9 September 2010, nine international non-governmental organizations conducted a joint freedom of expression mission to Azerbaijan to underscore their serious concerns regarding the current freedom of expression situation in the country. The mission met with journalists and other media workers, civil society activists and government officials, and participated in a local civil society freedom of expression forum. This report provides an overview of the mission's findings and concerns regarding the freedom of expression situation in Azerbaijan.

The mission found that freedom of expression in Azerbaijan has sharply deteriorated over the past several years due to a number of worrisome trends. The mission was particularly concerned by the Azerbaijani authorities' continuing practice of imprisoning journalists and bloggers in connection with expressing critical opinions; the enduring cycle of acts of violence against journalists and impunity for those who commit these acts; and the continued existence of criminal defamation provisions in Azerbaijani law.

This report also includes a series of recommendations developed by the mission for concrete measures which the Azerbaijani government must implement in order to address the serious freedom of expression situation in the country. These recommendations include immediately and unconditionally releasing the currently imprisoned journalists and bloggers and ceasing the imprisonment of persons for exercising their right to freedom of expression; undertaking thorough, prompt and independent investigations into all instances of violence against journalists and prosecuting those responsible for these acts; and decriminalizing defamation and ensuring that civil defamation provisions comply with international standards.

In perpetuating current practices, the Azerbaijani authorities are failing to comply with their international commitments to promote and protect freedom of expression. This trend is of particular concern in the context of Azerbaijan's upcoming parliamentary elections in November 2010, as freedom of expression is a necessary precondition to the fair and free conduct of elections. The mission intends for this report to encourage the Azerbaijani authorities to implement the necessary freedom of expression reforms and to ensure their full compliance with Azerbaijan's international commitments in that regard.

The mission further intends for this report to serve as a catalyst for greater international attention to the freedom of expression situation in Azerbaijan. The mission notes in particular the important role played by those governments with political and economic ties to Azerbaijan, and calls upon them to hold the Azerbaijani authorities accountable for their freedom of expression record.

Recommendations

The mission calls on the Azerbaijani authorities to:

1. Order the immediate and unconditional release of imprisoned journalist Eynulla Fatullayev and imprisoned bloggers Adnan Hajizade and Emin Milli;
2. Ensure that no journalists, media workers, bloggers or other citizens are arrested for exercising their right to free expression;
3. Initiate thorough, prompt and independent investigations into all instances of violence and threats of violence against journalists, political activists and human rights defenders, and bring those responsible to justice;
4. Ensure that all trials of journalists, political activists and human rights defenders are carried out in accordance with international standards for due process and the presumption of innocence;
5. Decriminalize defamation and ensure that all civil defamation provisions are in line with international standards;
6. Implement more effectively the Law on the Right to Obtain Information passed in 2005; in particular, take steps to appoint an information ombudsman as required by this law;
7. Establish fair, equitable and transparent conditions for the allocation of state advertising;
8. Establish an independent, multi-stakeholder committee with transparent procedures for the allocation of state media-support funds;
9. Establish an independent broadcasting regulatory body in line with international standards and with transparent procedures for the allocation of licenses;
10. Allow for the functioning of truly independent self-regulatory bodies for print media;
11. Reverse the ban prohibiting foreign entities from broadcasting on national frequencies, including BBC, Voice of America, and Radio Free Europe/Radio Liberty;
12. Promote the development of public service broadcasting that is in the interest of the public and is independent of government interests, with particular attention paid to the regions outside of Baku;
13. Invest in Internet infrastructure and work towards universal, affordable, high-speed Internet access countrywide;
14. Preserve and protect freedom of expression online and avoid imposing unnecessary regulation; and
15. Implement media provisions in the Election Code by:
 - establishing systematic monitoring to ensure equal and equitable access to state media by all candidates;
 - ensuring that journalists have access to polling stations as election observers, including throughout the vote-tabulation process; and
 - taking prompt and effective action against violations.

Furthermore, the international mission calls for an extensive, inclusive, multi-stakeholder consultation to support the implementation of a voluntary code of ethics and rigorous professional standards for journalists.

Finally, we call on the international community, particularly those countries with economic and political ties to Azerbaijan, to hold the government accountable for its freedom of expression record.

1. Introduction

This report is the result of a joint freedom of expression mission to Azerbaijan conducted by nine international non-governmental organizations (NGOs) from 7 to 9 September 2010. Participating organizations included ARTICLE 19; Freedom House; Index on Censorship; International Federation of Journalists; Media Diversity Institute; Press Now; Open Society Foundations; Reporters Without Borders; and World Association of Newspapers and News Publishers.

These organizations are members of the International Partnership Group for Azerbaijan, and are active in working towards the promotion and protection of freedom of expression in the country. They agreed to undertake the mission in light of their serious concerns regarding the freedom of expression situation in Azerbaijan. The timing of the mission was based on the participating organizations' concerns regarding the freedom of expression climate in the run-up to Azerbaijan's November 2010 parliamentary elections.

During the mission, participants met with journalists and other media workers, civil society activists, and government officials. A full list of meeting participants is provided in Appendix A. The mission attended a preliminary session of imprisoned journalist Eynulla Fatullayev's appellate hearing in the case of his conviction of drug possession. The mission also participated in a local civil society forum on freedom of expression.

The mission regretted the unavailability of Ali Hasanov, head of the Political and Social Department of the Presidential Administration, who initially had agreed to meet with the mission but was unavailable at the last minute. The mission also regretted the refusal of the Ministry of Justice to grant permission for mission participants to meet with imprisoned journalist Eynulla Fatullayev.

The main objective of the mission was to improve the freedom of expression situation in Azerbaijan. The specific objectives were to demonstrate international support to those working on-ground towards the promotion and protection of freedom of expression in Azerbaijan; to increase international attention to the freedom of expression situation in the country; and to increase pressure on the Azerbaijani authorities to take immediate, concrete steps to improve the freedom of expression situation in the country.

Structure of the Report

The Executive Summary and recommendations developed by the mission precede this introduction. Following this introduction, Chapter 2 provides an overview of the cycle of violence against journalists and impunity for those who commit these acts. Chapter 3 outlines the Azerbaijani authorities' use of the law to restrict freedom of expression, and Chapter 4 examines the continued use of criminal defamation provisions in the country. Chapter 5 provides an overview of the influence of the state on Azerbaijani media, and Chapter 6 outlines the economic constraints faced by the media. Chapter 7 explores the division present among the media in Azerbaijan, and Chapter 8 looks at issues related to professionalism of journalists. Chapter 9 examines the situation of freedom of expression online. Chapter 10 reviews freedom of expression in the context of elections. Chapter 11 contains the mission's concluding observations, with a list of meeting participants following in Appendix A.

2. Impunity for Violence against Journalists

In Azerbaijan, those who attack or harass journalists do so in the knowledge that they will not be punished for their crimes. The fact that the authorities have failed to conduct effective investigations into these crimes has contributed significantly to the current climate of fear and vulnerability. This endemic impunity has resulted in an environment in which citizens feel they do not have access to independent and unbiased media and do not enjoy the full rights of a functioning democracy, which has broader implications for Azerbaijan's democratic development. A free press is the first witness of human rights violations; it can expose corruption and help with conflict management in order to foster economic and political development.

Elmar Huseynov: a symbol of the current danger and a sign of what is to come?

The murder of journalist Elmar Huseynov in 2005 is symbolic of both the cycle of violence and the broader decline in free expression in Azerbaijan. Huseynov, the editor-in-chief of the opposition weekly *Monitor*, was shot dead on 2 March after he and other members of his staff had been continuously harassed by the authorities. Members of the independent media claimed the authorities were behind the murder, and Huseynov's father was of the same opinion. In contrast, the authorities accused two Georgian nationals of committing the crime and demanded their extradition. The Georgian authorities refused, and there have been no visible attempts by the Azerbaijani authorities to investigate further.

As a result of the authorities' failure to bring Huseynov's murderers to justice, many journalists believe that criminals are free to harass and target independent reporting within the country.¹ In June 2010, the Representative for Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Dunja Mijatovic, placed Azerbaijan on her "Hall of Shame" list for its failure to bring Huseynov's murderers to justice.²

"The level of impunity is extraordinary and breeds violence," commented one journalist who spoke to the mission. Other interviewees agreed that the current situation makes it easy for those wanting to silence critical voices, creating "an army of criminals" with a "free pass" to continue their abuses, as one journalist put it. The threat against journalists is so acute that many said they feared another murder was likely.

Parallels have been drawn — by journalists within Azerbaijan and by members of the international community — between the murder of Elmar Huseynov and that of Georgiy Gongadze, publisher of the Internet journal *Ukrainska Pravda* in Ukraine, who was abducted and murdered in September 2000. Gongadze is a symbol for impunity in Ukraine, just as Huseynov has become for Azerbaijan.

Continuing violence against journalists

The persistent targeting of selected individuals in the years following Huseynov's murder has perpetuated and strengthened the cycle of impunity in Azerbaijan. In 2009, the Institute for Reporters' Freedom and Safety reported over 50 instances of "attacks, provocation, violations and threats against journalists and media organizations" in Azerbaijan, many of them instances of violence.³ Authorities remain indifferent to the plight of journalists and police fail to protect them; when journalists report violence or threats of violence against them, they are often ignored, and, in some cases, subjected to acts of retaliation for lodging complaints with the authorities. In July 2009, bloggers Emin Milli and

¹ <http://en.rsfsf.org/azerbaijan-on-visit-to-france-aliev-reminded-30-05-2006.17849.html>

² http://www.osce.org/documents/rfm/2010/06/44433_en.pdf

³ <http://www.ifex.org/azerbaijan/2010/04/01/2009-freedom-of-speech-annual-report.pdf>

Adnan Hajizade reported an attack against them to the police, and were themselves arrested for hooliganism. They were sentenced to two years and two and a half years in prison respectively.

There have been many acts of violence against journalists during the last five years, including:

- Rasul Shukursoy, a reporter of *Komanda* newspaper, who was stabbed on 30 August 2010. He had received threats prior to his attack, but no action was taken to protect him.⁴
- Elmin Badalov, a reporter of *Yeni Musavat* newspaper, who was attacked on 28 July 2010 by security guards while taking photographs of villas near Baku reportedly owned by oligarchs. When he complained to the police, they refused to open an investigation and tried to present the case as if he had fallen and injured himself.⁵
- Emin Huseynov, the head of the Institute for Reporters' Freedom and Safety, who was attacked in a Baku police station on 14 June 2008.⁶
- Agil Khalil, a reporter of *Azadliq* newspaper, who was assaulted on 22 February 2008 and stabbed on 13 March 2008.⁷
- Uzeyir Jafarov, a former editor of *Gundelik Azerbaijan* newspaper, who was attacked on 24 April 2007.⁸
- Bahaddin Khaziyeve, the editor-in-chief of *Bizim Yol* newspaper, who was brutally attacked on 18 May 2006.⁹
- Fikret Huseynli, a reporter of *Azadliq* newspaper, who was kidnapped and tortured in Baku on 5 March 2006.¹⁰

In July 2009, the United Nations (UN) Human Rights Committee noted concern regarding reports of killings and attacks against journalists, and called on the authorities to protect media workers from such acts of violence and to “pay special attention and react vigorously if such acts occur.”¹¹ Council of Europe (COE) High Commissioner for Human Rights Thomas Hammarberg also expressed grave concern regarding reports of violence and threats of violence against journalists and called on the authorities to conduct “effective and independent” investigations into reports of such violence or threats.¹²

The situation in the regions: a bleak picture

In the regions outside of the capital, the situation for journalists is even direr. They face violence and threats regularly and most instances go unreported. The situation is particularly serious in the Azerbaijani exclave of Nakhchivan, and the range of subjects perceived as off-limits to journalists makes it an even riskier profession than in Baku. For example, local journalists Malahat Nasibova and Ilgar Nasibov face constant pressure from the authorities. Over the past several years, they have been sued many times, and in December 2007, Ilgar Nasibov was arrested and detained for several months.

“There are no journalists left in the regions,” said several reporters. According to one journalist, even employees of the mainstream television stations cannot ensure coverage of certain topics in the regions, including business, meaning that information on these subjects often do not make it back to the newsrooms for distribution.

Corruption within the electoral system is also said to be rife. One journalist reported that, in the 2009 municipal elections, one of his colleagues discovered that votes had been cast using the identities of

⁴ http://www.ifex.org/azerbaijan/2010/09/01/shukursoy_stabbed/

⁵ <http://en.rsrf.org/azerbaijan-security-guards-who-attacked-25-08-2010,38208.html>

⁶ <http://en.rsrf.org/azerbaijan-press-freedom-activist-20-06-2008,27569.html>

⁷ <http://www.rferl.org/content/article/1079639.html>

⁸ http://ifex.org/azerbaijan/2007/04/24/editor_of_critical_newspaper_brutally/

⁹ <http://en.rsrf.org/azerbaijan-opposition-demonstrators-arrested-12-06-2006,17759.html>

¹⁰ <http://en.rsrf.org/azerbaijan-opposition-journalist-escapes-06-03-2006,16672.html>

¹¹ <http://www2.ohchr.org/english/bodies/hrcs/hrcs96.htm>

¹² <https://wcd.coe.int/ViewDoc.jsp?id=1642017>

deceased persons. He said that officials had threatened to report him to the National Security Ministry unless he gave them a bribe of two sheep.

No steps taken to remedy the situation

Under European Court of Human Rights (ECtHR) jurisprudence, states party to the European Convention on Human Rights (ECHR) are obligated to conduct thorough, prompt, and independent investigations by law enforcement authorities into cases of human rights violations. However, the Azerbaijani authorities have consistently failed to adequately investigate cases of violence and threats of violence against journalists, which constitute violations of Articles 2 and 3 of the ECHR.

There is no tangible evidence that the law enforcement agencies have taken any significant steps to provide protection to journalists or investigate threats and acts of violence against them. Such cases have rarely, if ever, been investigated. When acts of violence or threats have been investigated, the processes have been lengthy and the findings unsatisfactory. Journalists have been told there are no updates when they have enquired about the progress of their cases, even when they have supplied information about the identities of potential suspects.

One example of such an investigation is that into the case of Agil Khalil, which has raised significant concerns within the domestic and international legal communities; it is widely documented that the investigation in the case has suffered from a number of shortcomings. Khalil was the victim of two attacks — including a knife attack — as well as other attempted attacks, yet the authorities failed to provide him with adequate protection. Khalil was also attacked while he was in police custody. Instead of pursuing possible links to his work, the investigation continued to focus on his personal life, attempting to discredit him using smear campaign tactics.

Government officials are intolerant of criticism against them. It is felt among journalists that authorities — from the highest level of the state to local officials — are either unwilling to tackle the issue of violence and impunity, or are directly responsible for it. The ECtHR ruled on 22 April 2010 that Eynulla Fatullayev should be released immediately¹³, but he remains in prison. In December 2009, authorities presented him with an additional charge of drug possession, which former Representative on Freedom of the Media of the OSCE Miklos Haraszti called “highly improbable” and “aimed at pre-empting” the ECtHR’s ruling in Fatullayev’s case.¹⁴ Fatullayev’s continued detention sends a clear message to other journalists, particularly those who have been critical of the authorities, that open, independent reporting will be punished.

Additionally to criminal proceedings, individuals can file complains regarding violations of their rights with the Human Rights Commissioner (Ombudsperson) of Azerbaijan under the 2001 Constitutional Law on the Commissioner for Human Rights of Republic of Azerbaijan.¹⁵ Although staff from the Office of the Human Rights Commissioner insisted that they investigate any cases of violations against journalists reported to them, testimonies from journalists who have been attacked assert the opposite. The Commissioner’s staff emphasized that the office maintains friendly relations with journalists, pointing out that since the Commissioner has taken office, she has issued 2,200 press releases in response to human rights abuses. They also assert that the office was responsible for the authorities’ decision to permit imprisoned blogger Emin Milli to leave prison to attend his father’s funeral.

¹³ Fatullayev v. Azerbaijan, 22 April 2010, Application no. 40984/07: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=fatullayev&sessionid=60202769&skin=hudoc-en>

¹⁴ http://www.osce.org/fom/item_1_42272.html

¹⁵ See the Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan. Adopted 28 December 2001; available at www.transparency.az/transpfiles/n5.doc. The first Commissioner, who was elected on 2 July 2002, remains in office.

Moreover, all investigations by the Office of the Human Rights Commissioner into violations against journalists are unsatisfactory, as the Commissioner can only make recommendations to the authorities concerning the case. There is no guarantee - or probability - that these recommendations will be implemented by the authorities. According to her office, the Commissioner cannot interfere in the judicial process. This amounts to recognition, at least in part, that the Human Rights Commissioner's hands are tied.

Impunity's impact on the profession — and society

One editor who spoke with the mission reported that he had lost track of the number of times he had been threatened or attacked. Another journalist said "the life of every citizen or journalist who wants freedom is under constant threat," demonstrating that the culture of impunity affects not only the media community, but also society at large.

There is a widespread lack of faith in the country's legal system, both in terms of the judiciary and the legal profession. Some journalists feel that lawyers will not represent them in cases related to their professional activities because of the inherent dangers. Despite the significant risks attached with taking on such cases, lawyers from organizations such as the Media Rights Institute and the Azerbaijan Lawyers' Forum, along with some independent lawyers, continue to provide legal assistance to some journalists. As one such lawyer noted in a discussion with the mission, the number of lawyers willing to take on such cases has decreased significantly in recent years.

Journalists and the media organizations they work for are not familiar with basic security measures, such as fitting media outlets' premises with alarms and closed-circuit cameras, or even varying the routes used to travel to work to make surveillance of a targeted journalist more difficult. The suspicion that authorities either simply ignore requests for attacks and threats to be investigated – or that this refusal is a direct attempt to silence critical voices – has led to a sense of fatalism and disenchantment within civil society.

Support for independent media in Azerbaijan is a vital part of protecting the country's journalists. As the number of independent media outlets shrinks, so do the benefits gained from a thriving professional environment that offers solidarity and therefore a degree of protection. This does not bode well for the future. Independent or opposition newspapers such as *Azadliq* report that applications for internships have dwindled. "The younger generation doesn't want to write about politics; it's too dangerous," said one journalist.

Self-censorship

The culture of impunity in Azerbaijan has led to a climate of pervasive self-censorship, and journalists attest to this. Unable to report the political and social situation accurately, journalists often avoid particular subjects. Journalists and bloggers who spoke with the mission noted that, for example, reporting on the president or his family or any of their business dealings is considered off-limits, as is criticism of government officials or debate about religion. But it is becoming increasingly difficult to identify dangerous subjects; because it has become evident that those who commit acts of violence against reporters, editors and columnists go unpunished, a journalist working in almost any field, writing about any topic, may find him or herself vulnerable to attack.

International image and its impact on the country

The many instances of freedom of expression violations, and the failure by the authorities to take adequate steps to address these violations, demonstrate the Azerbaijani government's lack of seriousness about its freedom of expression obligations. Azerbaijan has failed to live up to its international commitments to respect and protect freedom of expression per its membership in organizations such as the UN, the COE, and the OSCE, and its ratification of major human rights

treaties. Instead, it joins a group of authoritarian regimes which are notorious for their disregard of international human rights standards and law.

The actions taken by the Azerbaijani authorities to restrict freedom of expression have significantly damaged Azerbaijan's international reputation, placing it firmly in the camp of "worst offenders." Like Russia, Azerbaijan ignores many of its international commitments to respect and protect the rights of its citizens. Like China and Iran, Azerbaijan jails bloggers and online journalists.¹⁶ Elmar Huseynov, like Georgiy Gongadze from Ukraine, was killed for exposing corruption and government abuses.¹⁷ Freedom House ranks Azerbaijan as a "not free" country in terms of press freedom, along with countries such as Belarus, Burma (Myanmar), and North Korea.¹⁸ Azerbaijani President Ilham Aliyev appears in Reporters Without Borders' list of "predators of press freedom."¹⁹

More than 40 cases of freedom of expression violations are currently pending consideration by the ECtHR, including the cases of Eynulla Fatullayev, Agil Khalil, Uzeyir Jafarov, and Adnan Hajizade and Emin Milli. But there is concern and frustration that the international community is unable or unwilling to bring about change because of its strategic political and economic ties with Azerbaijan. The government's decision to refer the case of Eynulla Fatullayev to the ECtHR's Grand Chamber, and its refusal to honor the ECtHR's decision, demonstrates its disregard for international standards.

It is clear that the situation of freedom of expression in Azerbaijan will not improve until the cycle of impunity is broken. The current media landscape in the country is bleak and journalists live in a climate of fear. As one reporter said, journalists find themselves in "the worst scenario."

¹⁶ <http://en.rsf.org/press-freedom-barometer-netizens-imprisoned.html?annee=2010>

¹⁷ <http://en.rsf.org/ukraine-dead-official-gets-sole-blame-for-16-09-2010,38378.html>

¹⁸ <http://www.freedomhouse.org/template.cfm?page=251&year=2010>

¹⁹ http://en.rsf.org/spip.php?page=predateur&id_article=37258

3. Legal restrictions on freedom of expression

A wide range of legal provisions have been abused by the Azerbaijani authorities to restrict freedom of expression. Some of these – such as defamation provisions – are quite clearly connected with individuals exercising their right to freedom of expression. A trend has emerged, however, of the use of other charges less obviously connected with freedom of expression to silence critical voices. Currently imprisoned bloggers and journalists Eynulla Fatullayev, Adnan Hajizade and Emin Milli are examples of such cases. Fatullayev was most recently convicted for drug possession, while Hajizade and Milli are serving sentences for hooliganism; both sets of charges have been criticized as politically motivated.²⁰

For example, as mentioned above, former OSCE Representative on Freedom of the Media Miklos Haraszti called the charge of drug possession against Fatullayev “highly improbable,” and COE High Commissioner for Human Rights Thomas Hammarberg stated that criminal charges appeared to have been used to “silence undesired voices” in Hajizade and Milli’s case.²¹ Hammarberg called on the authorities to “end such practices of unjustified or selective criminal prosecution and imprisonment of journalists” and to “immediately release all journalists and any other persons imprisoned because of views or opinions expressed.” He specifically called for the release of Eynulla Fatullayev, Adnan Hajizade and Emin Milli.²²

Fatullayev's case has become particularly serious. His lawyer, Isakhan Ashurov, reported that a total of 22 cases on a variety of charges have been filed against Fatullayev, including those which have landed him in prison. The Azerbaijani authorities are refusing to comply with the 22 April 2010 ECtHR ruling in Fatullayev's case, which found that his imprisonment on charges of defamation, supporting terrorism, inciting hatred, and tax evasion constituted a violation of his freedom of expression.²³ The ECtHR ordered the Azerbaijani authorities to immediately release Fatullayev from prison. Instead of releasing him, the authorities proceeded with new charges against him of drug possession, for which he was convicted on 6 July 2010. The Azerbaijani authorities then applied to the ECtHR's Grand Chamber in Fatullayev's ECtHR case, which rejected the appeal, making the 22 April 2010 ruling final.

Hajizade and Milli are well known for their activities as youth activists and video bloggers, engaged in civic rather than political activism. They were arrested and charged with hooliganism after appealing to police as victims of an assault, following an incident in a restaurant during which two men demanded that Hajizade and Milli stop discussing the activities of their youth movement and then attacked them.²⁴ The youths’ arrest occurred shortly after Hajizade appeared in a satirical online video which was critical of the government's high expenditure to import two donkeys from Germany.²⁵

Other examples of abuse of the law to restrict freedom of expression include the case of *Azadliq* newspaper editor-in-chief Ganimat Zahid, who served a prison sentence following his arrest in November 2007 on charges of hooliganism and inflicting minor bodily harm following an apparent set-up. A woman whom Zahid had passed on the street accused Zahid of insulting her, and a man claiming to defend her engaged in a scuffle with Zahid. As the editor-in-chief of one of the most highly circulated opposition newspapers, Zahid is well known for his critical views of the Azerbaijani

²⁰ <http://en.rsrf.org/azerbaidjan-imprisoned-journalist-will-not-be-21-07-2010.37887.html> and <http://www.article19.org/pdfs/press/azerbaijan-eynulla-fatullayev-sentenced-to-2.5-years-imprisonment-on-new-pol.pdf>.

²¹ http://www.osce.org/fom/item_1_42272.html and <https://wcd.coe.int/ViewDoc.jsp?id=1642017>.

²² <https://wcd.coe.int/ViewDoc.jsp?id=1642017>

²³ Fatullayev v. Azerbaijan, 22 April 2010, Application no. 40984/07:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=fatullayev&sessionid=60202769&skin=hudoc-en>

²⁴ <http://www.article19.org/pdfs/publications/living-as-dissidents-freedom-of-expression-in-azerbaijan.pdf>

²⁵ <http://www.youtube.com/watch?v=Aaecvg7xCik>

government.²⁶ As with Hajizade and Milli's case, COE High Commissioner for Human Rights Thomas Hammarberg stated that in Zahid's case, the law appeared to have been used to silence a critical voice.²⁷

Sanat newspaper columnist Rafiq Tagi served a prison sentence following his conviction in May 2007 on charges of inciting religious hatred, based on an article he had written arguing that Islamic values were preventing Azerbaijan's integration into European structures and stunting Azerbaijan's democratic progress.²⁸ Both Zahid and Tagi maintain that they were targeted for their journalistic activities.

In addition, a number of obstacles continue to prevent full implementation of the 2005 Law on the Right to Obtain Information. Most notable is the government's failure, five years after the adoption of the law, to have appointed an Information Ombudsman as required by the law. This position would serve as an important channel of recourse for citizens in cases of non-compliance with the law outside of the court system, which is particularly important considering the lack of independence in the judiciary. Another significant barrier is the failure by some public bodies to comply with their responsibilities as information-owners under the law.²⁹ These issues must be addressed to achieve broader realization of freedom of expression in Azerbaijan.

²⁶ <http://www.article19.org/pdfs/publications/living-as-dissidents-freedom-of-expression-in-azerbaijan.pdf>

²⁷ <https://wcd.coe.int/ViewDoc.jsp?id=1642017>

²⁸ <http://www.state.gov/g/drl/rls/hrrpt/2007/100548.htm>

²⁹ <http://www.article19.org/pdfs/publications/azerbaijan-freedom-of-information-report.pdf>

4. Defamation

The continued presence of defamation provisions in Azerbaijan's Criminal Code remains among the most serious legal barriers to freedom of expression in the country.³⁰ Criminal defamation laws have a serious chilling effect on freedom of expression. They leave journalists in a position of vulnerability, and their existence contributes to self-censorship.

In July 2009, following its review of Azerbaijan's implementation of its International Convention on Civil and Political Rights commitments, the UN Human Rights Committee called for the Azerbaijani government to bring its defamation laws into compliance with Article 19 of the Universal Declaration of Human Rights.³¹ In March 2010, COE High Commissioner for Human Rights Thomas Hammarberg noted that the decriminalization of defamation in Azerbaijan should be considered as "a matter of urgency."³²

The mission was concerned by the Azerbaijani government's response to Hammarberg's report with regards to criminal defamation. The government stated that because the level of professionalism of journalists in Azerbaijan remained low, decriminalizing defamation would "exacerbate the situation" rather than improve it. The government also claimed that the use of criminal defamation provisions had become "an exception rather than a practice." The mission notes that issues regarding the professionalism of journalists do not merit the retention of criminal defamation provisions and should not be used as an excuse for such. The mission further notes that an increase in practices of self-censorship has contributed to the reduction in the use of criminal defamation provisions. In this regard, this reduction cannot be considered as progress.

While it is true that criminal defamation provisions no longer lead to prison sentences as frequently as in some previous years, they are still frequently used. Public officials often initiate these lawsuits, demonstrating intolerance to criticism. The Media Rights Institute reported that as of June, in 2010 public officials had filed 26 criminal defamation lawsuits against media outlets, which resulted in 14 convictions.³³

Civil defamation provisions also present an obstacle to freedom of expression in Azerbaijan, as they both fail to meet international standards and are used excessively against many opposition and independent media outlets. Many of these cases also are filed by public officials or by persons acting in the interest of public officials. The heavy damages awarded in these lawsuits present serious problems for many media outlets, which already face difficult financial situations due to a number of economic constraints on the media. The Media Rights Institute reported that as of June, in 2010 there had been 36 civil defamation lawsuits filed against media outlets, 30 of which were satisfied by the court.³⁴

The mission was encouraged by the indication by several Members of Parliament that the Human Rights Commission of the Azerbaijani Parliament, the *Milli Mejlis*, was considering a draft law which would decriminalize defamation. While decriminalization of defamation would certainly be a step in the right direction, the mission notes the importance of ensuring that any new civil defamation provisions comply with international standards for free expression.

Further, the mission notes the need to bring existing civil defamation provisions into compliance with international standards, as some aspects of these provisions remain problematic. In particular, provisions in the Constitution and the Civil Code which guarantee legal protection for the honor and dignity of the

³⁰ <http://www.article19.org/pdfs/tools/defamation-abc.pdf>

³¹ <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>

³² <https://wcd.coe.int/ViewDoc.jsp?id=1642017>

³³ http://www.mediariights.az/docs/half_year_report_2010_Azerbaijan_MRI.pdf

³⁴ http://www.mediariights.az/docs/half_year_report_2010_Azerbaijan_MRI.pdf

president do not comply with international standards, which hold that public figures should be subject to greater criticism than private persons.³⁵

³⁵ <http://www.article19.org/pdfs/analysis/azerbaijan-defamation-2004.pdf>

5. State influence on the media

State influence and dominance of the broadcast media stifles diversity, creating a media landscape in which pluralism has no place. The number of independent media outlets has decreased significantly since the November 2005 parliamentary elections.

Almost all broadcast media in Azerbaijan follow a pro-government line in their news coverage. The National Television and Radio Council (NTRC) is comprised of members appointed by the president. It has been criticized for a lack of transparency in its decisions to issue or suspend broadcast licenses. One of the most popular television stations in the country, ANS TV, had its license temporarily suspended by the NTRC in 2006. Monitors have reported that ever since, the outlet has adopted a much more cautious stance in its news coverage.³⁶

On 1 January 2009, the government banned the use of domestic airwaves for foreign broadcasts and prohibited the local-language broadcasts of various international news media from accessing national television and radio frequencies.³⁷ This affected the BBC, Voice of America, and Radio Free Europe/Radio Liberty, which previously broadcast on national radio frequencies but are now available only online in Azerbaijan.³⁸ This move served to further restrict the population's access to independent and critical news coverage.

The influence of the state has also been detrimental to the print media. Unbiased print media is rare, as most newspapers are either connected with ruling party officials or members of the political opposition. Approximately eighty percent of circulated newspaper media is owned by the state, ten percent is run by political opposition parties, and only the remaining five to ten percent can be considered politically independent.³⁹ Newspaper circulation remains alarmingly low. According to several prominent editors, circulation has decreased dramatically compared to the first years following independence from the Soviet Union. In 1992 and 1993, circulation of many newspapers was estimated to be between 150,000 and 200,000. Today, newspapers rarely surpass a circulation of 5,000 to 6,000.

State control of printing and distribution facilities has resulted in a particularly difficult situation for the print media. There is one main distribution center in Azerbaijan and newspapers and journals are sold in few places (one kiosk per 10,000 persons). Government organizations, schools, hospitals and universities are obliged to subscribe to state-run newspapers.

State intervention in the media in Azerbaijan's regions is also strong. According to local journalists who spoke with representatives of the mission, under a new informal policy for regional outlets initiated in 2009, the government has provided technical and financial assistance to some regional television stations, and sent some pro-government media personnel as reinforcements. Moreover, new regional television stations continue to be established with government support, leading to a large segment of available frequencies being taken by potentially pro-government broadcasters. The journalists who spoke with representatives of the mission believe that the government's intention with this policy is not to strengthen regional media, but, on the contrary, to prevent the emergence of independent regional broadcasters and thereby hinder the dissemination of critical opinions. They view the fact that the regional broadcasters that receive government aid have become increasingly inclined to provide entertainment coverage as a consequence of this new policy.

The side-effect of this policy is that some regional television stations are over-equipped and understaffed. Thanks to the government aid, the technical capacity of some regional television stations is

³⁶ <http://www.article19.org/pdfs/publications/living-as-dissidents-freedom-of-expression-in-azerbaijan.pdf>

³⁷ http://www.rferl.org/Content/Azerbaijan_Bans_RFERL_Other_Foreign_Radio/1364986.html

³⁸ http://www.irex.org/system/files/EE_MSI_2010_Azerbaijan.pdf

³⁹ http://www.irex.org/system/files/EE_MSI_2010_Azerbaijan.pdf

superior to that of some prominent broadcasters in Baku. However, the level of professionalism and the salaries of journalists working for these regional broadcasters does not match this technical capacity, resulting in a lack of professional staff able to use the sophisticated equipment.

The situation is similarly dire for the print media. Most regional and local newspapers are funded by city or district-level administration officials.

6. Other constraints on independent media

Many opposition and independent newspapers are in a particularly difficult financial situation, and face problems in paying salaries, taxes and periodic court fines.

The authorities engage in a number of other indirect interventions which make the existence of independent and opposition media difficult. The main problem is selective advertisement. The government reportedly actively pressures companies not to place their ads in critical newspapers and advertisers subsequently fear retaliation for possible association with these outlets.

The state financially supports media outlets through the Media Support Foundation, established by presidential decree in 2009. It claims to work for a more autonomous, diversified and stronger media. According to a representative of the foundation, Mushviq Alasgarli, over the past year, the fund has supported 30 newspapers, including three opposition newspapers. However, it is widely viewed by representatives of critical media outlets and civil society organizations as a means by the government to influence media and favor moderate reporting.

Another controversial measure criticized for the same reasons is the recent presidential decree which allocated five million AZN (approximately 4.48 million Euros) for the construction of apartments for journalists.⁴⁰ According to some editors, certain journalists have been provided with housing through these funds. One editor emphasized that this support has had very little impact on his newspaper. He estimated that at most, the assistance he receives from these funds covers the running costs of the newspaper for one month and a half per year. He noted that a grant of 10,000 AZN for a media organization represented a “drop in the ocean,” particularly when compared to the enormous profits the country is making from its natural energy resources.⁴¹ Other editors critical of the fund viewed their acceptance of the funds as justified by the fact that they paid their taxes to the state. However, they emphasized that often pro-government media do not pay taxes and receive the funding nonetheless. The most critical voices called these methods an institutionalized form of “bribery”.

Issues with the professionalism of journalists are also closely linked with the potential improvement of the financial situation for independent and opposition media. These issues will be elaborated upon in Chapter 8.

⁴⁰ See Chapter 8: Code of Ethics, professionalism and self-regulation in the print media

⁴¹ http://www.irex.org/system/files/EE_MSI_2010_Azerbaijan.pdf

7. A mistrusting, controlled and divided media environment

Twenty years after the collapse of the Soviet Union, the Azerbaijani media community is still struggling to achieve international standards for freedom of expression, access to information, and fair working conditions.

Unions

The country counts a number of official and non-official trade unions. The Journalists' Trade Union (125 members) and the First Trade Union of Public Television and Radio Broadcasting Company of Azerbaijan (800 members) are registered officially as trade unions which campaign for the labor and professional interests of their members. The Azerbaijan Journalists' Union (4,000 members) and Yeni Nesil Journalists' Union (550 members) are professional associations which focus on freedom of expression and the professional rights of journalists, but not on broader labor or social rights.

Journalism education

While a number of local organizations provide training in journalism in Azerbaijan, their overall impact is hindered by a lack of cooperation between the different educational institutions for the benefit of journalists. Journalism curricula at academic institutions lack practice-based courses and modules, and journalism training centers lack the proper structure and long-term strategic approach necessary to meet their students' training needs. Among those organizations are the public Baku State University, the private Khazar University, the Baku School of Journalism and the Azerbaijan Media Center.

NGOs

The NGO community is also very active in Azerbaijan. The Media Rights Institute, the Institute for Reporters' Freedom and Safety, and the Journalists' Democratic League are among the most active of the NGOs working on freedom of expression issues. They focus on monitoring freedom of expression violations, providing legal defense and pursuing cases of strategic litigation, pursuing legislative reforms, and acting as watchdog organizations, drawing national and international attention to freedom of expression violations in the country.

Traditional media

A large number of media outlets currently operate in Azerbaijan, not all with the same degree of success and influence. There are currently 162 newspapers published in Azerbaijan. Of these, 32 are daily, 45 are weekly, and 85 are monthly publications.⁴² The best-selling daily is the daily opposition newspaper, *Yeni Musavat* newspaper, with a reported circulation of 12,000. The other popular daily opposition newspaper, *Azadliq*, has a reported circulation of 7,500. The ruling party's official organ, *Yeni Azerbaijan* newspaper, and Parliament's organ, *Azerbaijan*, claim print runs of 6,000 and 8,700 respectively. The Russian-language newspapers *Zerkalo* and *Ekho* are also among the most widely read in Azerbaijan, with reported circulations of 5,000 and 6,000 respectively. Broadcasters include ANS-TV, ITV, Azad Azerbaijan TV (ATV), Lider TV, Khazar TV, and Space TV. News agencies include Trend, Azeri Press Agency (APA), and Turan.

The mission noted a marked division within the traditional media community, as conveyed by many interlocutors in mission meetings. Members of the sector do not enjoy the level of solidarity found in a healthy and functioning media environment. These divisions were observed throughout the media

⁴² http://www.irex.org/system/files/EE_MSI_2010_Azerbaijan.pdf

sector, including between the capital and the regions, and have led to significant vacuums in the media environment, specifically regarding the continuing development of professional standards, self-regulation and protection among the media community.

There seems to be little dialogue between pro-government and opposition media, and they express very different perspectives on the current situation and specific events, resulting in the impression that they live in separate worlds. These extreme divisions prevent the media community from seeking common values around which to define their work. Overt political influences on the media have created a lack of professional solidarity among journalists which must be overcome for successful development of the media.

These divisions also undermine the capacity of unions to recruit and organize effectively and to speak with one voice on behalf of all journalists. Journalists' unions and other professional groups must support their colleagues and provide collective protection for the space in which value-based journalism can take place. In doing so, they will provide the necessary framework for solidarity in the media community with a social philosophy of ethical conduct.

Rivalries and a dramatic drop in the number and variety of media outlets have radically altered the ways in which journalists work. The political influences that underpin censorship and media interference have increased, contributing to further polarization of the media-development community.

Building common grounds

The lack of common ground between these journalists and groups needs to be bridged if a genuinely professional media community is ever to develop.

The relationship between the media-focused NGOs and the representative journalists' unions and associations is often strained as they compete for the attention to be authoritative voices on media issues. While their mandates and audiences often differ, there should be greater efforts to combine the strengths of different organizations to defend the common goals of independent professional journalism.

The mission found that the links between journalists and civil society organizations, human rights defenders, trade unions, women's groups, and representatives of minority communities should be strengthened to win broad public support for greater respect for the profession and the rights of journalists. Unfortunately, in Azerbaijan, there are currently many fractures preventing effective solidarity action.

Even when there is a dialogue between media community and civil society, the dialogue is not based on a clear understanding that in a democratic society, journalism should maintain focus on its most crucial value: independence.

8. Ethics, professionalism and self-regulation in the print media

Many of the mission's interlocutors raised the issue of professionalism in the Azerbaijani media. They considered the issue of ethical standards to be a serious problem in the profession, along with poor working conditions due to issues with contracts, irregular salaries, and illegal undeclared payments. They also noted a clear link between progress in professionalism and the revision of legal provisions for defamation.

Journalists do not enjoy the freedom to exercise responsibility. The level of political and managerial influence and interference has contributed to the further deterioration of the quality of journalism and has seriously affected the security of journalists.

Journalists and editors are too close to their political sponsors, whether they be government or political parties. Many do not consider that, regardless of the media outlet for which they work, they face similar forms of constraints in their journalistic activities. This needs to be acknowledged as much by opposition media as by pro-government media. More importantly, it is essential that the professional journalist is seen as an independent, objective reporter of the truth, not as someone attached to a particular political interest.

The introduction of editorial independence and promotion of professional standards in the media would foster public engagement in political debate and society as a whole. It would strengthen the democratic processes of the country and provide the public and government officials with the information necessary to conduct an informed public debate on relevant policies.

In addition to the intense level of political interference in the daily work of journalists, the appalling conditions in which journalists are forced to work are the primary cause of poor ethical standards. It is not possible to expect journalists to perform professionally and ethically while they operate with irregular and illegal contracts, low and uncertain salaries, and without employment stability. When journalists can be hired and fired at will, they are not in the position to demand respect for their professional independence from their employers.

The mission's attention was brought to another issue important to the strengthening of independent journalism: the presidential decree which allocated five million AZN (approximately 4.48 million Euros) for the construction of apartments for journalists.⁴³ This contradicts the new Code of Ethics, which states that journalists may not receive any personal, political or financial remunerations, valuable presents, or free services which could hamper their ability to provide the community with accurate information.

If journalists agree with the provision by the state of such funds, the mission notes that it is essential to establish an independent, multi-stakeholder committee with transparent procedures for the allocation of state media-support funds in order to avoid the misuse of such funds, which would further corrupt the media. One of the basic criteria for the committee responsible for allocating these funds should be the print media's implementation of the Code of Ethics. The committee should also monitor the implementation of the Code providing regular reports on violations.

The mission met with many experts who agreed that it is only through industry-driven initiatives that engage all sides of the media that the necessary media reform and development of professional journalism will take place.

On the eve of the mission, on 6 September 2010, an amended version of the Code of Ethics for Azerbaijani Journalists was launched at a joint conference by the OSCE Office in Baku and the

⁴³ <http://en.trend.az/news/society/media/1746769.html>

Azerbaijan Press Council. The event was attended by representatives of the presidential administration, parliamentarians, and local and international experts.⁴⁴ The new document is based on the former Code of Ethics developed by the Azerbaijan Press Council. It focuses on four principles: to serve the truth, accuracy and objectivity; to approach information sources respectfully; to protect honor, dignity and personal immunity; and to protect the reputations of journalists and their organizations.

While the mission notes that it is a positive step for local actors to engage in dialogue on the issue of professionalism of journalists such as at the 6 September OSCE event, such dialogue cannot in and of itself solve the many problems in Azerbaijan's media environment. The mission is concerned by the Azerbaijani government's attempt to deflect criticism of its repressive practices towards the media by placing the blame for the dire state of freedom of expression in the country on journalists.⁴⁵ It is evident that there are problems with the professionalism of journalists in the country. However, many of the more serious obstacles to freedom of expression are attributable directly to the authorities, such as the imprisonment of journalists and the impunity for those who commit acts of violence against journalists, as well as the economic environment in which advertising is skewed towards pro-government outlets and salaries remain unsustainably low.

It is then urgent to form a cross-industry working group which will be charged with media reforms in the country. The working group should involve all sectors of the industry: the employers, editors, journalists, their unions, media NGOs and the Press Council. This body should set out the strategy for long-term media reform including guidelines on editorial independence and editorial statutes, self-regulatory instruments, pluralist and structured media ownership, as well as working conditions in line with international standards. This strategy should be developed in consideration of the broader freedom of expression environment in the country.

⁴⁴ <http://www.osce.org/documents/html/pdf/html/45921-2.pdf.html>

⁴⁵ <https://wcd.coe.int/ViewDoc.jsp?id=1642017>

9. Freedom of expression online

The deep pessimism within the media community is somewhat counter-balanced by the energy and enthusiasm prevailing among bloggers and others writing for online media.

A dynamic blogosphere

There was variation among the figures provided to the mission by its interlocutors. According to official figures, one third of the population (2.5 million persons) has access to the Internet. According to the head of the Internet Forum, Osman Gunduz, a more realistic figure is 27 percent of the population, about 90 percent of which have dial-up access only. The digital divide is wide between rural and urban parts of the population, as Azerbaijan's regions remain poorly connected.

The blogosphere has dramatically expanded during the past three years. Ten thousand bloggers are reported to be active, although it seems that closer to several hundred are influential in the Azerbaijani blogosphere.

A bloggers' forum, Bloqosfer 2010, was held after the mission was completed, from 10 to 12 September 2010. It was seen as the crowning of the development of the Azerbaijani blogosphere over the past three years, or as a new beginning.⁴⁶ According to Elnur Kelbizadeh, it was attended by about 50 bloggers and served as an opportunity for bloggers, new media specialists and other Internet experts, as well as representatives from the industry and civil society to identify as a community and strengthen their links. Representatives of the authorities attended the event. Some bloggers complained that the case of the two imprisoned bloggers was not raised during the forum, but others explained that the social aspect of blogging was stressed over political issues.

Vibrant online media

There was encouraging evidence of a vibrant and growing online media, including Internet television stations such as Obyektiv TV, ANTV, and Kanal 13. Those using digital media to report, campaign and inform displayed an optimism which bodes well for the future. Young people have taken the potential of Web 2.0 by storm. Some of the most popular websites, such as Tac.az, have started to address issues relevant to Azerbaijan's youth. Havaodsutorpag.com, open.az, contact.az, and irfs.az also have an interesting audience. Facebook has now about 170,000 users in the country, most of whom are 18 to 30 years old. Twitter is less popular, even though the "Green Revolution" in Iran contributed to making it more known in Azerbaijan, according to bloggers who met with the mission.

When the traditional media are under the control of the government or face pressure from the authorities, online media has been filling the void and has been able to ensure interesting coverage of current events.

During the State Oil Academy shootings in 2009, the new media's reaction outpaced the traditional media's. Videos of the event were posted immediately after the shootings occurred and news updates were regularly provided. This served as a turning point for the online media and bloggers, and as an opportunity to show their contribution to the right to information.

At its 8 September launch, the Azerbaijan Frontline Club screened a video that was filmed in May 2010 for a project by the Turan information agency and Obyektiv TV. It showed the devastation in several central regions (Sabirabad, Imishli, and Kurdemir) following the flooding of the Kur River. The video showed corruption among authorities meant to provide assistance to those affected by the floods. Local officials were accused of retaining most or part of the money given by the state for recovery efforts.

⁴⁶<http://elnurkelbizadeh.azeriblog.com/2010/09/15/bloqosfer-2010-azerbaycana-ne-verdi>

It remains to be seen how much the new media will be able to cover sensitive stories and help push the limits of censorship, or to help bring about benefits for the rest of the media and society.

The Internet has also been a tool for mobilization in the country, whether used by the opposition to voice criticism that rarely make it to the airwaves or to denounce corruption and abuses. For example, a lorry driver was beaten by employees of the Ministry of Transportation. A passer-by filmed it and posted it on YouTube. Many print outlets then published stories about it. Many video petitions also circulate online to call for the release of Adnan Hajizade and Emin Milli.

Some dialogue has been taking place online between bloggers from Azerbaijan, Armenia and Georgia. According to one blogger who spoke at an international conference held in Budapest from 20 to 22 September 2010, if something negative happened to bloggers in Azerbaijan, neighboring countries such as Armenia and Georgia could follow suit.⁴⁷

With the November 2010 parliamentary elections coming up, some Facebook groups and pages have popped up, created by political figures such as political analyst and potential candidate Ilgar Mammadov⁴⁸ or Erkin Gedirli, a lawyer whose group has now more than 400 members.⁴⁹ Given the lack of media pluralism and problems with access to the media by members of the political opposition, online and social media could provide a new avenue for the government's critics to express themselves.

Facebook could also play a watchdog role during the elections period. On 20 September 2010, a local assistance and consultancy center, For the Sake of Civil Society, launched a Facebook page calling for volunteer observers for the day of the elections.⁵⁰

Self-censorship

Despite the optimism conveyed by most bloggers met by the mission, self-censorship for online content is also an issue. "It's in everyone's head. We think of the consequences," said one blogger commenting on Adnan Hajizade and Emin Milli's case. Taboo topics reportedly include the first lady, criticism of the president, exposing high ranking officials' corruption and abuses, and coverage of the Nagorno-Karabakh conflict that deviates from the official angle.

New media versus traditional media

The place of bloggers and citizen journalists in Azerbaijan is not clear. The head of the Presidential Administration's Social and Political Department, Ali Hasanov, publically stated that "bloggers are not journalists," as a way to dismiss international criticism calling for the release of the two jailed bloggers.

Some bloggers with whom the mission met complained about not being recognized as journalists and then not being able to enjoy the rights and social benefits given to journalists. However, a requirement that bloggers register with the Ministry of Justice would present a danger of creating one category of bloggers recognized by the authorities, and another category of "illegal bloggers," who would become more vulnerable to repression.

Bloggers have indeed encountered problems in trying to access official information since they are not considered to be journalists. But many independent and opposition journalists also face this issue.

⁴⁷ <https://sites.google.com/a/pressatgoogle.com/internet-at-liberty-2010/>

⁴⁸ <http://www.facebook.com/group.php?gid=135421166488943>

⁴⁹ <http://www.facebook.com/group.php?gid=132385643466167&ref=ts>

⁵⁰ <http://www.facebook.com/event.php?eid=159803137367707&index=1>

The head of the Internet Forum, Osman Gunduz, stressed the need for more training to educate journalists and journalism' students, as well as the broader population, about the potential of the new media. Some training occurs in the regions, where editors are more open to it, but in Baku, it is more difficult to get editors' attention and to advocate for more links between online and traditional media. One blogger said that some editors prohibit journalists from traditional media from writing for online media.

Regarding the long-term development of the online media and their resources, one blogger noted that advertising options online are extremely limited.

Expensive and poor-quality Internet: a tool for Baku and its elite only?

The expansion of the blogosphere and the online media is for now a phenomenon very much limited to the capital and a few large cities, in part due to poor infrastructure and the cost of Internet access in the country. In spite of its economic strength, the government has failed to provide its citizens with affordable, high-speed Internet access. Such a service now costs the equivalent of 30 Euros per month. Dial-up connection is less expensive, but allows only for sending e-mails and browsing the web, not for uploading or downloading videos. The vast majority of the population is not able to access the web, or has service that is so slow it cannot enjoy the Web 2.0 potential. This may be the result of a political will to limit the reach on the Internet and its potential to hold those in power accountable.

There is one point of entry to the Internet which is controlled by the Ministry of Telecommunications. Among the approximately 35 Internet Service Providers (ISPs) that operate in the country, only two are directly controlled by the Ministry. The remaining ISPs are private companies, but there are suspicions that they may be required to allow Azerbaijan's security services to have access to the network on request. Most of the bloggers and online journalists met by the mission said they were not aware of current filtering or large-scale monitoring by the authorities. However, instances of filtering have been uncovered, such as the blocking of some critical sites like *tinsohbety.com*, a website hosted in Germany which criticizes the government and publishes cartoons of the president. The authorities occasionally block Chechen websites (such as *kavkazcenter* and *chechenpress*) and websites of some opposition newspapers (such as *Yeni Musavat*, *Azadliq*, and *Bizim Yol*).

There is a marked lack of transparency regarding the administration of the .az domain name. Several bloggers complained about not being able to register their preferred names. The private company Intrans has a monopoly on the registration of websites on the .az domain, with no independent oversight of the process.

Future restrictions?

For now there is no specific legislation regulating the Internet despite recent and repeated statements by the head of the NTRC, Nushirvan Maharramli, and officials from the Ministry of Communication stressing the need to license Internet television. Several of the mission's interlocutors said that the authorities were examining potential ways to regulate the Internet. The more popular the Internet becomes, the more the online media community fears restrictions might be imposed. Given the current media landscape in Azerbaijan, such a move could potentially constitute Internet censorship.

The way the Internet was built in Azerbaijan, with a single point of entry similar to Burma or Iran, ensures that if the authorities decide to do so, they can easily monitor websites, filter content, or tamper with bandwidth speed – if it is not already being done behind the scenes.

10. Freedom of expression and elections

The trends outlined above have significant potential to negatively impact the upcoming November 2010 parliamentary elections. In addition, the mission has a few specific concerns related to the media and elections in Azerbaijan.

The report issued by the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on its election observation mission during Azerbaijan's November 2005 parliamentary elections found that the Central Election Commission (CEC) had applied an overly strict interpretation of provisions of the Election Code pertaining to news coverage of the election campaign period. The CEC considered any media coverage of candidates to be campaigning on behalf of those candidates, meaning any coverage of the campaign period was subject to legal provisions for equal coverage of all candidates. The report noted that this did not stop the media from extensively covering the activities of public officials, including the President.⁵¹

The OSCE/ODIHR recommended that the Azerbaijani authorities take a number of steps to address media problems pertaining to elections. These included strengthening the independence of public television; ensuring equitable news coverage of political parties and candidates and taking prompt and effective action against violations; establishing systematic media monitoring by the CEC; ensuring the independent appointment of members of the National Television and Radio Council and impartial and transparent mechanisms for the broadcast licensing process; and providing for the editorial independence of the media, free of interference from the authorities, including by investigating and prosecuting all instances of violence against journalists.

The mission raised many of these issues during a meeting with CEC officials. The head of the CEC's Press Department, Azer Sariyev, noted that the Azerbaijani authorities have enacted significant reforms to electoral legislation in cooperation with expert international bodies such as the OSCE/ODIHR's Venice Commission. However, he noted, implementing this legislation was difficult, with more than 30,000 persons taking part in election commissions and 5,000 persons present at polling stations on Election Day. According to Sariyev, the CEC was actively engaged in raising public awareness of Election Code provisions and providing trainings for election officials.

The CEC officials expressed frustration in response to concerns raised by the mission, OSCE/ODIHR, and other international experts and bodies regarding unbalanced news coverage during election campaign periods. Sariyev said that during pre-election periods, some candidates think that coverage of normal government activities is campaigning. The head of the CEC's International Relations Department, Rovzat Gasimov, asked, "Should we stop covering the news just because there is an election"? CEC Press Department Advisor Ramin Nuraliyev noted that in monitoring the media, the CEC had found that opposition newspapers had often violated legal provisions related to election campaign periods. The mission underscored the recommendation by the OSCE/ODHIR that the CEC should develop systematic media monitoring, to which the CEC officials were receptive.

The mission raised the concern expressed by many local media, civil society, and political activists regarding Parliament's decision in June 2010 to shorten the campaign period from 28 to 23 days.⁵² These activists feel that the shortened campaign period places independent and opposition candidates in a disadvantaged position as they have less time to get their message out to potential voters, as opposed to the ruling Yeni Azerbaijan Party candidates who benefit from perpetual intensive media coverage of the president and other government officials. One Member of Parliament explained that the campaign period had gradually decreased from 60 days to the current 23 days within a few years.

⁵¹ http://www.osce.org/documents/odihr/2006/02/17923_en.pdf

⁵² http://www.rferl.org/content/Azerbaijani_Parliament_Amends_Election_Law/2076084.html

Sariyev noted that many European countries had short election periods and expressed his belief that a shorter campaign period did not make the conduct of elections less democratic. What was important, Sariyev said, was to comply with legal provisions for the conduct of elections. Sariyev noted that if a candidate was unpopular, it would not matter whether he or she campaigned for years, as they would not be elected.

One editor who spoke with the mission explained that many journalists face obstacles in attempting to monitor the electoral process on Election Day. Although the Election Code provides for journalists to observe all parts of the electoral process, he noted that in practice, they are sometimes prevented from observing the vote tabulation process at the end of the day. He further noted that sometimes other, non-media election observers faced similar problems, and in some cases, even certain election officials were not permitted to observe the vote tabulation process.

In response to the mission's noted concern of such practices, Gasimov said that the Central Election Commission had never heard of any instance of a journalist being barred from a polling station during the electoral process. According to Gasimov, there are procedures in place for handling complaints of violations, and the Central Election Commission would take immediate steps to address such complaints. Gasimov also noted that in some instances, journalists present at polling stations were engaging in campaign activities or intentionally agitating election officials. In such instances, Gasimov said that these journalists were not behaving as election observers and should be removed from the polling stations.

11. Conclusion

The mission found that the combined effect of the trends examined in this report is a freedom of expression climate which has significantly deteriorated over the past several years. The Azerbaijani authorities have failed to comply with many of their international commitments to freedom of expression. Through actions such as their refusal to comply with the European Court of Human Rights' ruling in Eynulla Fatullayev's case and the unavailability of a top Presidential Administration official to engage in dialogue with the mission, the authorities have demonstrated an unwillingness to seriously address the freedom of expression problems in the country.

This state of affairs is particularly disturbing in light of the upcoming parliamentary elections in November 2010. There is currently very little space for public political debate and many potential voters have been exposed to only one political view, that of the ruling Yeni Azerbaijan Party. Without an environment conducive to political pluralism, elections cannot be considered to be fair and free, regardless of any perceived progress in the technical conduct of proceedings on Election Day.

The mission has developed a number of concrete recommendations to the Azerbaijani authorities which must be implemented to improve the freedom of expression situation in the country. These recommendations have been developed in accordance with the Azerbaijani government's own commitments to freedom of expression under international law. The full list of recommendations is available at the beginning of this report, but two key steps which require immediate action are the unconditional release of Eynulla Fatullayev, Adnan Hajizade, and Emin Milli; effective and independent investigations into all cases of violence against journalists, as well as prosecution of those responsible for their attacks; and decriminalization of defamation.

While the current poor freedom of expression climate is attributable largely to the actions of the Azerbaijani authorities, the mission notes that the international community maintains some responsibility in this regard. The mission urges those governments with political and economic ties to Azerbaijan to consider their own commitments to human rights and freedom of expression and to hold the Azerbaijani government to account in this regard.

The mission hopes that this report will serve as a catalyst for the Azerbaijani authorities to implement critical freedom of expression reforms and to the international community to dedicate greater attention and resources to the freedom of expression situation in Azerbaijan. The mission's participating organizations, along with other member organizations of the International Partnership Group for Azerbaijan, will continue to engage in dialogue with the Azerbaijani authorities and with local stakeholders to work towards the full promotion and protection of freedom of expression in Azerbaijan.

Appendix A - List of meeting participants

Arzu Abdullayeva, Co-Chair of the Helsinki Citizen's Assembly and Chair of the Freedom of Expression Committee
Elmira Akhundova, Member of Parliament
Mushviq Alasqarli, Chairman of the Journalists' Trade Union
Arif Aliyev, Chairman of the Yeni Nesil Journalists' Union
Intigam Aliyev, Chairman of the Azerbaijan Lawyers' Forum
Mehman Aliyev, Director of the Turan News Agency
Zardust Alizadeh, Director of the Baku School of Journalism
Iqbal Agazade, Chairman of the Umid Party and Member of Parliament
Rauf Arifoglu, Editor-in-chief of *Yeni Musavat* newspaper
Isakhan Ashurov, Human rights lawyer
Shahveled Chobanoglu, *Yeni Musavat* newspaper columnist
Dilara Efendieva, Head of the Peace and Security Center, Association for the Protection of Women's Rights
Emin Fatullayev, father of imprisoned journalist Eynulla Fatullayev
Rovzat Gasimov, Head of the Central Election Commission's International Relations Department
Fazail Gazanfaroglu, Chairman of the Great Creation Party and Member of Parliament
Osman Gunduz, Chairman of the Azerbaijan Internet Forum
Rashid Hajili, Director of the Media Rights Institute
Hikmet Hajizade, father of imprisoned blogger Adnan Hajizade
Bahaddin Haziyeu, *Bizim Yol* newspaper editor-in-chief
Emin Huseynzade, New media specialist and Transitions Azerbaijan Country Director
Novella Jafaroglu, Chair of the Association for the Protection of Women's Rights
Uzeyir Jafarov, Milaz.info columnist and former *Gundelik Azerbaijan* newspaper editor
Yegana Jafarova, Human Rights Commissioner's Office
Seymur Khaziyev, *Azadliq* newspaper reporter
Vugar Maharramov, Head of Documentation Department, Human Rights Commissioner's Office
Zemfira Maharramli, Chief of Office, Human Rights Commissioner's Office
Ilgar Mirza, Independent Internet professional
Fariz Namazli, Lawyer of the Media Rights Institute
Azer Nazarov, Blogger and new media expert
Ramin Nuraliyev, Press Department Advisor of the Central Election Commission
Anar Orujov, Director of the Caucasus Media Investigation Center
Elchin Sadikhov, Lawyer of the Media Rights Institute
Aydin Safikhanli, Human Rights Commissioner's Office
Azer Sariyev, Director of the Central Election Commission's Press Department
Elchin Shiklinski, Chairman of the Azerbaijan Journalists' Union and Editor-in-chief of *Zerkalo* and *Ayna* newspapers
Rasul Shukurskoy, *Komanda* newspaper sports writer
Rafiq Tagi, *Sanat* newspaper columnist
Ganimat Zahid, Editor-in-chief of *Azadliq* newspaper



From 7 to 9 September 2010, a group of nine international non-governmental organizations undertook a joint freedom of expression mission to Azerbaijan. They found a freedom of expression environment which had deteriorated sharply over the past several years, and a failure by the Azerbaijani government to comply with its international commitments to freedom of expression. These trends are particularly worrisome in the context of Azerbaijan's upcoming parliamentary elections on 7 November 2010.

This report outlines the mission's serious concerns regarding the freedom of expression climate in Azerbaijan. These include the cycle of violence against journalists and impunity for those who commit these acts; the imprisonment of journalists and bloggers who have expressed critical opinions; and the continued presence of criminal defamation provisions in Azerbaijani law. This report also contains the mission's recommendations to the Azerbaijani authorities on how to improve the freedom of expression climate in the country.