

Submission

By the Election Monitoring and Democracy Studies Center (Azerbaijan)
to the thematic report of the Special Rapporteur on Freedom of Opinion and Expression
to the UN Human Rights Council: “Freedom of Opinion and Expression and Sustainable
Development

Introduction

This report is prepared by Azerbaijan-based NGO Election Monitoring and Democracy Studies Center (EMDS) and aims to inform the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on the situation in Azerbaijan. This document was prepared on the basis of observations made by the EMDS during 2021-2022 and information on violations collected based on both citizens' online complaints and media monitoring.

Background

EMDS is a non-governmental organization operating in the field of development of electoral system, civil society and democratic institutions in Azerbaijan.

EMDS was re-established on December 1, 2008, on the basis of the deregistered Election Monitoring Center (EMC). It should be noted that on May 14, 2008, the Khatai District Court canceled the registration of EMC based on the groundless claim of the Ministry of Justice of the Republic of Azerbaijan. After this event, the founders and members of EMC founded EMDS.

Freedom of expression, trends and highlights in recent years

Freedom of expression as one of the cornerstones of democratic society has been under constant pressure in Azerbaijan. In general, independent media representatives were continuously under pressure during the reporting period. Independent media outlets and professional journalists have been subjected to violence and threats due to their professional activities, and violations such as restrictions on access to their websites and hijacking of social media accounts have been recorded. Violations of freedom of expression mostly appeared in the form of summoning citizens to police stations because of their opinions and comments shared on social media, followed by the application of political-psychological pressure and administrative detention, forcing them to delete the critical comments, etc.

As respected international and domestic watchdogs long reported, journalists and media outlets faced continuous online and physical attacks, arbitrary detention and arrests, confiscation of equipment and other types of pressures.¹ EMDS recorded at least 87 cases of violations of

¹ Voice of America, ‘Attacks, Threats Add to Pressure for Azerbaijan’s Media’ (June 2022), <https://www.voanews.com/a/attacks-threats-add-to-pressure-for-azerbaijan-s-media/6622144.html>;
Council of Europe, (December 2019), <https://www.coe.int/en/web/commissioner/-/commissioner-mijatovic-urges-the-azerbaijani-authorities-to-respect-freedom-of-expression-improve-access-to-lawyers-and-uphold-the-rights-of-internall>;

freedom of expression in the reporting period.

Noteworthy, the Parliament Assembly of the Council of Europe has commissioned its Committee on Legal Affairs and Human Rights of the Assembly to prepare a report on the safety of journalists and human rights defenders in Azerbaijan by 2024.² The report is sought to cover the main threats to the work of mentioned groups following the recently growing attacks targeting government critics and journalists in Azerbaijan.³

Legislative measures

Legislative measures adopted in recent years have also played a negative role adding up to the repressive environment. On December 30 2021, the new draft law "On Media " was adopted by the parliament in the third reading. Some experts and independent media representatives stressed that the bill was aimed at keeping Internet media under control in Azerbaijan. One of the key points of the law was related to journalists' registration and issuance of a single type journalistic card reserved only for the journalists included in the Media Register. The requirements for the registration include illegitimate obligations, such as higher education, three years of work experience, legal capacity, and no previous convictions for serious or particularly serious crimes. The law also addresses issues aimed at the seduction of journalists, granting several privileges or in other ways which are incompatible with the professional ethics of journalists⁴. It is worth noting that despite the calls of civil society organizations, the bill was not submitted to the Venice Commission of the Council of Europe for expertise, and was adopted without consideration of the opinions of local experts too.

The law 'On Media' came into effect on February 10, 2022 with presidential decree. The Venice Commission stated in its commentary on the law that many of the provisions of the law should be changed or completely removed from, as this law further suppresses the freedom of expression in an already restrictive current environment in Azerbaijan.⁵

On September 26, 2022, the head of the country, Ilham Aliyev, approved the rules 'On the maintenance of the Media Register', and the registration of media organizations in the country began. Although the government stated that the registration was carried out voluntarily, the

Human Rights Watch, 'Azerbaijan: Events of 2021', (January 2022), Freedom of Expression,

<https://www.hrw.org/world-report/2022/country-chapters/azerbaijan#eaa21f> ;

Human Rights Watch, 'Beaten, Blacklisted, and Behind Bars The Vanishing Space for Freedom of Expression in Azerbaijan', (October 2010), <https://www.hrw.org/report/2010/10/26/beaten-blacklisted-and-behind-bars/vanishing-space-freedom-expression-azerbaijan> ;

Election Monitoring and Democracy Studies Center, 'Election Monitoring and Democracy Studies Center Report on Violations of Civil, Political and Social rights in Azerbaijan' (January 2022), <https://smdtaz.org/election-monitoring-and-democracy-studies-center-report-on-violations-of-civil-political-and-social-rights-in-azerbaijan/>

² Parliamentary Assembly of the Council of Europe, 'Motion for a resolution; Threats to life and safety of journalists and human rights defenders in Azerbaijan' (May 2022),

<https://pace.coe.int/pdf/042fbfe6011e3d6227a66192d3e259ddca61e2362b941ee9c1b8963d61eef1ac/doc.%2015521.pdf> ;

³ Turan.az, 'PACE to prepare report on threat to journalists in Azerbaijan' (June 2022), https://www.turan.az/ext/news/2022/6/free/politics_news/en/6550.htm/001

⁴ Turan, (December 2021) <https://bit.ly/33u5bTF>

⁵ Council of Europe, (20 June 2022), <https://www.coe.int/en/web/portal/-/azerbaijan-media-law-overregulation-in-an-already-restrictive-environment#:~:text=The%20Venice%20Commission%20concludes%20that,to%20do%20fulfil%20their%20public>

Media Agency said that the matters related to the media subjects, which do not apply to the register within 6 months, will be considered in court.⁶

For instance, the law on information, informatisation and protection of information amended in 2017 and 2020, along the relevant provisions in the Criminal Code and the Code of Administrative Offences granted prosecuting authorities with excessive powers to, among other, block access to the websites of media outlets without any court decision.¹⁸⁷ This Law, like the Law on Media was subject to wide criticism for enshrining measures granting authorities wide discretion to broadly interpret and possibly misuse it against government critics.⁸ Similarly, to the Law on Media, this Law was also used to punish independent media outlets and government critics. Relying on this Law, the relevant authorities blocked access to dozens of independent media outlets, mostly with profile critical of the government, including 'Radio Free Liberty', 'Meydan TV' and others where activists and journalists were subjected to intimidation and administrative detentions for violations (some of them have cases pending before the Court awaiting judgment, see Azadliq.info and Others, Appl.no. 36589/17).⁹

Cases

On July 16 2021, actor Elmin Badalov was detained by police and taken to the 27th Police Station for performing a street play called "Seventh Room" in the Winter Park. He was detained for about 3 hours and then released. On October 6 2021, blogger and activist Anar Abdulla was summoned by police and detained for 15 days over his thoughts shared on Facebook. He stated that he had been beaten at the police station.¹⁰

On February 15 2022, journalists Fatima Movlamli and Sevinj Sadygova were detained while covering the protest of families of war veterans in front of the presidential administration building. They later said that they were insulted and subjected to physical violence both during detention and in the Sabail District 9th police station. While the Ministry of Internal Affairs reacted to the news and promised to fire the officers no news were later provided.¹¹

On May 8 2022, journalist Aytan Mammadova was threatened with a knife by an unknown person while entering the block of the building where she lives.¹² Aytan Mammadova connected the attack on her with covering the court case of Ilkin Suleymanov, who is suspected

⁶ Jam News, (October 2022), <https://jam-news.net/media-registration-has-begun-in-azerbaijan-what-does-it-mean-for-freelance-journalists/>

⁷ Council of Europe, 'Analysis of Azerbaijani legislation on freedom of expression', (2017), 40-44, <https://rm.coe.int/azerbaijan-analysis-of-legislation-on-freedom-of-expression-december-2/16808ae03d> (Analysis of Legislation)

⁸ Azerbaijan Internet Watch, 'Restrictive new bills sweep freedoms under the carpet, part 1' (January 2021), <https://www.az-netwatch.org/news/restrictive-new-bills-sweep-freedoms-under-the-carpet-part-1/> ;

Azerbaijan Internet Watch, 'Who regulates content online in Azerbaijan? Legal analysis (May 2022), <https://www.az-netwatch.org/news/who-regulates-content-online-in-azerbaijan-legal-analysis/> (AIW report); Freedom House, 'Key Developments, June 1, 2017 - May 31, 2018', (2018), Freedom on the Net 2018, <https://freedomhouse.org/country/azerbaijan/freedom-net/2018> (Freedom on the Net)

⁹ Institute for Reporters' Freedom and Safety, 'Police have beaten up journalists and threatened them with death', (February 2022), <https://www.irfs.org/news-feed/reporter-fatima-movlamli-reported-being-beaten-by-the-police/>; Freedom on the Net (10); Analysis of Legislation (n10) 44; AIW Report (n10)

¹⁰ Caucasian Knot, 'Journalist Anar Abdulla arrested in Baku', (October 2021) <https://bit.ly/3fA1e29>

¹¹ Voice of America, 'Azerbaijan says it will remove police officers over media harassment', (February 2022), <https://www.voanews.com/a/azerbaijan-says-it-will-remove-police-officers-over-media-harassment/6446083.html>

¹² Meydan TV, 'Azerbaijani journalist threatened at knifepoint', (May 2022), <https://www.meydan.tv/en/article/azerbaijani-journalist-threatened-at-knifepoint/>

of killing 10-year-old Narmin Guliyeva in Dondar Gushchu village of Tovuz District. Although a criminal case was opened in connection with the fact, the journalist later expressed her dissatisfaction with the lack of action of the investigative authorities.¹³

On June 7 2022, ToplumTV journalists Nuray Kamal and Vusala Mikayil faced pressure while reporting the raid of the executive authorities on the shops in Yasamal District. They were offered a bribe to stop filming, and journalist Vusala Mikayil's phone was taken away by an employee of the executive power of Yasamal district.¹⁴

On June 23 2022, Nargiz Absalamova, a journalist cooperating with Abzas Media, faced similar pressures while covering the dispute between police and citizens near the Koroglu subway. The police officer demanded that she stop filming, and then confiscated journalist's card.¹⁵

Freedom of expression in conjunction with right to privacy

The recent years have seen an increase in the online attacks targeting journalists and government critics. Most recently, in July 2021, international media outlets and human rights NGOs revealed appalling details on the scandalous Pegasus spyware program. The analysis of the leaked data showed that phones numbers on the leaked Pegasus lists are more than 1000 Azerbaijani individuals, including prominent journalists. It is high likelihood that the Azerbaijani authorities had purchased the Pegasus spyware from the Israeli company NSO Group.¹⁶ No effective investigatory steps have been taken since then. Most recently, in August 2022, the State Security Service of Azerbaijan summoned a number of journalists and civil society members to inquire on their exposure to the Pegasus spyware program whereas summoned people later expressed their mistrust in effectiveness of such investigations by the State Security Service to the media.¹⁷

The authorities in Azerbaijan were also accused of organizing coordinated online attacks targeting, among others, the journalists' social media accounts.¹⁸

Conclusion and recommendations

During 2021 and 2022, there has been an increase in cases of political and social activists being detained, subjected to pressure and threats, as well as gross violations of freedom of expression and the right of association due to their dissenting views. The law 'On Media' was adopted

¹³ Toplum TV, (May 2022), <https://toplum.tv/sosial/ayten-memmedova-istintaqdan-narazidir> [available in azerbaijani]

¹⁴ Toplum TV, (June 2022), <https://xeber.media/news/18309272/icra-hakimiyvetinin-emekdasi-jurnalistlere-rusvet-teklif-edib-siz-cavan-qizlarsiniz-video> [available in azerbaijani]

¹⁵ MeydanTV, 'Journalist subjected to police violence in Baku had her press card destroyed', (June 2022), <https://www.meydan.tv/en/article/journalist-subjected-to-police-violence-in-baku-has-her-press-card-destroyed/>

¹⁶ Azerbaijan Internet Watch, 'targeted harassment via telegram channels and hacked Facebook accounts', (March 2022), <https://www.az-netwatch.org/news/targeted-harassment-via-telegram-channels/>

¹⁷ Radio Liberty, 'Azerbaijan Suspected Of Spying On Reporters, Activists By Using Software To Access Phones', (July 2021), <https://www.rferl.org/a/azerbaijan-pegasus-spying-nso/31365076.html>

¹⁸ Organized Crime and Corruption Reporting Project, 'Life in Azerbaijan's Digital Autocracy: 'They Want to be in Control of Everything'', (July 2021), <https://www.occrp.org/en/the-pegasus-project/life-in-azerbajians-digital-autocracy-they-want-to-be-in-control-of-everything>

without taking into account the negative opinion of local experts and the Venice Commission. Similarly, the restrictive law ‘On Political Parties’ was adopted in a short period of time without taking into account the opinions of local and international experts, as well as international experience.

Based on the abovementioned cases and observations, EMDS suggests the following measures to the state authorities to improve the situation for the protection of civil and political rights, in particular the freedom of expression;

- The provisions arising from the relevant decisions of the ECtHR regarding the protection of citizens' freedom of expression should be implemented;
- Putting an end to the practice of attacks, threats, abuse and harassment of journalists and social media users, a set of repressive activities that run counter to the Government’s obligation to create ‘a favorable or enabling environment’ for journalism;
- The law ‘On Media’ alongside other restrictive legislative measures such as Law on information, informatization and protection of information, as well as the relevant chapters of the Criminal Code and the Code of Administrative Offences should be improved based on the recommendations of the Venice Commission of the Council of Europe.

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