

POLICY PAPER ON THE SITUATION OF FREEDOM OF EXPRESSION IN SOCIAL NETWORKS IN AZERBAIJAN



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1. Summary

Freedom of expression is one of the fundamental rights of a democratic society. Freedom of expression increases tolerance for different opinions in society and is at the heart of the debate, which is important for solving problems.

The purpose of the policy paper is to study the situation of freedom of expression in Azerbaijan, especially on social networks, to describe the norms governing freedom of expression in national legislation, to show the nature of the facts of interference with freedom of expression, to reflect the approach of the European Court of Human Rights (ECtHR) to freedom of expression, and to analyze the findings of the study and make a final recommendation.

the Constitution, the Law on Information, Informatization and Protection of Information, the Code of Administrative Offenses, the Criminal Code, and other relevant legislative norms were reviewed and analyzed in the section of “the analysis of the legislation”.

Articles 47 and 50 of the Constitution of the Republic of Azerbaijan and a number of ratified national and international documents also protect freedom of expression. In these documents, the number of legitimate reasons for interfering with freedom of expression is limited, and the European Court of Human Rights requires that the interference must be both necessary in a democratic society and proportional to the violation of the law.

In terms of the activity of social media, there are a number of problematic points in national legislation. One of them is Chapter 3-1 of the Law of the Republic of Azerbaijan on “Information, Informatization and Protection of Information”, which is entitled “Internet Information Resources”, and the concepts included in the legislation in this chapter. For example, the term "public threat" is open to a wide field of application as an ambiguous concept in law. For this reason, this article is widely used and does not comply with one of the three main criteria for the quality of the law - the principle of foreseeability.

One of the biggest problems in the legislation is the existence of criminal liability for defamation and its widespread application, and sometimes even the activists and users of social media who express their thoughts openly are punished by imprisonment. In Resolution No. 1577 (2007), the Parliamentary Assembly of the Council of Europe called on States Parties to abolish prison sentences for defamation.

It was also repeatedly emphasized in the cases recognized as a violation of Article 10 of the Convention adopted by the European Court of Human Rights against Azerbaijan.

Several articles of the Criminal Code criminalize defamation. One of them is an article that protects the honor and dignity of the President. This article contradicts the principle that statesmen, public and political figures, including leaders, should be more tolerant of criticism, as repeatedly stated in the decisions of the ECtHR.

Looking at the application part of the legislation, it is observed that administrative legislation is often used to suppress freedom of expression. For example, Article 388-1 of the Code of Administrative Offenses is widely applied in court practice against political activists. It is also important to mention Article 211 of the Code of Administrative Offenses (violation of anti-epidemic regime, sanitary-hygienic and quarantine regimes), especially during a pandemic, when talking about restrictions on

freedom of expression. Criticism of measures taken by the state during the quarantine period has been sanctioned under this article.

Decisions on the proportionality of penalties are among the main violations found by the ECtHR in many cases against Azerbaijan. Such that in its decisions, the ECtHR found that local courts chose the most severe sanctions, especially in defamation cases, which did not take into account the factors contributing to the public debate and the role of the individual in public life.

The policy paper examines the facts of interference with social networks due to shares and calls in 2020. In order to collect the facts, media monitoring was conducted and the victims got interviewed. The study revealed that activists who criticized coronavirus measures and journalists who shared people's criticism about the decisions on pandemics and the application of measures on social media were subjected to illegal and disproportionate interference. They were summoned to police stations or brought to administrative responsibility.

During this period, several activists were prosecuted under Articles 147 and 148 of the Criminal Code. This shows that criminal liability for defamation is widely used in Azerbaijan, and journalists, bloggers, social network activists, and others who express themselves are easily punished by imprisonment.

In addition to imprisonment as a punishment mechanism, there are cases of forced isolation as mentally ill and dismissal from job. During the study period, an activist was locked up in a psychiatric hospital for a video he shared on social media, and two other activists were fired for their political activities and posts.

The policy paper concludes that freedom of expression on social networks is restricted in Azerbaijan. Not only activists expressing their views but also journalists covering other people's problems have been subjected to illegal interference. These restrictions have been based on both legislation and practice.

The policy paper finally includes recommendations. Recommendations include the decriminalization of defamation, reviewing the restrictive provisions of the Law on Information, Informatization and Protection of Information and bringing it into line with the Constitution and the European Convention on Human Rights (ECHR), the inadmissibility of abuse of Articles 211, 388-1, and 535 of the Code of Administrative Offenses (CAO) and Article 139-1 of the Criminal Code (CrC), the police's not using their powers as a means of political pressure, local courts' taking into account factors such as the subject matter of public interest, the person's public role, and the consequences of sharing while balancing the right to respect for private life with freedom of expression, at the same time, the necessity for local courts to refrain from imposing the most severe sanctions, especially if the opinion or sharing is not a hate speech, etc.

2. Introduction

Freedom of expression is one of the cornerstones of a democratic society. Freedom of expression increases tolerance for different opinions in society and organizes important discussions to solve problems.

As for the situation of freedom of expression in Azerbaijan, the UN Human Rights Committee expressed concern about excessive restrictions on freedom of expression in its fourth periodic report¹ of Azerbaijan dated November 16, 2016.

The Committee also expressed concern about consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists, and bloggers on allegedly politically motivated trumped-up administrative or criminal charges (hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred, etc.);

Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, also said in a report² published after her visit to Azerbaijan on July 8-12, 2019 that journalists and social media activists, who had expressed dissent or criticism of the authorities, are continuously detained or imprisoned in Azerbaijan on a variety of charges (disobeying the police, hooliganism, extortion, tax evasion, incitement to ethnic and religious hatred or treason, as well as drug possession or illegal possession of weapons).

Freedom House said in its Freedom on the Net 2020 report³ that Azerbaijan was not a free country, that there were pro-government commentators (trolls and bots) on social media, and that social network users had been arrested.

This policy paper includes the analysis of cases related to the summons to the departments of the Ministry of Internal Affairs and the Prosecutor's Office for opinions shared on social networks within the framework of freedom of expression and related to criminal and administrative prosecutions in terms of national legislation, international legislation, and decisions of the European Court of Human Rights and the analysis of the current situation in Azerbaijan. The practical part of the study covers a one-year period - 2020.

¹ <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshv33kpjIN1yQcFlNQGeFnqM5IxR4PQMZWvxmoWXyTsshELrTf%2fHJH%2fqslqI6FD8OFwu28r7iZSIAZRm9fDeUVCTGadLogIKdYRd4jrLMRra>

² <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

³ <https://freedomhouse.org/country/azerbaijan/freedom-net/2020>

3. Methodology

The legislative part of the presented policy paper describes the legislation on freedom of expression in Azerbaijan, the guarantees given to freedom of expression, and the restrictions applied to it. It then reviews international legislation and focuses on the approach of the European Court of Human Rights and how it balances freedom of expression with other freedoms. A legal review of the cases in which the court recognized the violation of freedom of expression against Azerbaijan is provided.

In the practical part, information was provided about people who were harassed (summoned to the police station, administratively or criminally prosecuted, etc.) for their opinions and shares directly expressed on the Internet and social networks. The media monitoring method was used to obtain the information. Media monitoring was conducted using keywords (Keywords: “summoned to police”, “administrative arrest”, “arrested”, “detained”, etc.) and limited to the period covered by the study by selecting specific historical intervals (January-December 2020).

The journalists, bloggers, and public activists, who were the victims of cases covered by the media, were contacted, and they got interviewed to clarify the information. Some of the information was accessed through social networks and some through personal acquaintances.

4. Legislation

4.1. National legislation

The Constitution⁴ of the Republic of Azerbaijan is the primary document guaranteeing freedom of expression in local legislation.

Article 47 of the Constitution states that “everyone has the right to freedom of thought and speech” and that “no one shall be forced to proclaim or to repudiate his/her thoughts and beliefs.” The article also sets a number of restrictions such that “agitation and propaganda inciting racial, national, religious, social discord and animosity or relying on any other criteria is inadmissible.”

Article 50 of the Constitution refers to the freedom of information. It is stated that state censorship in mass media, including the press, is prohibited and freedom of mass information is guaranteed. At the same time, it is stated that “everyone’s right to refute or reply to the information published in mass media and violating his/her rights or damaging his/her interests shall be guaranteed.”

In addition, Article 54.1 of the Constitution protects the right of citizens to freely participate in political life, and Article 57.2 protects the right of citizens to criticize the activity or work of state bodies, their officials, political parties, trade unions, other public organizations, and also activity or work of individual citizens. Thus, citizens have the right to express their criticism on issues of public interest and in the political debate without censorship.

There are two main articles in the Constitution that restrict freedom of expression. These are Article 46, which protects the honor and dignity of the people, and Article 106, which protects the honor and dignity of the President.

Another restrictive article is Article 32, which protects the right to inviolability of private life. The third paragraph of this article does not allow the collection, storage, use, and dissemination of information about a person's private life without his/her consent.

The legitimate grounds for restricting freedom of expression and freedom of information set out in the Constitutional Law⁵ on the Protection of Human Rights and Fundamental Freedoms are as follows:

- *interests of national security;*
- *protection of health and morals, rights and freedoms of others;*
- *prevention of crime;*
- *prevention of riots;*
- *protection of public safety;*
- *ensuring the interests of the territorial integrity of the state;*
- *protection of the reputation or rights of other persons;*
- *prevention of disclosure of confidential information;*
- *ensuring the authority and impartiality of the court.*

⁴ <http://www.e-qanun.az/framework/897>

⁵ http://www.supremecourt.gov.az/uploads/files/qanunlar/insan_huquq_ve_azadliqlarinin_heyata_kecirilmesi_haqqinda.pdf

Chapter 3-1 of the Law of the Republic of "Azerbaijan on Information, Informatization and Protection of Information"⁶ is entitled "Internet Information Resources" and this chapter imposes more restrictions on information shared on the Internet, including social networks, than provided for in international documents ratified by the country and the Constitution:

According to Article 13-2.3 of the Law, the owner of the Internet information resource and its domain name or the user of the information-telecommunication network must not allow the following information to be placed in that information resource (information-telecommunication network):

- *information on propaganda and financing of terrorism, methods and means of carrying out terrorism, organization or conduct of training for the purpose of terrorism, as well as open calls to terrorism;*
- *information on the promotion of violence and religious extremism, open calls for incitement to national, racial, or religious hatred and enmity, forcible change of the constitutional order of the state, disintegration of territorial integrity, forcible seizure or retention of power, organization of mass riots;*
- *information constituting a state secret;⁷*
- *information on the procedure or methods of manufacture of firearms, their components, ammunition, explosives, and explosive devices;*
- *information on methods and procedures for preparation or use of drugs, psychotropic substances, and their precursors, places of their illegal acquisition, as well as places or methods of cultivation of plants containing drugs;*
- *information on pornography, including child pornography;*
- *information on the organization of gambling and other illegal betting games and provoking participation in those games;*
- *information that promotes suicide as a solution to a problem, justifies suicide, substantiates or provokes to commit suicide, explains the methods of committing suicide, or is disseminated in order to organize the suicide of several people in a group;*
- *movies, television and video films not marked according to the relevant age category, including animated films, computer and other electronic games (except for those belonging to the "Universal" age category) in accordance with the Law of the Republic of Azerbaijan on Protection of Children from Harmful Information;*
- *information of an insulting or defamatory nature, as well as violating the inviolability of private life;*
- *information violating intellectual property rights;*
- *other information, the dissemination of which is prohibited by the laws of the Republic of Azerbaijan;*
- *false information threatening damage to human life and health, significant property damage, mass violation of public safety, disruption of the operation of life support facilities, financial, transport, communications, industrial, energy, and social infrastructure facilities, or other consequences regarding the public threat.*

There is no specific definition of the term "public threat", which is used in the last paragraph, in the law. Therefore, this paragraph is widely applied.

⁶ <http://e-qanun.gov.az/framework/3525>

⁷ <http://www.e-qanun.az/framework/5526> Article 5

The concept of "other information, the dissemination of which is prohibited" is also very common and open to wide interpretation. Thus, these two expressions are incompatible with the principle of foreseeability, which is one of the three basic principles of the quality of the law.

Administrative liability provided by the legislation:

According to Article 388 of the Code of Administrative Offense⁸, administrative liability is established for abuse of freedom of the mass media and journalistic rights. The cases of abuse provided by law are as follows:

- *to disclose information, the disclosure of which is prohibited by law;*
- *not to control the preparation of materials published in the press in accordance with the requirements of the legislation;*
- *to disseminate information without indicating its source, except in cases provided by law;*
- *to produce and distribute mass media products without reference information, or to deliberately misrepresent reference information.*

As for the sanction, individuals shall be fined in the amount of two hundred to three hundred manats, officials in the amount of five hundred to seven hundred manats, legal entities in the amount of two thousand to three thousand five hundred manats.

According to the amendment⁹ to the CAO dated December 1, 2017, Article 388-1 was added. Article 388-1 creates administrative liability even if the prohibited information is disseminated and not deleted on the Internet and social networks and access to it is not restricted. Thus, individuals who disseminate and receive this information shall be fined in the amount of five hundred to one thousand manats, officials shall be fined in the amount of one thousand to one thousand five hundred manats or shall be punished by administrative detention for up to one month, depending on the circumstances of the case and taking into account the identity of the perpetrator, and legal entities shall be fined in the amount of one thousand five hundred to two thousand manats. If Internet providers and host providers do not immediately restrict access to this information, officials shall be fined in the amount of one thousand five hundred to two thousand manats, and legal entities in the amount of two thousand to two thousand five hundred manats.

It should also be noted that Article 388-1 of the CAO has also been widely applied in court practice against political activists. Furthermore, when talking about restrictions on freedom of expression, it is also important to mention Article 211 of the Code of Administrative Offenses (violation of the anti-epidemic regime, sanitary-hygienic and quarantine regimes). Sharing critical content regarding the quarantine regime during the quarantine period was punished under this article.

Criminal liability provided by law

Article 101 of the CrC prohibits open calls to start an aggressive war. Making such calls shall be punishable by restriction of liberty for up to three years or by imprisonment for the same period. The same acts committed by mass media or by an official shall be punished by imprisonment for a period from two to five years with or without deprivation of the right to engage in certain activity for up to three years.

⁸ <http://e-qanun.az/framework/46960>

⁹ <http://e-qanun.az/framework/37417>

Public incitement to terrorism and dissemination of such materials is punishable by up to five years in prison under Article 214-2 of the CrC.

According to Article 220.2 of the CrC, actively disobeying the lawful demands of a government official and calling for riots, as well as violence against citizens, is punishable by up to three years in prison.

Another article of the CrC, Article 281, prohibits public incitement against the state. Such that making public calls for the forcible seizure of power, forcible detention or forcible change of the constitutional order of the Republic of Azerbaijan, or the disintegration of territorial integrity, as well as the dissemination of such materials, is punishable by up to five years in prison.

Moreover, Article 283.1 of the CrC prohibits calls for incitement to national, racial, social, or religious hatred and enmity and their dissemination through the mass media. Such cases shall be punishable by a fine in the amount of eight thousand to twelve thousand manats, or correctional labor for up to two years, or imprisonment for two to four years under the CrC.

Slander and insult are also criminalized by the Criminal Code¹⁰ of the Republic of Azerbaijan. Article 147 provides for criminal liability for slander. Such that the dissemination of information that tarnishes or discredits the honor and dignity of any person by knowing that it is a lie in public speeches, in a publicly demonstrated work, in the mass media, or in the Internet information resources in case of mass demonstration shall be punished by this Article. The sanction can be a fine in the amount of one hundred to five hundred manats, or by community works for a period of two hundred and forty to four hundred and eighty hours, or by correctional labor for up to one year, or by imprisonment for up to six months. Defamation of a person with a charge of a grave or an especially grave crime is considered an aggravating circumstance and is punishable by up to two years of correctional labor or up to three years of imprisonment.

Article 148 provides for liability for insult. Such that deliberately degrading the honor and dignity of an individual in public speeches, in a publicly demonstrated work, in the mass media, or in the Internet information resources in case of mass demonstration shall be punished by a fine in the amount of three hundred to one thousand manats, or by community works for a period of two hundred forty to four hundred eighty hours, or by correctional labor for up to one year, or by imprisonment for up to six months.

By the amendment to the Criminal Code in 2016, Article 148-1 was added to the Code. This article establishes liability for slander and insult from anonymous accounts exclusively on social networks. The sanction can be a fine in the amount of one thousand to two thousand manats, or by community works for a period of three hundred and sixty hours to four hundred and eighty hours, or by correctional labor for up to two years, or by imprisonment for up to one year.

The honor and dignity of the President are protected by a separate article in the CrC. According to Article 323 of the Criminal Code, defamation or humiliation of the honor and dignity of the President of the Republic of Azerbaijan in a public speech, in a publicly demonstrated work, or in the mass media shall be punishable by correctional labor for up to two years or imprisonment for the same period. Accusing the President of a grave or an especially grave crime shall be punishable by three to five years in prison.

¹⁰ <http://e-qanun.az/framework/46947>

In November 2016¹¹, a new paragraph, Paragraph 323.1-1, was added to this article. This paragraph stipulates that acts provided for in Article 323.1 of this Code shall be punishable by imprisonment for up to three years if they are committed by a mass demonstration by using fake usernames, profiles, or accounts on Internet information resources.

On May 31, 2017¹², the sanction of this paragraph was aggravated. The lighter sanction, a fine, has been abolished.

4.2. UN International Covenant on Civil and Political Rights

Article 19¹³ of the UN Covenant on Civil and Political Rights, ratified¹⁴ by Azerbaijan, also protects freedom of expression.

Paragraph 3 of that article lists the grounds and conditions that give rise to restrictions:

But these shall only be such as are provided by law and are necessary::

- a) For respect of the rights or reputations of others;*
- b) For the protection of national security or of public order, or of public health or morals.*

Conditions specified in the Covenant are as follows:

Restrictions on civil and political rights must:

- a) be prescribed by law and clearly stated;*
- b) be aimed at respecting the rights and reputations of others (interference with a person's private life must be prevented);*
- c) be aimed at the protection of national security;*
- d) protect the interests of public order;*
- e) target the protection of public health;*
- f) target the protection of morals.*

4.3 General approach of the European Convention on Human Rights and the European Court of Human Rights

Article 10 of the European Convention on Human Rights also protects freedom of expression and requires that the following conditions must be met when restricting freedom of expression.

¹¹ <http://e-qanun.az/framework/34571>

¹² <http://e-qanun.az/framework/36154>

¹³ https://migration.gov.az/content/pdf/5acb034968016_M%C3%BClki%20v%C9%99%20siyasi%20h%C3%BCquqlar%20haqq%C4%B1nda%20Pakt.pdf.

“1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

¹⁴ <http://www.e-qanun.az/framework/2708>

1. First, the interference must be based on legislation. That is, the restriction on freedom of expression must be specified in a certain piece of legislation. The Court (ECtHR) also has three main requirements for legislation:
 - a. *The language of the law must be clear;*
 - b. *The law must be accessible to all;*
 - c. *The consequences of the law must be foreseeable.*
2. The purpose of the interference must be based on one of the legitimate goals set out in the ECHR:
 - a. *for territorial integrity or public safety;*
 - b. *for the prevention of disorder or crime;*
 - c. *for the protection of health or morals;*
 - d. *for the protection of the reputation or rights of others;*
 - e. *for preventing the disclosure of information received in confidence;*
 - f. *for maintaining the authority and impartiality of the judiciary.*
3. Interference must be necessary in a democratic society and must be proportional to the violation of the law. The Court states that in order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned.¹⁵ In this regard, the Court considers whether the local courts have chosen the least restrictive sanction. In particular, it is important that the penalty does not amount to a form of censorship intended to discourage people and the press from expressing criticism.¹⁶ The Court urges local courts not to deprive a person of his/her liberty for an opinion expressed or shared and to consider the general effect of opinions, as well as requires detailed justification from the local courts for the choice of pre-trial detention among the measures of restraint.¹⁷

The ECtHR¹⁸ (hereinafter referred to as the Court) stated in its judgments that the most important feature of Article 10 is the protection of pluralism. Pluralism is one of the biggest pillars of democracy, promoting tolerance and broad-mindedness. The disapproval of an opinion by most members of society is not a ground for interfering with freedom of expression because freedom of expression protects not only expressions that society likes but also expressions that disturb and shock society.¹⁹

The Court stated in its judgments that the legitimate grounds set out in the second paragraph of Article 10 should be interpreted and applied in a narrow manner. In particular, political discourse, debate, and discussion of issues of public interest are more protected, and here the freedom of thought of the state is very narrow in comparison with the ideas that interfere with the private life of the people. Given its

¹⁵ Glor v. Switzerland, § 94, <http://hudoc.echr.coe.int/eng?i=001-92525>

¹⁶ Bédat v. Switzerland [GC], § 79, <http://hudoc.echr.coe.int/eng?i=001-161898>

¹⁷ Şahin Alpay v. Turkey, §§ 181-182, <http://hudoc.echr.coe.int/eng?i=001-181866>

¹⁸ ECtHR was established in 1959 to monitor the compliance of Contracting States with the provisions of the Convention.

¹⁹ Dink v. Turkey, § 137; <http://hudoc.echr.coe.int/eng?i=001-100383>

place in a democratic system, the actions and inactions of the state must be in the public eye. Thus, the "limits of permissible criticism" are wider with regard to the government than in relation to a private citizen, or even a politician.²⁰

The limits of acceptable criticism of private individuals or associations depend on the degree to which they participate in public debate. If they participate actively in public debate, they must display a greater degree of tolerance to criticism from their opponents and the style in which they are criticized.²¹

The Court finds that if the expressions made and shared are not hate speech (do not call for bloody revenge, do not support violence, do not support terrorism for their own aims, do not call for violence against certain persons by expressing deep and irrational hatred against them), Contracting States must not deprive the public of the right to information based on the restrictive grounds set forth in Paragraph 2 of Article 10.²²

The Court even states that political ideas that call into question the existing structure and power and calls to achieve these ideas through peaceful means fall within the scope of freedom of expression and are protected.²³ Thus, in assessing whether the interference was proportionate, the Court distinguishes between so-called peaceful or democratic separatist discourse and separatist discourse that is linked to the commission of offenses or acts which perpetuate violence, takes account of the context in which the discourse occurs, especially when separatist claims in a given region are accompanied by armed conflicts. The Court has held that if the interference with freedom of expression is to be justified, separatist discourse (specifically in the form of slogans) must have an impact on national security and public order and present a clear and imminent danger with regard to these legitimate aims.²⁴

As for comments targeting minorities, the Court stated that minorities, especially those who have historically been subjected to persecution and social injustice, should be protected from such comments. The Court also includes immigrants in such minorities. For example, in the case of Féret v. Belgium²⁵, the Court ruled that the ballots distributed by the politician during the election campaign also contained xenophobic comments against immigrants, and these comments were also shared on websites. The Court stated that the interference with freedom of expression, in this case, was not a violation and was based on an urgent public need.

The Court states that "press", "NGOs", "bloggers", and "active social media users", which shed light on issues of public interest in the protection of freedom of expression and act as a public "watchdog", have a higher level of protection under Article 10.²⁶ Referring to Resolution 1729 (2010) of the

²⁰ Castells v. Spain, § 46; <http://hudoc.echr.coe.int/eng?i=001-57772>

²¹ Jerusalem v. Austria, § 38, <http://hudoc.echr.coe.int/eng?i=001-59220>

²² Sürek v. Turkey (no. 4) [GC], <http://hudoc.echr.coe.int/eng?i=001-58298>; § 60; Gözel and Özer v. Turkey, § 56; <http://hudoc.echr.coe.int/eng?i=001-99780>

²³ <http://hudoc.echr.coe.int/eng?i=001-111399> Paragraph 129

²⁴ https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf (version - Updated – 31 August 2020), pp 525-527

²⁵ <http://hudoc.echr.coe.int/eng?i=001-93626>

²⁶ Magyar Helsinki Bizottság v. Hungary [GC], § 168, <http://hudoc.echr.coe.int/eng?i=001-167828>

Parliamentary Assembly of the Council of Europe²⁷, the Court said that it was important to protect concerned individuals (whistle-blowers) who sound an alarm in order to stop wrongdoings in their workplaces and that they contributed to public control.

Freedom of expression on the Internet²⁸

The Internet has created a broad platform for freedom of expression. The Internet's accessibility to everyone and its ability to store large amounts of information increase the public's access to news and play an important role in the dissemination of news. The Court noted that the political content that was ignored by the traditional media or banned by repressive governments was often shared online.²⁹ Thus, the Internet also makes a significant contribution to the formation of citizen journalism. Therefore, bloggers and active social network users also have the function of public control. However, the Court also said that given the important role of the Internet in terms of freedom of expression, there is a need for legislation regulating freedom of expression on the Internet in the country. Especially if defamatory expressions are spread on the Internet, they can do more harm to people's private life as they reach more people.³⁰

While the Court acknowledges the possible dangers of defamatory expressions on the Internet, the Court also acknowledges that the Internet has its own language of communication. In the case of Tamiz v. the United Kingdom³¹, although Tamiz, who is a politician, has appealed to local courts to convict Google over defamatory comments shared on Google's Blogger platform, the courts have rejected the lawsuit, stating that there was no "direct and persistent" violation of the law required to hear defamation cases outside the country's jurisdiction. It should be noted that these comments were deleted three months later. The ECtHR acknowledged that while the majority of comments were undoubtedly offensive, for the large part they were little more than "vulgar abuse" of a kind – albeit belonging to a low register of style – which is common in communication on many Internet portals, and which the applicant, as a budding politician, would be expected to tolerate.

A fair balance between freedom of expression and the right to respect for private life³²

The right to private life and the protection of the reputation or rights of others are two of the accepted legitimate aims to restrict freedom of expression. The Court considers the following criteria when balancing these two rights:

1. Contribution to a debate of public interest

- a. In the Court's view, public interest ordinarily relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its*

²⁷ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17851#:~:text=The%20Parliamentary%20Assembly%20recognises%20the.against%20corruption%20and%20mismanagement%2C%20both>

²⁸ https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf (version - Updated – 31 August 2020), Unit XIII

²⁹ Cengiz and Others v. Turkey, § 52, <http://hudoc.echr.coe.int/eng?i=001-159188>

³⁰ Delfi AS v. Estonia [GC], § 133; <http://hudoc.echr.coe.int/eng?i=001-155105>

³¹ <http://hudoc.echr.coe.int/eng?i=001-178106>

³² https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf (version - Updated – 31 August 2020), Unit IV

*attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy.*³³

2. The degree to which the person concerned is well known

- a. *The extent to which an individual has a public profile or is well known influences the protection that may be afforded to his or her private life.*
- b. *The Court does not limit public figures to political figures alone, but includes any persons who, through their acts or even their position, have entered the public arena: businessmen (especially owners of large companies), public servants, judges, all members of the political class, prime minister, ministers, heads of the executive powers, political advisers, MPs, and so on. Individuals entering the public arena must be prepared that their words and deeds will be investigated by journalists and people and demonstrate broad tolerance.*³⁴
- c. *The Court considers that protection of reputation should, in principle, be limited to that of living persons and not be relied upon with regard to the reputation of deceased persons, except in certain limited and clearly defined circumstances.*³⁵

3. Prior conduct of the person concerned

4. Content, form, and consequences of the impugned article

- a. *The court also distinguishes between statements of fact and value judgments. A requirement to prove the truth of a value judgment is considered a violation of Article 10.*³⁶
- b. *The Court also takes into account how the information was obtained, its accuracy, how many people it reached, and the severity of the sanction imposed on the disseminator.*
- c. *The Court also notes that in some cases, journalists may believe rumors when reporting on matters of serious public concern and that the journalist ought not to have been required to adduce proof of the factual basis of his claims when using interviews given to him/her by others. (Thorgeir Thorgeirson v. Iceland)*

5. Method of obtaining the information and its veracity

- a. *As to the dissemination of videos recorded using a hidden camera, in a public space, a public figure could have expected his/her conduct to have been closely monitored and even recorded on camera.*³⁷

According to the Court, the following issues are also of public interest:

1. the medical condition of a candidate for the highest office of State (*Éditions Plon v. France*)
2. sporting issues (*Nikowitz and Verlagsgruppe News GmbH v. Austria*)
3. criminal proceedings in general (*Dupuis and Others v. France; July and SARL Libération v. France*)

³³ Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC], § 171, <http://hudoc.echr.coe.int/eng?i=001-175121>

³⁴ Kapsis and Danikas v. Greece, § 35; <http://hudoc.echr.coe.int/eng?i=001-170368>

³⁵ https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf §167

³⁶ Morice v. France [GC], § 126; <http://hudoc.echr.coe.int/eng?i=001-154265>

³⁷ Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece, §§ 64-65; <http://hudoc.echr.coe.int/eng?i=001-181295>

4. crimes committed (*White v. Sweden; Egeland and Hanseid v. Norway; Leempoel & S.A. ED. Ciné Revue v. Belgium; Eerikäinen and Others v. Finland*)
5. a “sex scandal” within a political party, involving certain members of the Government (*Kącki v. Poland*)
6. protection of the environment and public health (*Mamère v. France*)
7. matters concerning historical events (*Dink v. Turkey*). The Court states that people have the right to know the historical truth.

People's right to information sometimes extends to the private lives of public figures, especially if the person in question is a politician. However, if the news does not contain information of public interest and is only personal and private information and is shared for entertainment purposes, it is not protected by Article 10. (*Von Hannover v. Germany, Rubio Dosamantes v. Spain*)

As to the sanctions imposed for defamation, the Court ruled that the imprisonment, as a criminal sanction, was disproportionate (*Cumpăna and Mazăre v. Romania, Mahmudov and Agazade v. Azerbaijan, Fatullayev v. Azerbaijan*); however, in exceptional cases – hate speech and incitement to violence – the prison sentence could be appropriate.

The Parliamentary Assembly of the Council of Europe (PACE) in Recommendation No. 1577 in 2007 called on States Parties to abolish the penalty for defamation.

In Resolution No. 1577 (2007)³⁸, the Parliamentary Assembly of the Council of Europe called on States Parties to abolish prison sentences for defamation.

4.4. Cases against Azerbaijan in the European Court of Human Rights (Article 10)

Until today (April 28, 2021), the Court has recognized a violation of Article 10 in eleven cases against Azerbaijan.³⁹

Let's review some of them:

Freedom of expression for journalists and writers

The case of Mahmudov and Agazade v. Azerbaijan⁴⁰

Although the ECtHR agreed that the article was defamatory and insulting, it took into account the fact that agricultural problems were a topical issue and that J.A. was also a prominent politician. In particular, the Court noted that the sanctions imposed were very severe and that lighter penalties could be imposed under domestic law. Thus, in this case, the Court ruled that the sanction imposed was disproportionate to the legal purpose and that there was a violation of Article 10 of the Convention.

³⁸ <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17588&lang=en>

³⁹ [https://hudoc.echr.coe.int/eng#%22respondent%22:\[%22AZE%22\],%22violation%22:\[%2210%22,%2210-1%22\]}](https://hudoc.echr.coe.int/eng#%22respondent%22:[%22AZE%22],%22violation%22:[%2210%22,%2210-1%22]})

⁴⁰ <http://hudoc.echr.coe.int/fre?i=001-90356>

The case of Fatullayev v. Azerbaijan⁴¹

The ECtHR noted that the first article differed from the denial of the historical fact of the Holocaust, adding that the issues discussed in the "Karabakh Diary" were still the subject of ongoing debate and were not intended to justify the perpetrator. As for four Khojaly survivors and two former soldiers, who sued Eynulla Fatullayev due to the first article, The ECtHR stated that the applicant had not denied the Khojaly massacre and had not insulted the Khojaly victims in his article. As for the two former soldiers, the ECtHR stated that the applicant had not blamed the entire Azerbaijani army and soldiers for the Khojaly genocide, but only a part of the battalions of the APF (Azerbaijan Popular Front), in his article and considered their complaint unfounded too as the two men had no connection with these battalions.

As for the second article, the ECtHR notes that the article was an analytical article and was very relevant at the time of publication – the applicant was not the only person who wrote a hypothetical scenario of the war at the time. There were speculations on the basis of several remarks by Iranian officials that Azerbaijan would also be involved in the war.

The ECtHR described the inclusion of the “target list” to be attacked in the article as “an attempt to convey to the readers a more dramatic picture of the specific consequences of the country's possible involvement in a possible future war” and added that it was the applicant's task, as a journalist, to impart information and ideas on the relevant political issues and express opinions about possible future consequences of specific decisions taken by the Government. The applicant did not express his support for such views in the article, nor did he play any role in their implementation. With regard to the Talysh, the ECtHR did not consider the applicant's discussion of the social and economic situation in the districts which are densely populated by ethnic minorities and his views on possible social tensions in those areas as incitement to ethnic hatred. The ECtHR found that in this case, the local courts had unjustifiably applied criminal provisions related to terrorism and incitement to ethnic hatred, in violation of Article 10.

The case of Tagiyev and Huseynov v. Azerbaijan⁴²

While balancing the right of the applicants to impart to the public their views on religion in the press and the right of others to be respected for their freedom of thought, conscience, and religion, The ECtHR stated that a religious group must tolerate the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.

The ECtHR notes that the article "Europe and us" mainly dealt with the comparison between Western and Eastern values, expressing the author's ideas about the role of religion in the formation of those values, as well as the impact of those values in the context of human rights and development in the world and in Azerbaijan. Therefore, the article should not be examined only in the context of a matter relating to religious beliefs, but also in the context of a debate on a matter of public interest, namely the role of religion in society and its role in the development of society.

⁴¹ <http://hudoc.echr.coe.int/eng?i=001-165974>

⁴² <http://hudoc.echr.coe.int/spa?i=001-198705>

The ECtHR said that domestic courts relied solely on the forensic linguistic and Islamic assessment and did not explain why the statements in the article led to incitement to religious hatred and hostility. The ECtHR also noted that the forensic linguistic and Islamic assessment was not detailed, that the domestic courts failed to carry out any assessment of the impugned remarks by examining them within the general context of the article, and that they examined the impugned remarks detached from the general context and content of the article, without assessing the author's intention, the public interest of the matter discussed and other relevant elements.

The ECtHR also noted that the penalties imposed on the applicants were extremely severe and that these severe sanctions dissuaded the press from openly discussing matters relating to religion, its role in society, or other matters of public interest. The ECtHR concluded that the applicants' criminal conviction was disproportionate to the aims pursued and, accordingly, not necessary in a democratic society, thus recognizing a violation of Article 10.

The case of Khadija Ismayilova v. Azerbaijan⁴³

The ECtHR confirmed that the applicant in the present case is a well-known investigative journalist and that the acts of a criminal nature committed against her were apparently linked to her journalistic activity. The ECtHR stated that in this situation, Article 10 of the ECHR required the respondent State to take positive measures to protect the applicant's journalistic freedom of expression, in addition to its positive obligation under Article 8 to protect her from intrusion into her private life.

The ECtHR found that although the authorities launched a criminal investigation, there were significant flaws and delays in the manner in which they investigated the case. Moreover, the articles published in the newspapers, which the applicant claimed were pro-government, as well as the unjustified public disclosure by the authorities during the investigation of the additional information relating to the applicant's private life, further compounded the situation, contrary to the spirit of an environment protective of journalism. The ECtHR ruled that the respondent State had failed to comply with its positive obligation to protect the applicant in the exercise of her freedom of expression; therefore, there had accordingly been a violation of Article 10.

Freedom of expression of advocates and lawyers

The case of Hajibeyli and Aliyev v. Azerbaijan⁴⁴

In this case, the ECtHR noted that lawyers, as well as applicants, play a fundamental role in ensuring the protection of human rights and that their freedom of expression is crucial for the effective functioning of the fair administration of justice. The ECtHR stated in accordance with the shorthand reports of the admission to the Bar Association (BA) that, in the admission process, they questioned the lawyers only about their stance regarding the functioning of the BA, not about their legal or professional ability. The Court confirmed that the applicants had not been admitted to the BA exclusively because of their views and criticisms; thus, that refusal constituted an interference with the exercise of their right to freedom of expression.

⁴³ <http://hudoc.echr.coe.int/eng?i=001-188993>

⁴⁴ <http://hudoc.echr.coe.int/fre?i=001-182173>

The case of Bagirov v. Azerbaijan⁴⁵

Examining the applicant's statement regarding E.A.'s death, the ECtHR stated that the applicant had not disclosed any information covered by the lawyer confidentiality. Because this information had previously been made public by E.A.'s mother. The applicant only began to represent his mother, R.R., after E.A.'s death.

While examining the applicant's statements about the judge, the Court found that pursued the legitimate aim of “maintaining the authority of the judiciary” within the meaning of Article 10 § 2. However, in assessing the proportionality of the sanction imposed, the Court noted that it should be taken into account that the applicant had made the statement in a courtroom because the principle of fairness militates in favor of a free and even forceful exchange of arguments between parties in the courtroom. The ECtHR added that although these comments were insulting, in the case of Ilgar Mammadov v. Azerbaijan, the ECtHR had already found a violation of Articles 5 and 18 of the Convention and confirmed that there had been a number of serious shortcomings in the criminal proceedings. The Court concluded that the reason (casting a shadow over State and statehood) given by the domestic courts in support of the applicant's disbarment is irrelevant for the purposes of Article 10 of the Convention and could not be considered as a reason for restricting the freedom of expression in a democratic society demanding pluralism, tolerance, and broadmindedness.

Furthermore, the ECtHR noted that the disbarment was an extremely harsh sanction, capable of having a chilling effect on the performance by lawyers of their duties as defense counsel. The ECtHR recognized a violation of Article 10, stating that the reasons given by the domestic courts in support of the applicant's disbarment were not relevant and sufficient and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued.

⁴⁵ <http://hudoc.echr.coe.int/ENG?i=001-203166>

5. Review of the practical situation

5.1 Summons to the police station

On February 18, 2020, plainclothes police detained **Rasul Hasan**, a well-known graphic designer, in front of his office and took him to the Main Department for Combating Organized Crime (MDCOC).

In an interview with RFE / RL⁴⁶, he cited a humorous “yalli” dance video of police officers he shared on social media as the reason for his detention. He was told at the MDCOC that he had "insulted the police" with a video he had made. There, he was asked which party he was affiliated with, his phone was confiscated, and the video he posted was deleted. He was also "warned" that his family members would be fired if he continued his work in this way. He was released after being detained for 5 hours in the department.

On March 19, 2020, blogger **Elnur Mammadov**⁴⁷ also told Toplum TV that he had received a warning about his sharings on social media:

"On the 19th of the month, the field commissioner of Zabrat 1, 15th police station, called my house and asked me. My family said I was not in the country. Then they asked for my father's number. After talking to my father, my brother was summoned to the police station and given a verbal warning. He was asked which party I was affiliated with. They told him that I should not write critical posts."

Moreover, on March 19, 2020, journalist **Ilgar Atayev** also told Toplum TV that he was summoned to the Narimanov District Police Department and warned for his sharing about the coronavirus:⁴⁸

"I wrote a funny post about the coronavirus. It was obvious that it was humor. I was summoned to the police and warned that I should be careful on sensitive issues. They also had me deleted that post."

On March 12, 2020, journalist **Amina Mammadova** shared an acquaintance's post about the fact that the number of coronavirus infections in Azerbaijan is more than statistics. "Several people have died in Azerbaijan due to the coronavirus, and \$ 200 can be paid to get out of quarantine," the post said.

It should be noted that the first coronavirus infection in Azerbaijan was recorded⁴⁹ on February 28, 2020, and according to official statistics, only one person died of coronavirus until March 24, 2020.⁵⁰

On March 24, 2020, Amina Mammadova was summoned to the 27th police station by the head of the police department. According to the journalist's interview with BBC Azerbaijan⁵¹, a preventive conversation was held with the journalist and she was told that her act was a crime and that "a fine in the amount of 500 to 5,000 manats and administrative detention" are envisaged for this act.

⁴⁶ <https://www.youtube.com/watch?v=iOxPcDHsphM>

⁴⁷ <https://toplum.tv/siyaset/senzura-yoxsa-ifade-azadliinin-mehdudlasdirilmasi-serh#.Xn4mK-ozbIUSenzura>

⁴⁸ <https://toplum.tv/siyaset/senzura-yoxsa-ifade-azadliinin-mehdudlasdirilmasi-serh#.Xn4mK-ozbIUSenzura>

⁴⁹ <https://nk.gov.az/az/article/682/>

⁵⁰ <https://nk.gov.az/az/article/715/>

⁵¹ <https://www.bbc.com/azeri/azerbaijan-52022897>

Furthermore, she was told that she slandered the police with the status she shared about the control of the quarantine regime by the police. At the police station, Amina Mammadova was then asked to delete the post she shared on Facebook and share a public apology post on her Facebook account. She was released after spending more than 4 hours in the police station. The owner of the post shared by Amina Mammadova was also summoned to the police station and later released.⁵²

On March 24, 2020, public activist **Rahim Khoyski** was also summoned to the Sabunchu District Police Department. He said in an interview with BBC Azerbaijan that the reason for his summons was the proposals he had written about the coronavirus and shared on Facebook. The post⁵³ encouraged people to share the hashtag #birolaq (eng. #BecomeOne) in case they supported the following proposals:

1. *The debts and loans of citizens should be suspended during a state of emergency.*
2. *Usage up to the current limits on utilities should be free of charge.*
3. *190 AZN, which is the subsistence minimum, should be paid to citizens who lost their income during the state of emergency (does not apply to recipients of state pensions, social assistance and pensions)*
4. *Taxes collected from entrepreneurs should be suspended.*
5. *Payments appropriate to the number of employees should be transferred to the companies that have stopped working, and those payments can be transferred to the salary cards of the employees of the companies.*
6. *Those who do not have salary cards and are engaged in service work should get their payments by approaching state banks with their TINs and ID cards.*
7. *In general, the unemployed should get their payments by approaching the bank with just an ID card.*

In the police station, he was asked to delete this post. According to an interview with Rahim Khoyski, although they demanded that he delete his post, he did not delete it but changed the post privacy from “Public” to “Only me”. He was released after being warned at the police station.

The head of press service of the Ministry of Internal Affairs (MIA), police colonel Ehsan Zahidov, said⁵⁴: “There is no need for a proposal, the citizen must comply with the decisions of the state.”

In addition, the head of the press service of the Prosecutor General's Office, Eldar Sultanov, in an interview with ASAN Radio regarding the coronavirus on March 16, 2020, warned those who shared posts about the coronavirus.⁵⁵

“We once again warn mass media outlets aiming to create misconceptions in society and deliberately disseminating information from this category, as well as social network users, that if they continue to

⁵² Amina Mammadova was interviewed to clarify the facts of the case. She confirmed the information published on BBC Azerbaijan.

⁵³ https://m.facebook.com/story.php?story_fbid=3269270509758955&id=100000281158464

⁵⁴ <https://www.bbc.com/azeri/azerbaijan-52022897>

⁵⁵ <https://azerinfo.tv/musahibe/14823-heqiqeti-eks-etdirmeyen-ve-cemiyetde-suni-ajiotaj-yaratmaga-hesablanmish-shayieler-yayilir.html>

commit such illegal acts in the future, the most serious measures will be taken in accordance with the law, including criminal liability," he said.

On April 5, 2020, teenage blogger **Zahra Kalantarova** was taken to the 29th police station by officers of the Yasamal District Police Department. In an interview with "Portagal Media"⁵⁶, Zahra Kalantarova linked her detention to the fact that she had scratched a picture of former President Heydar Aliyev and shared it on her Facebook page on April 3. According to the blogger, her phone was taken from her as soon as she entered the police station, and she was asked questions such as "What is it that you share?" and "Why are you sharing it?". Although they tried to have her enter the password of the phone, she did not provide the password. The blogger also said that one of the policemen threatened her: "Let me talk to you in my office for ten minutes, you will enter the password at your own will." Then they logged in to Zahra Kalantarova's account, deleted the post, and shared the post expressing regret. She was released after being detained for about 5 hours. In addition, public activist Sanay Yaghmur said on her Facebook page that the teenage blogger, who was under the age of 18, was brought to the police station without prior notice and without an advocate and a guardian.⁵⁷

On April 7, 2020, **Vusal Basharatov**, a resident of Khachmaz district, recorded and shared a video⁵⁸ of a drunken police sergeant Namig Eyyubov. On the same day, the Gusar District Police Department took V. Basharatov from his home and brought him to the police station without giving a reason.⁵⁹

In an interview with Meydan TV⁶⁰, his father, Hatam Basharatov, said he could only hear from his son a day later: "*On April 8, I called the 102 hotline service and they said that he had been sentenced to nine days in prison for resisting police. Allegedly, my son swore at the policemen standing at the post... When my son asked the police if they had warrants, they said that it was the chief's request and that they would return him to the house in an hour.*"

Vusal Basharatov was released on April 8.⁶¹

On June 26, 2020, **Firdovsi Amrahov**, an activist of the Azerbaijan Popular Front Party (APFP), was detained by police in Ganja and brought to Baku. According to the information⁶² given by the APFP to Turan News Agency, after F. Amrahov's detention, his Facebook account was deleted, "which gives grounds to believe that he was detained in connection with his activities on social networks."

On September 28, 2020, public activist **Giyas Ibrahimov** was taken from his home to the State Security Service (SSS). The reason for this was his anti-war posts on social media, especially his post

⁵⁶ <https://www.youtube.com/watch?v=p7oZ2p98LPM>

⁵⁷ <https://www.facebook.com/Sanay.Yaghmur/posts/529139731372360>

⁵⁸ <https://www.facebook.com/basharatvi/posts/2636670756576491>

⁵⁹ <https://www.facebook.com/basharatvi/posts/2637077326535834>

⁶⁰ <https://d9mc3ts4czbpr.cloudfront.net/en/article/serxos-polisin-videosunu-yayan-sexsin-hebs-olundugu-deyilir/>

⁶¹ <https://www.facebook.com/basharatvi/posts/2639056943004539>

⁶² <https://www.turan.az/ext/news/2020/6/free/Social/az/125226.htm>

criticizing the host of Public Television on his Facebook page. At SSS, he was instructed to be careful about the posts he disseminated at sensitive times.⁶³

5.2. Administrative prosecution

On March 22, 2020, **Anar Malikov**, an activist of the Jalilabad district branch of the APFP, was sentenced to 10 days in prison under Article 211 of the Code of Administrative Offenses.⁶⁴ This article provides for liability for "violation of the anti-epidemic regime, sanitary-hygienic and quarantine regimes".

According to the information we received from Anar Malikov, the protocol on administrative violation drawn up at the Jalilabad District Police Department states that on March 18, 2020, he caused confusion among the population by spreading false information about the quarantine period in the Republic of Azerbaijan on Facebook. The decision of the Jalilabad District Court dated March 22, 2020, for 10 days of administrative detention referred to the same basis.

Anar Malikov's latest posts were:

On March 18, 2020, he shared a post saying that the quarantine ban on entry and exit to Baku was a source of bribes:⁶⁵

"A ban on entry to Baku will also be a source of profit. If you ask how it will be, let me tell you. Taxi drivers will enter the city with a bribe of 5 AZN at the entrance."

On March 20, 2020, he shared a video of patients under coronavirus quarantine at the Jalilabad Hospital, making a "yalli" dance without a mask and celebrating the Novruz holiday.⁶⁶

On April 6, 2020, **Shakir Mammadov**, a member of the Movement for Democracy and Welfare in Azerbaijan, was detained by police near his home. Sh. Mammadov was sentenced to 15 days in prison on charges under Article 535.1 of the Code of Administrative Offenses (intentional disobedience to a lawful request of a police officer or serviceman). He was found guilty of unaddressed swearing and disobedience to a lawful request of the police officers who called him to discipline.⁶⁷

In an interview with Human Rights Watch⁶⁸, his advocate said that the police had asked Shakir Mammadov to delete critical Facebook posts calling on the government to help low-income families during quarantine.

⁶³ https://d9mc3ts4czbpr.cloudfront.net/en/article/qiyas-ibrahim-dtx-ya-aparilib/?utm_source=article&utm_medium=social-media&utm_campaign=news

⁶⁴ <https://www.facebook.com/karimliali/posts/10157108948853848>

⁶⁵ https://m.facebook.com/story.php?story_fbid=3401972523164338&id=100000548704348

⁶⁶ <https://www.facebook.com/watch/?v=1125657261105490>

⁶⁷ <https://www.meydan.tv/az/article/adr-herekatinin-uzvu-inzibati-ceza-alib/>

⁶⁸ <https://www.hrw.org/az/news/2020/06/26/340900>

On April 10, 2020, public activist **Nariman Abdullah**⁶⁹ was detained by police in Lankaran. Nariman Abdullah, accused of violating the quarantine regime, was sentenced to 10 days of administrative detention.

N. Abdullah's father told RFE / RL⁷⁰ that after taking the activist from home, they returned and took his phone. Relatives of the activist linked N. Abdullah's arrest with the posts and comments he wrote on social networks.⁷¹

On April 12, 2020, a protocol was drawn up against Kanal 24 correspondent **Ibrahim Vazirov** under Article 535 of the Code of Administrative Offenses (intentional disobedience to a lawful request of a police officer or serviceman) and he was sentenced to 25 days of administrative detention.⁷²

Kanal 24 said on its Facebook page⁷³ that Ibrahim Vazirov was arrested for covering economic and social problems in Shirvan. The correspondent's mother, Shafa Vazirova, also told Kanal 24 that her son was often summoned to the city police station. His mother said that Ibrahim was summoned to Shirvan by the police on April 12: "They wanted to delete the video he broadcast that day. Ibrahim said he would not delete the video. Then that person invited Ibrahim to Shirvan."

The Ministry of Internal Affairs said that Ibrahim Vazirov was detained for disobeying a police officer who demanded his permission and identity documents.⁷⁴

Stefan Schennach, General Rapporteur on media freedom and the safety of journalists for the Parliamentary Assembly of the Council of Europe, also condemned Ibrahim Vazirov's arrest.⁷⁵

Arif Babayev, a member of the Surakhani branch of the APFP, was detained on April 22, 2020. A. Babayev was charged under Article 388-1.1 of the Code of Administrative Offenses (placement of information on the Internet information resource or information-telecommunication network, the distribution of which is prohibited, as well as failure to prevent the placement of such information) and was sentenced to 30 days of administrative detention by the Surakhani District Court.

The information⁷⁶ given by the party to Turan News Agency that Arif Babayev was beaten at the 30th police station of the Surakhani District Police Department and forced to make a video saying that he would not call against statehood in the future. His brother Elkhan Babayev also told Meydan TV⁷⁷ that

⁶⁹ <https://www.meydan.tv/az/article/daha-bir-ictimai-feal-inzibati-hebs-cezasi-aldi/?ref=homepage-news>

⁷⁰ <https://www.azadliq.org/a/genc-fealin-10-sutka-hebs-edildiyi-deyilir/30547635.html>

⁷¹ <https://www.facebook.com/neriman.aeff/posts/2604013036554945>

⁷² <https://www.amerikaninsesi.org/a/az%C9%99rbaycanda-jurnalist%C9%99r-v%C9%99-%C3%BCxalif%C9%99%C3%A7ili%C9%99r-karantin-qaydalar%C4%B1n%C4%B1-pozmaq-ittiham%C4%B1-%C9%99-h%C9%99bs-edilir/5376792.html>

⁷³ <https://www.facebook.com/groups/kanal24.az/permalink/1553248771520087>

⁷⁴ <https://modern.az/az/news/234907/xususi-karantin-rejimi-pozaq-muxbir-hebs-edildi>

⁷⁵ <https://pace.coe.int/en/news/7899/stop-jailing-journalists-turkey-and-azerbaijan-must-uphold-council-of-europe-standards->

⁷⁶ <https://www.turan.az/ext/news/2020/4/free/politics%20news/az/123525.htm>

⁷⁷ <https://d9mc3ts4czbpr.cloudfront.net/ru/article/axcp-nin-daha-iki-feali-hebs-olundu/>

they criticized A. Babayev for his posts on Facebook at the 30th police station. According to him, his brother had sharings criticizing the government and supporting the chairman of the APFP, Ali Karimli.

After his release, A. Babayev told RFE / RL⁷⁸ that the owner of the hotel where he worked wanted him to resign. According to Babayev, his boss said he was forced to fire him: "A day after this petition, the boss openly said that he was being pressured because of me, they wanted him to fire me, and they were threatening him."

On May 19, 2020, the Lankaran District Court sentenced **Elvin Irshadov** to 16 days of administrative detention for critical posts on Facebook with the account named "Umar Ali". He was found guilty under Article 535.1 of the Code of Administrative Offenses (intentional disobedience to a lawful request of a police officer or serviceman). The court decision states that E. Irshadov resisted the police officers who called him to discipline.

In his posts before being detained, he frequently spoke of cases of corruption⁷⁹, the distribution of aid provided by the Heydar Aliyev Foundation to Lankaran to families "by acquaintance"⁸⁰, and the distortion of the name of the Talysh khanate in history books as the Lankaran khanate and the removal of the Talysh name from history⁸¹. At the same time, E. Irshadov criticized the quarantine measures of the state⁸² and the transfer of control over the quarantine regime to "the MIA, which has become famous for corruption"⁸³.

E. Irshadov's sister, Aynur Irshadova, told RFE / RL⁸⁴ that her brother had been told at the police station that "he was in opposition, he had written something and should be punished for it", and that his parents had been warned about his brother's critical posts.

On the evening of June 26, 2020, **Faig Rashidov**⁸⁵, a member of the Popular Front Party (APFP), was taken from his home in Ismayilli by officers of the Ismayilli District Police Department In the morning of June 27, Rashidov was charged under Article 388-1 of the Code of Administrative Offenses in the Ismayilli District Court (placement of information on the Internet information resource or information-telecommunication network, the distribution of which is prohibited, as well as failure to prevent the placement of such information). As a result, he was sentenced to 10 days in prison. The Azerbaijan Popular Front Party told RFE / RL that he had been repeatedly harassed for his activism.

⁷⁸ <https://www.azadliq.org/a/axcp-f%C9%99al%C4%B1-z%C9%99ng-e1%C9%99dil%C9%99r-ki-i%C5%9Fd%C9%99n-%C3%A7%C4%B1xmaq-bar%C9%99d%C9%99-%C9%99riz%C9%99-yaz-/30654901.html?fbclid=IwAR0GMDdW5y27Ukw2FRNHx1-WB98I-eUidaNdBTGALwo5iKYUYxklHYScLM>

⁷⁹ https://m.facebook.com/story.php?story_fbid=239205427406586&id=100039513917036

⁸⁰ https://m.facebook.com/story.php?story_fbid=235200091140453&id=100039513917036

⁸¹ https://m.facebook.com/story.php?story_fbid=225680122092450&id=100039513917036

⁸² https://m.facebook.com/story.php?story_fbid=216170236376772&id=100039513917036

⁸³ https://m.facebook.com/story.php?story_fbid=215097679817361&id=100039513917036

⁸⁴ <https://www.azadliq.org/a/sosial-%C5%9F%C9%99b%C9%99k%C9%99-f%C9%99al%C4%B1-h%C9%99bs-olunub/30622049.html>

⁸⁵ <https://www.azadliq.org/a/axcp-partiya-%C3%BCzvune-10-sutka-hebs-verilib/30693639.html>

Elshad Atayev⁸⁶, a resident of Imishli district, was detained by police on June 26, 2020. On June 27, he was taken to the Imishli District Court and sentenced to 10 days in prison under Article 535.1 of the Code of Administrative Offenses (intentional disobedience to a lawful request of a police officer or serviceman). According to the APFP, E. Atayev was arrested due to his activity on social networks and criticism of the government.⁸⁷

On June 29, 2020, the chairman of the Goychay branch of the Musavat Party, **Jeyhun Mammadli**, was found guilty of violating Article 535-1 of the Code of Administrative Offenses (intentional disobedience to a lawful request of a police officer or serviceman) and fined in the amount of 200 manats by the Zardab District Court.

According to the information⁸⁸ given by the Musavat Party to Voice of America (VOA), “Mammadli has not violated the law, the real reason for the accusation is his critical posts on social networks.”⁸⁹
⁹⁰.

5.3. Criminal liability

On January 11, 2020, **Alizamin (Zamin) Salayev**, a member of the Azerbaijan Popular Front Party (APFP), filmed his conflict with Hamza Azizov⁹¹, the head of the Salyan District Police Department, who was involved in a violent incident, and shared it on social networks.⁹² In the video, Z. Salayev claims that a police officer raped a 21-year-old young woman. It should also be noted that the woman was arrested for stabbing a police officer.⁹³

Z. Salayev, who arrived in Baku on January 13 to give an interview to journalists, was detained by police officers of the 8th police station. He was told by the department that he had a conflict with a police officer and was guilty of intentionally disobeying a lawful request of a police officer or serviceman under Article 535 of the CAO. The Sabail District Court sentenced him to 30 days of administrative detention. According to VOA⁹⁴, Alizamin Salayev told the court that his arrest was linked to a video he made about the police in Salyan district.

On January 24, 2020, a letter written by Z. Salayev to his family about his torture was spread.⁹⁵

⁸⁶ <https://www.azadliq.org/a/axcp-partiya-%C3%BCzvune-10-sutka-hebs-verilib/30693639.html>

⁸⁷ <https://www.facebook.com/karimliali/posts/10157417203623848>

⁸⁸ <https://www.amerikaninsesi.org/a/m%C3%BCsavat-partiyas%C4%B1n%C4%B1-f%C9%99al%C4%B1-c%C9%99rim%C9%99-olunub/5481731.html>

⁸⁹ <https://www.facebook.com/ceyhun.memmedov.7169709/posts/884417538747131>

⁹⁰ <https://www.facebook.com/100015366790182/videos/872491816606370/>

⁹¹ <http://istipress.com/hadise/25-01-2020/salyanda-polis-itkin-dusen-qizi-zorlayib-resmi>

⁹² <https://youtu.be/PROa13Go1eE>

⁹³ <https://www.meydan.tv/az/article/axcp-uzvune-qarsi-cinayet-isi-baslayib/?ref=search>

⁹⁴ <https://www.amerikaninsesi.org/a/axcp-f%C9%99al%C4%B1-bar%C9%99d%C9%99-yeni-cinay%C9%99t%C5%9Fi-qald%C4%B1r%C4%B1%C4%B1l%C4%B1-C4%B1b/-5342715.html>

⁹⁵ <https://www.azadliq.org/a/i%CC%87%C5%9Fg%C9%99nc%C9%99-%C5%9Fikay%C9%99tl%C9%99ri-v%C9%99-ona-veril%C9%99n-cavablar/30395103.html>

In an interview with Azadlig newspaper⁹⁶ on February 12, 2020, Alizamin Salayev reiterated that his arrest was linked to a video he had released and reaffirmed his claim that he had been tortured.

In March 2020, a criminal case was opened against Z. Salayev on the complaint of two individuals.

A criminal case has been launched against Z. Salayev at the Salyan District Police Department under Article 128 of the Criminal Code, on charges of intentionally causing minor damage to the health of his neighbor Joshgun Nuriyev. Z. Salayev said he was discharged from the hospital on March 1 after a medical operation and unexpectedly on March 2, his former neighbor Joshgun Nuriyev came to his house, hit his head on the wall, injured himself, and then complained to the police and prosecutor's office.

Z. Salayev said the person identified as a victim in the case was registered at a psychiatric hospital. A month ago, on February 29, a video was spread in the media about a 34-year-old resident of Salyan, Joshgun Eyvaz oglu Nuriyev, trying to commit suicide by climbing a power pole in the city.⁹⁷ Two days later, he filed a lawsuit against Z. Salayev.

In addition, Z. Salayev was warned that a criminal case would be opened against him during his 30-day administrative detention in January.

After Z. Salayev was released from administrative detention, H. Azizov also filed a lawsuit against him in the form of a special accusation. He demanded that the APFP activist be prosecuted under Articles 147 (slander) and 148 (insult) of the Criminal Code. Z. Salayev was arrested on April 20 by the verdict of the Salyan District Court. According to the verdict, Z. Salayev was found guilty of slandering and insulting the chief investigator of the Salyan District Police Department, Hamza Azizov, and sentenced to 2 years and 3 months in prison.⁹⁸

According to the verdict of the Yardimli District Court on May 21, 2020, **Jalil Zabidov**, an employee of the "Say No to Corruption" Facebook page and a teacher at the Dallakli village secondary school in Yardimli district, was sentenced to 5 months in prison on charges of hooliganism under Article 221.1 of the Criminal Code.

Prior to his arrest, J. Zabidov told Meydan TV⁹⁹ that the criminal case was launched immediately after the election. He said that he was an independent observer in the parliamentary elections on February 9, 2020, and shot and publicized the facts of fraud: "Therefore, the commission members insulted and beat me... The next day, Hamlet Amashov, a member of the precinct election commission, beat me and broke my arm."

J. Zabidov said that although a criminal case was launched against both of them at first, then "Hamlet Amashov turned and became a victim".

⁹⁶ <https://fb.watch/4BmL9VuCOP/>

⁹⁷ <https://virtualaz.org/bugun/157612>

⁹⁸ <https://www.meydan.tv/ru/article/axcp-feali-oz-mehkemesine-getirilmeyib/>

⁹⁹ <https://www.meydan.tv/ru/article/tenqidi-videolar-yayan-kend-muellimi-hebs-olunub/>

According to him, "the district administration, personally Yardimli's chief executive Ayaz Asgarov, was biased against him" because he shared the social problems and corruption cases in Yardimli on social networks and various websites. J. Zabidov said that the representative of the chief executive said: "If you withdraw, the criminal case will be closed, additional land will be given to you, you will have a normal financial opportunity," and threatened: "If you do not agree, you will have big problems."

There are also other lawsuits against J. Zabidov. Mahir Mirzayev and Azar Khamiyev¹⁰⁰, the deputy heads of the Yardimli District Executive Power, sued him under Article 23.1 of the Civil Code, i.e. for defamation of honor and dignity and business reputation.

Mahir Mirzayev cited the fact that J. Zabidov claims that the funds allocated by the Heydar Aliyev Foundation for a kindergarten in Yardimli have been misappropriated in a video posted on YouTube on April 30, 2020. Both of them demand 15,000 manats in compensation from J. Zabidov separately.

The information¹⁰¹ shared by the Yardimli District Executive Power on its pages on April 5, 2020, states: "Jalil Zabidov was sued by the Yardimli District Executive Power for his speeches against the state and statehood, and the case is currently in court."

According to the information given by D18 Movement to VOA, Akbar Shadiyev, a former employee of Azerishig, claims that J. Zabidov slandered him and tarnished his honor and dignity. Therefore, he filed a lawsuit against J. Zabidov in the Yardimli District Court, demanding his punishment under Articles 147 (slander) and 148 (insult) of the Criminal Code.¹⁰² In the material he prepared, J. Zabidov spoke about Akbar Shadiyev's embezzlement.¹⁰³

APFP member **Niyamaddin Ahmadov** is charged under Articles 214-1 (financing of terrorism), 233-1.2.1 (acquisition and possession of items that are not allowed to be in civil circulation by a group of persons), and 281 (preparation for open calls against the state) of the CrC and is expected to be sentenced to 14 years in prison.¹⁰⁴

The criminal case claims that Gabil Mammadov, who made harsh statements against the Azerbaijani government on social networks, made open calls on the Internet for terrorist purposes in Azerbaijan and sent money to N. Ahmadov with the same intention.

¹⁰⁰ <https://www.azadliq.org/a/se%C3%A7ki-videosu-yayan-m%C3%BC%C9%99llim-h%C9%99bs-olunub/30628680.html>

¹⁰¹ <http://www.yardimli-ih.gov.az/news/568.html>

¹⁰² <https://www.amerikaninsesi.org/a/d18-h%C9%99r%C9%99kat%C4%B1n%C4%B1f%C9%99al%C4%B1-akl%C4%B1q-aksiyas%C4%B1na-ba%C5%9Flay%C4%B1b/5619354.html>

¹⁰³ <https://www.azadliq.org/a/30889135.html>

¹⁰⁴ <https://www.amerikaninsesi.org/a/axcp-s%C9%99drinin-m%C3%BCChafiz%C9%99%C3%A7isinin-istintaq%C4%B1-ye%unla%C5%9F%C4%B1b/5771231.html>

Ahmadov links his arrest to his political activities and the unauthorized protest held by the National Council on October 19, 2019. It should be noted that N. Ahmadov regularly shared posts criticizing the government on his Facebook account.¹⁰⁵

Earlier, on April 16, 2020, the Khatai District Court sentenced N. Ahmadov to 30 days of administrative detention under Articles 211 (violation of anti-epidemic regime, sanitary-hygienic and quarantine regimes) and 535 (intentional disobedience to a lawful request of a police officer or serviceman) of the Code of Administrative Offenses. The APFP activist said that the administrative arrest was also politically motivated and that he did not violate quarantine rules.¹⁰⁶

Public activist **Nijad Ibrahim** announced on his Facebook account on July 20, 2020, that he would make a single person protest in front of the Presidential Administration and demand the resignation of President Ilham Aliyev. He was detained on July 20 while leaving home to protest.¹⁰⁷ He is charged under Article 139-1.1 of the CrC (violation of the quarantine regime - when there is a threat of the spread of disease). He said that he did not have a coronavirus at the time, that he received an SMS permit while going to the protest, and that he used protective measures such as wearing a mask and gloves. First, on July 22, 2020, the Nasimi District Court sentenced him to three months in prison for the period of preliminary investigation. Then, on March 5, 2021, the Nasimi District Court sentenced the public activist to 1 year and 3 months in prison.¹⁰⁸

In November 2020, the Mingachevir City Court also heard a lawsuit filed by Shahriyar Mustafayev, head of the Housing and Utilities Department of Mingachevir, in the form of a special accusation against blogger **Elchin Hasanzade** and public activist **Ibrahim Salamov (Turksoy)**, and each was sentenced to one year of correctional labor.¹⁰⁹

Hasanzade and Turksoy claimed that Shahriyar Mustafayev had evicted them from their rented apartment in Mingachevir on the basis of an order due to their critical posts on social networks. Mustafayev said the allegations were slanderous.

The special prosecutor was dissatisfied with the sentencing of Hasanzade and Turksoy to one year of correctional labor and appealed against the aggravation of their sentences. On March 2, 2021, they were arrested in the courtroom. The Sheki Court of Appeal sentenced each of them to 8 months in prison. Hasanzade and Turksoy were found guilty under Articles 147 (slander) and 148 (insult) of the Criminal Code.

¹⁰⁵ <https://www.facebook.com/elmeddin.sultanov.14/posts/599849247275898>

¹⁰⁶ https://www_azadliq.org/a/31131435.html

¹⁰⁷ https://www_azadliq.org/a/nicad-ibrahim/30960387.html

¹⁰⁸ https://www_azadliq.org/a/31135137.html

¹⁰⁹ https://www_azadliq.org/a/31130833.html

5.4. Other

Agil Humbatov, who harshly criticized¹¹⁰ the government and especially the President for the socio-economic situation of the population in the videos he shared on social media, shared another video¹¹¹ on March 29, 2020, criticizing the President for not paying child benefit. On March 30, police detained him and took him first to a police station and then to a psychiatric hospital.¹¹²

A. Humbatov was detained on the grounds that he could not control his actions and committed immoral acts against the surrounding residents. On April 1, Judge of the Sabunchu District Court, Samir Talibov, did not grant¹¹³ the application of A. Rasulov, chief physician of the psychiatric hospital, to involve A. Humbatov in compulsory treatment, and A. Humbatov was released. On the day of his release, A. Humbatov shared a new video complaining about the poor condition in the hospital.¹¹⁴ A day later, on April 2, Humbatov was arrested again and taken back to the psychiatric hospital. Later it was found out that the chief physician of the psychiatric hospital, A. Rasulov, appealed against the decision of the Yasamal District Court, and the Baku Court of Appeal upheld the appeal.

It should also be noted that on April 5, 2020, the media reported that the judicial activity of Samir Talibov, who ruled in favor of A. Humbatov in the court of the first instance, was terminated. The judge, who was appointed to this position in December 2018, said that he resigned voluntarily.¹¹⁵

One of our interviewees, who wanted to remain anonymous¹¹⁶, said that he was called by the State Security Service of the region where he was registered for almost every critical post he shared and was asked to delete it. He gets used to not answer the calls coming from numbers he does not know. Since one of his parents is a civil servant, they continue to harass him through his parent. He says he often tries not to delete his shares but sometimes he thinks it will be more rational to delete them. On the eve of the war, after sharing an article stating that he was not a violent person, without touching on the subject of war, his father received a call from the state body mentioned above. It was said that our interviewee was summoned to the military commissariat. However, the war ended before our interviewee went to the commissariat. He himself links his summons to the post he shared and sees it as persecution.

APFP member **Pari Miniatur** said on her Facebook page that she was fired from Baku Ataturk Lyceum on February 5, 2021.¹¹⁷

¹¹⁰ <https://youtu.be/HQ2crTsRcXc>

¹¹¹ <https://www.facebook.com/100005757886651/videos/1373438239524759/>

¹¹² <https://www.azadliq.org/a/aqil-hu%CC%88mb%C9%99tov-psixiatriya-x%C9%99st%C9%99xanas%C4%B1nda-acl%C4%B1q-etdiyini-deyib/30620764.html>

¹¹³ http://openazerbaijan.org/site/assets/files/1434/samir_talibov.pdf

¹¹⁴ <https://www.facebook.com/100005757886651/videos/1376384305896819/>

¹¹⁵ <https://www.meydan.tv/ru/article/samir-talibov-hakimlikden-konullu-sekilde-getmisem/?ref=article-related-artciles>

¹¹⁶ Our interviewee never publicized these issues because he was afraid of possible pressure on his family members, and wanted to remain anonymous in the study paper.

¹¹⁷ <https://d9mc3ts4czbpr.cloudfront.net/az/article/peri-miniatur-ataturk-liseyinden-resulzadenin-portretini-cekdiyim-ucun-cixarildim/>

Peri Miniatur herself attributed this to the fact that she wanted to take a portrait of M. A. Rasulzade in the city center on May 28, 2020, filmed the process and shared¹¹⁸ it on the Internet, and her comments¹¹⁹ on the difficult social situation in the country: "I was told that one of the high-ranking officials of Azerbaijan had criticized me. I was also warned to stay out of the political process. Then there were other forms of pressure..."¹²⁰

Peri Miniature added that after these events, her salary was reduced in the summer of 2020, and the head of the HR department asked her to come and write a letter for resignation.

In February 2021, Eylem Gultekin, the school principal of the Baku Ataturk Lyceum, where the painter worked, sued the painter under Article 147.1 (slander) of the Criminal Code. The advocate of the school principal, Faig Najafov, said that the painter had damaged the reputation of the lyceum by saying on her Facebook account that she had been subjected to pressure at work for her political views and for painting a portrait of Rasulzade.¹²¹

¹¹⁸ <https://www.facebook.com/peri.miniatur/posts/3211978692190841>

¹¹⁹ <https://www.facebook.com/peri.miniatur/posts/3333445570044152>

¹²⁰ <https://www.azadliq.org/a/31123562.html>

¹²¹ <https://arqument.az/az/peri-miniatur-resulzadenin-portretini-cekenden-bir-hefte-sonra-xeberdarliq-edildi/>

6. Conclusions

The policy paper concludes that freedom of expression on social networks is restricted in Azerbaijan. Not only activists expressing their views but also journalists covering other people's problems have been subjected to illegal interference. These restrictions have been based on both legislation and practice:

Chapter 3-1 of the Law of the Republic of Azerbaijan on "Information, Informatization and Protection of Information" imposes more restrictions on information shared on social networks than provided for in international documents ratified by the country and the Constitution.

There is no specific definition of the term "public threat" in the law. Therefore, this paragraph is widely applied.

The concept of "other information, the dissemination of which is prohibited" is also very common and open to wide interpretation. Thus, these two expressions are incompatible with the principle of foreseeability, which is one of the three basic principles of the quality of the law.

Defamation in the law creates not only civil liability but also criminal liability and can even result in imprisonment. In practice, this is abused. With the amendments, the scope of restrictions has been expanded and social networks have been included in this circle.

Article 211 of the Code of Administrative Offenses was used as a means of pressure on those criticizing the situation regarding the quarantine regime. Articles 211 (violation of anti-epidemic regime, sanitary-hygienic and quarantine regimes), 388-1 (placement of information on the Internet information resource or information-telecommunication network, the distribution of which is prohibited, as well as failure to prevent the placement of such information), and 535.1 (intentional disobedience to a lawful request of a police officer or serviceman) of the CAO and Article 139-1 of the CrC have been used as a means of political persecution and to discourage public criticism.

Furthermore police and prosecutor's office call social network users to the police station, make "warning" calls, and often hold preventive conversations, posts are systematically required to be deleted or are forcibly deleted, and such interventions result in discouragement of future critical sharing.

At the same time, the contribution of the spoken and shared expression to the public debate and the results of the sharing are not taken into account. There have been instances where local courts have used the most severe sanctions. In defamation cases, in particular, courts have imposed imprisonment without regard to a person's public role or the degree to which a person discloses himself/herself to the public.

Although its application was not found during the study, the fact that Article 106 of the Constitution and Article 323 of the Criminal Code, which provide increased protection for the honor and dignity of the head of state, is still in force contradicts the documents ratified by Azerbaijan. Given their role in a democratic society, heads of state should be more tolerant of criticism.

7. Recommendations

Legislation

1. The main recommendation regarding freedom of expression is to decriminalize defamation. It is enough to protect defamation by the Civil Code. Freedom of expression can legitimately be restricted by civil prosecution under Articles 21 and 23 of the Civil Code.
2. The restrictive norms of “the Law on Information, Informatization and Protection of Information” are broader than the restrictions in the Constitution and Conventions and restrict freedom of expression beyond its legitimate goals. These articles should be revised and brought into line with the Constitution, the Constitutional Law, as well as the Convention.

Practice

3. It is necessary to prevent abuse in the use of Articles 211, 388-1, and 535 of the Code of Administrative Offenses, to use the norms only for legal purposes.
4. It should be ensured that the police act within the scope of their authority as defined in the Law on Police, the illegal actions of the police must be stopped, their authority should be removed from being a tool of political pressure and an instrument of punishment and should remain only within the limits established by law.
5. When balancing freedom of expression with the right to respect for private life, local courts must take into account factors such as the subject matter of public interest, the person's public role, and the consequences of sharing. At the same time, local courts must refrain from imposing the imprisonment sentence, especially if the opinion or information shared is not a hate speech.

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Reference to IDI is compulsory when using information.

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