

POLICY PAPER ON THE SITUATION OF FREEDOM OF EXPRESSION IN AZERBAIJAN (2021)



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AUTHOR: ZHALA RAHMAN

EXPERT: ALASGAR MAMMADLI

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1. SUMMARY

The member states of the Council of Europe must fully execute the judgments of the European Court of Human Rights (the Court or the ECtHR). So, by joining the European Convention on Human Rights (the Convention or the ECHR), the member countries undertook to comply with the judgments of the ECtHR. This obligation is reflected in Article 46 of the Convention. Rights and freedoms of man and citizen guaranteed by the Constitution of the Republic of Azerbaijan (AR) are applied in accordance with the international treaties ratified by the AR. According to Article 148 of the Constitution, international treaties to which the Republic of Azerbaijan is a party shall be an integral part of the legislative system of the Republic of Azerbaijan. Article 151 of the Constitution states that if a conflict arises between normative legal acts of the legislative system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum) and inter-state treaties to which the Republic of Azerbaijan is a party, the international treaties shall apply.

The ECtHR has so far passed 16 judgments against Azerbaijan regarding the violation of freedom of expression. The Court recognized the violation of the right to freedom of expression regarding Azerbaijan for the first time in December 2008 in its judgment on the case of Mahmudov and Aghazade v. Azerbaijan.

Most of the victims of violations of the right to freedom of expression are journalists. The first judgment on the violation of the right to freedom of expression by restricting the right to access to information based on the complaints sent from Azerbaijan is the case of Rovshan Hajibeyli v. Azerbaijan.

The objective of the report is to describe the state of freedom of expression in Azerbaijan, to reflect the approach of international conventions to freedom of expression, to describe and analyze local legislation, to show the nature of the interference with freedom of expression in 2021, to study the status of execution of judgments rendered by the ECtHR, to analyze the results of the study, and finally to give recommendations.

In the “International Legislation” section of the report, the approach of the ratified documents to the freedom of expression and the limitations set by them are described, while in the analysis of the “Local Legislation” section, the Constitution of the Republic of Azerbaijan, the Code of Administrative Offenses, the Criminal Code, the Code of Criminal Procedure, as well as the Law on Information, Informatization and Protection of Information, have been reviewed.

Articles 47 and 50 of the Constitution of the AR protect the right to freedom of expression. Restrictions on freedom of expression in international documents are quite narrow, and interference with this right is required to be necessary in a democratic society.

One of the biggest problems with the law is that criminal liability for defamation still remains. This problem has been repeatedly emphasized in the cases where the violation of Article 10 of the Convention was recognized against Azerbaijan. Several articles in the Criminal Code create criminal liability for defamation. One of them is the article protecting the honor and dignity of the president. This article contradicts the principle that state representatives, public and political figures, including executives, should be more tolerant of criticism, which is repeatedly mentioned in the judgments of the ECtHR.

One of the main violations found by the ECtHR in many cases against Azerbaijan is related to the proportionality of punishments. So, in those judgments, it was stated that the local courts chose the most severe sanctions and they did not take into account the factors of contribution to the public debate and the role of the person in public life, especially in defamation cases.

If we look at the practical part, we will see that some people were brought to criminal liability according to Articles 147 and 148 of the Criminal Code. This shows that criminal liability for defamation is widely applied in Azerbaijan.

In the end, recommendations were included in the report. The recommendations reflect the decriminalization of defamation, the repeal of Articles 147, 148, and 148-1 of the Criminal Code, which stipulate liability for slander and insult, or the amendments to the parts of those articles that determine the penalty of deprivation of liberty, the reinvestigation of criminal cases resulting in the deprivation of freedom of journalists, the release of unjustly arrested journalists, the execution of judgments of the ECtHR, the cessation of harassment against social media users, the execution of the provisions arising from the judgments of the Strasbourg Court regarding the protection of freedom of expression of citizens.

2. INTRODUCTION

Freedom of expression is one of the important pillars of a democratic society, one of the main conditions for its progress, and the development of each individual. According to the judgments made by the ECtHR in 2021, the three countries that violate the right to freedom of expression the most are Turkey, Russia, and Azerbaijan. Reports and study papers prepared in different years show that there are systematic interventions on freedom of expression in Azerbaijan.

The objective of preparing the report is to clearly show the framework of freedom of expression, to collect the facts of illegal and illegitimate interference with freedom of expression in the Republic of Azerbaijan in 2021, to describe them, and to assess the status of execution of ECtHR judgments.

In 2021, the ECtHR ruled on the violation of the right to freedom of expression in a total of 85 cases. 31 of those judgments were issued against Turkey. In 19 judgments, interference with the right to freedom of expression was found in Russia. Violation of the right to freedom of expression was recognized in six judgments issued against Azerbaijan, which is the third in the ranking.

3. METHODOLOGY

First, in the “Legislation” section of the report, the guarantees and limitations of this right in international documents were included. The second section describes the guarantees and limitations of freedom of expression in local legislation. Moreover, administrative liability, criminal liability, etc., applied by law within the framework of freedom of expression, were investigated and described. In the statistical part of the document, information was provided on interferences with freedom of expression (those who were summoned to the police station, subjected to administrative or criminal liability, etc.) in the country during 2021. The media monitoring method was used while preparing the study paper. The information was obtained from various local and international reports as well as a number of media outlets. Media monitoring was conducted using keywords and was limited to the specific period covered by the study (January - December 2021). Keywords used during the study are: "Summoned to the police", "administrative detention", "arrested", "detained", "warned", etc. During the data collection, Meydan TV, Radio Liberty (RFE/RL), Voice of America (VOA), Toplum TV, and other news websites were used.

4. LEGISLATION

4.1 International Legislation

The Republic of Azerbaijan has ratified a number of international documents for the provision and development of human rights and freedoms in the country. Freedom of expression, which is one of the primary features of democracy, is a fundamental human right, and this right is protected by various international documents.

These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Protection of Human Rights and Fundamental Freedoms.

These instruments are legally binding on countries that have ratified them, and contracting states are formally required to respect their provisions.

According to Part 2 of Article 12 of the Constitution of the Republic of Azerbaijan, *“Rights and liberties of a person and a citizen listed in the present Constitution are applied in accordance with international treaties to which the Republic of Azerbaijan is a party.”*¹

According to Article 19 of the Universal Declaration of Human Rights adopted by the UN:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 19 of the UN International Covenant on Civil and Political Rights guarantees everyone's right to freedom of expression and access to information:

“Everyone shall have the right to hold opinions without interference. 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.”

According to Article 10 of the ECHR:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

Article 46.1 of the Convention determines the binding force and execution of ECtHR judgments in member states. According to that norm:

¹ <https://e-qanun.az/framework/897>, The Constitution of the Republic of Azerbaijan

“The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”

Paragraph 3 of Article 19 of the UN International Covenant on Civil and Political Rights states that the grounds and conditions giving rise to restrictions shall only be provided by law and necessary:

a) For respect of the rights or reputations of others;

b) For the protection of national security or of public order (ordre public), or of public health or morals.

The grounds and conditions for restricting freedom of expression in the Covenant can be listed as follows:

- restrictions must be provided by law and clearly specified;
- restrictions must be for the purpose of respecting the rights and reputations of others (intrusion into the private life of a person must be avoided);
- restrictions must have the purpose of protecting national security;
- restrictions must protect the interests of public order;
- restrictions must target the protection of public health;
- restrictions must be considered for the protection of morality.

Paragraph 2 of Article 10 of the ECHR indicates the cases in which the right to freedom of expression will be restricted and on what grounds it can be restricted:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

These grounds declared in the Convention for restricting freedom of expression must meet the following conditions:

- restrictions on civil and political rights must be provided by law and clearly specified;
- restrictions must be based on one of the rights specified in the European Convention on Human Rights;
- restrictions must meet the test of "necessity in a democratic society";
- There should be no discrimination in the application of rights.

4.2. Domestic Legislation

Article 47 of the Constitution emphasizes, *“Everyone has the right to freedom of thought and speech,”* and states, *“No one shall be forced to proclaim or to repudiate his/her thoughts and beliefs.”* Article 50 declares, *“Everyone is free to legally seek, receive, impart, produce, and disseminate any information.”* It also states, *“Freedom of mass information is guaranteed. State censorship in mass media, including the press is prohibited.”*

According to Article 54.1 of the Constitution, *“Citizens of the Republic of Azerbaijan have the right to freely participate in political life of society and state.”* According to Article 57.2, *“Citizens of the Republic of Azerbaijan have the right to criticize activity or work of state bodies, their officials, political parties, trade unions, other public organisations and also activity or work of individual citizens. Persecution for criticism is prohibited. Insult or libel shall not be regarded as criticism.”*

Article 71 of the Constitution guarantees human rights and freedoms and notes, *“The legislature, executive and judiciary shall have the duty to observe and to protect the rights and freedoms of man and citizen set forth in the Constitution.”* It also states, *“Everyone’s rights and freedoms shall be restricted on the grounds provided for in the present Constitution and laws, as well as by the rights and freedoms of others.”*

According to Paragraph 3 of Article 71, *“Rights and freedoms of man and citizen may be partially and temporarily restricted in time of war, martial law and state of emergency, as well as mobilization, subject to the international obligations of the Republic of Azerbaijan. The population shall be notified in advance about restrictions as regards their rights and liberties.”*

According to Article 24 of the Constitution, *“Everyone, as from the moment of birth, enjoys inviolable and inalienable rights and freedoms;”* however, *“Rights and freedoms shall also include the responsibilities and duties of everyone to the society and to other persons.”*

Furthermore, according to the provisions mentioned in Article 47 of the Constitution, *“Agitation and propaganda inciting racial, national, religious, social discord and animosity or relying on any other criteria is inadmissible.”*

Although restrictions on freedom of information are not directly specified in Article 50 of the Constitution, it states, *“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 the Constitutional Law on the Regulation of the Application of Human Rights and Freedoms in the Republic of Azerbaijan, legitimate grounds for restricting freedom of expression and information are *state security interests; protection of health and morality, rights and freedoms of other persons; prevention of crimes; prevention of riots; protection of public safety; ensuring the*

*interests of the territorial integrity of the state; protection of the reputation or rights of others; prevention of disclosure of confidentially obtained information; ensuring the reputation and impartiality of the court, etc.*²

The purpose of "*protection of the reputation or rights of others*", which is one of the grounds stated in the Constitutional Law, is actually expressed in several articles in the Constitution itself. Article 46 of the Constitution, which protects the right to protect honor and dignity, Paragraph 3 of Article 32 of the Constitution, which protects the right to inviolability of private life ("*Gaining, storing, using and spreading information about the person's private life without his/her consent is not permitted.*"), and Article 106 of the Constitution, which provides for the immunity of the President of the Republic of Azerbaijan, are the norms that create a basis for restricting one's freedom.

The purpose of the Law of the Republic of Azerbaijan on Access to Information³ is *to determine the legal basis for ensuring the right to access to information, established by Article 50 of the Constitution of the Republic of Azerbaijan, free, unhindered, and under equal conditions for all, based on the principles of an open society and a democratic legal state.*

In addition to open information, there is restricted information (confidential and secret information). The second includes, for example, state secrets, commercial secrets, investigation secrets, professional secrets (doctor, advocate, notary secrets), information intended for official use, private life secrets, and personal information.

Chapter 3-1 of the Law of the Republic of Azerbaijan on Information, Informatization and Protection of Information⁴ is called "Internet Information Resources". In this chapter, the information shared on the Internet, including social networks, is subject to more restrictions than stipulated in the country's Constitution and ratified international documents:

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 shall not allow the placement of the following prohibited information in that information resource (information-telecommunication network:*"

- *propaganda and financing of terrorism, as well as methods and means of terrorism, information about training for the purpose of terrorism, as well as open calls for terrorism;*
- *information on the propaganda of violence and religious extremism, open calls directed to the evocation of national, racial, or religious enmity, violent change of the*

² <https://e-qanun.az/framework/1881>, Constitutional Law of the Republic of Azerbaijan n Regulation of the Application of Human Rights and Freedoms in the Republic of Azerbaijan

³ <https://e-qanun.az/framework/11142>

⁴ <https://e-qanun.az/framework/3525>

constitutional order, territorial disintegration, violent seizure or maintenance of power, and organization of mass riots;

- *state secrets;*
- *instructions or methods for producing firearms, their component parts, ammunition, and explosive substances;*
- *information on preparation and usage of narcotic drugs, psychotropic substances, and their precursors, about locations of their unlawful acquisition, as well as information on the location of and methods of cultivation of plants containing narcotic substances;*
- *pornography, including information related to child pornography;*
- *information on the organization of and incitement to gambling and other unlawful betting games;*
- *information disseminated with the purpose to promote suicide as a method of solving problems justifies suicide, provides the basis for or incites suicide, describes the methods of committing suicide, and organizes the commission of suicide by several individuals or organized groups;*
- *cinema, television and video films not marked for the appropriate 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;*
- *defamatory and insulting information, as well as information breaching the inviolability of private life;*
- *information breaching intellectual property rights;*
- *false information that threatens to harm people's life and health, cause significant property damage, massive disruption of public safety, disruption of life support facilities, financial, transport, communication, industrial, energy, and social infrastructure facilities, or other socially dangerous consequences;*
- *other information prohibited by the laws of the Republic of Azerbaijan.*

4.3. Administrative Liability⁵

Article 388 of the Code of Administrative Offenses stipulates administrative liability for the abuse of freedom of mass information and journalistic rights. The cases of abuse established in the law are as follows:

- *disclosure of the data prohibited by the law to disclosure;*
- *non-realization of control of preparation of the materials published in the printing edition according to requirements of the Law of the Azerbaijan Republic on Mass Media;*
- *promulgation of information without specifying of its source, except the cases established by the Law of the Azerbaijan Republic on Mass Media;*

⁵ <https://e-qanun.az/framework/46960>, Code of Administrative Offenses of the Republic of Azerbaijan

- *production or distribution of products of mass media without reference data or intentional misstatement of reference data*

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

Article 388-1 was added to the Code according to the amendment⁶ to the CAO dated December 1, 2017. Article 388-1 of the Code creates administrative liability if prohibited information is distributed on the Internet and social networks, is not deleted, and access to it is not restricted. Thus, physical persons who disseminate and take such 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 based on the circumstances of a matter, taking into account the identity of the offender, shall be administratively detained for a term of up to one month, 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 limit access to that information immediately, officials shall be fined in the amount of one thousand five hundred to two thousand manats, and legal entities shall be fined in the amount of two thousand to two thousand five hundred manats.

4.4. Criminal Liability⁷

According to criminal law, statements of various content are not protected under the umbrella of freedom of expression and create criminal liability. Article 101 of the Criminal Code (CC) completely prohibits *open calls to aggressive war* and this act shall be punishable by imprisonment for a term of up to three years. If the call is made by an official through mass media, he/she shall be deprived of the right to engage in certain activities for up to three years or imprisoned for a term of two to five years without any restrictions on his activities.

According to Article 214-2 of the Code, *open calls to terrorism and dissemination of such materials* shall be punishable by imprisonment for a term of up to five years.

Article 281 of the CC prohibits *open calls against the state* and this act shall be punishable by imprisonment for a term of up to five years.

According to Article 323 of the Code, *defaming or humiliating the honor and dignity of the President of the Republic of Azerbaijan in a public speech, in a publicly displayed work, or in mass media* shall be punishable by correctional works for a term of up to two years or

⁶ <https://e-qanun.az/framework/37417>

⁷ <http://e-qanun.az/framework/37417> On making amendments to the Code of Administrative Offenses of the Republic of Azerbaijan

deprivation of liberty for the same period. *Accusing the President of a serious or particularly serious crime* shall be punishable by imprisonment for a term of three to five years.

According to article 220.2 of the CC, *calls for mass riots, violence against citizens, as well as calls for actively disobeying the legal requirements of a representative of the authorities* shall be punishable by imprisonment for a term of up to three years.

Article 283.1 of the Code completely prohibits *hate speech*. So, in the event of *calls to incite national, racial, social, or religious hatred and enmity and their dissemination through mass media*, a fine in the amount of eight thousand to twelve thousand manats or imprisonment for a term of two to four years shall be imposed.

Article 147 of the Criminal Code creates criminal liability for *slander*. According to that article, *disseminating information that defames the honor and dignity of any person, knowing that it is false, or discredits him/her in public speeches, a publicly displayed work, mass media, or internet information resources* shall be punishable by a fine in the amount of one hundred to five hundred manats, or public works for a term of two hundred and forty to four hundred and eighty hours, or correctional works for a term of up to one year, or deprivation of liberty for a term of up to six months. *Defamation by accusing a person of a serious crime* shall be punishable by correctional work for a term of up to two years or imprisonment for a term of up to three years.

Article 148 of the Criminal Code creates criminal liability for *insult*. According to that article, *deliberately humiliating the honor and dignity of a person in an indecent manner in the mass media, in the Internet information resource when it is publicly displayed, in a publicly displayed work, or in public speeches* shall be punishable by a fine in the amount of three hundred to one thousand manats, or public works for a term of two hundred forty to four hundred eighty hours, or correctional works for a term of up to one year, or deprivation of liberty for a term of up to six months.

Article 148-1, added to the Criminal Code in November 2016, *criminalizes slander and insult (defamation) on social networks using fake usernames, profiles, or accounts*. Those acts shall be punishable by a fine in the amount of one thousand to two thousand manats, or public works for a term of three hundred sixty to four hundred eighty hours, or correctional works for a term of up to two years, or deprivation of liberty for a term of up to one year.

Article 163 of the Code is called *obstruction of legal professional activities of journalists*. According to Article 163.1, *obstructing the legal professional activity of journalists, i.e. forcing them to disseminate information or refuse to disseminate information with the threat of coercion*, shall be punishable by a fine in the amount of five hundred to one thousand manats or correctional work for a term of up to one year.

Also, according to Article 163.2, if *the same acts are committed by an official using his official position*, he/she shall be punished by deprivation of the right to hold a certain position or to

engage in certain activities for a period of up to three years, or by correctional work for a term of up to two years, or by deprivation of liberty for a term of up to one year.

5. PRACTICAL SITUATION

5.1. Warnings

The state of freedom of expression in Azerbaijan in 2021 was described by the method of media monitoring. The warning facts collected as a result of monitoring are as follows:

1. Ali Aliyev⁸, the Chairman of the Citizen and Development Party, was warned for allegedly *"using slanderous and insulting expressions about various individuals in his speeches on YouTube channels, calling for violence against citizens, and posting information prohibited by law on the Internet information resources"*.
2. Social activist Elmir Abbasov⁹ was warned for the post he wrote on the Facebook social network.
3. Ibrahim Khudiyev¹⁰ was summoned to the police station and given a warning for his satirical poem.
4. On December 16 and 17, 2021, Abushov Zamiq Hidayat oglu, Mahmudov Ilgar Mehman oglu, Ibrahimov Mehdi Nazim oglu, and Safarsoy Rza Ali oglu¹¹ were invited to the Prosecutor General's Office and "the illegal nature of their actions was brought to their attention". By explaining that *"due to the continuous dissemination of various biased information that is not based on specific facts on social media platforms for the sake of sensationalism, more serious measures will be taken against them in the future due to their similar activities,"* according to Article 22 of the Law on the Prosecutor's Office, warnings were issued to prevent the violation of the law, which is an act of prosecutorial influence.
5. On December 20, 2021, a warning was issued against the school principal in Gusar district, Hikmat Jamirza oglu Aghajanov¹², to prevent him from committing a violation of the law in accordance with Article 22 of the Law on the Prosecutor's Office in connection with *"spreading prohibited information about suicide in the Internet information resource."*

⁸ <https://genprosecutor.gov.az/az/post/4250> The Prosecutor General's Office warned Ali Aliyev

⁹ <http://gozetc.az/az/pozuntular/axcp-uzvund%c9%99n-t%c9%99zyiq-altinda-pesmanliq-etirafi-alibla/> They received a "confession of remorse" from the APFP member under pressure

¹⁰ <http://gozetc.az/az/pozuntular/satirik-sair-polis%c9%99-aparildigini-bildirib/> The satirical poet said that he was taken to the police

¹¹ <https://report.az/hadise/bas-prokurorluq-bir-nece-jurnalisti-cerimeleyib/> Prosecutor General's Office: Several journalists were fined

¹² <https://www.azerbaycan24.com/intiharla-bagli-melumatlari-yayan-direktora-xeberdarliq-edildi/> The school principal who spread the information about the suicide was warned

6. According to the information given by the chairman of the Democracy-1918 Movement, Ahmad Mammadli¹³, on March 15, 2021, the police approached the office of the organization, threatened him with various criminal acts and demanded to stop his activities.

5.2. Administrative Liability

As a result of media monitoring for 2021, it was found that 6 people were subjected to administrative liability by interfering with their right to freedom of expression. These facts are as follows:

1. Independent military journalist Sakhavat Mammadov and journalist Ibishbayli Fikrat Faramaz oglu¹⁴ were fined in the amount of 500 manats administratively under Article 388-1.1.1 of the Code of Administrative Offenses (*placing prohibited information in the Internet information resource or information-telecommunication network, as well as failure to prevent such information from being placed*).
2. During this period, according to Article 388-1.1.1 of the Code of Administrative Offenses, a fine in the amount of 1500 manats was imposed on the olke.az and manevr.az websites¹⁵ on December 18 for "*illegal publication of information promoting suicide as a method of solving problems, inciting it as a justification, and explaining the methods of committing it.*"
3. Due to the statements made by the guest in *Bizimləsən* program¹⁶ of the ATV television channel, on April 21, 2021, the National Television and Radio Council drew up a protocol and appealed to the court to fine the channel in the amount of 3,000 to 4,000 manats and stop broadcasting according to Article 388-2.0.2 of the Code of Administrative Offenses.
4. On March 5, 2021, the well-known advocate Shahla Humbatova¹⁷ was expelled from the Bar Association by the decision of the Baku Administrative Court for not paying the membership fee for more than 6 months. She was the advocate of several people who were arrested in connection with the events that took place in Ganja in June 2018 and is

¹³ <https://www.turan.az/ext/news/2022/3/free/Social/az/2714.htm/001> The "Democracy-1918" Movement reports that the police pressured them

¹⁴ <https://report.az/hadise/bas-prokurorluq-bir-nece-jurnalisti-cerimeleyib/> Prosecutor General's Office: Several journalists were fined

¹⁵ <https://report.az/hadise/bas-prokurorluq-bir-nece-jurnalisti-cerimeleyib/> Prosecutor General's Office: Several journalists were fined

¹⁶ <https://marja.az/70250/atv-cerimelendi-bizimlesen-verilisinin-yayimi-dayandırildi> ATV was fined, the broadcast of the *Bizimləsən* program was stopped

¹⁷ <https://d9mc3ts4czbpr.cloudfront.net/az/article/sehla-humbatova-vekiller-kollegiyasından-cixarıldı/> Shahla Humbatova was expelled from the Bar Association

known for her critical posts on Facebook. The advocate stated that the decision was made with the aim of restricting her freedom of expression.

5. On October 6, 2021, journalist and social activist Anar Abdulla¹⁸ was administratively detained for 15 days due to the opinions he wrote on his Facebook account.

5.3. Criminal Liability

During the period of media monitoring, there were also cases of restriction of freedom of expression by criminal punishment. These are the following:

1. On June 16, 2021, under Article 147.1 of the Criminal Code, journalist Tural Safarov was sentenced to 6 months in prison on charges of slandering a public official.
2. On March 2, 2021, by the decision of the Shaki Court of Appeal, blogger Elchin Hasanzade¹⁹ and social activist Ibrahim Turksoy²⁰ were found guilty under Articles 147 and 148 of the CC and sentenced to 8 months in prison.
3. 2 social activists - Ibrahim Turksoy for his critical satirical poems against the government and Nijat Ibrahim for his critical posts - were brought to criminal liability.
4. On June 17, 2021, activist Tahir Heydarov, who made critical posts on social networks under the name "Tahir Zangilanli", was sentenced to 2 years and 6 months in prison.²¹
5. After social activist Nijat Ibrahim held a protest in front of the Presidential Administration on July 20, 2020, and announced on his Facebook account that he would demand the resignation of President Ilham Aliyev, despite complying with all the requirements of the pandemic, on March 5, 2021, he was sentenced to 1 year and 3 months in prison under Article 139-1.1 of the Criminal Code (*violation of the anti-epidemic regime, sanitary-hygiene or quarantine regimes*).²²
6. APFP member Niyamaddin Ahmadov was charged under Articles 214-1 (financing terrorism), 28, 281.2 (preparation to make open calls against the state), and 233-1.2.1 (illegally preparing, acquiring, storing, transporting, carrying, transferring, or selling items that are not allowed to be in civil circulation by law) of the Criminal Code, and a

¹⁸ <https://bizimxeber.az/az/post/anar-abdullaya-15-sutka-ceza-verildi-1791> Anar Abdulla was sentenced to 15 days in prison

¹⁹ <https://www.azadliq.org/a/31130833.html> Blogger and social activist were arrested

²⁰ <http://gozetci.az/az/pozuntular/satirik-sair-polis%c9%99-aporildigini-bildirib/> The satirical poet said that he was taken to the police

²¹ <http://gozetci.az/az/pozuntular/qarabag-m%c9%99hbusuna-2-il-6-ay-h%c9%99bs-c%c9%99zasi-verilib/> "Prisoner of Karabakh" was sentenced to 2 years 6 months in prison

²² <https://www.azadliq.org/a/nicad-ibrahim/30960387.html> "If I had the coronavirus, how could the police eat lahmacun with me?"

pre-trial detention measure was chosen for him on October 8, 2021. According to the later verdict, N. Ahmadov was sentenced to 13 years in prison (*Note: APFP officials declared that this charge was absurd and considered Ahmadov's arrest as a continuation of repression against the party and its chairman Ali Karimli*).²³

²³ <https://www.azadliq.org/amp/niyameddin-ehmedov-axcp/31472856.html> 15 years of imprisonment was requested for Niyamaddin Ahmadov

6. ECtHR

Annual Report

In 2021, 425 complaints were sent to the ECtHR from Azerbaijan. This indicator is less than the number of applications sent in 2020 (525). According to a report released on January 25, the ECtHR received a total of 44,250 applications in 2021. In 2020, this number was 41,700. During the year, 10,630 applications were communicated with the states. 36,092 judgments or rulings were adopted, 32,961 of which were related to inadmissibility, and in the remaining cases, applications were sent for final decision.²⁴

Pending Complaints

At the end of 2021, a total of 70,150 applications are pending at the ECtHR. In 2020, the number of pending applications was 62,000. According to the number of pending applications, the Russian Federation is the leader with 17,013 applications. Second is Turkey (15,251 applications), 3rd - Ukraine (11,372 applications), 4th - Romania (5,690 applications), 5th - Italy (3,646 applications), 6th - Poland (2,255). Azerbaijan ranks 7th with 2,092 pending applications (3 percent of the ECtHR's total workload).

In 2021, the ECtHR made a total of 36 judgments regarding Azerbaijan. The alleged violation was recognized in 35 judgments related to Azerbaijan. In its judgments regarding Azerbaijan, the Court found a violation of the *right to freedom of expression in 6 cases*, the right to life in 6 cases, the right not to be subjected to torture in 7 cases, the right not to be subjected to forced labor in 1 case, the right to liberty and security in 9 cases, the right to a fair trial in 7 cases, the right to respect for private life in 3 cases, the right to freedom of association in 4 cases, the right to an effective remedy in 1 case, and the right to property in 6 cases. Violation of other rights was recorded in 12 cases.²⁵

In 2021, the judgments against Azerbaijan, in which the violation of Article 10 of the European Convention on Human Rights was found, are as follows:

1. *Avaz Zeynalov v. Azerbaijan*; Application No. 37816/12 25260/14; 22/04/2021
2. *Hasanov v. Azerbaijan*; Application No. 52584/09; 08/07/2021
3. *Mammadov and Abbasov v. Azerbaijan*; Application No. 1172/12; 08/07/2021
4. *Mahmudov and Aghazade v. Azerbaijan* (2); Application No. 28083/08; 22/07/2021
5. *Hasanov and Majidli v. Azerbaijan*; Application No. 9626/14 9717/14; 07/10/2021
6. *Hajiyev v. Azerbaijan*; Application No. 19925/12 47532/13; 09/12/2021

²⁴ <https://aihmaz.org/aihm-2021-az%99rbaycanla-bagli-36-q%99rar-2-milyona-yaxin-t%99zminat/>

²⁵ <https://aihmaz.org/aihm-2021-az%99rbaycanla-bagli-36-q%99rar-2-milyona-yaxin-t%99zminat/>

A Brief Summary of ECtHR Judgments in 2021 regarding the Violation of the Right to Freedom of Expression in relation to Azerbaijan

1. *Avaz Zeynalov v. Azerbaijan; Application No. 37816/12 25260/14; 22/04/2021*²⁶; The case of *Avaz Zeynalov (Avaz Zeynalli) v. Azerbaijan*, who is the editor-in-chief of *Xural* newspaper, is related to the detention and conviction of the journalist on the charge of demanding a bribe from MP Gular Ahmadova. The ECtHR did not consider the search of Zeynalov's office and home and the seizure of some of his belongings proportionate to the legitimate aim stipulated in Article 10 of the Convention and recognized the violation of Article 10. The Court also found the violation of the right to respect for private life related to the illegality of the search and seizure, the right to liberty and security related to the inappropriateness of pre-trial detention, and the right to a fair trial (presumption of innocence) related to the fact that the authorities criminalized the applicant without a court order, and held that 13,000 euros must be paid to the applicant in respect of non-pecuniary damage.
2. *Hasanov v. Azerbaijan; Application No. 52584/09; 08/07/2021*²⁷; In the case of *Ali Hasanov v. Azerbaijan*, the applicant was a journalist and editor-in-chief of *Ideal* newspaper and was convicted for his article about a war veteran. The domestic courts determined that he should write his articles under different titles and that the articles had a derogatory tone. The applicant was sentenced to 6 months in prison for insult. In this case, the violation of the right to freedom of expression and the right to a fair trial was disputed before the ECtHR. Although the Court noted that the applicant's conviction was a lawful interference with his right to freedom of expression, it emphasized that the interference did not pass the test when determining the "necessity in a democratic society". Since the applicant died, he was represented by his sister, and the ECtHR held that 1,700 euros must be paid to the applicant in respect of non-pecuniary damage.
3. *Mammadov and Abbasov v. Azerbaijan; Application No. 1172/12; 08/07/2021*²⁸; In the case of *Elnur Mammadov and Irdak Abbasov v. Azerbaijan*, both applicants were journalists at the IRFS (Institute for Reporters' Freedom and Safety). In 2009, after the arrest of the editor-in-chief of the *Milli Yol* newspaper, Shahin Aghabeyli²⁹, during a police search in the editorial office of the newspaper, the applicants were not allowed³⁰ to film and were treated rudely, their filming equipment was taken from their hands, and one of the applicants was detained and released an hour later. The Court emphasized in its judgment that such treatment of journalists seriously limited their right to obtain and

²⁶ [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-209346\"\]}](https://hudoc.echr.coe.int/eng#{\)

²⁷ [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-210839\"\]}](https://hudoc.echr.coe.int/eng#{\)

²⁸ [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-210849\"\]}](https://hudoc.echr.coe.int/eng#{\)

²⁹ He died in a car accident after his release from prison.

³⁰ <https://www.irfs.org/az/news-feed/irfs-representatives-face-harassment-during-arrest-of-milli-yol-newspaper-editor-in-chief/>

disseminate information. This intervention did not pursue any legitimate goal and was not necessary in a democratic society. The ECtHR ruled that there had been a violation of the right to freedom of expression, as well as the right to liberty and security in relation to the applicant. The Court determined a total of 12,500 euros to be paid in respect of non-pecuniary damage.

4. ***Mahmudov and Aghazade v. Azerbaijan (2); Application No. 28083/08; 22/07/2021***³¹
This judgment on the case of Rovshan Mahmudov and Yashar Aghazade against Azerbaijan is the second judgment of the ECtHR against Azerbaijan in this regard. The first judgment recognizing the violation of Article 10 against Azerbaijan was also made with respect to these journalists. The applicants were the editor-in-chief and employee of the *Müxalifət* newspaper, known for its critical position. The domestic judicial authorities brought the petitioners to criminal responsibility for the article allegedly defaming Jalal Aliyev, one of the political figures of Azerbaijan, former MP and brother of former president Heydar Aliyev and uncle of current president Ilham Aliyev. So, after J. Aliyev's complaint, the journalists were convicted of slander by the verdict of the Yasamal District Court dated May 16, 2007, and were deprived of liberty for two years and six months. However, before that decision of the Supreme Court, in December 2007, the journalists were released by the pardon decree of the President of Azerbaijan. The Court emphasized that the conviction of the applicants in this case was not "necessary in a democratic society" even though it was a legal interference with their right to freedom of expression and held that the respondent State was to pay the applicants 3,400 euros in respect of non-pecuniary damage.
5. ***Hasanov and Majidli v. Azerbaijan; Application No. 9626/14 9717/14; 07/10/2021***³²; In the case of *Ulvi Hasanov and Majid Majidli v. Azerbaijan*, the applicants were members of the opposition NIDA Civic Movement. In July 2013, at the Icheri Sheher underground station in Baku, while distributing leaflets with the words "The source of power is the people", which is an excerpt from the Constitution of Azerbaijan, they were detained by the police and a "protocol on administrative offense" was drawn up. Later, the applicants were accused of distributing pamphlets against the government, disobeying the legal order of a police officer, and were administratively detained for 15 days.³³ The Court recognized the violation of Article 10 and Article 6 in this case. The ECtHR held that the content of the leaflets had not been examined in domestic courts and that the government had punished the applicants simply for distributing the leaflets, and ruled that the interference did not meet the requirement of Article 10 § 2. The Strasbourg Court also concluded that the trial was unfair and found a violation of Article 6. It was decided that a total of 11,700 euros must be paid to the applicants in respect of non-pecuniary damage.

³¹ [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-211100\"\]}](https://hudoc.echr.coe.int/eng#{\)

³² [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-212032\"\]}](https://hudoc.echr.coe.int/eng#{\)

³³ <https://qafqazinfo.az/news/detail/yoxa-cixan-gencler-tapildi-45829>

6. *Hajiye v. Azerbaijan; Application No. 19925/12 47532/13; 09/12/2021*;³⁴ In the case of *Rovshan Hajiye v. Azerbaijan*, the applicant was the editor of the opposition-oriented *Azadlıq* newspaper. He asked for information about the impact of the radiation station located in Gabala district on the environment from related institutions (a special commission created by the order of the President of the Republic of Azerbaijan - the head of which was the Minister of Health) through an information request. However, the administrative bodies that have the information did not provide that information and the domestic courts justified it. After investigating the matter, the ECtHR noted that the ready and accessible information sought by the applicant concerned a matter of public interest and that access to the information played an important role in the exercise of the applicant's right to obtain and disseminate information as a journalist. Failure to provide access to information is contrary to Article 10 of the Convention (right to freedom of expression). The Court determined 1,500 euros to be paid in respect of non-pecuniary damage.

³⁴ [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-213788\"\]}](https://hudoc.echr.coe.int/eng#{\)

7. STATUS OF IMPLEMENTATION OF ECTHR JUDGMENTS

This part of the report describes the status of execution of the judgments made in previous years regarding freedom of expression, including 2021.

The Committee of Ministers of the Council of Europe (CM CoE) supervises the execution of judgments regarding the violation of the right to freedom of expression within several groups. These groups are:

1. ***For defamation; Mahmudov and Aghazade Group (1)*** - *Mahmudov and Aghazade v. Azerbaijan, Fatullayev v. Azerbaijan, Taghiyev and Huseynov v. Azerbaijan, Hasanov v. Azerbaijan;*
2. ***For journalists being subjected to violence while performing his/her professional activity; Muradova Group (2)*** - *Najaflı v. Azerbaijan, the execution of the judgment on the case of Haji and Others v. Azerbaijan with similar content is supervised within the framework of the Mammadov (Jalaloglu) Group (3);*
3. *The judgments related to Khadija Ismayilova v. Azerbaijan (4) and Hajibeyli and Aliyev v. Azerbaijan (5) (rejection of admission to the Bar because of their critical views) are reviewed separately;*
4. ***Namazov Group (6)*** - *Baghirov v. Azerbaijan, Namazov v. Azerbaijan, Aslan Ismayilov v. Azerbaijan;*
5. ***Mammadli Group (7)*** - *The status of execution of the judgment on the case of Ibrahimov and Mammadov v. Azerbaijan, in which deprivation of liberty for graffiti was considered a violation, is supervised;*
6. ***Mammadov (7308/12) Group (8)*** - *Judgment on the case of Religious Community of Jehovah's Witnesses v. Azerbaijan, in which the ban on bringing religious literature into the country was considered a violation.*

NOTE: The supervision of 4 judgments issued in 2021 - the case of Avaz Zeynalov, the case of Mammadov and Abbasov, the case of Hasanov and Majidli, and the case of Rovshan Hajiyev - has not yet been classified by groups.

In the case of E. *Fatullayev v. Azerbaijan*, the applicant, who was convicted for another crime after the ECtHR judgment, was released after the presidential pardon. Fair compensation was paid to the applicant. In this case, supervision of individual measures was closed.

After the ECtHR judgment on the case of *Taghiyev and Huseynov v. Azerbaijan*, the applicants were released from serving the rest of their sentences. The applicants have also been fully compensated.

In the case of *Hasanov v. Azerbaijan*, the applicant was pardoned by the presidential decree and released from serving the remainder of his sentence. All individual measures have not been executed in the case of *Taghiyev and Huseynov v. Azerbaijan*, as well as *Hasanov v. Azerbaijan*. The Committee of Ministers warned the Government of Azerbaijan in this regard at its 1419th meeting.³⁵

The execution of the mentioned judgments imposes the following requirements on the Government of Azerbaijan:

1. *Measures related to making amendments to defamation legislation;*
2. *Measures aimed at preventing the arbitrary application of legislation;*
3. *Execution of measures aimed at preventing violations of the right to presumption of innocence by the Prosecutor General's Office and government officials.*

At the 1419th meeting of the Committee of Ministers held on November 30-December 2, 2021, concern was expressed about the delay in reforming the defamation legislation, the government was asked to provide statistical information on the application of existing laws that provide for criminal penalties for slander and insult (defamation), as well as information on the possibility of amending the laws.³⁶

In the resolution, the concern about the content of the new Law on Media, which was being prepared in Azerbaijan, was specially emphasized, and the government was asked to cooperate with the Council of Europe in the preparation of the draft law. However, 7 days after the adoption of the resolution, the text of the new draft Law on Media was submitted to the Milli Majlis by the President.³⁷

In the resolution, the CM CoE also recalls the conditions such as taking clear measures that can protect journalists from arbitrary criminal prosecutions, adapting domestic court practice to European standards, and taking purposeful steps to improve the practice of criminal prosecution related to the media.

³⁵ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a488d7 1419th meeting, 30 November – 2 December 2021 (DH)

³⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a488d7
1419th meeting, 30 November – 2 December 2021 (DH)

³⁷ <https://www.amerikaninsesi.org/a/parlamentdə-media-haqqında-qanun-layihəsi-müzakirə-ediləcək---media-ictimaiyyəti-sənədlə-tanış-olmadığını-bildirir-/6346446.html> The draft Law on Media will be discussed in the parliament - the media community says they are not familiar with the document

Similar concerns were expressed in the resolution adopted at the 1406th meeting of the Committee of Ministers held on June 7-9, 2021.³⁸

- *Request for amendments to Articles 147 and 148 of the Criminal Code, which determine liability for slander and insult (defamation);*
- *Elimination of the practice of arbitrary and disproportionate application of criminal penalties for defamation and other provisions of the criminal law;*
- *Making changes to the practice of violation of the right to presumption of innocence by prosecutorial and executive authorities.*

In the National Action Program in the Field of Increasing the Efficiency of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan³⁹ signed by the President of Azerbaijan in 2011, the requirement "Preparation of proposals to improve the legislation in order to eliminate criminal liability for defamation" was envisaged. The draft law prepared in accordance with the Program was not in accordance with the dimensions of the CoE in terms of content (this was the opinion of the Venice Commission), and in the end, it was submitted to the country's parliament and was not accepted. In turn, the Plenum of the Supreme Court of the Republic of Azerbaijan adopted a decision in 2014 on "Giving suggestions on amendments to the Criminal Code to the Milli Majlis of the Republic of Azerbaijan as a legislative initiative".⁴⁰ In that decision, a draft amendment to Articles 147 and 148 of the CC was submitted to the Milli Majlis. The Plenum of the Supreme Court, based on the position of the European Court, considered it appropriate to prescribe only a fine in the mentioned articles. However, that initiative was not realized. On the contrary, the framework of the punishments provided for in the criminal legislation has been further expanded - fines have been increased, and those provisions have also been applied to content distributed over the Internet.⁴¹

Muradova Group; Mammadov (Jalaloglu) Group - Within these Groups, in addition to the violation of Article 10 of the Convention, the execution of more than 20 judgments, in which the violation of Articles 2, 3, 5, 6, 11, 13, and 34 has been recognized, is supervised. The execution of the judgments on the cases of Najafli v. Azerbaijan and Haji and Others v. Azerbaijan are also included in those cases. The Court considered that journalists performing their professional activities in these cases were subjected to violence and attack by police officers and other

³⁸ <https://rm.coe.int/0900001680a2b222> 1406th meeting, 7-9 June 2021 (DH)

³⁹ <https://e-qanun.az/framework/22821> Order of the President of the Republic of Azerbaijan on the Approval of the National Action Program in the Field of Increasing the Efficiency of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan

⁴⁰ <http://www.supremecourt.gov.az/post/view/590> Decision of the Plenum of the Supreme Court of the Republic of Azerbaijan on the judicial practice of considering cases regarding complaints in the form of private charges

⁴¹ <http://www.supremecourt.gov.az/post/view/590> Decision of the Plenum of the Supreme Court of the Republic of Azerbaijan on the judicial practice of considering cases regarding complaints in the form of private charges

persons and that the incidents were not investigated effectively was a violation of the right to freedom of expression.

Payment of compensation for judgments within this group has been ensured. As for other individual measures, it is reported that after the judgment on the case of Najafli v. Azerbaijan, the case has been re-examined on newly opened cases. According to the government's communication, on April 2, 2013, the Prosecutor General of Azerbaijan canceled the decision of the Sabail District Prosecutor's Office dated March 9, 2003, on the case of the applicant journalist and decided to reinvestigate the criminal case.⁴² However, the applicant stated that he did not have information about any new proceedings. The government did not provide additional information on this matter. No information was provided in the case of Haji and Others v. Azerbaijan.

As for general measures, the practice of ill-treatment in law enforcement agencies remains widespread. The situation of protection of journalists performing their professional activities continues to be problematic. Local laws provide for criminal liability for obstructing a journalist's professional activity.⁴³ Compared to individuals who interfere with the activities of journalists, officials bear a heavier responsibility. They can be imprisoned for up to 1 year for such cases. However, this provision has not been executed in the last 10 years. In several cases where journalists were subjected to violence, criminal cases were opened; however, those cases were later terminated.

Namazov Group⁴⁴ - The execution of 3 judgments is supervised within this Group. As for the general measures to be implemented, the government has not presented an action plan for this case. The CM CoE expressed its concern in the resolution adopted at its last meeting (September 2021) where it discussed the Group's case: "We note with concern the delays in providing information about individual and general measures executed or planned to be executed by the officials." In its resolution, the CM CoE called on the government to renew the proceedings on those matters due to the disproportionate nature of the decisions and sanctions imposed against the applicants. In this Group's case, the decision of the domestic courts regarding Aslan Ismayilov was annulled and his membership in the Bar Association was restored.

Mammadov (7308/12) Group (Religious Community of Jehovah's Witnesses v. Azerbaijan) - Execution of 3 judgments is under extended supervision within this Group. In the case of the Religious Community of Jehovah's Witnesses v. Azerbaijan, the Court considered the ban on bringing religious literature into the country a violation of Article 10. In the government's communication regarding the execution of the judgments included in the Group, it is stated that

⁴² <https://aihmaz.org/s%99rh-n%99c%99fli-az%99rbaycana-qarsi-2-oktyabr-2012/>
COMMENTARY: NAJAFI v. AZERBAIJAN – October 2, 2012

⁴³ <http://www.supremecourt.gov.az/post/view/590> Decision of the Plenum of the Supreme Court of the Republic of Azerbaijan on the judicial practice of considering cases regarding complaints in the form of private charges

⁴⁴ <https://aihmaz.org/5553-2/> No. 74354/13 Namazov Group's case – September 16, 2021

compensations have been paid. In the communication of the applicants, it was stated that there were problems in the payment of compensations. The government has not submitted an action plan for the execution of the judgments.

Mammadli Group (Ibrahimov and Mammadov v. Azerbaijan) - The Group's case which is under extended supervision was discussed at the December 2021 meeting of the CM CoE. The Committee noted that the claim for compensation was not satisfied in the case of Ibrahimov and Mammadov v. Azerbaijan and called on the government to pay all the sums determined by the European Court, including the calculated delay interest, without delay. The government was also invited to inform about the general measures envisaged in this case. In the case of Ibrahimov and Mammadov, other individual measures (revision of the case, etc.) were not executed.

Hajibeyli and Aliyev v. Azerbaijan; Khadija Ismayilova v. Azerbaijan - The supervision of the execution of the case of Hajibeyli and Aliyev v. Azerbaijan, where the fact that the applicants were not admitted to the Bar for their critical thoughts on the state of the advocacy institute in Azerbaijan is considered a violation of the right to freedom of expression, is still at the stage of classification. Within the framework of the judgment, some of the individual measures were executed with delay. The amount of compensation was paid in installments to the applicant Hajibeyli. Interest due to delay has not been paid. In relation to the applicant Aliyev, the compensation has been fully paid.

Execution of other individual measures is also problematic. Civil procedure legislation provides for cases to be reviewed by domestic courts; however, this has not yet occurred. The issue of the applicants' membership in the Bar Association also remains open, the government has not taken any steps in this direction.

In the case of Ismayilova v. Azerbaijan, where the dissemination of secretly taken pictures of the applicant, who is a well-known investigative journalist, on the web and the publication of derogatory articles about her are considered a violation of the right to respect for private life and the right to freedom of expression, the Court notes that measures should be taken to protect the right of journalists to freedom of expression. The case of Ismayilova v. Azerbaijan, in the light of the reports of the Human Rights Commissioner of the Council of Europe, reveals the problem of the existence of an environment of impunity in relation to violations committed against journalists. Although domestic laws provide for the necessary punishments for illegal acts committed against journalists, those provisions are not applied. It should also be noted that the compensations for Khadija Ismayilova have been paid in full.

In December 2020, the CM CoE discussed the status of execution of the judgment and called on the government in its resolution to provide information on the measures taken regarding the payment of compensation and the investigation of the perpetrators of the crime against the applicant; however, this has not been followed. Regarding general measures, the Committee

recalls the obligation of states to create an enabling environment that protects journalists and other media representatives from threats and attacks.

In its resolution⁴⁵ adopted on Khadija Ismayilova Group's case v. Azerbaijan at its 1436th meeting held on June 8-10, 2022, the CM CoE calls on the authorities to eliminate the shortcomings identified by the Court, in particular, to immediately reopen the investigation into criminal acts committed against the applicant (threat letter, secret filming, and distribution of intimate videos), to properly interrogate all witnesses, and to follow up on all leads related to the case, arising from the applicant's journalistic activities. It also calls on the authorities to provide information on whether the applicant's disclosed personal information has been removed from publicly available resources. Then, the CM CoE called on the authorities to take measures to ensure that it is the duty of investigative bodies to investigate whether there is a possible connection between crimes committed against journalists and their professional activities, as well as to take measures aimed at improving the practice of domestic courts in ensuring the balance between the right to respect for private life and reputation and the right to freedom of expression, etc.

Furthermore, the appeals of the Supreme Court regarding the acquittal of the other applicants included in the Mammadli Group in 2021 - Anar Mammadli, Intigam Aliyev, Ibrahimov and Mammadov, Khadija Ismayilova, Arif and Leyla Yunus - were ignored.

On the basis of the cases and recommendations grouped by the CM CoE on ECtHR judgments, judicial system reforms and national legislation improvement reforms did not take place, and political discrimination was observed in the payment of compensations to victims.

Although about 42 people belonging to the group of political prisoners, based on the resolution adopted by the Parliamentary Assembly of the Council of Europe on January 30, 2020, and the reports of local human rights organizations, were released in 2021, currently, there are more than 100 political prisoners in the country's prisons.

⁴⁵ <https://aihmaz.org/%c9%99riz%c9%99-%e2%84%9665286-13-x%c9%99dic%c9%99-ismayilova-grupu-az%c9%99baycana-qarsi-8-10-iyun-2022/>

8. CONCLUSION

The study shows that no progress has been made in the state of freedom of expression in Azerbaijan compared to previous years. Despite the resolutions of the Committee of Ministers of the Council of Europe, no positive changes have been recorded related to the legislation, as well as the principle of necessity for a democratic society is not followed in the interventions made on the freedom of expression on a practical level. Official authorities abuse their powers and make illegitimate interference with freedom of expression. Activists, social media users, journalists, public figures, and party members who expressed their opinions were subjected to harassment and interference by the government, and media organizations were suppressed. Many of the arrests of journalists and political activists happened after the comments written and posts shared by them. Freedom of expression is restricted not only in traditional media but also in social networks.

As can be seen from the few facts mentioned in the practical part, the police do not hesitate to openly threaten journalists, activists, and other persons, abuse their status and position to make unlawful interventions against them, and sometimes use their powers to impose an administrative fine as an unjustified means of repression to limit a person's freedom of expression.

Prosecution authorities also use the provisions which are included in the legislation and which do not have a legitimate legal purpose too widely and to an extent that is not necessary in a democratic society, assess the information as "prohibited information" at their own discretion without a judicial investigation, "warn" or sue journalists and social media users for spreading this information.

Under the law, defamation creates not only civil liability but also criminal liability and often even results in imprisonment.

Azerbaijani courts insist on not studying the experience of the ECtHR in the 15 years that have passed since the first recognition of the violation of Article 10 of the ECtHR, do not try to apply the standards of the ECtHR in their decisions, subject freedom of expression to criminal liability with defamatory claims, and do not use the test of necessity in a democratic society.

The detention, harassment, and threats against political and social activists for their dissenting opinions on social media are accompanied by gross violations of freedom of expression and the right to association.

Despite the regular demands, resolutions, and calls of the Committee of Ministers of the Council of Europe, the government does not comply with the full and unconditional execution of ECtHR judgments. Although it mainly executes the payment of non-pecuniary damage regarding the judgments, it does not care about adapting the legislation to the standards, taking concrete

measures, eliminating violations, bringing the perpetrators to justice, and applying the ECtHR experience as a rule in subsequent litigations.

9. RECOMMENDATIONS

1. Articles 147 and 148 of the Criminal Code, which stipulate liability for slander and insult, should be abolished, only civil liability should be provided for defamation;
2. The criminal cases resulting in the deprivation of liberty of journalists should be re-investigated, and the release of unjustly arrested journalists should be ensured;
3. The application of laws guaranteeing the protection of journalists performing their professional activities and the right of journalists to obtain information should be ensured.
4. The recommendations of the Committee of Ministers of the Council of Europe regarding the legal system of Azerbaijan should be implemented, the judgments of the European Court of Human Rights should be executed, and the persons responsible for relevant violations should be removed from the law enforcement and judicial system;
5. The authorities should take into account the resolutions of the Parliamentary Assembly of the Council of Europe and the reports of local human rights organizations regarding the release of political prisoners by demonstrating political will;
6. The provisions arising from the relevant ECtHR judgments regarding the protection of citizens' freedom of expression should be executed, and the persecution of social media users should be stopped.

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Reference to IDI is compulsory when using information.

Contact information:

Phone: +99450 435 95 42

Web: www.idi-aze.org

Email: info@idi-aze.org

Facebook: www.facebook.com/DTI.IDI