

# **Submission pursuant to Rule 9.2 of the Committee of Ministers' Rules Mahmudov and Agazade group v. Azerbaijan (Applications No. 35877/04, No.40984/07, No.13274/08)**

## **I. Introduction**

1. International Partnership for Human Rights (IPHR) is an independent, non-governmental organization founded in 2008. Based in Brussels, IPHR works closely together with civil society groups from different countries to raise human rights concerns at the international level and promote respect for the rights of vulnerable communities. IPHR is committed to promoting human rights worldwide but has a special focus on countries in Central Asia and the South Caucasus as well as Russia and the Ukraine. It acts to empower local civil society groups who are working to advance the protection of human rights in their respective countries and assists them with raising human rights concerns at the international level. In cooperation with partner organizations, IPHR advocates on behalf of individuals and communities who are among those most vulnerable to discrimination, injustice and human rights violations.
2. We are writing to lodge this submission pursuant to Rule 9(2) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments in respect of the Mahmudov and Agazade group v. Azerbaijan, consisting of three cases concerning imprisonment of journalists under criminal defamation charges: Mahmudov and Agazade v. Azerbaijan (Appl. no.35877/04), Fatullayev v. Azerbaijan (Appl. no.40984/07) and Tagiyev and Huseynov v. Azerbaijan (Appl. no.13274/08).

## **II. The Court's judgments in this group and CM's examination**

3. The three judgments in the Mahmudov and Agazade group concern violations of the right to freedom of expression of the applicant journalists resulting from their criminal conviction and imprisonment for insult and defamation; and, in the Fatullayev case, the arbitrary application of anti-terror legislation (incitement to violence, racial or religious hatred) leading to the applicant's extended sentence (violations of Article 10 of the European Convention on Human Rights). The Court found that the use of imprisonment as a sanction was unjustified under Article 10. The Fatullayev case also concerns violations of the right to an impartial tribunal (violation of Article 6 § 1) and the right to the presumption of innocence (violation of Article 6 § 2) due to public statements made by the public prosecutor.
4. The Committee of Ministers (CM) has regularly examined this group of cases at its quarterly DH human rights meetings since December 2010 and has already adopted four interim resolutions noting that the execution of these judgments requires three main sets of measures to be taken

by the Azerbaijani authorities, as per CM notes on the status of execution of these cases on its HUDOC EXEC database (last accessed on 3 August 2022):

- (i) those related to criminal defamation, namely legislative amendments to the Criminal Code in order to remove lengthy prison sentences for defamation (Article 147) and insult (Article 148);
  - (ii) those aiming to prevent the arbitrary application of other provisions of Criminal Code to limit freedom of expression, such as terrorism, incitement to violence, racial or religious hatred etc.;
  - (iii) and those aiming to prevent violations by the Public Prosecutor's Service and the executive of the right to the presumption of innocence.
5. In light of the upcoming examination of this group of cases by the CM at its next DH human rights meeting in September 2022, this submission provides comments on the Government's most recent communication of 25 May 2021 to the CM concerning general measures, as well as updates on most relevant developments.

### III. General measures

6. This submission provides information on the following issues:

- A. FAILURE TO AMEND DOMESTIC LEGISLATION ON DEFAMATION IN LINE WITH THE CONVENTION STANDARDS
- B. NEW LAW ON THE MEDIA AND ITS THREATS TO FREEDOM OF EXPRESSION
- C. CONTINUED APPLICATION OF CRIMINAL DEFAMATION LAWS AND INCREASED USE OF ADMINISTRATIVE SANCTIONS

#### **A. FAILURE TO AMEND DOMESTIC LEGISLATION ON DEFAMATION IN LINE WITH THE CONVENTION STANDARDS**

7. It is recalled that the CM has called upon the Government of Azerbaijan, on numerous occasions, including in its four resolutions on this group of cases, to amend the domestic legislation on defamation to ensure it is in line with the standards set by the European Court on Human Rights (the Court). It has particularly called for the removal of lengthy prison sentences for defamation, stipulated in Articles 147 (slander) and 148 (insult) of the Criminal Code. No relevant amendments have been made to date.
8. In its communication of 25 May 2021, the Government reported that '300 amendments were made to the Criminal Code by the Law adopted on 20 October 2017' (page 2). It referred to 18 offences being decriminalized and the broadening of sanctions envisaged in 158 articles of the Criminal Code to incorporate alternative penalties, including a new type of punishment, restriction of liberty (page 2). Further amendments were made to reduce application of arrest for crimes that do not pose great danger to public safety and for less grave crimes. Such reforms are presented as a part of the 'humanisation of penal policies' and reforms in the judicial-legal system started in 2017.

9. It is submitted that none of these amendments concern provisions on defamation in the Criminal Code, or are relevant to the general measures in this group of cases. Majority of the offences that were decriminalized are economic offences.<sup>1</sup> Furthermore, restriction of liberty as a new type of punishment adopted as an alternative sanction to imprisonment was only introduced to Article 147.2 of the Criminal Code concerning slander connected with accusation of committing serious or especially serious crime, but not to Article 148 of the Criminal Code concerning insult.

## **B. THE NEW LAW ON MEDIA AND ITS THREATS TO FREEDOM OF EXPRESSION IN AZERBAIJAN**

10. In its communication of 25 May 2021, the Government reported about the draft Law on Media that was being prepared at the time as a part of the implementation of the Presidential Order on “Deepening the reforms in the field of media” of 12 January 2021. The Government referred to it as a part of additional measures ‘for supporting the media and increasing its professional capacities’.
11. The new Law has not been presented to the public until December 2021, when it was about to be adopted. The Government electively invited a number of experts to closed discussions of the draft law where they did not have a possibility to effectively provide their input.<sup>2</sup>
12. On February 8, 2022, the Azerbaijani president Ilham Aliyev approved the Law on Media adopted by the Parliament on 30 December 2021.<sup>3</sup> Further to the Law, on 8 February 2022, a Presidential Order was adopted, which empowered a newly established media regulatory authority to issue sanctions for online media outlets located outside of Azerbaijan.<sup>4</sup> The order also instructed the Cabinet of Ministers to prepare a draft law establishing administrative responsibility for violating the new Law on Media.
13. The Law on Media drew significant criticism from both local<sup>5</sup> and international<sup>6</sup> rights watchdogs both during the legislative process and after its adoption and called upon the Government of

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1 In 2021, the Government has also reported on decriminalisation of these crimes in other groups of cases, including Mammadli group of cases [https://hudoc.exec.coe.int/eng#%7B%22EXEClidentifier%22:%5B%22DH-DD\(2021\)220E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXEClidentifier%22:%5B%22DH-DD(2021)220E%22%5D%7D); and Muradova, Mammadov (Jalaloglu) and Mikayil Mammadov group of cases, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1170E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1170E)

2 Interview with Khaled Agaliyev, one of the founders of Media Law Group <https://www.turan.az/ext/news/2022/1/free/Interview/en/617.htm/001>

3 Report News Agency article “New law on media adopted in Azerbaijan”, December 30, 2021. <https://report.az/en/milli-majlis/new-law-on-media-adopted-in-azerbaijan/> ;

Official website of the State Information Agency:

[https://azertag.az/xeber/Media\\_haqqinda\\_\\_Azerbaycan\\_Respublikasinin\\_Qanunu-2005649](https://azertag.az/xeber/Media_haqqinda__Azerbaycan_Respublikasinin_Qanunu-2005649)

4 Decree of the President of the Republic of Azerbaijan on amending the “Charter of the Media Development Agency of the Republic of Azerbaijan”. <https://e-qanun.az/framework/49128>

5 Public statements released by domestic human rights groups in December 2021: by 36 representatives of independent civil society consisting of journalists, experts, and human rights defenders <https://arqument.az/az/media-haqqinda-qanun-layihesi-ile-bali-aciq-muraciet/>; by BBC News Azerbaijan <https://www.bbc.com/azeri/azerbaijan-59522116>; the Union of New Generation Journalists (YNJB) <https://www.bbc.com/azeri/azerbaijan-59522116>.

6 Statement by the Committee to Protect Journalists, 10 February 2022 <https://cpj.org/2022/02/new-azerbaijan-media-law-increases-restrictions-on-the-press/>; Statement by the Norwegian Helsinki Committee condemned the new Law on Media on 10 February 2022 <https://www.irfs.org/news-feed/norwegian-helsinki-committee-condemns-azerbaijani-law-on-media/>

Azerbaijan not to adopt the Law on Media and to repeal it respectively.<sup>7</sup> Despite the widespread concerns, the government of Azerbaijan pledged to ensure the Law on Media meets international standards and adopted the law.<sup>8</sup>

14. The civil society criticism refers to the Law's excessive regulation and further extensive Government control over the media and journalistic activity and the introduction of harsher sanctions for journalists and media outlets. It established numerous requirements and regulations on audiovisual media, print media, online media entities, news agencies, and journalists. For example, according to Article 75.3.5 of the Law on Media, the journalist will be withdrawn from the Media Register and his/her journalist card will be ceased if the information, released by a journalist on three different occasions, does not meet at least 16 requirements of Article 14 (requirements for the information published or distributed in media) of the Law. Article 65 of the Law on Media lists grounds for which the operations of an on-line or print media entity can be suspended or terminated, which were criticized for their disproportionality.<sup>9</sup>
15. Among the restrictive regulations concerning content, stipulated in Article 14 of the new Law, many of the provisions are 'too ambiguous, leaving too much room for arbitrary interpretation and thereby lacking foreseeability', as described by the Venice Commission.<sup>10</sup> For example, Article 14.1.11 of the Law requires journalists to interpret facts and events 'impartially and objectively' and stipulates that 'one-sidedness must not be allowed', or otherwise heavy sanctions (the suspension for up to 2 months, restricting the access to the information (online) and other administrative penalties) will apply.<sup>11</sup> Article 14.1.6. of the Law prohibit using 'immoral lexical (swearing) words and expressions, gestures', which is a vague term and subject to wide discretionary interpretation. Article 14.1.14 envisages that 'publication (dissemination) of information about a person's guilt without a legally binding court decision should not be allowed.' Although generally such a provision may be aimed to ensure presumption of innocence, in the Azerbaijani context it will likely hinder

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7 On July 30, 2022, the Media Law Group issued a statement on summoning journalists to the prosecutor's office. It is noted in the statement that the General Prosecutor's Office issued a warning to journalists that they violated the Law on Media, did not present facts and events impartially and objectively, and allowed one-sidedness.

Regretting that the Prosecutor General's Office did not refer to the basic provisions of the Constitution regarding freedom of expression, but to the new "Media" law, whose content was criticized by the progressive world, whose application was considered unacceptable, and whose legitimacy became the subject of serious debate, the Media Law Group notes that the requirements of the Article 14 of the said Law are relevant for media subjects but not for individuals and should not be applied to individuals. More: <https://www.jamaz.info/x%C9%99b%C9%99r%C9%99r/manset/media-huququ-qrupu-jurnalists%C9%99rin-prokurorluga-cagirilmasil%C9%99-bagli-b%C9%99yanat-yaydi/>; Media Law Group is a civil society initiative working in the field of media freedom in Azerbaijan. The group was founded by lawyers Alasgar Mammadli and Khalid Agaliyev.

8 Media Development Agency's response letter dated 18 January 2022. <https://rm.coe.int/reply-by-the-authorities-of-azerbaijan-to-the-letter-of-the-council-of/1680a54990>

9 See Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe adopted a Joint Opinion on the Law on Media, 20 June 2022 (paras 42-43) [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)009-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)009-e)

10 Para 23

11 Articles 14.1.6 and 65.5 of the Law also makes references to other legislation, such as the Law on Information, Informatisation and Protection of Information, which provides additional restrictions and sanctions (administrative penalty) on "owners of information resources", for example prohibiting the placement of information of "an insulting or defamatory nature" (etc.). Article 388-1 of the Code on Administrative Offences foresees fines in an amount of five hundred to one thousand manats (290-580 EUR) for individuals or one thousand to one thousand five hundred manats (580-870 EUR) for legal officials, or up to one-month administrative imprisonment, or one thousand five hundred to two thousand manats (870-1160 EUR) for legal entities.

reporting on issues of corruption and accountability of state officials. The Law also empowers the state authority with an enormous discretion and control over media, in particular internet/online media, such as requiring an Internet portal to publish at least 20 materials per day (Article 60.5).<sup>12</sup>

16. In addition to these requirements, the Law on Media also requires from media outlets that content they publish or disseminate should also meet the requirements of the Law on Protection of Children from Harmful Information<sup>13</sup> and the Law on Information, Informatization and Protection of Information<sup>14</sup> which provides a long list of requirements, which were criticized by civil society groups for vagueness.<sup>15</sup>
17. On 20 June 2022, the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe adopted a Joint Opinion on the Law on Media.<sup>16</sup> According to the Joint Opinion, 'It has come to the conclusion that in the context of an already extremely confined space for independent journalism and media in Azerbaijan, the Law will have a further 'chilling effect'. It concluded that 'many provisions are not in line with European standards on freedom of expression and media freedom and do not allow the media to effectively exercise its role as a "public watchdog". The Venice Commission has called on Azerbaijan to not implement the Law as it stands, and provided series of recommendations in case the current Law is not repealed in its entirety. The recommendations cover the issues concerning the establishment of media entities, funding, registering in the Media Register, the accreditation scheme for journalists, the restrictions on content, the right of journalists not to disclose their sources of information, legal grounds for restricting the exercise of freedom of expression during martial periods.
18. On 18 January 2022, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, invited the President of Azerbaijan to use his authority to return a recently adopted media law to the Milli Majlis to proceed to its substantial revision. In her letter, the Commissioner raises serious concerns about the compliance of the new law with international human rights standards concerning freedom of expression and media freedom<sup>17</sup>.

### **C. CONTINUED APPLICATION OF CRIMINAL DEFAMATION LAWS AND INCREASED USE OF ADMINISTRATIVE SANCTIONS**

19. In its most recent decision on this group of cases adopted at its meeting in December 2021, the CM has asked the Government of Azerbaijan to provide statistical information concerning the number of prosecutions under defamation charges, including those which resulted in convictions, and what the sentence was, and those that resulted in acquittals. This information remains pending

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12 New Media Law: implications for online media/journalism in Azerbaijan; March 24, 2022. <https://www.az-netwatch.org/tag/online-media/>

13 The Law on Protection of Children from Harmful Information <https://e-qanun.az/framework/40764>

14 The Law on Information, Informatization and Protection of Information <https://e-qanun.az/framework/3525>

15 Azerbaijan Internet Watch. Report: Restrictive new bills sweep freedoms under the carpet [part 1]. January 11, 2021. <https://www.az-netwatch.org/news/restrictive-new-bills-sweep-freedoms-under-the-carpet-part-1/>

16 CDL-AD(2022)009-e. Azerbaijan - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Law on Media, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022).

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)009-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)009-e)

17 Council of Europe news, 25 January 2022. Azerbaijan: new media law raises serious human rights concerns and should be changed. <https://www.coe.int/en/web/baku/-azerbaijan-new-media-law-raises-serious-human-rights-concerns-and-should-be-changed>

as of the date of the drafting of this submission. The Government did not provide such statistical information in its communication of 25 May 2021 either.

20. This submission informs the Committee that the Azerbaijani courts continue applying criminal defamation charges, as well other provisions of the Criminal Code leading to conviction and imprisonment of journalists. According to the Media Law Group report 2022, most of the lawsuits against journalists related to defamation and insult stem from complaints filed in the procedure of special prosecution. In at least 11 cases, most of whom were initiated by state officials, have demanded that journalists to be imprisoned for their articles on matters of public interest.<sup>18</sup>
21. **Annex 1** provides a non exhaustive list of criminal defamation cases from 2020-2022.
22. Further to defamation charges, journalists continued being subjected to other types of pressures and harassment, including arbitrary application of Criminal Code.<sup>1920</sup> According to the Semi-Annual

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18 Media Law Group's Semi-Annual Report "LEGAL ENVIRONMENT FOR MEDIA in AZERBAIJAN 2022". Page 5 (in English) [https://www.turan.az/advertisements/smi/MRG\\_Semi\\_Annual\\_Report\\_2022\\_eng.pdf](https://www.turan.az/advertisements/smi/MRG_Semi_Annual_Report_2022_eng.pdf)

19 On June 19, 2020, the journalist of the newspaper Azadlyg Tazahan Mirally was found guilty of hooliganism. The court sentenced him to a year of restriction of freedom. The court ordered Mirally to wear an electronic bracelet and not to leave their place of residence from 23 o'clock to 7 in the morning.

On July 28, 2020, the blogger Aslan Gurbanov, suffering from a severe form of epilepsy, was arrested for four months on charges of open calls against the state and inciting national, religious, social growth. The court is currently ongoing.

On August 27, 2020 blogger Jalil Zabidov was taken to the police after critical publications. After some time, he was charged with hooliganism. The local court found him guilty and sentenced him to 5 months in prison.

On September 8, 2020, a criminal case was opened against a group of Azerbaijani bloggers working abroad. In particular, Ordukhon Temirkhan, Gurban Mammadov, Orhan Agayev, Rafael Piriev, Ali Hasanaliyev, Tural Sadygly, accused of anti-state calls were put on the international wanted list.

On October 16, 2020, the editor-in-chief of the newspaper Yüksəliş Naminə and the head of the organization Legal Enlightenment of Sumgayyt Youth, Elchin Mammadley, was found guilty under the articles "Theft" and "illegal storage of weapons". He was sentenced to 4 years in prison.

On November 16, 2020, the journalist, the head of the XEBERMAN.com website, Plad Aslanov, arrested in 2019, was found guilty of treason. The court sentenced him to 16 years in prison. On February 24, 2020, Aslanov was charged with a new charge under Article 134 of the Criminal Code (threat of murder or causing serious harm to health). Justice for Journalists. Foundation for International Investigations of Crime against Media. Independent Expert Opinion On Report On Attacks On Media Workers in Azerbaijan. 8 June 2021. More (in Russian): [https://jfi.fund/ru/report-2020-1/?fbclid=IwAR0Y0\\_c4zmA38LqMSjsME4eoPvVWhn5PCVvp3IHQX-BAV6lzQw284aneWrE#az](https://jfi.fund/ru/report-2020-1/?fbclid=IwAR0Y0_c4zmA38LqMSjsME4eoPvVWhn5PCVvp3IHQX-BAV6lzQw284aneWrE#az)

- 20 1. Elchin Mammad, head of "Yüksəliş Naminə" newspaper and yukselish.info news resource, has been in prison since March 2020. On 14 October, 2020 the Sumgait City Court sentenced Elcin Mammad to four years in prison on trumped-up charges of theft and illegal possession of weapons (Articles 177.2.4 and 228.1 of the Criminal Code).
2. Blogger Aslan Gurbanov, who was arrested by the State Security Service, was deprived of freedom for 7 years in 2021. Aslan Gurbanov was arrested by the State Security Service in 2020 and charged with anti-state appeals and ethnic hatred (Articles 281.2 and 283.1 of the Criminal Code).
3. Polad Aslanov, founder and editor of "Xeberman.com" and "Press-az.com" information websites, was detained in 2019 on suspicion of treason (under Article 274 of the Criminal Code) and sentenced to 16 years in prison. The Supreme Court reduced his sentence from 16 years to 13 years.
4. In 2022, Kim TV internet channel host Abid Gafarov was sentenced to 1 year in prison on charges of libel and insult.

Report 2022 prepared by the Media Law Group<sup>21</sup>, more than 80 incidents were registered in Azerbaijan in the first half of 2022. Among the most common incidents faced by journalists in the first half of 2022 were harassment while performing their professional activities and defamation claims in courts. At the beginning of 2022, it became common for journalists and media executives to be summoned to prosecutor's offices and questioned. The General Prosecutor's Office routinely issued warnings to several journalists and media for the articles they published or posts they shared in social media accounts (see Section C.1. below).

### **C.1. Increased application of administrative sanctions in defamation cases**

23. An increased use of administrative sanctions in defamation cases by Azerbaijani courts on the basis of the requests from the Prosecutor's Office have been observed in the last two years, along with the imposition of criminal sanctions resulting in imprisonment for defamation.<sup>22</sup> Such practice must be seen in the context of the growing warnings of the the General Prosecutor's Office to Internet users, including online media, to comply with the domestic legislation. On numerous occasions, including in December 2021, the General Prosecutor's Office publicly appealed to internet users and media representatives in the virtual space to "resolutely comply with the requirements of the legislation, as well as to conduct public discussions within the framework of the law and in accordance with ethical norms, and warned them that strict measures will be taken."<sup>23</sup>
24. It has turned into a routine reporting in the Azerbaijani media that social media users, journalists and news websites receive formal warnings or had administrative complaints against them in courts initiated by the Prosecutor General's Office. According to the Media Law Group, it became a widespread practice that journalists and media executives were summoned to the prosecutor's office and questioned. The General Prosecutor's Office issued a warning to several journalists and media for the articles they wrote or published.<sup>24</sup>
25. With such warnings or complaints the Office urges online media users and journalists to refrain from disclosing 'inaccurate and distorted information' and from spreading 'biased and misleading information' in public, allegedly in violation to the Law On information, informatization and protection of information, the provisions of which are ambiguous and allows for wide discretion in interpreting it.<sup>25</sup> Although, the warnings are formal and they are among the types of prosecutorial acts under the domestic legislation, there is no clarity as to what legal consequences such warnings can bring to concerned individuals. The documented cases of such warnings indicate that such

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21 Media Rights Group is a civil society initiative in the field of media freedom in Azerbaijan working to advance standards, protection the media and journalists, promoting freedom of expression, as well as other fundamental rights. The group was founded by lawyers Alasgar Mammadli and Khalid Agaliyev. More information about the report (in English): [https://www.turan.az/advertisements/smi/MRG\\_Semi\\_Annual\\_Report\\_2022\\_eng.pdf](https://www.turan.az/advertisements/smi/MRG_Semi_Annual_Report_2022_eng.pdf)

22 Who regulates content online in Azerbaijan? Legal analysis; May 17, 2022. In this new legal analysis, we specifically look into content regulation on the internet carried out by the Prosecutor's office and how the measures in place, silence free speech often relying on the use of a restrictive law on Information, Informatization, and Protection of Information. <https://www.az-netwatch.org/tag/prosecutors-office/>

23 December 21, 2021. The General Prosecutor's Office issued a warning to media subjects and social network users. <https://genprosecutor.gov.az/az/post/4684>

24 Media Law Group's Semi-Annual Report "LEGAL ENVIRONMENT FOR MEDIA in AZERBAIJAN 2022". More (in English): [https://www.turan.az/advertisements/smi/MRG\\_Semi\\_Annual\\_Report\\_2022\\_eng.pdf](https://www.turan.az/advertisements/smi/MRG_Semi_Annual_Report_2022_eng.pdf)

25 Report by Azerbaijan Internet Watch 'Who regulates content online in Azerbaijan', 30 July 2022. <https://www.az-netwatch.org/tag/prosecutors-office/>

actions are taken by inviting individuals to the Prosecutor's office for interrogation following which warnings are issued. If the person signs such a warning act, he/she commits to not violate the relevant laws again. Such a practice is seen as a tool to intimidate social media users, journalists and other media actors by making legal threats against them.

26. **In Annex 2**, we provide extracts of the most recent warnings and other administrative measures issued by the Prosecutor's Office against social media users, social and political activists, as well as journalists and owners of online news sites for their posts and publications online in August 2022.
27. More details about the previous warnings and other administrative offence sanctions such as administrative fines and arrests can be found in the legal analysis prepared by the organization Azerbaijan Internet Watch of 22 May 2022 "Who regulates content online in Azerbaijan? Legal analysis". It analyses the lawfulness and compatibility of the prosecutor office's sanctions and warnings to media subjects and social media users into line to international standards. According to the organization, there are at least 5 statements of General Prosecutor's Office where a group

of media subjects and social media users were warned or subjected to administrative penalties between the period of December 2021 - April 2022 (with cases described in a footnote).<sup>26</sup>

28. On 10 August of 2022, the General Prosecutor's Office held a conference titled "Ensuring the information security of the society in the conditions of media freedom and the growing influence of social networks". According to media reports, General Prosecutor Kamran Aliyev said that if actions and calls are made in some media and social network concerning a violation of the rights and freedoms of citizens and the weakening of the state's defense capacity, the national security of Azerbaijan, the prosecutor's office must take decisive steps. The Chief Prosecutor further noted (quote): "Our goal is to eliminate some gaps in the field of information. Some media representatives do not welcome this activity of ours. They consider it as an interference in the activities of the

26 **Example 1:** On April 1, 2022, the Prosecutor General's Office warned two online media platforms for spreading inaccurate information. According to *the Press Service of the Prosecutor General's Office*, "gazet.az" and "manset.az" published inaccurate information on March 31, 2022, about an incident in which as a result of collapsed school building some 20 people died, and many more were injured in Nakhchivan, thus violating the requirements of the Laws of the Republic of Azerbaijan "On Information, Informatization and Protection of Information", as well as "On Media". Neither of the laws prohibit the spread of inaccurate information, nor do these laws define what inaccurate information is. The vagueness of the terminology however does allow the law enforcement authority to define any kind of views, and comments as "inaccurate information" and take punitive or deterrent legal action against them.

**Example 2:** According to *the press service of the Prosecutor General's Office* dated January 24, 2022, the Prosecutor General's Office of the Republic of Azerbaijan continued to take preventive measures against the placement of prohibited information by law on the Internet, for the purpose of ensuring information security. The press service then referred to *five social media users* who received warnings and *one person* who was detained on the grounds of putting pressure on democratic institutions, disrupting the activities of government agencies, making calls that would result in the governance decline in the country, as well as posting insulting or defamatory information on Facebook thus violating Article 13-2.3.9 of the law on the information. However, Article 13-2.3.9 of the Law on Information, Informatization, and Protection of Information cited by the Prosecutor General's Office only prohibits the dissemination of "information that is insulting or slander, as well as infringing on the privacy of private life." The law does not prohibit the information that could be characterized as putting "pressure on democratic institutions", "disrupting government agencies", or "calling to reduce the level of governance in the country" on the list of prohibited information.

**Example 3:** On December 21, 2021, *Prosecutor's office issued a warning* to the principal of a high school, who was interviewed about the suicides among students. The Prosecutor's office said the information shared by the school principal qualified as prohibited content, and thus was unacceptable to spread. The Prosecutor General's Office did not reveal further details about the case and specifically what parts of the principal's interview violated the rules about the information on suicide. Article 13-2.3.8 of the Law on Information only prohibits the information that "promotes suicide as a method of solving problems, justifies or incites suicide, explains the methods of committing suicide or information to organize the suicide of several people in a group."

**Example 4:** On December 28, 2021, *Prosecutor's office issued a warning* to 5 social media users for violating Article 13-2 of the Information law by spreading the information without citing certain facts and sharing biased information aimed to stir sensation in the society. The prosecutor's office further urged social media users and journalists "to refrain from disclosing inaccurate and distorted information," warning "that the most serious measures would continue against the spread of biased and misleading information in society."

Similar, non-criminal legal action (i.e., warning) by the Prosecutor's Office *was made* on November 21, 2021, against some media and social network users. The Prosecutor General's Office initiated a violation of an administrative offense under Article 388-1.1.1 of the Code of Administrative Offenses and sent the case to the relevant court for consideration. In addition, three other people were warned by the prosecutor. The Prosecutor General's Office further urged more serious measures in accordance with the relevant legislation, including criminal liability against media and social network users who disseminate false and inaccurate information in order to create artificial agitation. However, Article 13-2 of the information law does not prohibit information of a "sensational" nature or for not basing information "on concrete facts" or sharing "various biased information."

<https://www.az-netwatch.org/tag/prosecutors-office/>

media. However, if we do not intervene in time when a violation of the law is about to occur, it will be negatively received by some social network users. The warnings are then is being done to prevent more serious violations of the law."<sup>27</sup>

29. In summary, the above information demonstrates that the application of criminal defamation laws continue and has increased in the last years, followed by other means such as formal warnings and administrative penalties. Such a situation is in contradiction with the Government's submission that 'the practice of rejecting the possibility of imprisonment for label and insult has continued in the national courts during 2016-2020'.

## Recommendations

- Articles 147 (slander) and 148 (insult) of the Criminal Code should be repealed.
- The Law on Media should be repealed based on the recommendations adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022).<sup>28</sup>
- Further to the Law on Media (Article 14 in particular), Article 13-2.3 of the Law on Information, Informatisation, and Protection of Information, which provides for the same excessive requirements on content for "owners of information resources", including media subjects and journalists, should be significantly reduced to meet the standards of Article 10 ECHR.
- The Government of Azerbaijan should be asked to provide the following information:
- Statistics on warnings (issued under Article 22 of the Law on the Prosecutor's Office) and administrative offences cases initiated by the General Prosecutor's Office of the Republic of Azerbaijan against media subjects and social media users during 2020-2022;
- Statistics on domestic court decisions under Articles 147 and 148 of the Criminal Code covering the period 2020-2022. The information should include the plaintiff's requests and outcomes of such cases.

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27 A conference on media freedom was held at the General Prosecutor's Office <https://apa.az/az/media/bas-prokurorluqda-media-azadligi-ile-bagli-konfrans-kecirilib-foto-yenilenib-1-717050>

28 Links to the Opinion: [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)009-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)009-e)

# Annex 1 — criminal defamation cases in 2020-2022

The below list of cases of criminal defamation is not exhaustive and is aimed to demonstrate the existence of such cases.

## 2022

1. On January 13, 2022, the Citizen and Development Party leader, Ali Aliyev was sentenced to 5 months in prison on charges of libel (Article 147.1 of the Criminal Code) based on a complaint<sup>29</sup> from an officer of the State Border Service, stemming from Mr Aliyev's comments made about the officer in an interview published on Youtube. Human Rights Watch organization condemned the arrest of the Party leader.<sup>30</sup> Ali Aliyev and his lawyer, Javad Javadov, say his imprisonment is a violation of his freedom of expression and retaliation for his political activities. Aliyev's lawyer complained of unfair treatment by the court and said his client was not given the chance to defend himself.<sup>31</sup> On 23 June 2022, the Yasamal District Court issued another verdict for libel to the imprisoned Party leader and he was found guilty under the Article 148 (insult) of the Criminal Code and sentenced to 6 months' imprisonment.<sup>32</sup> In the court's verdict, it is noted that Ali Aliyev's previous sentences are combined, and he was assigned a total term of imprisonment for 12 months with detention in a general regime colony. This is the third court defamation verdict against Aliyev in the last six months.<sup>33</sup>
2. On July 13, 2022, by the decision of the Yasamal district court of the city of Baku, Abid Gafarov was deprived of liberty for a period of 1 year.<sup>34</sup> He was charged under both Articles - 147.1 (libel) and 148 (insult) of the Criminal Code and handed down six months of imprisonment for each charge,

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29 Border guard Emil Jafarov filed the lawsuit against Ali Aliyev in response to his comments in a YouTube interview in which Aliyev expressed his doubts about Jafarov's chances of surviving a deadly helicopter crash on November 30 of last year during training flights at the Garaheybat airfield in the Khizi region. Some 14 servicemen died in the crash and two were injured, one of whom was Lieutenant Colonel Emil Jafarov. Azerbaijan's Prosecutor General's Office blamed the helicopter crash on pilot error. However, Ali Aliyev had suggested the possibility Russia was involved, speculating it could have been sabotage. In his interview, Aliyev argued that it was impossible for someone to survive a deadly helicopter crash with no burns and only minor injuries. So he suggested that Jafarov's presence on the flight was staged to back up the government's explanation.

30 Human Rights Watch: Ali Aliyev's arrest is shame. 2022 January 27. [https://www.turan.az/cache/2022/politics\\_news/free/news-2022-1-free-politics\\_news-en-818.htm](https://www.turan.az/cache/2022/politics_news/free/news-2022-1-free-politics_news-en-818.htm)

31 Azerbaijan's Jailing of Opposition Party Leader Highlights Criminalization of Slander. March 22, 2022. <https://www.voanews.com/a/azerbaijan-jailing-of-opposition-party-leader-highlights-criminalization-of-slander-/6496390.html>

32 Ali Aliyev's prison term extended. 2022 June 23. [https://www.turan.az/ext/news/2022/-free/Chetin\\_sual/en/6401.htm/001](https://www.turan.az/ext/news/2022/-free/Chetin_sual/en/6401.htm/001)

33 Azerbaijani opposition activist convicted for slander for the third time in six months. 23 June 2022. <https://jam-news.net/azerbaijani-opposition-activist-convicted-for-slander-for-the-third-time-in-six-months/>

34 Lawsuits against him were filed by a group of veterans of the second Karabakh war. At first there were seven veterans who complained, later four withdrew their complaints, Gafarov told Turan. The reason for the complaints was Gafarov's speech on the Internet, where he reproached the veterans that they "boldly attacked the Armenians, but now they are not fighting for their rights, and out of hopelessness they sew up their mouths, arrange self-immolation." True bravery is courage shown against a despot, and veterans behave "submissively". <https://www.turan.az/ext/news/2022/7/free/Social/en/7074.htm/001>

totaling in one year in prison.<sup>35</sup> Gafarov considers the accusation legally unfounded, but he did not name anyone personally. Nevertheless, the linguistic examination found “slander” and “insult” in Gafarov’s statements. “The examination issued a conclusion in 48 hours, while in practice this process takes at least a month. Everything is obvious, there is an order for my arrest,” Gafarov said before the court session on July 13. At the same time, according to him, the judge did not allow Gafarov and lawyers to make a closing statement. Abid Gafarov believes that he is being persecuted for exposure of the crimes of the security forces against the defendants in the “Terter case.

3. On June 9, 2022, the Yevlakh District Court sentenced human rights activist, Ilham (Aslanoglu) Takhmazov to six months in prison, finding him guilty under Article 148 (insult) of the Criminal Code. This is the lawyer’s second arrest in a year. Earlier, on January 28, the Yevlakh District Court found Ilham Aslanoglu guilty under the Article 147.2 (libel with charges of committing a grave or especially grave crime) and sentenced him to five months in prison.<sup>36</sup> The Institute for Reporters’ Freedom and Safety (IRFS) condemned the Azerbaijani government for arresting human rights defender Ilham Tahmazov (Ilham Aslanoglu) on defamatory charges and demanded his immediate release.<sup>37</sup>

## 2021

4. On June 10, 2020, the head of the production association of the city’s housing and communal services Shakhriyar Mustafayev filed a lawsuit against Elchin Gasanzade and blogger Ibrahim Turksoi, a journalist and employee of the site yükselish.info, working in the city of Mingyachevir. On March 2, 2021, the Sheki Court of Appeal sentenced bloggers Elchin Hasanzade and Ibrahim Turksoy to 8 months in prison on charges of libel and insult. Both were arrested in the courtroom. The reason for the lawsuit is critical publications about the official in social networks. Earlier, Mustafayev was evicted from a rented apartment for criticizing the leadership of the city of Mingachevir. The Mingachevir court earlier sentenced both to a year of correctional labor. The bloggers appealed the verdict, but the appellate court upheld the verdict, only shortening the term.<sup>38</sup>
5. According to an alternative report by Justice for Journalists submitted to the UN Human Rights Committee in Advance of Its Adoption of the List of Issues Prior to Reporting for Azerbaijan (133rd Session, 11 October 2021 - 5 November 2021), in 2021, at least 13 physical attacks and threats, 27 non-physical attacks and threats online and offline, and 60 instances of judicial and economic attacks have been documented as of 12 August 2021.<sup>39</sup>

35 The court sentenced Abid Gafarov to one year in prison. 2022 July 13. <https://www.turan.az/ext/news/2022/7/free/Social/en/7074.htm/001>

36 They are trying to silence those who talk about the “Terter case”. [https://www.turan.az/ext/news/2022/-/free/Chetin\\_sual/en/6542.htm](https://www.turan.az/ext/news/2022/-/free/Chetin_sual/en/6542.htm)

37 Institute for Reporters’ Freedom and Safety calls on Azerbaijani government to decriminalize defamation and immediately release human rights defender Ilham Tahmazov. June 14, 2022. More (in English): <https://www.irfs.org/news-feed/institute-for-reporters-freedom-and-safety-calls-on-azerbaijani-government-to-decriminalize-defamation-and-immediately-release-human-rights-defender-ilham-tahmazov/>

38 Turan News Agency, “The court sentenced two bloggers to 8 months in prison” <https://turana.az/ext/news/2021/3/free/Social/en/1852.htm>

39 Stakeholder Submission to the UN Human Rights Committee in Advance of Its Adoption of the List of Issues Prior to Reporting for Azerbaijan (133rd Session, 11 October 2021 - 5 November 2021). 12 August 2021. [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AZE/INT\\_CCPR\\_ICSAZE\\_46469\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AZE/INT_CCPR_ICSAZE_46469_E.pdf)

## 2020

In 2020, the Justice for Journalists Foundation reported at least 12 cases where journalists were sued under 147 (slander) and 148 (insult) of the Criminal Code.<sup>40</sup> Some of these cases are summarised below:

6. On June 16, 2020, entrepreneur Malakhat Gurbanova sued Anara Mamedova, the head of the Kriminal.az site. Gurbanova, engaged in pawnshop activity, was insulted by the expression “Pawnshop Malahat”. The court sentenced the journalist to correctional work for a period of one year, with the retention of 20% of his income for the benefit of the state. Mammadov is already serving a five-and-a-half-year sentence on probation for his reporting on the assassination of the mayor of the city of Ganja in 2018.
7. On June 26, 2020, the Supreme Court of Azerbaijan decided to fine the Meydan TV journalist Sevindzh Vagifgizy 1000 manats for publishing about falsifications in the elections. The school director sued the journalist, who was accused of falsifying the voting results.
8. On August 4, the head of the executive power of the Neftchal region, Mirgasan Seidov, filed a civil lawsuit against the editor-in-chief of the low-budget site bizimxeber.az, Adil Huseynli, because of his articles. The official demanded to fine the journalist 20,000 manats, the court fined the journalist 3,000 manats.

## Annex 2

Extracts of the most recent warnings and other administrative measures issued by the Prosecutor’s Office in July - August 2022:

1. August 8, 2022. The General Prosecutor’s Office of the Republic of Azerbaijan issued a warning to several social media users.<sup>41</sup>

According to the information received by the General Prosecutor’s Office of the Republic of Azerbaijan, Baku city residents Rustam Ismayilbeyli, Farid Huseynov, Goranboy district resident Elmar Mammadov and Mingachevir city resident Gulay Eyvazova were invited to the prosecutor’s office, and the requirements of the law were brought to their attention. According to the Law of the Republic of Azerbaijan “On information, informatization and protection of information”, the dissemination “false information that threatens a massive breach of public safety and the occurrence of socially dangerous consequences” is unacceptable. According to the Law of the Republic of Azerbaijan “On National Security”, steps aimed at weakening the country’s defense capabilities are considered a threat to our state, and any actions that serve this should be prevented in time. Taking into account the above, during the conversation with the mentioned persons, the socially dangerous consequences of their actions were explained to them, and a warning, which is an act of prosecutorial influence, was announced according to Article 22 of the Law of the Republic of Azerbaijan “On the Prosecutor’s Office”.

40 Justice for Journalists. Foundation for International Investigations of Crime against Media. Independent Expert Opinion On Report On Attacks On Media Workers in Azerbaijan. 8 June 2021. More (in Russian): [https://jff.fund.ru/report-2020-1/?fbclid=IwAR0nYP9uVKAf75M7SGKmPU0Dq5WtpdmOsWOLVVVMaH5G\\_-NH89AY2SJHr1Y#az](https://jff.fund.ru/report-2020-1/?fbclid=IwAR0nYP9uVKAf75M7SGKmPU0Dq5WtpdmOsWOLVVVMaH5G_-NH89AY2SJHr1Y#az)

41 A warning has been issued to several social media users. <https://genprosecutor.gov.az/az/post/5485>

2. August 4, 2022. The General Prosecutor's Office issued a warning to those who violated the requirements of the Law on "Information, Informatization and Information Protection"<sup>42</sup>

As a result of the monitoring carried out by the Prosecutor General's Office of the Republic of Azerbaijan, it was determined that Tayyar Huseynli, a resident of Absheron district, during an interview on the Internet information resource and information-telecommunication network, used sharp and insulting expressions in terms of current values in the Azerbaijani society about people with different world views and beliefs. In the discussions that took place, Mubariz Sadiqli, Nijat Dadashov and Irshad Muradov and other persons published information that was insulting or slanderous, as well as violating privacy. Thus, the requirements of Articles 13-2.2.3 and 13-2.3.9 of the Law on "Information, informatization and information protection" were violated. Taking into account the above, considering that during the conversation with the mentioned persons, they did not realize the socially dangerous consequences of their actions in time, that they realized that such writings were wrong under the current circumstances and that they would not commit such violations in the future, according to Article 22 of the Law "On Prosecution", the prosecutor it was enough to announce the warning, which is an act of impact measure.

3. July 30, 2022. The General Prosecutor's Office of the Republic of Azerbaijan warned media subjects and social network users.<sup>43</sup>

Through the conducted monitoring, it was determined that during the publication of information in the media, in some cases, the requirements of Article 14.1.11 of the Law of the Republic of Azerbaijan "On Media", i.e., the requirements for unbiased and objective presentation of facts and events, and the non-allowance of one-sidedness, were not observed. Thus, Sakhavat Mammadov, Rovshan Mammadov, Zulfugar Alasgarov, Elgun Rahimov, Fuzuli Kahramani, Zeynal Bakhshiyev and Ruslan Izzetli were warned not to allow such negative situations in the future, according to Article 22 of the Law "On the Prosecutor's Office".

4. July 27, 2022. The General Prosecutor's Office of the Republic of Azerbaijan warned media subjects and social network users.<sup>44</sup>

Thus, social media users are Fikret Farametz oglu, head of the "jamaz.info" website, Alishov Agil Balabey, head of the "miq.az" website, Ismayil Elchin Khankarem oglu, a resident of Shirvan city, Jabbarli Ali Allahverdi oglu, a resident of Lankaran district, and Fataliyeva, a resident of Khachmaz district. According to Article 22 of the Law "On the Prosecutor's Office", Nurana Etibar was warned not to allow such negative situations in the future. In addition, in accordance with Article 24 of the Law "On Prosecution" for posting information prohibited by law on his page on the Facebook social network, Shahmuradov Tofiq Tahmuraz oglu was charged with Article 388-1.1.1 of the Code of Administrative Offenses (in the Internet information reserve and or posting of information prohibited from dissemination in the information and telecommunication network, as well as failure to prevent the posting of such information) was initiated and sent to the Nizami District Court of Baku city for consideration. According to the court's decision, Tofiq Shahmuradov was sentenced to administrative detention for 1 month. The General Prosecutor's Office of the Republic of Azerbaijan addresses the media subjects and social network users and informs them

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42 The General Prosecutor's Office issued a warning to those who violated the requirements of the Law on "Information, Informatization and Information Protection". <https://genprosecutor.gov.az/az/post/5466>

43 Warning to media subjects and social network users. <https://genprosecutor.gov.az/az/post/5448>

44 Warning to media subjects and social network users. <https://genprosecutor.gov.az/az/post/5426>

that the dissemination of unverified information without any clarification with state institutions is unacceptable and leads to the liability provided by the legislation. Appropriate measures will be taken in accordance with the requirements of the current legislation against those who have caused negative situations.