

ARTICLE 19



# Azerbaijan: When the truth becomes a lie

2014

Award winning picture of police crackdown on peaceful demonstrations in March 2011 © Mehman Huseynov – Institute for Reporters' Freedom and Safety (IRFS)

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ISBN: 978-1906586-92-8

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# I. Acknowledgements

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This report is a publication of ARTICLE 19: Global Campaign for Free Expression. It was written by Nathalie Losekoot, Head of Europe and Central Asia of ARTICLE 19, with input from Edward Pittman, Program Coordinator, Open Society Program on Independent Journalism and Ramute Remezaite, independent legal expert. It was reviewed by David Diaz-Jogeix, Director of Programmes of ARTICLE 19 and Boyko Boev, Senior Legal Officer of ARTICLE 19 provided comments. It was edited by Susie Alegre and proof-read by Georgia O'Brien. The report's design and layout were done by Adam Cohen and coordinated by Ana Melissa Zarraga, Communications Officer of ARTICLE 19.

ARTICLE 19 is grateful to those who provided their expertise and analysis for the report, especially during the in-depth interviews conducted in Baku. The report could not have been prepared without the ongoing work and commitment of these courageous individuals. For safety and security reasons their names are not included here.

This report has been produced with support of Open Society Foundations. It was published as part of the International Partnership Group on Azerbaijan\* and endorsed by the following organisations (in alphabetical order):

**Civil Rights Defenders**  
**Committee to Protect Journalists**  
**Index on Censorship**  
**International Media Support**  
**Media Diversity Institute**  
**Norwegian Helsinki Committee**  
**Open Society Foundations**  
**PEN International**  
**Reporters without Borders**

\* The International Partnership Group for Azerbaijan is a coalition of international NGOs, coordinated by ARTICLE 19, working to promote and protect freedom of expression in Azerbaijan.

## Methodology

The findings of this report are based on desk research carried out by ARTICLE 19, followed by a fact-finding mission to Baku from 6-10 July 2014. During the mission, in-depth interviews were held with journalists, lawyers, civil society activists and political analysts. To protect the privacy of those interviewed and avoid retaliation against them, no interviewees have been identified by name in the report.



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## II. Executive summary

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**In 2014 the Azerbaijani authorities unleashed a vicious attack on civil society in the country, including those engaged in the protection of human rights and fundamental freedoms. The number of people imprisoned for expressing their critical opinions peacefully – whether on paper, on the Internet or on the streets – has been growing. Independent non-governmental organisations (NGOs), the media or other critical voices offline and online are being removed from public life. In the case of organisations and the media, this is being done by paralysing them, limiting their ability to operate financially. In the case of individuals – human rights defenders, NGO leaders, youth activists, social media activists, bloggers and journalists – it is being achieved by imprisoning them.**

Engaging in human rights in Azerbaijan is dangerous: attacks are both physical and psychological. Whilst drafting this report, news came that Ilgar Nasibov, a journalist from Naxçivan, was in intensive care after being brutally attacked in his office on 21 August. Individuals are subjected to arbitrary arrest, smear campaigns, pressured to ‘repent’, and they, their families and colleagues are threatened. Those involved in highlighting the issue of political prisoners in Azerbaijan at international level are particularly vulnerable and have, ironically, become political prisoners themselves.

One of the case studies in this report focuses on the wrongful imprisonment of eight youth activists, members of the youth movement N!DA. The closing statement of their trial included a reference to Live Not By Lies, an essay written in 1974 by Alexander Solzhenitsyn, a Soviet dissident. This phrase encapsulates the choice which faces every one of us; however, at this defining moment, it is particularly pertinent for the Council of Europe (CoE), if it is serious about its role as guarantor of human rights and fundamental freedoms, specifically freedom of expression.

It seems an easy choice to make, to choose the truth above lies, but the case studies in the report show how easy it has become for the Azerbaijani authorities to censor the truth. They have done this by:

- failing to adequately investigate attacks, including murders of journalists;
- imprisoning youth activists on spurious charges, with staged public appearances, as well as forcing some of those imprisoned to ‘repent’ their alleged crimes, issuing a clear warning to others not to engage in public protest;
- imprisoning Facebook activists on similarly spurious charges (such as drug possession) brought by the same department within the Ministry of Internal Affairs, creating a pattern of such charges being used to suppress the use of social media for public engagement;
- paralysing NGOs, including through imprisoning NGO leaders, and preventing information about political prisoners from being brought before international fora, such as the Council of Europe;
- putting pressure on journalists using imprisonment on spurious charges, physical attacks, threats, smear campaigns and blackmail in order to prevent uncomfortable truths from being published.

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The recent arrest and imprisonment of several NGO leaders is a disturbing new trend in the already difficult and repressive environment for civil activists and non-government organisations in Azerbaijan. These arrests not only paralyse the organisations they lead, but also clearly attempt to silence dissenting voices at international fora, such as the CoE (all these individuals are engaged at an international level). By silencing those who act and advocate for the rights of others, there is little hope for any substantial improvement of the human rights situation in Azerbaijan.

President Aliyev claims that “press freedom is fully ensured”<sup>2</sup>, but ARTICLE 19 believes that this is untrue in today’s Azerbaijan. The recent attack on the journalist and human rights defender Ilgar Nasibov in Naxçıvan will be a litmus test in demonstrating the Azerbaijani authorities’ political will to investigate the attack and bring both the perpetrators and instigators to justice. Without the resolve to establish the truth in such cases, there will inevitably be an increase in the already acute self-censorship, adding to the almost total lack of press freedom in Azerbaijan.

This is also the moment of truth for the Council of Europe, the beacon of human rights and fundamental freedoms in Europe. With Azerbaijan as the chair of its Committee of Ministers, the integrity and accountability of the whole institution is at stake should it choose to close its eyes to the truth and turn away without holding Azerbaijan to account.

The timing of this report is intended to highlight the discrepancy between Azerbaijan’s chairmanship of the Committee of Ministers (the decision-making body of the CoE, the key regional human rights body in Europe), and the country’s appalling record on fundamental rights and freedoms, particularly the right to freedom of expression. The Azerbaijani government is undoubtedly testing its ability to pretend in the international arena that it holds human rights in high regard, whereas it is clearly engaged in a campaign to decimate civic space at home and prevent critical and independent voices from freely expressing their opinion there.



# Recommendations

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## To the Azerbaijani authorities:

### General recommendations

Comply with Azerbaijan's international human rights obligations, including on freedom of expression by:

- implementing the recommendations it accepted in the Universal Periodic Review (2013);
- implementing the recommendations of the UN Human Rights Committee (2009) and submit its state report to the Committee without delay;
- implementing the Council of Europe's recommendations and resolutions taking measures to ensure a genuinely independent and impartial judicial review of cases concerning fundamental freedoms.

Ensure that everyone detained enjoys full due process rights, refrain from unjust use of pre-trial detention measures, and ensure that everyone detained has immediate access to a lawyer of their choice, access to family, adequate medical care and a trial in line with international standards.

### The right to life

Renew efforts to find and prosecute those responsible for the murders of Elmar Huseynov and Rafiq Taği, regularly informing their families of progress and providing periodic updates to the local press and the international community.

Conduct impartial and effective investigations the murders of Elmar Huseynov and Rafiq Taği, and bring to justice both the instigators and perpetrators.

### The right to protest

Ensure that the right to freedom of expression and the right to protest, both online and offline, are respected. Refrain from using spurious criminal charges to place critics behind bars.

Immediately release Bakhtiyar Guliyev, Shanin Novruzlu, Mahammad Azizov, Rashad Hasanov, Uzeyir Mammadli, Rashadat Akhundov, Zaur Gurbanli, and Ilkin Rustamzade and all other activists and protesters held on politically motivated charges.

Conduct impartial and effective investigations into the allegations of torture, inhumane and degrading treatment of anybody that is or has been held in custody by Azerbaijani law enforcement agencies, including Shanin Novruzlu, Mahammad Azizov and Kemale Beneyarli.

### The right to blog and social media

Ensure that the right to freedom of expression and the right to protest, both online and offline are respected. Refrain from using spurious criminal charges to place critics behind bars.

Immediately and unconditionally release Omar Mammadov and all other bloggers and online activists held on politically motivated charges.

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## **The right to freedom of association**

Immediately and unconditionally release Intigam Aliyev, Rasul Jafarov, Anar Mammadli, Leyla Yunus, Bashir Suleymanli, Hasan Huseynli, Emil Mammadov, and any other NGO leaders and human rights defenders detained or imprisoned in relation to their NGO activities, and drop all charges against them.

Repeal restrictive amendments to the Law on Non-Governmental Organisations (public associations and foundations), the Law on Grants, and the related changes in the Code of Administrative Offences.

Create an enabling environment where civil society organisations are able to hold public events in hotels or other spaces of their choice without interference.

## **The right to freedom of the press**

Ensure a favourable environment for all media. This should include opening up the advertising market, refraining from placing bans on distribution, and placing a cap on civil defamation claims.

Ensure an independent, speedy and effective investigation into any reported attack or threat against a journalist. Renew efforts to investigate the case of Idrak Abbasov and Khadija Ismaylova.

Immediately release Avaz Zeynalli and all other journalists held on politically motivated charges.

## **To the Council of Europe (CoE)**

### **To the Committee of Ministers:**

Condemn the crackdown on civil society in Azerbaijan and in particular the wrongful imprisonment of human rights defenders, journalists and activists there.

Call for an urgent session of the Committee of Ministers to discuss the crackdown on civil society in Azerbaijan, in particular the wrongful imprisonment of human rights defenders, journalists and activists and the implementation, or lack thereof, of the recommendations made by the Parliamentary Assembly of the Council of Europe (PACE) in its resolution 1917 (2013).

Coordinate with the PACE to deliver an opinion on the compliance of the government of Azerbaijan with its Council of Europe commitments, including resolution 1917 (2013). Follow up on the outcome and consider the suspension of Azerbaijan's Chairmanship.

Invite the Commissioner on Human Rights to visit Azerbaijan more frequently and meet with human rights defenders, journalists and activists, including those currently imprisoned.

Invite the Secretary General to consider effective measures to support human rights defenders in Azerbaijan.

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### **To the General Secretary:**

Call for an urgent meeting with the President of Azerbaijan to discuss the crackdown on civil society, in particular the wrongful imprisonment of human rights defenders, journalists and activists.

Issue Azerbaijani human rights defenders with an open invitation to Strasbourg to discuss human rights issues in an official setting.

Visit Azerbaijan and:

- visit human rights defenders, journalists and activists in custody;
- hold a public meeting with local human rights defenders;
- speak to the local media about freedom of expression and Azerbaijan's commitments to the Council of Europe.

Consider a public awareness campaign about the crackdown on civil society in Azerbaijan.

Develop a mechanism for CoE bodies to provide direct assistance to civil society, including human rights defenders, journalists and activists.

### **To the Parliamentary Assembly of the Council of Europe (PACE):**

Given that Azerbaijan is currently the Chair of the Committee of Ministers and in the light of the escalation of human rights violations in Azerbaijan, call on the President of PACE to convene a special session on Azerbaijan at its earliest convenience and:

- invite human rights defenders from Azerbaijan and international human rights NGOs to attend the special session on Azerbaijan;
- invite the President and Minister of Foreign affairs of Azerbaijan and raise the recent arrests, prosecutions and other forms of intimidation of human rights defenders, journalists and activists with them;
- consider the observations and reports of other CoE bodies about Azerbaijan (for example, the Commissioner for Human Rights, CoE resolutions on Azerbaijan's execution of judgements made by the European Court of Human Right);
- issue a resolution on Azerbaijan condemning politically motivated arrests, prosecutions and other forms of intimidation of human rights defenders, journalists and activists and calling for the release of all political prisoners;
- commission a report by independent experts on the situation of human rights defenders in Azerbaijan.

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Review the appointment of the special rapporteurs on Azerbaijan and political prisoners, and ensure that the process of appointment is transparent and the discussion informed by the opinions of international experts, including NGOs.

Appoint a co-rapporteur on political prisoners and hold Pedro Agramunt, the recently appointed special rapporteur on political prisoners, to task to swiftly and publicly react, visit and establish contact with all relevant local human rights defenders, including those currently detained and imprisoned.

Include in the mandate of the special rapporteurs on Azerbaijan to:

- hold bi-annual dialogues with human rights defenders and civil society organisations in Azerbaijan;
- investigate arrests and produce bi-annual reports on the situation in Azerbaijan;
- consider UN monitoring bodies' reports on Azerbaijan regarding its compliance with human rights standards;
- consider reports on Azerbaijan by international human rights NGOs and Azerbaijani human rights defenders.

Seek an opinion by the Venice Commission on any new legislation in Azerbaijan relating to human rights and human rights defenders.

Develop a rapid assistance and protection mechanism for human rights defenders in Europe.

Initiate the preparation of a convention for the protection of human rights defenders in Europe.

### **To the Commissioner on Human Rights:**

Establish a special monitoring programme on Azerbaijan, which includes:

- frequent visits to Azerbaijan;
- meetings with human rights defenders;
- close working with the UNHR Council and Special Rapporteurs on Azerbaijan;
- attendance of trials where human rights defenders, journalists or activists are being charged on spurious grounds, because of their professional activities;
- contact and visits to human rights defenders, journalists and activists in prison.

# III. Introduction

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The climate for freedom of expression in Azerbaijan has deteriorated significantly since the beginning of 2014, despite Azerbaijan having become the chair of the Committee of Ministers of the Council of Europe on 14 May 2014.

This is particularly true with regard to political expression, as the Azerbaijani government has demonstrated intolerance towards all forms of political dissent, both online and offline. In this report, ARTICLE 19 examines how Azerbaijan complies with its international commitments as a member of the United Nations (UN) and as a member of the CoE (the latter often called the 'bedrock' of human rights).

The right to freedom of expression is a fundamental right that cuts across other rights, with an application far broader than the rights of the media. As an empowering right, freedom of expression is crucial to the free flow of information to inform political debate, public participation in decision making and holding governments to account.

This report looks at the right to freedom of expression in Azerbaijan from the following perspectives:

- the right to life
- the right to protest (including freedom of assembly)
- the right to blog and use social media
- the right to freedom of association
- the right to freedom of the press.

ARTICLE 19 has recently developed a number of principles on the right to blog, has been directly involved in the Declaration on Crimes against Freedom of Expression, and has also considered the right to protest in a recent country report on Brazil. In this report, these principles will form a further entry point for an assessment of Azerbaijan's compliance with its international commitments in the sphere of freedom of expression.

The timing of this report is intended to highlight the discrepancy between Azerbaijan's chairmanship of the Committee of Ministers (the decision-making body of the CoE, the key regional human rights body in Europe) and its appalling record on fundamental human rights and freedoms. The Azerbaijani government is undoubtedly testing its ability to pretend in the international arena that it holds human rights in high regard, whereas it is clearly engaged in a campaign to decimate civic space at home and prevent critical and independent voices from freely expressing their opinion there.

The highlighted case studies demonstrating violations of freedom of expression cut across different professions and backgrounds and include journalists, youth activists, social media activists and bloggers, and human rights defenders. These cases show specific trends in terms of the form that the attacks and prosecutions take.



A man is restrained by police at a protest in Baku, Azerbaijan on 12 January 2013. More than 20 people were detained and fined under new legislation, introduced in November 2012, which has seen the penalties for organizing or participating in unsanctioned protests dramatically increased, severely restricting the right to freedom of assembly and association © IRFS

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One of the main criteria when selecting case studies for this report has been the motive behind the attack or prosecution; criminal charges brought against an individual rarely show clear links to their profession or occupation. Other cases studies illustrate restrictive violations, such as the blocking of bank accounts, the denial of access to hotels to hold conferences and the imposition of excessive fines leading to bankruptcy.

In this report, ARTICLE 19 calls upon the international community and, in particular the CoE and its member states, to consider the values and principles that are the backbone of one of the strongest human rights instruments in the world – the European Convention on Human Rights – and the body that holds the convention’s signatories to account, the European Court of Human Rights. These standards should be the norm and should be upheld not just in speeches, but in practice.<sup>3</sup> The right to freedom of expression should therefore be protected, both offline and online, both in law and in practice. These are trying times for the Council of Europe, with armed conflict between its member states, but as an institution it should not shy away from an internal reality check and it should refuse to ‘live a lie’.

One of the case studies in this report includes the imprisonment of eight youth activists, members of the youth movement N!DA. The closing statement<sup>4</sup> in their trial included a reference to Live Not By Lies, a 1974 essay written by Alexander Solzhenitsyn, a Soviet dissident. This phrase encapsulates the choice which faces every one of us; however, at this defining moment, it is particularly pertinent for the Council of Europe, if the Council is serious about its role as guarantor of human rights and fundamental freedoms, specifically freedom of expression.

## Structure of the Report

Following this Introduction, Chapter IV contains an overview of the international freedom of expression standards to which Azerbaijan has committed. It also includes some of the key decisions and recommendations made by international bodies and special mandates on freedom of expression in Azerbaijan.

Chapter V focuses on freedom of expression and the right to life, with a specific focus on the deaths of journalists Elmar Huseynov and Rafiq Tağı.

Chapter VI looks at the right to protest and highlights the imprisonment of youth activists from N!DA who had organised a protest against the deaths of non-combatant conscripts in the Azerbaijani army.

Chapter VII contains an analysis of the right to blog and use social media with two case studies, including the recent imprisonment of blogger Omar Mammadov and photographer Mehman Huseynov.

Chapter VIII considers the right of freedom of association, and highlights the arrest of Intigam Aliyev, Rasul Jafarov and Anar Mammadli, three internationally known human rights defenders.

In Chapter IX, ARTICLE 19 provides an overview of press freedom in Azerbaijan, and includes case studies on the closure of one of the last independent newspapers in Azerbaijan, *Azadlyq*, as well as attacks on journalists and the indiscriminate targeting of independent investigative journalist Khadija Ismayilova.

The report ends with Conclusions.

# IV. International Standards on Freedom of Expression

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International law requires Azerbaijan to ensure that the right to freedom of expression is a reality for all. The Azerbaijani Constitution, in Article 151, provides that international law takes precedence<sup>5</sup> in cases of discrepancy between domestic law and the international treaties which Azerbaijan has ratified.

This chapter provides information about the standards the government of Azerbaijan has committed itself to as a member state of the United Nations (UN), the Council of Europe (CoE) and the Organisation for Security and Co-operation in Europe (OSCE). As a signatory to major international and regional human rights treaties, Azerbaijan has binding obligations under international law to respect freedom of expression.

## United Nations

The United Nations sets out the right to freedom of expression in Article 19 of the Universal Declaration of Human Rights<sup>6</sup> (UDHR), one of its core documents:

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.

While the UDHR is not binding, the right to freedom of expression as defined in Article 19 is broadly recognised as having acquired legal force as customary international law since its adoption in 1948<sup>8</sup>.

In 1992<sup>9</sup>, as a member state of the United Nations, Azerbaijan ratified the International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup>. Article 19 of the ICCPR includes the following rights:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

The ICCPR also includes the right to peaceful assembly and association in Articles 21 and 22. In 2001, Azerbaijan also ratified the first Optional Protocol to the ICCPR,<sup>11</sup> which gives the UN Human Rights Committee jurisdiction to receive and hear complaints from individuals regarding violations of the ICCPR by States parties.<sup>12</sup>



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In July 2009, the UN Human Rights Committee (the Committee) reviewed Azerbaijan's implementation of its ICCPR commitments.<sup>13</sup> The Committee noted strong concern about limitations to freedom of expression, including harassment of and lawsuits against journalists, as well as killings and beatings of journalists.<sup>14</sup> The Committee included a specific commendation on freedom of expression in its recommendations to the Azerbaijani government<sup>15</sup>. Azerbaijan was due to submit its state report to the Committee on 1 August 2013, but failed to do so.

Azerbaijan was subject to its second Universal Periodic Review by the UN Human Rights Council in April 2013. In October 2013, it accepted all the recommendations<sup>16</sup> proposed by its peers (other UN member states), which included recommendations such as:

**“Take effective measures to ensure the full realization of the right to freedom of expression, including on the Internet, of assembly and of association as well as to ensure that all human rights defenders, lawyers and other civil society actors are able to carry out their legitimate activities without fear or threat of reprisal (Czech Republic)”.**

## Council of Europe

Upon joining the Council of Europe (CoE) in 2001, Azerbaijan assumed a responsibility to “accept the principles of the rule of law and of the enjoyment by all people within [their] jurisdiction of human rights and fundamental freedoms”<sup>17</sup>. Having ratified the European Convention on Human Rights (ECHR)<sup>18</sup> it is equally bound to respect Article 10 of the ECHR, which protects the right to freedom of expression.<sup>19</sup>

In its application to become a member of the CoE, Azerbaijan undertook obligations to “guarantee freedom of expression and the independence of the media and journalists” and to “exclude the use of administrative measures to restrict the freedom of the media”. It was also obliged to “re-examine and amend, at the latest within one year of its accession, the rules governing registration of associations and appeals procedures”.<sup>20</sup> However, since joining in 2001, Azerbaijan has continually ignored the numerous reports and accompanying resolutions<sup>21</sup> about its fulfillment of its obligations and commitments, also exemplified by several decisions of the European Court of Human Rights.<sup>22</sup> Where it has responded, for example, to the report by the CoE Commissioner on Human Rights on 23 April 2014<sup>23</sup>, it refutes any wrongdoing or violations.<sup>24</sup>

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ARTICLE 19 is concerned that the Azerbaijani government pays little attention to the responsibilities attached to its membership of the CoE, whereby it should offer all its citizens full protection from human rights violations. The organisation fears that Azerbaijan's Council of Europe membership provides the country with a platform for legitimatising its appalling human rights performance. One example was its imprisonment of eight youth activists from the N!DA youth movement following a politically motivated trial<sup>25</sup>. This was condemned at both international<sup>26</sup> and national level only two days before a visit by the Secretary General of the CoE and just eight days before Azerbaijan assumed the chairmanship of the CoE Committee of Ministers on 14 May 2014.

Recently, international human rights organisations have started to become more vocal in their criticism of the CoE's inaction against the mounting evidence of human rights violations in Azerbaijan. In July 2014, Amnesty International highlighted that the "fact that PACE is not elaborating a strong and consolidated stance on human rights violations in Azerbaijan indicates that PACE itself is struggling to meet its human rights expectations. Although PACE decided to proceed with a separate report on 'Azerbaijan's Chairmanship of the Council of Europe: What follow-up on respect for human rights?', it remains to be seen whether PACE is ready to impartially scrutinize the human rights situation in Azerbaijan. The rapporteur appointed for this report is already the PACE co-rapporteur on the monitoring of Azerbaijan. Not designating a separate rapporteur raises questions about impartiality of the process."<sup>27</sup> ARTICLE 19 concurs with this analysis.

ARTICLE 19 fears that the lack of reaction by the CoE to Azerbaijan's violations of human rights might lead to the erosion of the CoE's credibility as an effective institution that effectively protects the human rights of all under its jurisdiction.

### The Organization for Security and Co-operation in Europe (OSCE)

As an OSCE participating state, Azerbaijan has commitments to uphold freedom of expression under its so-called "Human Dimensions"<sup>28</sup>. These provide specific recommendations for states to address their responsibilities, setting them out in numerous documents<sup>29</sup>, which link back to the UDHR and ICCPR:

In accordance with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and their relevant international commitments concerning seeking, receiving and imparting information of all kinds, [the participating States] will ensure that individuals can freely choose their sources of information.

Similar to her predecessor, Miklos Harazsti, the current Special Representative for Freedom of the Media, Dunja Mijatović has spoken out in the strongest terms about the Azerbaijani authorities' failure to fulfil their commitments. She has included Azerbaijan in a "Hall of Shame" for failing to bring to justice those responsible for the unsolved 2005 murder of Elmar Huseynov.<sup>30</sup>

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In her latest report to the OSCE Permanent Council, Mijatović indicated that 2014 saw the highest number of imprisoned journalists since the establishment of her office: “this troubling trend is a sign of a rapidly deteriorating media freedom environment, which discourages investigative journalism and contributes to a climate of threat and intimidation”.<sup>31</sup> In the same report, she stated that she had issued a public statement on 15 May 2014 “expressing my outrage by the eight year prison sentence handed down to Parviz Hashimli, a journalist with the newspaper Bizim Yol”, and had called on the authorities to stop imprisoning journalists for their work.

On 22 August 2014,<sup>32</sup> Mijatović expressed alarm at the violent attack against Naxçıvan journalist and human rights defender Ilgar Nasibov on 21 August, stating “This ongoing persecution of independent journalists, media activists and freedom of expression advocates must stop immediately. The authorities in Azerbaijan have to do their utmost to stop these practices”.

# V. The Right to Life

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## Introduction

Every time a journalist is killed in Azerbaijan, especially when this happens with impunity, it has a particularly chilling effect on freedom of expression. There is no specific international convention or legal instrument providing exclusive protection to journalists, bloggers and media workers; however, the state does have obligations to protect them, to investigate all attacks against journalists and to prosecute perpetrators. One of the few international standards addressing the effect of impunity and the importance of journalists' safety and security is the Joint Declaration on Crimes against Freedom of Expression adopted in 2012<sup>33</sup>, which squarely places the responsibility for protecting journalists on the state. In addition to this, Article 3 of the UDHR guarantees everyone the right to life, liberty and security of person.

These are backed up by General Comment No. 34 – Article 19<sup>34</sup>, in which the UN Human Rights Committee (HRC) called on states to “put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression”, and stated that attacks - including arbitrary arrest, torture, threats to life and killing – on people for exercising their right to freedom of expression are never compatible with Article 19 of the ICCPR.<sup>35</sup> It also noted that “journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports. [...]. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted,

and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.” The HRC also emphasised that this obligation also “requires States Parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression”.

The CoE Committee of Ministers stated in 2014:

“Eradicating impunity is a crucial obligation upon States, as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system. All attacks on journalists and other media actors should be vigorously investigated in a timely fashion and the perpetrators prosecuted. The effective investigation of such attacks requires that any possible link to journalistic activities be duly taken into account in a transparent manner.”<sup>36</sup>

The European Court of Human Rights has also extensively addressed the issue of violence against journalists in its case law on Article 2 (right to life), and Article 10 (freedom of expression) under the European Convention on Human Rights.<sup>37</sup> A 2010 Recommendation by PACE recommends that the Committee of Ministers<sup>38</sup> ‘assist member states in training their judges, law enforcement authorities and police in respecting media freedom, in particular as regards protection of journalists and media against violent threats and gives its full support to ensure that the high number of murders of critical journalists are investigated and brought to justice’.

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The murder of journalist Elmar Huseynov in 2005 is symbolic of both the cycle of violence and the broader decline of free expression in Azerbaijan, both of which are ongoing and rapidly deteriorating. The persistent targeting of selected individuals in the years following Huseynov's murder has confirmed that those who attack or harass journalists do so in the knowledge that they will not be punished for their crimes.<sup>39</sup>

The case studies in this chapter highlight how little effort the Azerbaijani authorities have taken to find the real killers and instigators of the murders of Elmar Huseynov and Rafiq Tağı. Tağı's murder in 2011 is another case where no one has been brought to justice.

## Case Study 1: Killed for publishing critical commentary

### Rafiq Tađi<sup>40</sup>

**Died:** 23 November 2011 in Baku, aged 61.

**Role:** Writer and freelance journalist who wrote for, among others, 'Sanat' newspaper and the Azeri service of *Radio Free Europe/Radio Liberty* (RFE/RL).

**Focus:** Rafiq Tađi, a critic of President Aliyev, had a long career as both a journalist and author of several books of essays, short stories and poems. An essay entitled '*Europe and Us published in Sanat*' in 2006 provoked protests in Azerbaijan and Iran. It also led to the Iranian Grand Ayatollah Fazel Lankarani declaring a fatwa (Islamic legal pronouncement) calling for the death of Rafiq Tađi.<sup>41</sup> In 2007, Tađi and the editor of 'Sanat', Samir Sadagatoglu, were given prison sentences for three and four years respectively for inciting religious hatred. After serving eight months, both were released by Presidential pardon.

On 10 November 2011, when Azerbaijani-Iranian relations were particularly tense, Rafiq Tađi published an article *Iran and the Inevitability of Globalisation* at [www.kulis.az](http://www.kulis.az). The article was very critical of Iran and its ruling regime. On 28 November 2011, after Tađi's death, Grand Ayatollah Fazel Lankarani's son, Ayatollah Mohammad Javad Lankarani, made a statement congratulating Rafiq Tađi's killer and the Azerbaijani nation.

**Case details:** While on his way home late in the evening of 19 November 2011, Rafiq Tađi was attacked by a group of men in a car-park and stabbed repeatedly with a knife. Tađi was taken to hospital but died on 23 November as a result of his injuries. The day before his death, he gave an interview from his hospital bed in which he suggested that the attack might be in retaliation for the article, *Iran and the Inevitability of Globalisation*.<sup>42</sup> Others have suggested that the attack could have been an attempt to stir up feeling for observant Muslims in Azerbaijan<sup>43</sup>

**Investigation:** A joint investigatory-operational team involving representatives of the Ministries of National Security, Internal Affairs and the Office of the Prosecutor General was established soon after Tađi's death. Tađi's wife and her lawyers complain that no effective investigation into the attack was carried out despite their numerous appeals. Moreover, Tađi's wife (hereafter referred to as the 'victim') has had no access to any investigation material, as national law provides that such access can only be provided after the investigation is over. This means a victim is prevented from participating in the investigation and in effectively challenging the actions of investigatory bodies.

**Current status:** In January 2014, the General Prosecutor's Office issued a decision to suspend the investigation. His lawyer confirmed that an application to the European Court of Human Rights is currently being prepared.

**Background:** After Taği's death, the Embassy of the Islamic Republic of Iran in Baku released a statement denying Iran's involvement with his murder. Instead they claimed it had been a "Zionist-American sabotage to undermine the strategic Iranian-Azerbaijani relationship". Several questions were raised about the treatment the journalist had received while in hospital. Taği had appeared to be in a stable condition after surgery and was fit enough to provide an interview. In the hours before his death, however, he was moved out of intensive care to an ordinary ward.<sup>44</sup> A week after his death, Taği's family expressed their concern that no one had been held liable. Their lawyers appealed to the Ministry of Health for his medical records, but these were not released due to the ongoing criminal investigation.

Rafiq Taği's murder was widely condemned by many, including the OSCE Special Representative for the Media.<sup>45</sup> On 15 December 2011, PACE<sup>46</sup> passed a resolution in which it condemned the murder. Lawyer Khalid Bagirov stated: "Rafiq Taği was a public figure. His murder is a crime against society as

a whole. If the criminals are not punished, then not a single dissident in Azerbaijan will be able to feel safe".

ARTICLE 19 is concerned that Azerbaijan failed to launch an independent, speedy and effective investigation in the case of Rafiq Taği, and that it has to date failed to bring to trial, before impartial and independent tribunals, both the perpetrators and the instigators of these crimes. The fact that Azerbaijani legislation restricts the provision of information regarding on-going criminal investigations, effectively leaves family and colleagues in the dark, allowing investigators to ignore their input and opinion.

Grave of Rafiq Taği © IRFS



## Case Study 2: Impunity for killing of head of independent newspaper Elmar Huseynov<sup>47</sup>

**Died:** 2 March 2005 in Baku, aged 37.

**Role:** Founder and editor of the independent news magazine, *Monitor*.

**Focus:** Elmar Huseynov was widely known for his harsh criticism of the Azerbaijani authorities, particularly of President Ilham Aliyev and his father, former President Heydar Aliyev. Starting his career in the early 1990s, the award-winning journalist worked for several publications including the daily newspaper *Zerkalo* and the weekly paper *Alver*. In 1995, he established the weekly magazine *Monitor*, but was forced to close the publication in 1998 after being convicted of ‘insulting the nation’. The authorities had previously made several attempts to close down the printing companies that published *Monitor*. Throughout his professional career, Huseynov was subject to frequent harassment by the authorities.

**Case details:** Elmar Huseynov was returning home from work at approximately 9pm on 2 March 2005 when he was shot multiple times in the stairwell of the building where he lived. He was fatally wounded and died at the scene. It is believed that the murder was premeditated and well planned. The light in the entrance of Huseynov’s apartment building was not working and telephones in the nearby area had been disconnected. After his death,

his family stated that he had received several threats and had been concerned about his safety.

**Investigation:** On 7 April 2005, a month after Huseynov’s death, investigators in Baku stated that they had identified six suspects, all Georgian citizens, in connection with the journalist’s murder. The Georgian authorities refused to extradite the suspects due to lack of evidence. Neither the motive nor any evidence linking the suspects to the murder was made public and five of the men did not remain under suspicion. Huseynov’s family and colleagues criticised the authorities for failing to investigate possible motives relating to his professional activity.

In April 2005, the Prosecutor General’s Office reclassified the case from ‘premeditated murder’ to an ‘act of terrorism’. Investigators claimed that the murder was intended to destabilise the country, and President Ilham Aliyev condemned Huseynov’s murder as a “provocation against the Azerbaijani state” and an “act of terrorism.”

In May 2005, it was announced that a 46-year-old Georgian citizen was the chief suspect in the journalist’s murder. The suspect was later identified by the National Security Ministry (MNB) as Tahir Hubanov. Huseynov’s wife, Rushana Huseynova, reported that the man,



using a different name, had come to their apartment several times in the week prior to the murder asking when the journalist would be at home. However, Mrs Huseynova has stated that she is 'skeptical' that investigators have identified the real killer, and said she believes her husband was killed because of his work as a journalist.

Throughout the investigation, the authorities have continued to blame the Georgian authorities for their lack of cooperation in refusing to extradite the two main suspects, Teymuraz Aliyev and Tahir Khubanov.<sup>48</sup>

**Current status:** More than nine years after Elmar Huseynov's death, no-one has been brought to justice for his murder. In 2007, Huseynov's former colleague Eynulla Fatullayev published an in-depth examination of the unsolved killing. He claimed that the murder had been ordered by high-ranking officials in Baku and carried out by a criminal group.

ARTICLE 19 is concerned that Azerbaijan failed to launch an independent, speedy and effective investigation into the murder of Elmar Huseynov; that it did not consider new evidence published in 2007; and that, to date, it has failed to bring to justice both the perpetrators and instigators of these crimes.



Sabir Huseynov at the grave of his son Elmar Huseynov © Aziz Karimov

# VI. The Right to Protest

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Following the sentencing of Azerbaijani youth activists in a Baku court on 6 May 2014, supporters clashed with police. © Jahangir Youssouf (RFE/RL)



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Protest is an important part of any society, allowing people to express their feelings and challenge injustice.<sup>49</sup> There is nothing new about the Azerbaijani authorities' dislike of demonstrations that are critical of their policies; the authorities have implemented particularly tight restrictions on the right to freedom of assembly since the violent break-up of a peaceful opposition demonstration after the 2005 parliamentary elections.<sup>50</sup> In 2013, President Aliyev confirmed this again when addressing Azerbaijani police officers:

'I remember 2005, when some forces wanted to stage the notorious "orange revolution" in Azerbaijan, but the decisive actions of the police stopped those negative things. Then, in 2005, the situation was not the same as now. In some cases Azerbaijan came under pressure from international organizations. Now, of course, no-one can put pressure on us, and I can say that such attempts have been exhausted. But then the pressure on us was quite strong to condemn the actions of the police who were allegedly overzealous, and to punish them. In other words, we were left with a choice. I said back then and I want to say again now that not a single policeman will be punished.'<sup>51</sup>

Although there is no explicit right to protest within international human rights standards, ARTICLE 19 believes that this right is protected implicitly under international law as it is the exercise of three interrelated and interdependent rights<sup>52</sup>, all guaranteed under the UDHR & ICCPR:

- freedom of expression;
- freedom of peaceful assembly;
- freedom of association.

The European Court of Human Rights has ruled that the right to protest is protected by both the right to freedom of expression and the right to peaceful assembly. It has recognised that the right to organise and participate in public gatherings is inherent to the right to express, receive and communicate ideas and information without interference<sup>53</sup>.

Pictures taken at demonstrations in Azerbaijan have been widely distributed and show heavy-handed police action when dispersing protests.<sup>54</sup> Amendments to the Law on Peaceful Assembly in May 2008 stipulated that demonstrations can only be held at a number of approved sites, all of which are remote and far from the centre of Baku.

Further changes to the Law on Freedom of Peaceful Assembly were adopted in November 2012. These criminalised participants in peaceful gatherings who cause significant violations of the rights and legal interests of citizens, and garnered concern from the UN Special Rapporteur on Peaceful Assembly and Association.<sup>55</sup> On 14 May 2013 further changes were made to the Code of Administrative Offences, increasing the maximum period of administrative detention to 60 days for "organising, holding and attending an unauthorised assembly". These amendments were considered by the CoE Commissioner for Human Rights to "clearly have a chilling effect on the organisation of or participation in demonstrations".<sup>56</sup>

The case study below clearly demonstrates the extent to which the authorities want to quash public protest, and sends a message to think twice to anyone wanting to organise a demonstration. President Aliyev enjoys staunch support from

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Azerbaijan's private and state-owned media, and opposition news outlets face constant pressure through a steady barrage of defamation suits and fines. Squeezed out of the mainstream media and political debates, many opposition activists, particularly Azerbaijani youth, are faced with a daily struggle for political visibility. With no end in sight to the arrests of young activists, the struggle for those who dissent looks set to continue in Azerbaijan.<sup>57</sup>

ARTICLE 19 is currently aware of up to 10 activists behind bars for organising or participating in protests.



March 2014, wall in Baku © NIDA

### Case Study 3 - Imprisoned for organising protests N!DA activists<sup>58</sup>

**Role:** Nida Civic Movement (Azerbaijani: N!DA Vətəndaş Hərəkatı), commonly referred to as N!DA or Nida, is a civic youth movement founded in early 2011 by a number of young people wanting to achieve democratic and social changes in Azerbaijan. Nida means exclamation mark in Azerbaijani.<sup>59</sup>

**Arrested:** Between 7 March - 1 April 2013, seven N!DA members were arrested by police on suspicion of instigating violence during a planned protest on 10 March 2013 about deaths of conscripts in the Azerbaijani army as a result of hazing and bullying. Those arrested were:

- Bakhtiyar Guliyev
- Shanin Novruzlu
- Mahammad Azizov
- Rashad Hasanov
- Uzeyir Mammadli
- Rashadat Akhundov
- Zaur Gurbanli.

Later that year, on 17 May, Ilkin Rustamzade (from 'Active Youth', another youth movement) was also arrested as part of the same criminal investigation.

**Charge:** The eight youth activists faced charges that ranged from illegal drugs possession (Article 234.1 of the Criminal Code), to illegal weapons possession (Article 228.1), and illegal

weapons possession by an organised group (Article 228.3). They were later also accused of planning to organise acts of public disorder (Article 220.1).

**Convicted:** 6 May 2014 (sentences ranging from six to eight years).

**Case details:** Following the arrest of the youth activists, their homes were searched, and officials from the Ministry of National Security claimed to have found illegal drugs at Mahammad Azizov's house, and illegal drugs and bottles filled with gasoline (improvised weapons) at the homes of Bakhtiyar Guliyev and Shanin Novruzlu. For ten days the three activists were refused a lawyer of their choice, and afterwards claimed to have been threatened and beaten into making a confession by officials of the Ministry of National Security. On 9 March 2013, two of the activists (Guliyev and Azizov) were shown on state television, confessing to planning to use Molotov cocktails at the protest.<sup>60</sup> Shanin Novruzlu, who was a minor at the time of his arrest, was apparently beaten so badly in pre-trial detention that he lost four of his front teeth. None of these allegations were effectively investigated. The activists and their relatives maintain that both the drugs and the fuel bottles were planted by officials from the Ministry of National Security. Following the court decision, at least one of the activists, Bakhtiyar Guliyev, announced he had left

N!DA and submitted a request for clemency, 'repenting' his actions. He also stated that he wanted to be removed from the list of political prisoners that had been created by other civil society activists.<sup>61</sup>

**Current status:** Imprisoned.

**Background information/motive:** All members of N!DA were active on social media, in particular Facebook and Twitter, and engaged in discussions, some using satire, about human rights and democracy that were critical of the regime. The younger members of the group (Guliyev, Novruzlu and Azizov) had posted an announcement online advertising a protest to be held on 10 March 2014 against the death of conscripts in the Azerbaijani army as a result of hazing and bullying. This triggered a reaction from the authorities, who had reacted with force during previous protests.

On 30 April 2014, other N!DA youth activists Turgut Gambar, Albulfez Gurbanli and Ilkin Rustemzade were sentenced to 10-15 days' administrative imprisonment for participating in an unsanctioned memorial service to mark the four year anniversary of a shooting at Azerbaijan's State Oil Academy, and had their heads forcibly shaved.

On 6 May 2014, more than 25 protesters were arrested during a rally following the sentencing

of the activists at Baku City Grave Crimes Court. Most were fined, although three protesters were given administrative prison sentences on 7 May for participating in an unauthorised protest. One of them, Kemale Beneyarli, received a 30-day administrative prison sentence. According to Amnesty International, she told her lawyer that her head had been severely beaten on 7 May at Nasimi District Police Station for refusing to sign an incriminating statement before the trial hearing. On 8 May, she had emergency medical treatment at Binagadi Temporary Detention Centre. No information is available as to whether her allegations of torture and inhumane and degrading treatment were investigated by the Azerbaijani authorities.

ARTICLE 19 believes that youth activists and others who actively engage in public protests, organised online or offline, are targeted to prevent criticism of government policy from becoming public. The imprisonment of youth activists on spurious charges, the staged public appearances, and the "repenting" of their alleged crimes by some of those who have been imprisoned are a clear warning signal to others not to engage in protest. Any protest, even the smallest action (such as a flash mob by five individuals in support Rasul Jafarov, one of the arrested human rights defenders, on his birthday on 17 August 2014<sup>62</sup>), result in arbitrary arrests and/or police violence.

# VII. The Right to Blog and Social Media

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In its recent policy paper *Right to Blog*<sup>63</sup>, ARTICLE 19 highlights the invaluable part that blogging plays in the free flow of information worldwide. It enables a true exchange of information in ways that traditional media did not support in the past. It also allows an immediate sharing of information with its audience and immediate feedback. It represents a valuable form of alternative journalism and is an example of the Internet's 'democratisation of publishing.'

In the 21st century, many bloggers will take their place alongside traditional media as watchdogs. The international community and individual states must develop protection for bloggers, just as they have developed protection for traditional media. Throughout history, the traditional media have obtained protection as a group even though many members of the media are not concerned as individuals with advancing public interest. Similar protection must be provided for bloggers.

This is in line with the UN Human Rights Committee's interpretation of the minimum standards guaranteed in Article 19 of the ICCPR in General Comment No.34.<sup>64</sup> Importantly, the HR Committee has stated that it protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression. In other words, the protection of freedom of expression applies online in the same way as it applies offline.

In May 2013, the Azerbaijani Milli Məclis (Parliament) adopted amendments to the Criminal Code<sup>65</sup>, whereby the offences of criminal defamation (Article 147) and insult (Article 148) were amended to include expression on the Internet and at public demonstrations.

The maximum penalties for both offences remain six months' imprisonment, although this can be extended to three years' imprisonment for aggravated defamation (Article 147.2).

The inclusion of all expression on the Internet broadens the scope of criminal defamation significantly, suggesting that communications on social network sites could be criminally liable. This is particularly concerning since restrictions on political activism and a lack of media diversity has made the Internet the main refuge of freedom of expression and political dissent in Azerbaijan.<sup>66</sup>

Although it is seldom used today<sup>67</sup>, the threat of criminal defamation has an ongoing chilling effect on the journalistic and now the online communities. The first reported conviction on a charge of criminal defamation online was on 30 July 2013 against Facebook user Mikhayil Talibov, for allegedly libellous Facebook posts, although he was later acquitted.<sup>68</sup>

## Imprisonment of bloggers and other social media users

Instead of using criminal defamation charges, there is a clear trend in Azerbaijan to target those who are critical of the regime online with other criminal charges not related to their exercise of their right to freedom of expression, but spurious charges including hooliganism or drug possession. One of the first cases that attracted attention about the use of such charges was the case of the two 'Donkey' bloggers – Emin Milli and Adnan Hajizade<sup>69</sup> in 2009. At the time ARTICLE 19 stated that it believed that Milli and Hajizade were targets of political persecution because they used blogging as a tool to further civic participation.



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*Our Vision prevails over their fear...  
Our Passion prevails over their power...  
Our Love prevails over their hate...  
Celebrate our Vision for Freedom!  
Passion for Justice!  
Love for Humanity!*

*1st letter from Emin Milli from prison  
11 November 2009<sup>70</sup>*

A more recent case concerns Mehman Huseynov (see *Case Study 5*), a social media activist and photographer with the Institute for Reporter Freedom and Safety (IRFS). He was detained in June 2012 on spurious hooliganism charges<sup>71</sup>, and although released, is subject to a travel ban as the investigation is ongoing. He has been repeatedly arrested, held and questioned for several hours, and then released.<sup>72</sup>

In the last two years, the pattern of using drug possession charges to target bloggers and social media activists has become evident, with the imprisonment of at least five social media activists on the same spurious charges, followed by allegations of ill-treatment and an unfair trial.<sup>73</sup> The following two case studies show this pattern of abuse, with Facebook users in particular coming under attack.

## Case Study 4: Social media activist in prison

### Omar Mammadov<sup>74</sup>

**Role:** Youth activist and popular blogger, administrator of Facebook page “AzTV-dən seçmələr” (‘Exclusives from AzTV’), and founder of the pro-opposition Axın (Akhin – ‘Current’) youth movement.

**Arrested:** On 24 January 2014 by the Anti-Drug Department of the Ministry of Internal Affairs. Mammadov (aged 19) was not allowed to inform his family about his detention or retain a lawyer of his choosing before being placed in pre-trial detention for three months on 25 January.

**Charge:** Manufacturing or possession of a large quantity of illegal drugs (Article 234.4.3 of the Azerbaijani Criminal Code)

**Convicted:** 4 July 2014.

**Case details:** In October and December 2013, before Mammadov’s arrest, his father was summoned by the Ministry of Internal Affairs, warning him to keep his son, then studying abroad, away from opposition political activity. Two days before Mammadov’s arrest, police invited Mammadov and his father for a “talk”, confiscated Mammadov’s laptop, and demanded that he close the ‘Exclusives from AzTV’ Facebook page. Mammadov’s lawyer told the international human rights organisation Human Rights Watch that police beat Mammadov in

custody, although the prosecutor’s office said its investigation found no evidence of any beating. The forensic examination results showed no signs of illicit drug use. His trial began on 30 April 2014.

**Current status:** Imprisoned.

**Background information:** Before founding the Akhin movement, Mammadov was an active member of the N!DA Civic Movement, and a member of a local branch of the Civic Solidarity Party. At the request of his father, he left N!DA, instead establishing the Akhin movement in November 2013, which was not political and provided a platform for discussing cultural topics. He was an active blogger and administrator of the Facebook page ‘Exclusives from AzTV’. AzTV is Azerbaijan’s main state television channel and the page, with 57,000 followers, featured satirical and critical posts about the government.



Omar Mammadov © Kenan Qasimli

## Case Study 5: At risk of prison for using social media

### Mehman Huseynov<sup>75</sup>

**Role:** Social media activist and photographer with the *Institute for Reporters' Freedom and Safety* (IRFS) and *Turan News Agency*, and activist with the 'Sing for Democracy' Campaign during the Eurovision TV song contest in May 2012 in Baku.

**Arrested:** On 12 June 2012 in Baku. He was released on 13 June 2012; however, the charges against him still stand.

**Charge:** Hooliganism (Article 221.2.2 of the Azerbaijani Criminal Code).

**Convicted:** He faces up to five years' imprisonment if convicted.

**Case details:** On 21 May 2012, Huseynov was taking photos of an opposition protest in Baku in his professional capacity as a journalist. He got into an altercation with a police officer, whom Huseynov says attacked and insulted him, breaking his camera. On 5 June 2012, the police sent an official summons to Huseynov's home. As Huseynov was abroad at the time, he reported to the Sabail District Police Station when he returned to Baku on 12 June 2012. He was questioned for three hours and then detained on charges of hooliganism. He was held in custody for nearly 24 hours until the Sabail District Court released him on 13 June 2012 with the

provision that he must not leave Baku for two months while the investigation continued.

**Current status:** On 20 June 2012, Huseynov was summoned by officials from the Sabail District Police Station and sent to the Sabail district state medical facility where he was given a medical examination to determine whether he had been injured during the 21 May 2012 protest. Huseynov's lawyer noted that this was a due process violation as a full month had passed since the protest.

Despite the fact that the charges against Huseynov were brought over two years ago, they have not been dropped and have effectively prevented Huseynov from travelling abroad.

**Background information:** Huseynov's photos and videos, often documenting human rights violations, are widely used by the Azerbaijani and international press. His YouTube channel has nearly 2,000 subscribers and has had nearly 2.5 million views. Huseynov is seen by many local campaigners as "the first victim of Eurovision" as he may have been targeted for his activism with the 'Sing for Democracy' Campaign, which used the Eurovision Song Contest held in May 2012 in Baku as a platform to promote democracy and human rights in Azerbaijan.

His Facebook page SANCAQ – on issues happening in and around Baku - had over 165,000 visits in July 2014. In addition to his work with IRFS, Mehman Huseynov is the brother of IRFS Chairman Emin Huseynov, which may have been another motivating factor behind his arrests, as his brother is also a vocal advocate for free expression in Azerbaijan, both at home and abroad, notably at international fora such as the Council of Europe. On 5 August 2014, Emin Huseynov was also barred from leaving the country and faces imminent arrest.

ARTICLE 19 believes that social media users who express critical opinions in Azerbaijan and who have thousands of followers, in particular on Facebook, are targeted for expressing such criticisms. With at least five such Facebook activists behind bars on similar charges (drugs possession), brought by the same department of the Ministry of Internal Affairs, there seems to be a pattern of such charges emerging to suppress the use of Facebook for public engagement. With other activists wishing to remain anonymous and refrain from publicity around their case, there is concern that there are at least another fifteen estimated Facebook activists currently in prison.



Mehman Huseynov © Turkhan Garisha

# VIII. The Right to Freedom of Association

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Article 11 of the ECHR and Article 22 of the ICCPR guarantee the right to freedom of association, and Azerbaijan has committed to ensuring the protection of this freedom at national level. In Azerbaijan, however, freedom of association has been at the heart of the governmental policy to suppress critical voices in Azerbaijan. Local and international non-governmental organisations (NGOs) focusing on the promotion of democracy and human rights in Azerbaijan are increasingly becoming the targets of government repression. The government uses both legislative and policy measures to suppress the environment in which civil society functions including:

- burdensome and lengthy regulations and procedures
- selective and arbitrary application of laws
- difficulties in finding venues for events
- (recently) legal prosecution of NGOs and their leaders.

## Lengthy, burdensome and selectively applied registration procedures

In Azerbaijan it is very difficult to register as a domestic or international NGO, and registration procedures are often aimed selectively and arbitrarily at NGOs deemed critical of the government. According to local civil society reports, around 1,000 human rights groups remain unregistered to date in Azerbaijan<sup>76</sup>. The Venice Commission concluded that the “NGO registration procedure is one of the most problematic aspects of the law in general”<sup>77</sup>. There are at least four cases against Azerbaijan where the European Court for Human Rights has found denial of registration

to be in violation of the right to freedom of association<sup>78</sup>.

Acquiring legal status is crucial for the effective operation of an NGO in the country, as it is required to receive a grant, open a bank account, and other procedures. Therefore, all NGOs willing to effectively operate in Azerbaijan are subject to state registration overseen by the Ministry of Justice.

The suspension of the work of the Azerbaijan Human Rights House (AHRH), which served as a resource centre and conference venue for local groups, illustrates the arbitrary nature of government action against critical international NGOs. In March 2011, the Ministry of Justice suspended the AHRH’s registration, and ordered it to cease its work, claiming it was in breach of a law that requires all international groups or their local affiliates in Azerbaijan to sign separate agreements with the government allowing them to operate. The negotiations on such an agreement have not yet led to any resolution<sup>79</sup>.

In 2013 and 2014, the government introduced a series of new amendments to laws regulating NGO activities, paving the way for further repression.

## New restrictive amendments on grants

In March 2013, new tougher sanctions were adopted for NGOs that receive funding from a donor without registering a grant agreement with the Ministry of Justice<sup>80</sup>. This led to fear that the punitive nature of the fines could potentially serve as a pretext for government harassment of NGOs<sup>81</sup>. The amendments also make it essentially

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impossible for unregistered groups to fund their work through donations and grants. Previously, individuals affiliated with unregistered groups could sign grant agreements and, without threat of sanction, use the funds to support activities of an unregistered organisation.

In February 2014, another set of restrictive amendments to a number of laws regulating NGO operations in Azerbaijan was signed into law by the President of Azerbaijan. The new legislation introduces additional obligations for organisations with regard to their registration as legal entities, their receipt and use of grants, and their reporting to the government<sup>82</sup>.

Even though the declared purpose of these changes was to increase the transparency and accountability of NGOs, ARTICLE 19 is concerned that the impact of this legislation seems to be aimed at further reducing civil society's ability to hold the Azerbaijani authorities to account<sup>83</sup> and ultimately shut critical organisations down.

### **No public space for NGOs to hold events**

Another factor which hampers the exercise of the right to freedom of association is the increasing trend in 2014 of hotels and conference centres refusing NGOs space to hold their events. Very often the NGOs organising the events are informed at the last minute that the venue and other services have been cancelled by the hotel or conference centres, despite having signed agreements and/or having made advance payments.

In January 2014, the 'Art for Democracy' campaign was prevented from screening a documentary film on artistic freedom of expression in Azerbaijan at the Park Inn Hotel in Baku. Just minutes before the launching of the event, there was a power cut at the hotel, affecting only the floor where the event was to take place. At the time, hotel staff blamed it on technical problems but later on admitted that it was the result of pressure on hotel management, although they didn't specify by whom. Later the same year, the 'Art for Democracy' campaign had to cancel other events due to last minute cancellations by the Central Park Hotel and Grand Hotel in Baku.

Several other NGOs, including the Women's Association for Rational Development, the Institute for Reporters' Safety and Freedom, the Election Monitoring and Democracy Studies Centre and the National and International Studies Centre, experienced similar difficulties with the Park Inn Hotel in 2013 and 2014 involving last minute cancellations. All these examples clearly illustrate a new and worrying trend of interference with NGO activities in Azerbaijan.

On 19 August 2014, United Nations human rights experts condemned the growing tendency to prosecute prominent human rights defenders in Azerbaijan, and urged the Government "to show leadership and reverse the trend of repression, criminalization and prosecution of human rights work in the country."<sup>84</sup>

The call, made by the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the promotion and protection of the

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right to freedom of opinion and expression, stated that they “are appalled by the increasing incidents of surveillance, interrogation, arrest, sentencing on the basis of trumped-up charges, assets-freezing and ban on travel of the activists in Azerbaijan” and called for the “criminalization of rights activists” to stop.

### Unprecedented crackdown on independent NGOs and their leaders

The Azerbaijani government’s introduction of this series of new repressive amendments to laws regulating NGO activities in 2013 and 2014 paved the way for an unprecedented crackdown on independent NGOs and imprisonment of their leaders.

On 13 May 2014, the Serious Crimes Investigation Department of the Prosecutor General’s Office launched a criminal case against a number of local and international NGOs under Articles 308.1 (abuse of power) and 313 (service forgery) of the Criminal Code on the basis of allegations of irregularities found in the activities of a number of domestic NGOs and branches or representative offices of foreign NGOs. Soon after, the Azerbaijani authorities froze the bank accounts of more than 20 local and international NGOs, along with those of their leaders, imposed travel bans and detained the leaders of several Azerbaijani NGOs, including Leyla Yunus, the Director of the Institute for Democracy and Peace, one of the initiators of a list of political prisoners presented to the Council of Europe.

Officially, the charges brought against the NGO leaders stemmed from their NGO activities, either a lack of registration or other alleged violations of the repressive NGO legislation. Coupled with criminal charges of tax evasion and abuse of power, the authorities effectively made it impossible for independent NGOs to operate legally. These steps were broadly condemned internationally and locally, including, for example, the International Bar Association’s Human Rights Institute, whose Deputy Chair stated that “When the arrests are placed in the context of bank accounts being frozen of numerous NGOs operating in Azerbaijan and President Ilham Aliyev signing into law controversial amendments to Azerbaijan’s NGO regulations, a perturbing picture emerges.”<sup>85</sup>





NDA - Photo: Ahmed Muktar August, 2013

## Case Study 6 – Arrested for protecting human rights at international level

### Intigam Aliyev

**Role:** Chairman of the Legal Education Society and award-winning human rights lawyer. One of the main lawyers litigating cases of human rights violations in Azerbaijan at the European Court of Human Rights (ECtHR), he has made over 200 applications and has won more than 40 cases in the last 20 years.

**Arrested:** On 8 August 2014, Intigam Aliyev was arrested by the Serious Crimes Investigation Department of the Prosecutor General's Office and sentenced the same day to three months' pre-trial detention by the Nasimi District Court in Baku. His office and home were searched that morning and various materials, including case files, were confiscated.

**Charges:** Tax evasion (Article 213 of the Criminal Code of the Republic of Azerbaijan), illegal enterprise (Article 192) and abuse of power (Article 308.2).

**Case details:** Arrested on the above mentioned charges as part of a criminal case against a number of national and international NGOs on charges of alleged irregularities found in the activities of the Legal Education Society. The case and the charges followed a series of repressive amendments to laws regulating NGO activities adopted from February 2013 onwards.

**Current status:** In pre-trial detention at Baku Pre-Trial Detention Centre, Khurdakhani settlement.

**Background information/motive:** Intigam Aliyev is a distinguished human rights lawyer and is often referred to as 'müəllim' (teacher), an honourable title which expresses the highest respect in Azerbaijan. He has been defending the rights of Azerbaijani citizens in domestic courts for almost 20 years and is one of the few human rights lawyers in Azerbaijan to have successfully litigated cases before the ECtHR. Since 2001, when Azerbaijan joined the Council of Europe, Intigam Aliyev has sent more than 200 applications to the ECtHR and has won more than 40 cases related to freedom of speech, freedom of association, the right to fair trial, the right to liberty and security and the right to free elections, among others.

Currently, more than 20 cases representing more than 40 applicants are being communicated by the ECtHR to the Azerbaijani government regarding violations stemming from the Azerbaijani parliamentary elections in 2010. During the raid on the offices of the Legal Education Society on 8 August 2014, when Intigam Aliyev was arrested, the materials of all the cases were seized, preventing the applicants themselves from continuing with the

litigation. In December 2008, the ECtHR upheld a complaint by Aliyev against the government of Azerbaijan under Article 11 for refusing to register the Azerbaijani Lawyers Forum in 2003.<sup>86</sup> In November 2005 Aliyev was refused admission to the Bar Association of Azerbaijan.<sup>87</sup>

Aliyev has been consulted by international organisations, including the Organisation for Security and Co-operation in Europe and the Council of Europe, as an expert on the rule of

law and human rights and is often invited as a guest speaker.

On 4 March 2013, Intigam Aliyev was awarded the annual prize of Homo Homini 2012 by the Czech human rights organisation People in Need for his achievements in the field of human rights, especially for his personal courage and exceptional dedication to protecting the rights of victims of human rights violations.



Intigam Aliyev ©Daniel Janik RFE/RL

## Case Study 7 – Arrested for counting political prisoners Rasul Jafarov

**Arrested:** On 2 August 2014, Jafarov was arrested by the Serious Crimes Investigation Department of the Prosecutor General's Office and sentenced that day to three months' pre-trial detention by the Nasimi District Court in Baku. Prior to that, his personal bank account had been frozen and he had had a travel ban imposed upon him with the confiscation of his passport.

**Charges:** Tax evasion (Article 213 of the Criminal Code of the Republic of Azerbaijan), illegal enterprise (Article 192), and abuse of power (Article 308.2).

**Case details:** The charges against Jafarov stem from the Human Rights Club's lack of registration with the Ministry of Justice. Established in December 2010, the NGO made numerous<sup>88</sup> unsuccessful attempts to register. The Human Rights Club's complaint is currently pending before the European Court of Human Rights. The Council of Europe's Commissioner for Human Rights, Nils Muižnieks, raised concerns about the Human Rights Club in his report following his visit to Azerbaijan in May 2013. Meanwhile, Jafarov had been receiving grant funds as a registered individual taxpayer, a common practice in Azerbaijan in response to the difficulties human rights groups face when they try to register.

**Current status:** In pre-trial detention at Baku Pre-Trial Detention Centre, Khurdakhani settlement.

**Background information/motive:** Rasul Jafarov is considered to be one of the most courageous Azerbaijani human rights defenders, well known for the successful human rights campaign 'Sing for Democracy' which he coordinated, held in the wake of the Eurovision song contest in Baku in May 2012. The campaign used the contest as a platform to expose human rights violations in the country to the wider public, making use of the contest's national and international media attention. The campaign transformed into the 'Art for Democracy' initiative that mobilises artists as part of the human rights community.

In the last few years, Rasul Jafarov has become one of the most outspoken Azerbaijani human rights advocates at international fora, including the United Nations, as well as at regional organisations, such as the Council of Europe, exposing the government's failures to meet its international obligations. As part of his international advocacy activities, Jafarov has been actively advocating for the release of political prisoners<sup>89</sup> in Azerbaijan, and for the appointment of a special rapporteur on political prisoners in Azerbaijan at the Council of Europe.



Rasul Jafarov © Aziz Karimov

Immediately before his detention, together with several other local NGOs, Jafarov was working on the compilation of a comprehensive list of political prisoners to be presented to the newly appointed CoE rapporteur on political prisoners in Azerbaijan' however, he himself ended up on that list. By arresting Jafarov, the authorities sent

a clear message to the younger generation that international human rights advocacy will not be tolerated in Azerbaijan and that those exercising the right to freedom of expression and assembly will be swiftly dealt with by the authorities.

## Case Study 8 – Arrested for exposing election violations Anar Mammadli and Bashir Suleymanli



Anar Mammadli © Aziz Karimov



Bashir Suleymanli © Parvana Bayramova

**Role:** Anar Mammadli and Bashir Suleymanli are the Chairperson and the Executive Director respectively of the Election Monitoring and Democracy Studies Centre (EMDSC). EMDSC is the only independent domestic election observation group in Azerbaijan and has been operating since 2001.

**Arrested:** On 16 December 2013 Anar Mammadli was arrested by the Serious Crimes Investigation Department of the Prosecutor General's Office and placed under 3-month pre-trial detention.

**Charges:** Appropriation in significant size (Article 179 of the Criminal Code of the Republic of Azerbaijan), tax evasion (Article 213), illegal enterprise (Article 192) and abuse of power (Article 308.2).

**Case details:** Anar Mammadli and Bashir Suleymanli were the first victims of the unprecedented wave of repression targeting NGOs. The charges in their cases stem from their organisation's lack of state registration, similar to the case against Rasul Jafarov and the Human Rights Club.

**Current status:** Imprisoned.

**Background information/motive:** Anar Mammadli and Bashir Suleymanli are highly respected human rights defenders whose human rights organisation has conducted countrywide, independent citizens' election observation in Azerbaijan since 2001. EMDSC is a member of the European Platform for Democratic Elections (EPDE), and Anar Mammadli was elected to the EPDE's board on 10 December 2013. EMDSC has faced many challenges in relation to its registration due to legislation establishing excessively bureaucratic procedures.

Following the 9 October 2013 presidential elections, EMDSC published several critical reports about the electoral process. Soon after, on 16 December 2013, Anar Mammadli was arrested.

On 9 May 2014, two United Nations independent experts, the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, and the UN Special Rapporteur on the rights of peaceful assembly and association, Maina Kiai, called for the immediate release of Mammadli and Suleymanli<sup>90</sup>. Mammadli was one of the participants in a June 2013 consultation convened by Maina Kiai in Geneva

as part of the preparation of his report on the exercise of the rights to freedom of peaceful assembly and freedom of association in the context of elections. Kiai stated that he was "troubled" to learn about the imprisonment of both Mammadli and Suleymanli.

"Civil society plays a key role in ensuring transparent and fair elections by monitoring the exercise of public freedoms in such critical times. Silencing these human rights defenders would not only have a devastating impact on the Azerbaijani civil society as a whole, it would also indelibly stain the 2013 presidential elections," said the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya.<sup>91</sup>

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## Further cases of imprisonment

The leaders of two NGOs based outside Baku have been convicted on charges not directly linked to their NGO activities. On 14 July 2014, Hasan Huseynli, the President of the Ganja-based 'Intelligent Citizen' Enlightenment Centre Public Union operating in Ganja, was convicted on dubious charges of armed hooliganism and unlawfully carrying a cold weapon, and sentenced to six years in prison. On 13 May 2014, Emil Mammadov, the Head of the NGO 'Promoting Democracy' in the southern region of Salyan, was arrested on charges of extortion following a complaint made by a group of people, including members of the Salyan local executive authority. Local human rights groups believe such charges to be politically motivated in retaliation for the human rights work of the two NGOs.

ARTICLE 19 believes that the recent arrests and imprisonment of several NGO leaders is a disturbing new trend in the already difficult and repressive environment for civil activists and non-government organisations operating in Azerbaijan. Linked to their professional activities, these arrests not only paralyse the organisations they lead but, as all these individuals were also engaged at international level and include a prominent human rights lawyer, are also clearly an attempt to silence any dissenting voices at international fora, including the Council of Europe. By silencing those who act and advocate for the rights of others, there is little hope for any substantial improvement of the human rights situation in Azerbaijan.



# IX. Press Freedoms

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Press freedom and, in particular, individual journalists have been under severe attack for many years in Azerbaijan where critical publications have been involved. This has included financial pressure, imprisonment of journalists on politically motivated charges, as well as physical attacks and blackmail. This chapter focuses on physical attacks and blackmail attempts, as both financial pressure and imprisonment have been covered in previous chapters, and they follow a similar pattern when relating to press freedom.

## One of the few left – the newspaper *Azadlyq*

The main opposition newspaper, *Azadlyq*, was forced to stop publication for one week on 1 August 2014, as it was unable to pay 20,000 manat (approx. 25,500 USD) to the state-owned printer. At the time, it was owed 70,000 manat (approx. 89,000 USD) by the state-owned distribution company GASID. This was the latest incident in which financial difficulties put pressure on the newspaper. In 2012 and 2013 similar situations arose, exacerbated by several astronomical fines, including a civil defamation claim, which led to a temporary freeze of the newspaper's bank account. Due to a ban on distribution by individual sellers throughout Baku and by kiosks on selling the newspaper at Baku metro stations, the number of copies distributed has now dwindled to 10,000, half of what it was in 2010.<sup>92</sup>

Ganimat Zahid, the editor-in-chief, who himself spent more than two and a half years in prison on spurious charges of hooliganism brought against him in 2007, told Reporters Without Borders in

August 2014: “*Azadlyq*, which means ‘freedom’, will live since freedom is the very essence of man and mankind. ... We know that the fight for basic freedoms has no borders and that dictators all use similar methods to crack down on these freedoms. But we shall not give in.”<sup>93</sup>

## Spurious charges

Whereas it has become rare for journalists to be imprisoned on criminal defamation charges, the authorities are now resorting to other articles in the Criminal Code that carry heavier prison sentences. Local experts believe that the concerns raised by the international community about the use and abuse of defamation led to this change of tack by the government. The charges now used against journalists carry much longer sentences than criminal defamation, which used to be up to three years; the average sentence today is seven years<sup>94</sup>.

It is now the norm, similar to the cases of imprisonment of the youth activists, social media activists and human rights defenders, for journalists, too, to be pressurised and silenced through imprisonment on spurious charges. One charge journalists particularly fear is bribery. At the time of writing, at least 10 journalists are imprisoned, including Avaz Zeynalli<sup>95</sup>, accused of bribing a (former) Member of Parliament.

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## Physical attacks and threats against journalists

As mentioned in Chapter I, the UN HRC<sup>96</sup> has called on states to “put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.” It also noted that “All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.” The UN HRC also emphasised that this obligation also “requires States Parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression.”<sup>97</sup>

The two cases studies highlighted below fall into this category. The case study of Idrak Abbasov is particularly relevant with regard to the State's responsibility to ensure protection of the individual from any acts by private persons. The case of Khadija Ismailylova highlights the threats and intimidation that journalists in Azerbaijan face because of their professional activities.

# АЗАДЛЫГ

АЗӘРБАЙҠАН ХАЛҢ ЧӨБҮӨСИНӨНН ГӨЗӨТӨ

№ 1 24 ДЕКАБР 1989-ЧУ ИЛ.

ТРИМАТИ 20 ТОННАДЫР



## ТОФИГ ФИКРӘТ МИЛЛӘТ ШӘРҢИСИ

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 Чәһ гәрәһәһә, гәһ гәрәһәһә, шәһ гәрәһәһәһә бәд.  
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First page edition of Azadlyq (Freedom) newspaper 24 December 1989 ©ARTICLE 19

## Case Study 10 – Attacked for being an independent journalist Idrak Abbasov<sup>98</sup>

**Role:** Investigative journalist – worked for the now defunct Russian-language newspaper *Zerkalo*, as well as the Institute for Reporters' Safety and Freedom (IRFS). He is also the local correspondent for the Institute of War and Peace Reporting.

**Focus:** Social and political issues, human rights, and the illegal demolition of properties by the authorities.

**Date of attacks:** February 2009<sup>99</sup> and 18 April 2012 (with previous attacks in 2001 and 2005).

**Current status:** In February 2009, Idrak Abbasov travelled to the autonomous republic of Naxçivan, where he was invited to a meeting at the Ministry of National Security. Arriving at the building, he alleges that he was subjected to torture and other ill-treatment by ministry officials for several hours and accused of being an Armenian spy. His photos and footage from his camera were deleted by ministry officials, after which he was ordered to leave Naxçivan immediately.

On 18 April 2012, Abbasov was one of several journalists reporting on the demolition of houses by the State Oil Company of Azerbaijan Republic (SOCAR) in the Sulutapa settlement in the Binagady district of Baku<sup>100</sup>. Although SOCAR security guards ordered him to stop

filming, he refused and continued. Shortly afterwards, the journalist was violently attacked by around 20 SOCAR security guards, who knocked him to the ground and hit him repeatedly with rubber batons, wooden sticks and kicks to his head, eyes, ears, chest, ribs and abdomen until he lost consciousness. The incident was reported to the police, who were present at the scene. They failed to intervene to protect Abbasov, or his brother, who tried to intervene and was also injured. Idrak Abbasov was hospitalised in Baku because of his serious injuries, which included severe concussion, broken ribs and significant trauma to his right eye. Gunay Musayeva, a journalist from the newspaper *Yeni Musavat*, who was with Abbasov at the time of his attack, was also assaulted.

**Investigation:** The Azerbaijani authorities have not initiated any investigation into the allegations of torture and other ill-treatment of Abbasov by Ministry of National Security officials in the capital of Naxçivan in February 2009.

Regarding the attack by SOCAR security guards in the Sulutapa settlement in April 2012, Abbasov appealed several times to the Prosecutor General's Office, the Minister of Internal Affairs and the Binagadi District Police Department, requesting that a criminal investigation be initiated. The Ministry of Internal Affairs' Main Investigation and Inquest

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Department opened a criminal case, but charged the SOCAR security guards with hooliganism, which Abbasov has objected to. He stated to Index on Censorship: “*This wasn’t hooliganism; this is an Article 163 case, obstruction of the lawful activities of a journalist.*”<sup>101</sup> Abbasov has since stated that he believes his attackers’ intention was to kill him. Officials at SOCAR, the state oil company whose employees attacked the journalist, also announced their own investigation at the end of April 2012, and in a media report, SOCAR’s President stated the attackers had been sacked, but no further information was made available. In May 2013, SOCAR reportedly blamed Abbasov for instigating the attack himself.<sup>102</sup>

**Current status:** No progress has been made regarding the 2009 attack. With regards to the 2012 attack by SOCAR security guards, to date no effective investigation has been conducted. No perpetrators were identified and brought to justice, despite evidence (pictures, videos and witnesses). The investigation failed to identify the SOCAR security guards who were present during the incident and responsible for the violence against the journalist; neither the police nor the witnesses present at the scene were called for interrogation about the case; the journalist was not provided with the forensic medical expert’s report, which had been conducted after a long

delay (11 June 2012) and after numerous requests. The journalist has had no access to any investigation material to date, as national law provides that such access can only be provided after an investigation is closed. In May 2014, after exhausting all domestic remedies, the journalist applied to the European Court of Human Rights regarding the ineffective investigation.

**Background information:** Abbasov has alleged that he has been beaten up several times by state officials while carrying out his professional duties. According to the local director of IWPR in 2012: “In May 2001, for example, when covering an opposition protest, he was struck round the head with a police truncheon and spent a month in hospital. In October 2005, while covering another opposition demonstration, he was badly beaten by plainclothes police, only regaining consciousness after two months of treatment.”<sup>103</sup>

In March 2012, in recognition of his work, Index on Censorship awarded Idrak Abbasov the Guardian Journalism Award for “investigative journalism of dogged determination across a range of media, including print, online, radio and television”.



İdrak Abbasov © IRFS

In his acceptance speech, Abbasov acknowledged other Azerbaijani journalists at risk, saying: “This is the price that my colleagues in Azerbaijan are paying for the right of the Azerbaijani people to know the truth about what is happening in their country. For the sake of this right we accept that our lives are in danger, as are the lives of our families. But the goal is worth it, since the right to truth is worth more than a life without truth.”<sup>104</sup>

The attack in 2012 attracted the attention of the international community. On 24 May 2012, the European Parliament passed a resolution on the human rights situation in Azerbaijan in support of Mr Abbasov and another journalist, Khadija Ismayilova, who was being threatened for her reporting<sup>105</sup>.

The Guardian, The Daily Telegraph, The Independent, The Wall Street Journal, CBC News and BBC News all connected the attack to the Eurovision Song Contest<sup>106</sup>.

The case was also highlighted by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, in his report following a visit to Azerbaijan in May 2013, in which he expressed concern about violence against journalists.<sup>107</sup>

## Case Study 11- Attacked for being an independent journalist

### Khadija Ismayilova<sup>108</sup>

**Role:** Independent investigative journalist, works for both Azerbaijani and foreign media, regularly contributing to Radio Free Europe/Radio Liberty's Azerbaijani service.

**Focus:** High-level corruption in Azerbaijan.

**Date of attack:** Blackmail: 7 March 2012, with an online smear campaign launched one week later, continuing throughout 2013. In February and March 2014 she was interrogated several times by the Serious Crimes Investigation Department of the Prosecutor General's Office as a witness in a criminal investigation into the leaking of state secrets<sup>109</sup> after posting a letter from the Ministry of National Security on Facebook.<sup>110</sup>

**Current status:** On 7 March 2012 Khadija Ismayilova received a letter including six intimate photographs of herself along with an explicit threat of defamation, using insulting and derogatory language. Envelopes containing the explicit images were also sent the same day to her boyfriend, to several relatives, and to a number of opposition media outlets. Taking the decision to make the attempted blackmail public, Ismayilova posted a message on her Facebook page on 8 March 2012, linking the blackmail to her efforts to reveal "corruption at the highest level and

disclosed the mysteries of offshore business of members of the ruling family."<sup>111</sup>

A week later, on 14 March 2012, a one-minute, sexually explicit video of Ismayilova with her boyfriend appeared online. It had been filmed by a camera secretly installed in her apartment. The footage was posted on a fake news website, with a URL that falsely suggested a connection with Azerbaijan's opposition Musavat (Equality) Party. The website had been registered on 11 March to a US-based Internet Protocol (IP) address. Earlier, on 13 March, the *Yeni Azerbaijan* newspaper, considered to be the official organ of the ruling Yeni Azerbaijan Party, published a long and scurrilous article attacking Ismayilova and her employers at Radio Free Europe/Radio Liberty (RFE/RL). Ismayilova took legal action against the newspaper; however, the claim was not accepted by the court.

**Investigation:** On 15 March 2012, the Office of the President of Azerbaijan issued a statement strongly condemning the actions against Khadija, describing them as a "dirty campaign" and a "provocation" and vowing to do everything possible to bring those responsible to justice. The next day, the Prosecutor General's Office opened an investigation into what they termed an "invasion of privacy", but refused to include





Khadija Ismayilova © RadioSvoboda.org (RFE/RL)

the threats against her. Khadija Ismayilova subsequently stated, in an interview with RFE/RL, that “[t]he Baku prosecutor’s office statement showed that the prosecutor’s office was not doing anything substantial on the investigation. They were not investigating the crime....Instead, they were investigating me, my lifestyle, and my friends.”

**Current status:** Ismayilova has carried out her own investigations into the blackmail attempt and the installation of hidden cameras in her home. She discovered information about the post office in Moscow that the original letter was apparently mailed from, and identified an employee of a phone company who admitted to her that he had been instructed to install additional wires outside her apartment. The journalist has handed over all her findings to the Prosecutor General’s Office, but so far they appear not to have followed up her leads. She filed three complaints against the Prosecutor General’s Office for lack of investigation, none of which were admitted in court.<sup>112</sup>

Throughout 2013, pro-government newspapers continued the smear campaign, with references and links to the intimate video, and articles about her and her family containing lies. In April 2013, a video appeared online on a pro-government website, showing a woman resembling Ismayilova and claiming it was her. Ismayilova stated to RFE/RL that these were fabricated. In July 2013, more intimate videos appeared online, apparently filmed in her apartment.

Between 8 and 25 February 2014, Ismayilova was summoned five times as a witness by the Serious Crimes Investigation Department

of the Prosecutor General's Office as part of an investigation into the leaking of state secrets to alleged US intelligence agents. On 12 March she was summoned again to testify at the Serious Crimes Investigation Department of the Prosecutor General's Office. She had posted online a letter she had received written by a former Ministry of National Security officer in exile, which included information about the recruitment of an opposition figure by the ministry. The letter had already been circulated on the Internet in 2011.

**Background information:** From 2008 to 2010, Ismayilova was the Baku bureau chief for *Radio Azadliq*, RFE/RL's Azerbaijani Service for which she still hosts a popular talk show *After Work* and for which she frequently publishes reports. Ismayilova has won numerous awards for her investigative reports including RFE/RL Story of the Year Award in 2011 for her exposé on the commercial interests of Aliyev's daughters. She was given the Gerd Bucerius Free Press of Eastern Europe Award in May 2012 and the Global Shining Light Award in October 2013.

Khadija Ismayilova's case is not an isolated one; this is not the first time that smear campaigns have been used to try and intimidate journalists in Azerbaijan. The editor and director of the newspaper *Azadliq*, Ganimat Zahid and Azer

Akhmedov, were subjected to similar harassment in 2005, while journalist Agil Khalil was also a victim of harassment in 2008.

Despite President Aliyev's claims that "press freedom is fully ensured"<sup>113</sup> in Azerbaijan, ARTICLE 19 believes that this is untrue today. The lack of effective investigation into physical attacks, smear campaigns, blackmail, and the murder of journalists are at the core of the lack of justice given to journalists in Azerbaijan.

# X. Conclusion

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In 2014, the right to freedom of expression in Azerbaijan is a distant aspiration. The statement by President Aliyev to the Council of Europe that “As for fundamental freedoms, all of them are honored in Azerbaijan. There are free political activities, political freedoms...”<sup>114</sup> could not be more far from the truth. When looking at the different angles touched upon in this report, the main issue is the lack of truth, during both criminal investigations and subsequent trials.

In murders of journalists Elmar Huseynov and Rafiq Taği remain unsolved. Azerbaijan failed to bring the perpetrators and instigators of these crimes to trial before impartial and independent tribunals. The current restriction within national legislation, limiting the provision of information regarding ongoing criminal investigations, leaves family and colleagues effectively in the dark, allowing the investigation to ignore their input and opinion – and possibly the truth.

ARTICLE 19 believes that youth activists and others who actively engage in public protests are targeted to prevent criticism of any government policy from becoming public. The imprisonment of youth activists, such as those from N!DA, on spurious charges, accompanied by dubious public appearances, as well as the subsequent “repenting” of their alleged crimes by some of those imprisoned, are a clear warning signal to others not to engage in protests.

Protesting (and asking for the truth) online is equally risky. With at least five such Facebook activists behind bars on very similar charges (drugs possession), all brought by the same department of the Ministry of Internal Affairs, a pattern seems to be emerging aimed at suppressing the use of Facebook for public engagement. With other activists wishing to remain anonymous and refrain from publicity around their cases, there is a concern that there are at least another fifteen estimated Facebook activists currently in prison.

The Azerbaijani government seems intent on preventing information about political prisoners (the truth) from being brought before international fora, such as the Council of Europe. The recent arrests and imprisonment of several NGO leaders is a disturbing new trend in the already difficult and repressive environment for civil activists and non-government organisations operating in Azerbaijan. By silencing those that act and advocate for the rights of others, there is little hope for any substantial improvement of the human rights situation in Azerbaijan.

Another forum where uncomfortable truths might be told is the media, and it is now the norm, very like the imprisonment of youth activists, social media activists and human rights defenders, for journalists, too, to be pressurised and silenced through imprisonment on spurious charges.

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The most recent case of Ilgar Nasibov, the journalist and human rights defender, who was brutally beaten in Naxçivan on 21 August 2014, will be a litmus test of the Azerbaijani authorities' political will to investigate the attack and to bring both the perpetrators and instigators to justice. Without the necessary resolve to uncover the truth in such cases, the result will be an increase in self-censorship, adding to the almost total lack of press freedom in Azerbaijan.

This is also the moment of truth for Europe's beacon of human rights and fundamental freedoms, the Council of Europe. With Azerbaijan as chair of the Committee of Ministers, the integrity and accountability of the whole institution is at stake, should it choose to close its eyes to the truth and turn away without holding Azerbaijan to account.



# References

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- \* Alexander Solzhenitsyn, *Live Not By Lies*, 1974, part of the closing statement of activists from the youth movement N!DA on trial in Baku in 2014.
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  2. Parliamentary Assembly of the Council of Europe, 24 June 2014, <http://assembly.coe.int/Main.asp?link=/Documents/Records/2014/E/1406241000E.htm>
  3. Speech by President Aliyev stating: "...As for fundamental freedoms, all of them are honoured in Azerbaijan. There are free political activities, political freedoms .... There is free Internet access, more than 70 percent of the population has access to the Internet. We can't limit freedom of speech and expression anyway in conditions where there is free internet and an absence of censorship. ... I want to restate that press freedom is fully ensured. Freedom of assembly is ensured as well." at the opening session of PACE, 24 June 2014, [http://www.azmissioncoe.org/?options=news&id=47&news\\_id=18](http://www.azmissioncoe.org/?options=news&id=47&news_id=18)
  4. Rashadat Akhundov, 1 May 2014 (<http://www.meydan.tv/en/site/news/1581/NIDA-Activist-Sentenced-%28UPDATED%29.htm>)
  5. Constitution of the Republic of Azerbaijan, as adopted on 12 November 1995.
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  8. See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).
  9. Adopted by Decision No. 227 of the Azerbaijani Parliament, 21 July 1992.
  10. UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, entered into force 23 March 1976.
  11. Adopted by Decision No. 162-IIQ of the Azerbaijani Parliament, 29 June 2001.
  12. *Optional Protocol to the International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976.
  13. For ARTICLE 19's assessment of Azerbaijan's implementation of its ICCPR commitments, please see ARTICLE 19, *Written Comments of ARTICLE 19: Global Campaign for Free Expression Concerning the Republic of Azerbaijan*, 2 July 2009. Retrieved 13 August 2014 from <http://www.article19.org/pdfs/press/written-comments-of-article-19-global-campaign-for-free-expression-concernin.pdf>.
  14. The Committee included a specific recommendation on freedom of expression in its recommendations to the Azerbaijani government: 'The Committee urges the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression. Legislation on defamation should be brought into line with article 19 by ensuring a proper balance between the protection of a person's reputation and freedom of expression. In this respect, the State party is urged to consider finding a balance between information on the acts of so called "public figures", and the right of a democratic society to be informed on issues of public interest. The State party is also urged to effectively protect media workers against attempts on their integrity and life, and to pay special attention and react vigorously if such acts occur. The State party should not unreasonably restrain independent newspapers, as well as local broadcasting of radio stations. Finally, the State party should treat users of non-conventional media in strict compliance with article 19 of the Covenant.'
  15. United Nations document CCPR/C/AZE/CO/3, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Azerbaijan*, 13 August 2009.
  16. Rec. 109.110, A/HRC/24/13; 5 July 2013, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/154/65/PDF/G1315465.pdf?OpenElement>
  17. Statute of the Council of Europe, London, 5 May 1949, Article 3.
  18. The European Convention on Human Rights and Fundamental Freedoms (ECHR), adopted on 4 November 1950, E.T.S. No. 5, entered into force on 3 September 1953. Azerbaijan ratified the ECHR on 15 April 2002.

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19. ECHR, Article 10; 1. 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; 2. 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.
20. Azerbaijan's Application for Membership of the Council of Europe, Opinion No. 222 (2000), Parliamentary Assembly, iv.d.
21. Resolution 1917 (2013): 'In accordance with the monitoring procedure, as set out in Resolution 1115 (1997) and amended by Resolutions 1431 (2005) and 1515 (2006), the Assembly assessed the progress made by Azerbaijan in the fulfilment of its obligations and commitments in Resolutions 1305 (2002) and 1545 (2007) on the honouring of obligations and commitments by Azerbaijan and in Resolutions 1358 (2004), 1398 (2004), 1456 (2005), 1614 (2008) and 1750 (2010) on the functioning of democratic institutions in Azerbaijan'
22. See for example the decision in the case of Ilgar Mammadov v. Azerbaijan (Application no. 15172/13) of 22 May 2014, upholding his complaint under Article 18 that 'his arrest and the criminal proceedings against him were repressive measures and had the purpose of "removing" him as a critic of the Government and a potentially serious opponent in the upcoming presidential elections, as well as discouraging others from criticising the Government'.
23. CoE Commissioner on Human Rights Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property, 23 April 2014.
24. Comments of the Azerbaijani authorities on the observations on human rights situation in Azerbaijan by Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights Comm/DH/GovRep (2014) 8, 23 April 2014.
25. <http://www.hrw.org/news/2014/05/06/dispatches-azerbaijan-eight-convicted-one-colossal-injustice> (last reviewed 13 August 2014)
26. Condemned by the EU on 12 May 2014 (PC.DEL.508/14), Amnesty International considers the eight activists 'prisoner of conscience (<http://www.amnesty.org/en/for-media/press-releases/azerbaijan-assumes-chairmanship-human-rights-body-council-europe-amidst-clip>)'.
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28. For example: Concluding Document of Budapest, 6 December 1994 (hereafter referred to as Budapest 1994) (Decisions: VIII. The Human Dimension): *36. The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society.*
29. Concluding Document of Vienna – The Third Follow-up meeting, Madrid, 6 September 1983 (hereafter referred to as Vienna 1989) (Co-operation in Humanitarian and Other Fields):  
*(34) (...) in accordance with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and their relevant international commitments concerning seeking, receiving and imparting information of all kinds, [the participating States] will ensure that individuals can freely choose their sources of information. In this context they will (...)*  
  - *allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds.**To these ends they will remove any restrictions inconsistent with the abovementioned obligations and commitments.*
30. Statement by OSCE Representative on Freedom of the Media, Dunja Mijatović, Helsinki Commission Hearing on the Threats to Free Media in the OSCE Region, 9 June 2010. [http://www.osce.org/documents/rfm/2010/06/44433\\_en.pdf](http://www.osce.org/documents/rfm/2010/06/44433_en.pdf).
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  36. Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors (30 April 2014) [https://wcd.coe.int/ViewDoc.jsp?id=2188999&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogg ed=F5D383#P33\\_5653](https://wcd.coe.int/ViewDoc.jsp?id=2188999&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogg ed=F5D383#P33_5653)
  37. CoE, European Convention on Human Rights, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)
  38. PACE, Recommendation 1897, 'Respect for media freedom,' 2010 (Assembly Debate on 27 January 2010) <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/EREC1897.htm>
  39. <http://www.article19.org/data/files/pdfs/publications/free-expression-under-attack.pdf> – sources include IRFS, RSF, CPJ, HRW, AI and ARTICLE 19.
  40. <http://azerbaijanfreexpression.org/campaigns/impunity/murdered-rafiq-tagji/>
  41. <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/eres1535.htm>
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  43. Rovshan Ahmedov, deputy head of Azerbaijan's Islamic Party, reportedly stated in November 2011: "After an event of this kind, the hunt for enemies will be on. It is a provocation against Islam."
  44. Shahbaz Khuduoglu, from the Qanun publishing company, commented: "If Taghi's life was still in danger, why did they move him to an ordinary ward? If the crisis had passed, why did he suddenly die three days later?"
  45. [http://azerireport.com/index.php?option=com\\_content&task=view&id=3396&Itemid=1](http://azerireport.com/index.php?option=com_content&task=view&id=3396&Itemid=1)
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  48. *Azerbaijan: Independent Journalists under Siege*, Amnesty International, 2009, p1.
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64. See also the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, 30 March 2011.
65. International Bar Association Human Rights Institute (IBAHRI), *Azerbaijan, Freedom of Expression on Trial*, April 2014, p19.
66. <http://www.article19.org/resources.php/resource/3753/en/azerbaijan:-new-legislative-amendments-further-erode-rights-to-freedom-of-expression-and-peaceful-assembly>
67. ARTICLE 19, *Living as Dissidents*, p21
68. As reported by the Media Rights Institute and included in its report, *Execution of Judgements of the European Court of Human Rights in Azerbaijan* (May 2014), p.34
69. <http://www.article19.org/data/files/pdfs/press/azerbaijan-imprisonment-of-bloggers-politically-motivated.pdf>
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71. <http://www.hrw.org/news/2014/06/23/updates-politically-motivated-arrests-and-convictions-azerbaijan>
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78. *Ramazanova and Others v Azerbaijan, Nasibova v Azerbaijan, Ismayilov v Azerbaijan, Aliyev and Others v Azerbaijan*
79. <http://humanrightshouse.org/Articles/20037.html>
80. The amendments introduced in the Code of Administrative Offences provide that a failure to submit copies of grant agreements to the Ministry of Justice within 30 days of the signing of the agreement may result in a fine between 5,000 and 7,000 AZN; a founder may be held personally liable and fined from 1,000 to 2,500 AZN; the absence of a grant agreement may result in fines between 8,000 to 15,000 AZN and/or property confiscation from an NGO; an individual may be held liable personally and fined between 2,500 to 5,000 AZN; a failure to include required information in financial reports submitted to relevant government agencies about donations received by an NGO or information on persons donating the funds can now lead to a fine ranging from 5,000 to 8,000 AZN for NGOs, while NGO managers could be liable for fines of 1,500 to 3,000 AZN.
81. Human Rights Watch *Tightening the Screws: Azerbaijan’s Crackdown on Civil Society and Dissent*, September 2013, p. 56
82. The new law provides for heavy fines for signing contracts based on non-registered grant agreements (*whereas the registration is often delayed on minor deficiencies*); failure to adjust constituent documents of NGOs (including foreign NGOs) to local legislation, conducting any activity on the changes made to the constituent documents if such changes were not yet registered (*whereas the registration may well result in significant delays*), failure to conclude contracts with volunteers.

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97. Idem.
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99. *Azerbaijan: Independent Journalists under Siege*, Amnesty International, June 2009, p.6.
100. With the emergence of urbanisation infrastructure projects in Azerbaijan in recent years, often followed by demolitions of numerous buildings resulting in property rights violations, Idrak Abbasov has been actively investigating and reporting on this issue. In particular he covered this issue during the run up to the Eurovision song contest held in May 2012, which saw an intensification in construction in preparation for the contest, which in turn resulted in numerous cases of forced evictions and illegal demolitions of the houses of Azerbaijani citizens.
101. <http://www.indexoncensorship.org/2012/04/azerbaijan-journalists-under-attack/>
102. Human Rights Watch report Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent, September 2013, p. 44
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