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**Council of Europe
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and Rule of Law**

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Re: Mahmudov and Agazade group of cases v. Azerbaijan (application no. 35877/04)

Summary

The Helsinki Foundation for Human Rights (HFHR) addresses the Committee of Ministers in its supervisory capacity, pursuant to Rule 9.2. of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of terms of friendly settlements.

This letter provides the Committee with an update on:

- a) Latest cases of arbitrary application of criminal legislation, including on defamation, to limit freedom of expression of individuals critical of Azerbaijani Government
- b) Other cases of restrictions of freedom of expression, and media freedom in particular, by the Azerbaijani authorities that in no way can be considered conducive to creating environment enabling and protecting freedom of expression in the country

The above-mentioned judgments established violations of the right to freedom of expression in that the applicant journalists were given imprisonment as unjustified sanction for criminal defamation as a result of their publications. The European Court of Human Rights established that imprisonment as a sanction for defamation is disproportionate and has a strong chilling effect on the media, and is therefore in violation of Article 10 of the Convention.

In light of the below information, we respectfully ask the Committee of Ministers to:

- a) Hold debates on this group of cases at the Committee's quarterly DH meeting and request the Azerbaijani Government to provide explanations on the below

mentioned cases, including on the failure of domestic courts to ensure fair trial guarantees;

b) Urge Azerbaijan to renew the dialogue with the Venice Commission and other Council of Europe bodies to assist the Azerbaijani authorities in ensuring that its domestic legislation affecting freedom of expression is in line with the European standards;

c) Adopt an interim resolution condemning further developments hindering freedom of expression and information in Azerbaijan and calling upon Azerbaijan to take urgent measures to ameliorate the situation by a) releasing those imprisoned under trumped up charges and no fair trial for their critical voices, and b) repealing laws restricting freedom of expression and having a strong chilling effect on the media freedom in the country.

Introduction

The HFHR is a non-governmental organization established in 1989 in order to promote human rights and the rule of law as well as to contribute to the development of an open society in Poland and the CIS region. One of the activities of HFHR includes participating in legal actions undertaken for the public interest such as representing parties and preparing legal submissions to national and international courts and tribunals. Protection of freedom of expression in Poland and the CIS region is one of our focus areas in our work. We have authored a number of third party interventions before the European Court of Human Rights concerning freedom of expression in Azerbaijan (e.g. Rauf Mirqadirov, application no. 62775/14) and human rights defenders in the same country (e.g. Rasul Jafarov, application no. 69981/14). We regularly submit Rule 9.2. submissions to the Committee of Ministers in cases against Poland and incidentally on cases against other Council of Europe members (e.g. Ilgar Mammadov, application no. 15172/13). Our lawyers have been engaged in representing before the ECtHR a number of human rights defenders, including Leyla Yunusova and Arif Yunusov (application no. 59620/14). We regularly inform the Execution Department of Execution of ECtHR Judgments about the constant failure of Azerbaijan to implement their judgment. We authored a report on the lack of independence of the judiciary in Azerbaijan¹.

We welcome Azerbaijan's recognition of the importance 'to improve the sub-legislation and internal regulatory instruments for full enjoyment of freedom of expression and freedom of association in line with European standards' and 'to bring the functioning of the judicial system in line with relevant European standards ...' (Rule 8.2.a communication from the authorities to the Committee of Ministers, 12 September 2017, paras 40-41). We express our deep concern however that despite all the measures taken by the authorities, as described in the above-mentioned communication of the authorities to the Committee, arbitrary application of the criminal law to limit freedom of expression, followed by gross violations of fair trial standards, remains a widely used practice in Azerbaijan. Furthermore, new legislative amendments further limiting media freedom and freedom of information in Azerbaijan, as detailed below, have been adopted, which cannot be considered to be in line with Azerbaijan's stated commitment to the European standards, including those relating to freedom of expression. Quite the opposite, it serves as a testimony to Azerbaijan's regressive targeted policy to silence its critics and eliminate space for free media in the country. The Government's reference to the President's interference in the criminal proceedings against

¹ The report is available at: http://www.hfhr.pl/wp-content/uploads/2016/09/Azerbaijan_judiciary.pdf

Mehman Aliyev, the head of Turan News Agency, as a good practice example, in its latest submission to the Committee only demonstrates the executive's influence on the judiciary.

Over the past years, including the period when the measures reported to the Committee by the Azerbaijani Government had been taken, the authorities have used trumped up charges, including criminal defamation, and vague laws, which they applied arbitrarily, to arrest and prosecute their critics exercising their freedom of expression, as detailed below. The Azerbaijani authorities continue persecuting its critical voices despite the Committee's numerous calls upon Azerbaijan to strengthen judicial independence vis-à-vis the executive and prosecutors and to ensure that the criminal legislation is not arbitrarily applied to those exercising their freedom of expression, including in the Committee's interim resolution of 8 June 2016.

A. Cases of arbitrary application of criminal legislation, including defamation, to limit freedom of expression in Azerbaijan

a) Conviction under criminal defamation charges

In March 2017, Mehman Huseynov, a popular video-journalist and blogger in Azerbaijan, known for his hard-hitting video reports of alleged corruption by senior Azerbaijani officials and other abuses of the authorities, was sentenced by a Baku court to two years in prison on charges of defaming a police chief of the Nasimi police station, after he gave a statement in front of the courthouse in which he described the abuses he had suffered at that police station.²

On 9 January 2017, a group of plain-clothes officers attacked Mehman Huseynov, blindfolded and gagged him with towels, forced a bag over his head and took him to the Nasimi district police station, where police used an electroshock weapon on his groin, and punched him, bloodying his nose. The next day, officers took him before a court that found him guilty of disobeying police orders and fined him 200 manat (EUR 98). Mehman Huseynov went public about the ill-treatment he suffered at the station, and filed a complaint with the prosecutor's office. The authorities formally opened an inquiry into Huseynov's allegations, but swiftly closed the inquiry claiming the allegations were groundless. While authorities refused to conduct a credible investigation into Huseynov's torture allegations, the Nasimi police chief brought a criminal lawsuit against him for defamation and the court sentenced him to two years in prison. On 15 December 2017, Baku Appeal Court dismissed Huseynov's appeal and upheld the verdict. The lawyer of Huseynov reported fair trial violations, such as the Court's failure to obtain CCTV footage from the police station as important evidence and to secure the participation of the police chief.

Since 2012, Mehman Huseynov has been under a travel ban, deprived of his identity documents and has been repeatedly harassed and intimidated by the police.

b) Charges of alleged illegal border crossing, smuggling and resisting arrest, following abduction in the Georgian capital Tbilisi

² Council of Europe Media Freedom Alert, 'Mehman Huseynov Sentenced to Two Years on Defamation Charges', last updated on 18 December 2017

On 29 May 2017, Azerbaijani journalist Afgan Mukhtarli was abducted on the streets of Tbilisi and reappeared in Azerbaijani custody, where he now awaits trial on fabricated charges of alleged illegal border crossing, smuggling, and resisting arrest. Although he reports having been brought through the border by force and that his passport remained at his home in Tbilisi that day, Afgan Mukhtarli was accused of attempting to cross the border illegally and to bring in 10.000 EUR to Azerbaijan. On 12 January 2018, he was sentenced to 6 years in prison.³

Afgan Mukhtarli is an Azerbaijani journalist and political dissident who covered social and political issues, including corruption cases in the highest echelons of power in Azerbaijan, for media outlets, such as Yeni Musavat opposition newspaper, Radio Free Europe/Radio Liberty, Institute for War and Peace Reporting (IWPR), and Meydan TV. Following years of harassment against him and his family, Afgan and his wife Leyla Mustafayeva, also a journalist, left Azerbaijan and fled to Georgia in January 2015.

c) Drug possession charges

On 10 May 2016, two NIDA youth movement activists Bayram Mammadov and Giyas Ibrahimov were forced into a car by plainclothes police officers and brought to Sabunchu police station where they were beaten, threatened and forced to confess to false charges of drug possession and supply under duress, following their protest against the Government policy, corruption and specifically ‘Happy Flower Day’ commemorating the birthday of former President Heydar Aliyev (10 May) by writing “Happy slave day!” (in Azerbaijani) “Fuck the system” (in English) on the plinth of the statue of President Ilham Aliyev’s father Heydar Aliyev located in a park in front of the Heydar Aliyev Palace in Baku the night before. Their initial interrogations by the police concerned their writing on the statue, for which they were offered release in exchange for a televised apology by the Head of Baku City Chief Police Office (BCCPO). As the activists refused to do so, on 25 October 2016 and on 8 December 2016, Giyas Ibrahimov and Bayram Mammadov respectively were convicted for drug charges and sentenced to 10 years in prison.⁴

The court proceedings in their cases were conducted in gross violations of basic fair trial standards. Notably the principle evidence against them for possession and intent to supply heroin was their own confession and drugs found on them and at their home. During their trials the activists were not given an opportunity to challenge the authenticity, quality or reliability of any of the evidence against them despite the highly suspicious circumstances in which it was obtained. The confessions were relied on by the courts in their finding of guilt, and the complaints of torture and duress raised by the applicants were not examined. The principle of equality of arms was violated by the fact that every defence motion was denied without explanation, including crucial requests for forensic fingerprint analysis of the drugs, cross-examination of the search and police witnesses concerning the unreliability of their evidence, requests to exclude the use of confession evidence obtained by torture or ill-treatment and the illegality and suspicious circumstances of the searches. Such multiple shortcomings serve as further evidence that the activists’ arrest and conviction for drug offences was manifestly in retaliation for their graffiti protest on the statue of Heydar Aliyev.

³ Council of Europe Media Freedom Alert, ‘Exiled Journalist Abducted, Detained and Faces Charges in Azerbaijan’, last updated on 12 January 2018

⁴ Amnesty International, ‘Azerbaijan: Ten years in jail for youth activist who sprayed graffiti is a travesty of justice’, 26 October 2016

d) Travel ban imposed as a result of conditional release from prison of a journalist, initially convicted under trumped up charges

In May 2016, award winning investigative journalist Khadija Ismayil was subjected to an international travel ban preventing her from leaving Azerbaijan, as a result of her early release by the Supreme Court suspended an earlier seven-and-a-half-year jail term under fabricated charges of illegal entrepreneurship, abuse of power and tax evasion (which she is currently challenging before the European Court of Human Rights). Such a travel ban is unlawful as it had no legal basis domestically and was applied automatically by the executive authorities responsible for the execution of the Supreme Court decision despite the fact that the latter did not indicate for such a measure to be applied. The Supreme Court indicated that the applicant should not change her permanent place of residence without informing the executive department of the Binagadi District without any reference to a restriction of the applicant's right to leave the country. The domestic courts before which Ms Ismayil challenged the illegality of the travel ban however dismissed her arguments failing to provide any adequate reasoning for such findings. Such a ban severely hinders the journalist's right to freedom of movement, which is essential for her work, and forms a part of the broader persecution by the authorities aimed at punishing her for her work as an investigative journalist and to prevent her from continuing with it.

B. New legislative restrictions of freedom of expression, including media freedom in Azerbaijan

This section provides information on further regressive legislative steps taken by the Azerbaijani authorities to limit freedom of expression and information in Azerbaijan. We believe the Committee should consider in light of execution of the respective group of cases as it demonstrates Azerbaijan's absence of any willingness to protect and promote freedom of expression, including media freedom and freedom of information, and to create environment conducive to those rights, as claimed in its action reports to the Committee.

In March 2017, the Azerbaijani president approved amendments to the Information, Information Technologies and Protection of Information Act, including creating new powers for the Government and domestic courts to block websites that contain prohibited information. The new provisions also provide a non-exhaustive list of such prohibited information, however, does not explain what constitutes such information:

- Information on agitation and financing of terrorism or methods and ways of terrorism or organization and execution of training for terrorism purposes, as well as propaganda of terrorism (public calls for terrorism);
- Information on agitation of violence and religious extremism, propaganda (public calls) for incitement to ethnic, racial or religious hatred or to overthrow the constitutional order through violent means or separatism or overthrow or keep a government or organization by mass disorder;
- Information classified as secret;
- Information on the preparation of rules or methods of firearms and sets of firearms, ammunition, bombs; information on preparation or use of rules and methods of drugs or places where drugs can be obtained unlawfully;

- Information on pornography, including child pornography; information on organization of gambling and other unlawful betting games or incitement;
- Disseminating information for the purposes of suicide agitation, suicide justification, suicide incitement, explanation of methods of suicide or organization of group suicide;
- Defamation as well as information violating privacy;
- Information violating intellectual property; other information whose dissemination is prohibited by Statutes of Republic of Azerbaijan.

The Law establishes that once the Ministry has discovered that prohibited information has been placed on a website, it shall notify the website owner or host in writing and if the prohibited information is not removed within eight hours of the notification, the Ministry may apply to the court to restrict access to such a website (Article 13). The same Article further provides that when the information placed on a website threatens legal interests of the state and the society or poses an imminent threat to human life and safety, the Ministry can temporarily restrict access to such websites, and, simultaneously, apply to court for a permanent restriction.

Furthermore, on 7 April 2017 the Parliament passed amendments to the Code of Civil Procedure introducing Chapter 40-6, which regulates the trial procedure for the above mentioned cases.

On 1 December 2017, the Parliament adopted a new set of amendments that will hold individuals, officials and legal entities responsible — and subject them to fines — for online dissemination of “prohibited information”. The Law provides that the host and Internet providers will face fines in the amounts of 500-1000 AZN for individuals, 1,500-2,000 AZN for officials and 2,000-2,500 AZN for legal entities .

C. Application of the new laws on critical news websites

The new laws were swiftly applied to the main independent or opposition minded news websites, which led to their permanent blocking: Azadliq.info, Meydan TV, Azerbaijan Saati, Turan TV and Azadliq.org⁵. The five websites have been inaccessible in Azerbaijan since 27 March 2017. The Government blocked them temporarily on the grounds that they publish articles containing prohibited material, calling for ‘the destruction of public order’.⁶ It then requested the courts to block them permanently. Initially the Government denied it had blocked the websites, and then failed to provide any evidence for the block. Eventually it cited eleven articles to justify the ban, two of which were published after the sites had already been blocked. The articles that allegedly contained ‘prohibited information’ addressed various social, economical and political issues in Azerbaijan⁷.

⁵ Azadliq.org is the website of Radio Free Europe/Radio Liberty (RFE/RL) Azerbaijani Service.

⁶ European Human Rights Advocacy Centre, ‘Popular critical news sites challenge block by Azerbaijani Government’, 28 June 2017

⁷ **Azadliq.info (5 Articles)**

(i) An article ‘Why Azerbaijan’s dynasty-building is a bad sign for Europe’ dated 10 March 2017, taken from the Azadliq.org website translating an article by Rebeka Foley, originally published on the Freedom House website (original Article): <https://freedomhouse.org/blog/why-azerbaijan-s-dynasty-building-bad-sign-europe>

(ii) An article ‘Behind Azerbaijan’s facades’ dated 22 March 2017, taken from the Azadliq.org website translating an article by Sergey Romyantsev, originally published on the Open democracy website (original Article): <https://www.opendemocracy.net/od-russia/sergey-romyantsev/behind-azerbaijan-s-facades>

(iii) A news article dated 23 March 2017, which quoted a post from the politician Jamil Hasanli’s Facebook page. This post contained a discussion of a peaceful demonstration, which was later authorized by relevant authority.

Both the Prosecution and the Ministry failed to provide specific articles that they considered as entailing prohibited information and to explain what particular information in those articles constituted prohibited information. The District Court ordering the permanent blocking has also failed to indicate which particular information was considered to be prohibited according to the new law. This further supports the widespread belief that the restriction of the respective websites was aimed to prevent them from publishing and disseminating information critical of the Government in Azerbaijan and hinder the society's access to such information.

The websites are amongst the only reliable sources of independent information (i.e. not controlled by the Government), and their readership is predominantly in Azerbaijan. Their purpose is to provide independent and critical analysis of significant social, economic and political issues in Azerbaijan. The block has therefore had a detrimental effect on the reach of the websites, which casts doubt on their future survival, and prevents their readers from obtaining independent news on key social, economical and political issues in the country.

On behalf of the Helsinki Foundation for Human Rights,

D. Bychawska - Siniarska

Dominika Bychawska-Siniarska
Member of the Board
Helsinki Foundation for Human Rights

(iv) A news article dated, 24 March 2017, which quoted a declaration by the opposition political Block National Assembly ("Milli şura") criticising the Government and discussing a peaceful demonstration, which was later authorized by the relevant authority.

(v) An article dated 28 April 2017, which called for participation peaceful demonstration in peaceful ways, which was later authorized by the relevant authority.

Meydan.tv (2 Articles)

(vi) An article dated 20 January 2017, by opposition politician Elman Fattah. The article was critical of both authoritarian regimes and religious rule (sharia) and the author called for a democratic secular republic;

(vii) An interview dated 27 March 2017, with opposition leader Jamil Hasanli discussing a proposed peaceful demonstration, which was later authorized by the relevant authority.

Azerbaycansaati.tv (4 Articles) and Kanalturan.com (1 interview which is common with Azerbaycansaati.tv)

(viii) An article dated 25 December 2016, by Ganimat Zahid, head of Azerbaycansaati.tv. The author was critical of President I. Aliyev and various MEPs relating to their statements about the economic crisis;

(ix) An article `Пора менять` dated 30 December 2016, by Arif Mammadov, an ex-diplomat, that was critical of the Government (Article in Russian): <https://www.azerbaycansaati.tv/3124.html>;

(x) An interview `Заложники "Алиевского режима" dated 20 February 2017, on both Azerbaycansaati.tv and Kanalturan.com with human rights defender Leyla Yunus (interview in Russian): <https://www.azerbaycansaati.tv/3589.html>;

(xi) An interview `Я хочу обратиться к своему народу – пора проснуться!` dated 6 March 2017 on Azerbaycansaati.tv with political refugee Orduhan Teymurhan (interview in Russian): <https://www.azerbaycansaati.tv/3646.html>.