

# **Article 10**

# **Freedom of Expression**

## ***EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN AZERBAIJAN***

2022

Media Rights Group

## Article 10, Freedom of Expression

### *EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN AZERBAIJAN*

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## *Review*

The document examined the implementation of the judgments of the ECtHR, recognizing the violation of Article 10 of the Convention. The investigation is based on information provided by the parties during the implementation process in communication with the CoE and information obtained directly from the parties.

The first part of the document deals with the history of ECtHR-Azerbaijan relations and the implementation mechanisms of ECtHR judgments.

The second section provides an overview of cases in which the ECtHR has recognized violations of the right to freedom of expression in Azerbaijan.

The third section provides information on the implementation status of each of the decisions.

Finally, annex 1, following the recommendations for more effective implementation, provides an overview of all judgments that found a violation of the right to freedom of expression.

## **CHAPTER ONE: Azerbaijan - Council of Europe and European Court of Human Rights**

Azerbaijan-Council of Europe relations dates back to 1992 when on January 24 of that year, the Azerbaijani Parliament applied to the Council of Europe for the status of "special guest". In 1995, the Parliamentary Assembly of the Council of Europe (PACE) initiated considering Azerbaijan's application for "special guest" status. Azerbaijan was accepted as a member of the European Commission for Democracy through Law (Venice Commission) by the Council of Europe on March 17-18, 1996. In June of that year, it decided to grant Azerbaijan the status of "special guest". CoE decided on January 17, 2001, to admit Azerbaijan as a full member of the Council of Europe. On April 15, 2002, Azerbaijan submitted a document on

ratification of the European Convention on Human Rights (ECHR) and its Protocols to the depositary. From that date, the Convention and its Protocols entered into force concerning Azerbaijan, and persons under the jurisdiction of Azerbaijan have the right to appeal to the European Court of Human Rights (ECtHR).

With Azerbaijan accepting the jurisdiction of the ECtHR, appeals to the Court began. The ECtHR announced its first decision on Azerbaijan in 2006. In *Fahmin Hajiyev v. Azerbaijan*, ECtHR found out that the applicant's right to a fair trial was violated. Since then, the ECtHR has made 300 substantive judgments against Azerbaijan.

### **Implementation of ECtHR judgments – Council of Europe and National Mechanisms**

The member states of the Council of Europe must fully implement the judgments of the ECtHR. Accordingly, by acceding to the European Convention, states have committed themselves to implementing the ECtHR's judgments. This obligation is enshrined in Article 46 of the Convention.

The Committee of Ministers of the Council of Europe (CoE) oversees the implementation of ECtHR judgments. The CoE is provided with the necessary support in the oversight process by its Secretariat and the Enforcement of Judgments Office, which is part of the Directorate General Human Rights and Rule of Law. The Department works closely with the Member States to identify the measures needed to implement the judgments and provides recommendations to the CoE. In addition, the Committee on Legal Affairs and Human Rights, Parliamentary assembly Council of Europe (PACE), the PACE Rapporteur on the implementation of decisions, and the Council of Europe

Commissioner for Human Rights are involved in the implementation of the judgments.

The CoE monitors the implementation of ECtHR judgments on the merits, friendly settlement, and decisions to exclude applications from the list of cases to be considered. According to the Convention, the member states of the Council of Europe have a legal obligation to remedy the violations identified by the ECtHR. This obligation is implemented through two types of measures:

Individual measures aim to return victims to their previous state as much as possible before the violation occurs. Compensation ("just satisfaction") is the most common individual measure. Compensation covers both pecuniary and non-pecuniary damage. Individual measures also include reinstatement to a previous job, renewal of an unfair trial, return of the property, enforcement of local court decisions, the release of a person imprisoned as a result of an unfair court decision, and so on.

The goal of general measures is to prevent similar violations in the future. These measures are mostly related to improving judicial practice, detention conditions, and reforms of states' legal and political systems.

Once the ECtHR judgments are final, it is sent to the CoE to oversee its implementation. The CoE reviews the implementation of its decisions at the "Human Rights" meeting, which is held four times a year. Human Rights meetings are held annually in March, July,

September, and December. Meetings are held behind closed doors, and victims, civil society organizations, and representatives are not allowed to attend. Once the ECtHR judgments have entered into force, they are submitted to the CoE and included in the agenda of the meetings. States shall submit an Action Plan as soon as possible after the entry into force of the decision, but not later than 6 months after the entry into force of the decision, stating the measures to be taken for the full implementation of the decision.

### National legal mechanisms

According to Part 2 of Article 12 of the Constitution of the Republic of Azerbaijan, human and citizens' rights and freedoms guaranteed by the Constitution are applied in accordance with international treaties to which the Republic of Azerbaijan is a party. The Constitution recognizes the binding execution of the judgments of the ECtHR in the Republic of Azerbaijan. According to Article 148 of the Constitution, international agreements to which the Republic of Azerbaijan is a party are an integral part of the legislative system of the Republic of Azerbaijan. Article 151 of the Constitution states that if there is a conflict between the normative legal acts included in the legislative system of the Republic of Azerbaijan and the interstate agreements to which the Republic of Azerbaijan is a party, those international agreements shall be applied.

Azerbaijan is represented before the ECtHR by the "Plenipotentiary Representative of the Republic of Azerbaijan to the European Court." The Plenipotentiary Representative is

responsible for the relations between the Republic of Azerbaijan and the ECtHR. The Plenipotentiary is also an essential body in enforcing ECtHR judgments. It has the function of coordinating the activities of the relevant state bodies to ensure the implementation of the judgments of the ECtHR and the CoE. It is also the responsibility of the Plenipotentiary to study the legal consequences of ECtHR judgments and prepare proposals for the improvement of legislation and law enforcement practice.

The national legislation of the Republic of Azerbaijan allows for the renewal of proceedings in the context of the implementation of ECtHR judgments and the reconsideration of the case in domestic courts. These issues are reflected in both the criminal procedure and civil procedure legislation of the Republic of Azerbaijan. According to the Code of Criminal Procedure provisions, ECtHR judgments are one of the grounds for reviewing national judicial decisions. The provisions of the Code of Civil Procedure also express the same approach.

## **CHAPTER TWO: Article 10 - All ECtHR judgments recognizing the violation of the right to freedom of expression (concerning Azerbaijan)**

### **General overview**

The ECtHR recognized the violation of Azerbaijan's right to freedom of expression for the first time in a December 2008 judgment on the appeal of two imprisoned journalists (Mahmudov and Agazadeh v. Azerbaijan). Since that date, 16 judgments on merit have been announced regarding the violation of the right to freedom of expression. 16 judgments were announced on the complaints of 30 applicants. Most of the applicants are journalists. Mostly, they have been convicted of crimes and have faced violence and imprisonment for their professional activities. In one of its judgments announced at the end of 2021, the ECtHR ruled that the right to freedom of expression was violated by restricting the right to access information. A summary of all 16 judgments of the ECtHR recognizing the violation of the right to freedom of expression concerning Azerbaijan is attached to the report (Annex 1).

*Judgments recognizing a violation of Article 10 of the European Convention are as follows:*

1. Mahmudov and Agazadeh v. Azerbaijan (1); Application №.35877 / 04; 18/12/2008
2. Fatullayev v. Azerbaijan; Application №.40984 / 07; 22/04/2010
3. Najafli v. Azerbaijan; Application №.2594 / 07; 02/10/2012
4. Hajibeyli and Aliyev v. Azerbaijan; Application №.6477 / 08 10414/08; 19/04/2018
5. Khadija Ismayilova v. Azerbaijan; Application №.65286 / 13 57270/14; 10/01/2019
6. Tagiyev and Huseynov v. Azerbaijan; Application №.13274 / 08; 05/12/2019
7. Ibrahimov and Mammadov v. Azerbaijan; Application №.63571 / 16; 13/02/2020
8. Religious community of Jehovah's Witnesses v. Azerbaijan; Application №.52884 / 09; 20/02/2020
9. Bagirov v. Azerbaijan; Application №.81024 / 12 28198/15; 25/06/2020
10. Haji and others v. Azerbaijan; Application №.3503 / 10; 01/10/2020
11. Avaz Zeynalov v. Azerbaijan; Application №.37816 / 12 25260/14; 22/04/2021
12. Hasanov v. Azerbaijan; Application №.52584 / 09; 08/07/2021
13. Mammadov and Abbasov v. Azerbaijan; Application №.1172 / 12; 08/07/2021
14. Mahmudov and Agazadeh v. Azerbaijan (2); Application №.28083 / 08; 22/07/2021
15. Hasanov and Majidli v. Azerbaijan; Application №.9626 / 14 9717/14; 07/10/2021
16. Rovshan Hajiyev v. Azerbaijan; Application 99.19925 / 12 47532/13; 09/12/2021

*In its judgments, the ECtHR concluded that the following actions of the State violated Article 10 of the Convention:*

- application of criminal penalties of imprisonment for libel and insult, violence, incitement to racial, religious, social, ethnic hatred;
- imprisonment for graffiti;
- refusal to be admitted to the bar or removal from the bar due to critical statements;
- lack of effective investigation of violence against journalists doing his/her duties;

- prohibition of the import of books into the country based on hostile content;
- search of journalists' homes, offices, and cars, seizure of belongings;
- detention, administrative arrest for distribution of protest leaflets;
- failure to respond to information requests for publicly available information in a government agency;

CoE monitors the implementation of judgments recognizing violations of the right to freedom of expression in several group cases.

The main cases - the execution of the judgments of Mahmudov and Agazadeh v. Azerbaijan, Fatullayev v. Azerbaijan, Tagiyev and Huseynov v. Azerbaijan, Hasanov v. Azerbaijan, which are related to defamation, are under the monitoring of **Mahmudov and Agazadeh Group (1)**. The **Muradova Group (2)** monitors the implementation of the judgment against Najafli v. Azerbaijan, which considers the violence against journalists and the failure to effectively investigate the incident a violation of the right to freedom of expression. A similar violation is related to the implementation of the judgment of Haji and others v. Azerbaijan is under the monitoring of the **Mammadov (Jalaloglu) Group cases (3)**.

As in the case of Khadija Ismayilova against Azerbaijan (4), Hajibeyli and Aliyev's case are related to the denial of admission to the Azerbaijani Bar Association (5) was monitored separately, while Bagirov v. Azerbaijan case was monitored under the **Namazov Group cases (6)**. The execution of Ibrahimov and Mammadov c. Azerbaijan, which is related to the arrest of applicants for writing graffiti on the statue of the former president of Azerbaijan, is under the monitoring of the **Mammadli Group cases (7)**. The implementation of the judgment of the religious community of Jehovah's Witnesses c. Azerbaijan, which is related to the ban on the import of religious literature into the country, is under the monitoring of **Mammadov (7308/12) Group cases (8)**. Avaz Zeynalov v. Azerbaijan, Mammadov and Abbasov v. Azerbaijan, Hasanov and Majidli v. Azerbaijan, and Rovshan Hajiyev v. Azerbaijan cases the ECtHR established that the right to freedom of expression was violated but these cases have not yet been classified into groups.

Except for unclassified cases, most of these judgments are subject to an "extended supervision" procedure. The implementation of some judgments (for example, Hajibeyli and Aliyev v. Azerbaijan) is monitored as "standard supervision". Implementation of the judgments included in the "extended supervision" system is on the agenda of the CoE Human Rights meetings held every three months. ECtHR judgments must meet certain criteria to be included in the "extended supervision" category. This category includes decisions that envisage urgent individual measures and which carry major systemic problems in their content and necessitate the implementation of general measures such as political reforms. The focus on implementing judgments under "standard supervision" is different. Monitoring of these cases is mainly under the control of the Judgment Enforcement Department. The role of the CoE is limited to reviewing the Action Plans and reports submitted to it.

***So far, no group of cases related to the violation of the right to freedom of expression in Azerbaijan has been closed.***

### CHAPTER THREE: Implementation status of judgments;

#### Mahmudov and Agazadeh Group (1)

Judgments executed within this group is related to, in particular the unjustified imprisonment for libel and insult (in other cases the court could not establish any specific circumstances justifying the sanction imposed on incitement to violence or racial or religious hatred), the violation of the applicant's right to freedom of expression (Violation of Article 10), as well as (in Fatullayev case against Azerbaijan) the providing insufficient reasons to substantiate the defamatory nature of some statements and the arbitrary application of anti-terrorist legislation to punish the applicant for his statements.

Fatullayev's case is also related to the violation of the right to impartiality in the courts. Thus, the judge had previously ruled against the applicant in the first defamation case in the civil case (violation of Article 6 § 1). In this case, it was established that the public prosecutor's statements concerning the application of anti-terrorist legislation violated the applicant's right to the presumption of innocence (Article 6 § 2 of the Convention).

Although Mahmudov and Agazadeh v. Azerbaijan the applicants were convicted, they were not detained due to the pardon given by the president. When the judgment was announced in Eynulla Fatullayev's case, he was still serving an eight-year sentence, and the ECtHR judged to release him immediately.

**Individual measures:** Considering the measures taken in the case of Mahmudov and Agazadeh v. Azerbaijan (release of applicants from prison, absence of any entry in the applicants' file on the sentence, payment of a fair compensation), these measures were closed. In the case of E. Fatullayev against Azerbaijan, after the ECtHR judgment, the domestic courts' decisions on the applicant were annulled, and the applicant convicted of another crime was released early after the presidential pardon. The applicant was paid fair compensation. In this case, the monitoring over individual measures is closed. In the case of Tagiyev and Huseynov, the applicants were released from serving the remainder of their sentences by presidential pardon. The applicants were also compensated. The case was also sent to the Supreme Court for re-trial. In the case of Hasanov against Azerbaijan, the applicant was also pardoned by a presidential decree and released from serving the remainder of his sentence. However, the government did not provide information on fair compensation. Not all individual measures have been implemented in the case of Tagiyev and Huseynov, as well as Hasanov against Azerbaijan. At its 1419th meeting, the CoE called on the Azerbaijani government to provide necessary information on individual measures.

**General measures:** The implementation of the judgments included in the Group requires the Government of Azerbaijan to take measures in three directions:

- measures to change defamation legislation;
- measures aimed at preventing the arbitrary application of legislation;



- Measures aimed at preventing violations of the right to the presumption of innocence by the Prosecutor General's Office and government officials.

After the group cases entered the implementation phase, the CoE regularly discussed implementation status and adopted more than 10 resolutions. The last resolution was adopted at the 1419th meeting of the CoE held from November 30 to December 2, 2021. The document expressed concern about the delay in the reform of defamation legislation and asked the government to provide statistics on the application of existing laws criminalizing defamation and insult and the possibility of amending existing laws. In addition, the resolution emphasizes concern over the content of the new Media Law being drafted in Azerbaijan and calls on the government to co-operate with the Council of Europe in preparing the law. However, a week after adopting the resolution, the text of the new draft of "Media Law" was made public. Parliament hastily adopted the bill. The law, which passed the parliament, must come into force after being signed by the President of Azerbaijan. In some cases, this law requires licensing of Internet television, creates opportunities for extensive interference in editorial policy, essentially leaves media regulation to the state, covers the issuance of licenses by a government agency to engage in journalism, the creation of a single register of journalists, and more.

The resolution of the CoE also reiterates the need to take clear measures to protect journalists from arbitrary prosecution, to bring local judicial practice in line with European standards, and to take targeted steps to improve the practice of criminal prosecution of the media.

The resolution adopted at the 1406th meeting of the CoE on 7-9 June 2021 expressed similar concerns: the requirement to amend Articles 147 and 148 of the Criminal Code, which prescribe liability for defamation and insult; elimination of the practice of arbitrary and disproportionate application of criminal penalties for defamation and other provisions of the criminal law; making changes to the practice which violate the right to the presumption of innocence by the prosecutor's office and the executive authorities.

In all the resolutions of the Committee of Ministers, addressing Azerbaijan's willingness to cooperate with the Council of Europe, it stressed the need for a meaningful dialogue with the Azerbaijani government to address the problems posed by the Group cases.

**Government Action** - The Azerbaijani government has taken steps to reform defamation legislation in the context of the implementation of judgments recognizing violations of the right to freedom of expression, but these steps have not led to decriminalization of libel and insult and a change in existing practice. The "National Action Program to Increase the Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan" signed by the President of Azerbaijan in 2011 called for "preparation of proposals to improve the legislation to eliminate criminal liability for defamation". The draft law prepared in accordance with the program did not meet the standards of the Council of Europe (this was the opinion of the Venice Commission), and as a result was not adopted by the parliament. Initiatives of civil society on defamation - the draft projects were not accepted.

The Plenum of the Supreme Court of Azerbaijan, in turn, decided in 2014 to "submit proposals to the Milli Majlis of the Republic of Azerbaijan on amendments to the Criminal Code." In that

proposals, a draft amendment to Articles 147 (libel) and 148 (insult) of the Criminal Code was submitted to the Milli Majlis. Based on the position of the ECtHR, the Plenum of the Supreme Court considered it expedient to provide only a fine in Articles 147 and 148 of the Criminal Code. However, this initiative did not materialize. On the contrary, the scope of penalties provided for in the criminal law has been further expanded - fines have been increased, and these provisions have also been extended to content spread on the Internet.

The decree "On deepening reforms in the judicial system" signed by the President of Azerbaijan in 2019 created new opportunities for reforming defamation legislation. The decree recommended the Supreme Court and the Prosecutor General's Office of Azerbaijan and instructed the Ministry of Justice to continue measures to decriminalize crimes - to prepare and submit relevant draft laws within three months. However, the implementation of this decree did not include the decriminalization of liability for libel and insult.

**Current application of the law** - Against the background of non-decriminalization of liability for libel and insult, the relevant articles of the Criminal Code are applied. Ten years ago, following an oral call from the President of Azerbaijan, an unofficial moratorium was imposed on the imprisonment of journalists for libel and insult. However, this did not last long. Over the past few years, journalists, as well as activists who share critical content on social media, have been repeatedly convicted of libel or insult. One of the most memorable examples of defamation in recent years is the arrest of blogger Mehman Huseynov who has publicly stated that he had been tortured and slandered by the police for a long time. In addition, well-known journalists, public and political figures, and civil society representatives have been imprisoned for defamation in at least four cases over the past year:

- ***Ibrahim Turksoy, blogger (he was arrested for sharing information on social media);***
- ***Elchin Hasanov, journalist (he was imprisoned for writing articles criticizing officials);***
- ***Ali Aliyev, politician (he was arrested for expressing suspicion of the official version of the causes of the helicopter crash in Azerbaijan);***
- ***Ilham Aslanoglu, investigative lawyer (arrested for reporting on war crimes);***

In addition to being convicted of defamation charges, the practice of convicting journalists on bogus criminal charges is widespread. At least five journalists are currently in jail on such charges. Elchin Mammadli, editor of the "Yüksəliş naminə" website, for burglary, Polad Aslanov, editor of the Xeberman.com and Press-az.com news sites, for treason and illegal possession of weapons and ammunition; Bahruz, editor-in-chief of "Neytral İnformasiya Agentliyi", for taking bribes; and Afgan Sadigov, the editor-in-chief of the "Azal TV" news portal, was convicted of extortion and sentenced to long prison terms.

Over the past four years, several people have been prosecuted for anti-government calling and calls for religious discrimination. For example, Nureddin Ismayilov, the editor-in-chief of teref.info website, Mustafa Hajibeyli, the head of bastainfo.com website, and Anar Mammadov, the editor of kriminal.az website, have been charged with "inciting anti-government propaganda" for writing articles on topics of public interest. Blogger Aslan Gurbanov was found guilty of "inciting national, racial, social, religious hatred and enmity."

Azerbaijan's criminal law provides for separate liability for insulting the honor and dignity of the President. Only this provision is not applied in practice.

**Muradova Group cases and Mammadov (Jalaloglu) Group cases** - Execution of more than 20 judgments, violation of Articles 2, 3, 5, 6, 10, 11, 13, and 34, within these groups is monitored. Execution of the judgments of *Najafli v. Azerbaijan, Haji and others v. Azerbaijan* is also among those cases. The ECtHR found that journalists engaged in professional activities were subjected to violence and attacks by police officers and others and that the events were not effectively investigated.

**Najafli case** - The ECtHR found both substantive and procedural rights under Article 3 were violated in this case. Substantive violation: The applicant journalist was beaten and knocked unconscious by police during his professional activity during an unauthorized demonstration in Baku in 2009. Procedural violation: investigators did not make the necessary efforts to carry out the procedural measures; the applicant was not provided with access to the investigation and was not informed about the procedural steps; efforts by the Sabail Police to identify the culprits were ineffective (no list of police officers interfering in the protests was obtained, no identification and testimony were obtained, no cross-examination was conducted, no attempts were made to chronologize the events); lack of independence of investigation (investigators were appointed by the police department which was accused of violence against the journalist); failure of the domestic courts to accept the applicant's civil claim on the grounds that the defendants did not appear.

**The case of Haji and others against Azerbaijan** - in this case eight applicants were ill-treated by individuals (in relation to the applicants, Mr. Haji, Mr. Mehdiyev, Mr. Budagov, and Mr. Abbasov), or police officers (in relation to the applicants Mr. Mukhtarli, Mr. Nasibov, Mr. Ibrahimov, and Mr. Guliyev) in connection with their journalistic activities in 2008-2014. Abbasov, one of the applicants, was attacked by government officials who yelled at the applicant to "stop filming." The ECtHR found that the applicant's rights under Article 3 (assault, loss of consciousness, prolonged treatment; failure to conduct an appropriate investigation for more than 6 years; restriction of access to information on the progress of the investigation), as well as Article 10 (the actions resulting in ill-treatment were related to journalistic activities; the state did not take the necessary measures to protect the journalist), were violated. The other applicants' procedural rights under article 3 were found to be violated.

**Individual measures** - Compensation is provided in both judgments. As for other individual measures, it is reported that after *Najafli's* judgment, the case was reconsidered on the basis of newly opened facts. According to the government, on 2 April 2013, the Prosecutor General of Azerbaijan annulled the decision of the Sabail District Prosecutor's Office of 9 March 2003 in the case of the applicant and decided to reopen the criminal case. However, the applicant stated that he had no information about any new proceedings. The government did not provide additional information. No information was provided in the case of *Haji and others*. The implementation of general measures on both judgments is monitored within the aforementioned *Mahmudov* and *Agazadeh Groups* cases.

CoE discussed the implementation of the judgments included in the two groups in December 2021. The CoE expressed concern over the implementation of the resolution. The resolution's analysis

states that although more than 14 years have passed since completing some work in the groups, and the CoE requested detailed information from the Government on individual measures in 2020, no updated information has been provided. This situation is a matter of serious concern. That is because years of delays and non-submission of information hinder the clarification of the status of implementation of judgments and make it impossible to provide victims with adequate compensation. The CoE notes that after the judgments of the ECtHR, governments should re-evaluate the possibility of re-investigation, indicate what measures they will take to address the problems, and what concrete results would be achieved and when. It is not enough to list the reopening of the investigation into this group's case to assess the Government's efforts.

As for general measures, the practice of ill-treatment in law enforcement agencies remains widespread. The implementation of the judgments of both groups has been going on for more than 10 years, and the problems identified through the judgments remain unresolved. By the end of 2021, more than 70 similar applications were pending before the ECtHR. The main problems are the prevention of ill-treatment in law enforcement agencies during detention and arrest, ineffective investigations, and the failure to take measures to increase accountability for ill-treatment.

**Current situation** - the protection of journalists' professional activities continues to be problematic. Domestic law provides for criminal liability for obstructing a journalist's professional activities. Officials have a greater responsibility than individuals who interfere in the activities of journalists. In such cases, they can be imprisoned for up to 1 year. However, this provision has not been applied in the last 10 years. Criminal investigations have been opened in several cases of violence against journalists, but these investigations have since been dropped.

Law enforcement officials have hindered journalists from carrying out their professional activities in the last six months alone. Journalists dressed in distinctive journalistic attire were detained by police, taken to the police office, and held there for several hours.

In August 2021, three journalists covering the protest of feminist activists in front of a police station were detained. Voice of America employee Ulviya Ali, Microscope Media employee Elnara Gasimova and freelancer journalist Nargiz Absalamova were intercepted by police. They said they were beaten, forcibly taken to the police station, and detained for about three hours. Aysel Umudova from Meydan TV, Zarifa Novruzova from Microscope Media, and Fatima Movlamova from Turan TV were subjected to similar treatment during protests by members of opposition political parties - police forcibly detained them and took them to the police office. Journalists detained in the police office for about 3 hours were searched. Turan TV employee Fatima Movlamova was detained during a protest rally near the Interior Ministry and taken to the police station. Microscope Media employee Alakbar Azayev was detained by police and taken to police while filming a rally near the Presidential Administration. Another freelancer journalist, Amina Mammadova, was prevented from filming the protest by police, and her equipment was forcibly taken.

In the cases mentioned above, the journalists appealed to the prosecutor's office to investigate the interference they were subjected to and punish the officials who interfered in their lawful professional activities. However, the prosecutor's office rejected the journalists' complaints and refused to open a criminal case in all cases.

**Namazov Group cases** - implementing 3 judgments within this group is under monitoring. Namazov's case is related to a violation of the applicant's right to respect for privacy (Article 8) due to lack of adequate procedural safeguards in the disciplinary proceedings instituted against him by the Azerbaijan Bar Association and the inability of the domestic courts to provide appropriate and sufficient grounds for their decisions. Aslan Ismayilov's case is related to the failure of the domestic courts to provide justified answers to the decisive arguments in the case of expelling the applicant from the Azerbaijan Bar Association and thus violating Article 6. In Bagirov's case, the Court concluded that expelling the applicant from the Azerbaijan Bar Association violated his rights under Articles 10 and 8. The ECtHR found that the arguments presented by the domestic courts in support of the applicant's expelling were irrelevant and insufficient, as well as that the sanctions imposed were disproportionate to the intended purpose. In Bagirov's case, where the violation of the right to freedom of expression was recognized, individual measures were not implemented fully. The compensation determined by the ECtHR was paid to the applicant, but it has not yet been possible to restore the applicant's professional activity.

As for the general measures, the government has not submitted an Action Plan for this case. At a recent meeting of the CoE (September 2021) it adopted a resolution which stated: "We note with concern the delays in providing information on individual and general measures taken or planned by officials." In its resolution, the CoE called on the government to resume proceedings on these issues due to the disproportionate nature of the judgments and sanctions imposed on the applicants. Given the commitment of the applicants to return to their former status (*restitutio in integrum*), the government was invited to draw the attention of the Bar Association to the Court's judgments. As for general measures, the CoE considered it necessary to take measures to ensure the preparation of specific grounds in domestic legislation for the exclusion from the Azerbaijan Bar Association. The government was also called upon to apply safeguards to prevent unnecessary disciplinary action against lawyers and to bring disciplinary proceedings into line with the criteria set by the Convention and the Council of Europe, in particular the CoE' recommendation on freedom of expression.

**Mammadov (7308/12) Group (Jehovah's Witnesses v. Azerbaijan)** - The implementation of 3 judgments within this group is under "extended supervision". In this case, the ECtHR found that the ban on the importation of religious literature into Azerbaijan was a violation of Article 10. The government's report on the implementation of the judgments states that compensation has been paid. The applicants' submissions stated that there were problems with the payment of compensation. The government did not submit an Action Plan to implement the judgments.

**Mammadli Group (Ibrahimov and Mammadov v. Azerbaijan)** - The case of Ibrahimov and Mammadov v. Azerbaijan is the only case under supervision within the Mammadli Group in which a violation of Article 10 has been recognized. The ECtHR found that the Government had applied an unjustified and arbitrary arrest and conviction by abusing criminal law in violation of the rule of law. The Government prosecuted its critics, civil society activists, and human rights defenders in violation of Article 18 of the Convention, along with Article 5. The ECtHR also found that the applicants had in fact been imprisoned for graffiti writing.

The Group case, which is under extended supervision, was discussed at the last meeting of the CoE (December, 2021). CoE noted that the claim for compensation in the case of Ibrahimov and

Mammadov was not met, and called on the government to pay in full all the amounts set by the ECtHR, including the accrued interest, without delay. The government was also invited to provide information on general measures. In the case of Ibrahimov and Mammadov, other individual measures (reconsideration of the case, etc.) were not implemented.

**Hajibeyli and Aliyev v. Azerbaijan** - The non-admission of applicants to the bar due to their critical views on the state of advocacy in Azerbaijan is still in the classification (standard or extended) stage. As part of the judgment, some individual measures were implemented with delay. Some individual measures were implemented with delay. The amount of compensation was paid to the applicant Hajibeyli in installments. Due to the delay, no interest was paid. It is not known whether compensation was paid to the applicant Aliyev. Because the applicant was a representative in other court cases, it is not clear for which cases he received payment. The CoE called on the government to address the uncertainty on these issues. The implementation of other individual measures is also problematic. Civil procedure law provides for retrials by domestic courts, but this has not yet happened. The issue of the applicants' membership in the Bar remains open, and the government has not taken any steps in this direction.

**Khadija Ismayilova v. Azerbaijan:** In the case of Ismayilova, the dissemination of secret footage of the applicant and the publication of defamatory articles about her violated the right to respect for privacy and freedom of expression. The government did not provide an Action Plan to implement the judgment. Moreover, since the applicant's bank accounts were frozen, the Government did not provide for the payment of the main individual measure - the amount of compensation. There were no reports of any steps being taken to investigate the illegal actions against the applicant (sending a threatening letter, recording and disseminating bedroom footage with a hidden camera). Ismayilov's case, in the light of the reports of the Commissioner for Human Rights of the Council of Europe, also raises the problem of impunity for violations against journalists. Although domestic law provides penalties for illegal actions against journalists, the domestic authorities refrain to apply these provisions. The ECtHR argues that such an environment has a serious deterrent effect on journalists and other media actors as "public watchdogs" and on freedom of expression in general. This judgment requires an effective Action Plan to eliminate the environment of impunity.

The CoE last discussed the implementation status of the judgment in December 2020, and in its resolution called on the government to provide information on the individual measures taken to pay compensation and investigate the perpetrators of crimes against the applicant. As for general measures, the Committee recalls its commitment to creating a conducive environment that protects journalists and other media actors from threats and attacks.

### *RECOMMENDATION*

**In light of the cases in which the ECtHR has recognized violations of the right to freedom of expression, it is helpful to take the following steps to improve defamation legislation and protect journalists and other media actors in Azerbaijan:**

- Articles 147 and 148 of the Criminal Code, which provides for liability for libel and insult, should either be repealed or the parts of those articles that provide for imprisonment should be changed;*
- Laws regulating the activities of journalists and the media (in particular the newly adopted Media Law) should be brought into line with Council of Europe standards;*
- Co-operate with the Venice Commission of the Council of Europe while changing media laws, as well as those that criminalize libel and insult;*
- The application of laws guaranteeing the protection of professional journalists and the right of journalists to access information must be ensured;*
- Pressure on journalists engaged in professional activities, especially those who gather information from public events, should be stopped, and measures should be taken in accordance with the law against those who detain journalists, use physical force against them, or obstruct them from carrying out their professional activities.*



## ANNEX 1

**Review of all ECtHR judgments concerning a violation of the right to freedom of expression by Azerbaijan**

**Mahmudov and Agazade v. Azerbaijan;**<sup>1</sup> *Application №.35877/04; 18/12/2008* - In this case, the first applicant was the editor-in-chief of the Mukhalifat («Müxalifət») newspaper, and the second applicant was an employee of that newspaper. Domestic courts ruled that the newspaper's article about a well-known public figure and MP was defamatory. Both applicants were found guilty of libel and insult and sentenced to five months' imprisonment. The ECtHR found that although the interference with the applicants' freedom of expression was justified, the imposition of a criminal penalty was contrary to Article 10. The ECtHR ordered compensation of 1,000 euros as non-pecuniary damages and 925 euros as costs and expenses.

**Fətullayev v. Azerbaijan;**<sup>2</sup> *Application №.40984/07; 22/04/2010* - The imposition of unjustified imprisonment for defamation in Fətullayev's case as a punishment (the ECtHR did not find a specific case justifying the imposition of such a punishment for incitement to violence or racial hatred) and the failure to establish sufficient grounds to justify defamation in some of the applicant's statements, as well as the arbitrary application of anti-terrorism legislation to some of the applicant's statements, has violated the journalist's right to freedom of expression. This case also violated the right to an impartial trial (violation of Article 6.1). The judge who ruled during the civil defamation proceedings against the applicant also ruled on the criminal proceedings instituted on the same grounds. The ECtHR also established that the public prosecutor's statements regarding the application of anti-terrorism legislation violated the applicant's presumption of innocence (violation of Article 6.2). When the ECtHR ruled in Fətullayev's case, the applicant was still serving an eight-year sentence. The ECtHR also decided to release the applicant immediately. The ECtHR found a violation of the applicant's right to freedom of expression and a fair trial and set a fair fine of € 27,822.

**Najafli v. Azerbaijan;**<sup>3</sup> *Application №.2594/07; 02/10/2012* - The case is related to the fact that journalist, editor-in-chief of the newspaper Ramiz Najafli was beaten and injured by police during a rally by opposition forces in Baku. The police beat the journalist, wearing a distinctive journalist's uniform, and he was taken to hospital. The applicant suffered a closed head injury, concussion, and soft tissue damage in the head area. Although the prosecutor opened a criminal case, the prosecutor decided to suspend the criminal case until the person who injured the journalist was identified. The applicant appealed to the court for a decision to continue the investigation, but the courts rejected his appeal. The applicant also filed a civil lawsuit against the Ministry of Internal Affairs, demanding compensation for pecuniary and non-pecuniary damage, but this claim was not upheld.

The ECtHR also found that the fact of ill-treatment alleged by the applicant was quite serious. It reached a minimum severity level, leading to inhuman and degrading treatment. Article 3 of the Convention had been violated on merit. The ECtHR also examined the procedural violation and found that the investigation into the applicant's allegations of ill-treatment also did not meet the requirements of Article 3 of the Convention and that Article 3 had also been violated from a procedural point of view. Regarding the applicant's claims under Article 10 of the Convention, the ECtHR emphasized that the applicant was not participating in the protest but doing his professional duties. Determining that interference with a journalist's activity was not justified under Article 10 § 2, the ECtHR emphasized that in the light of the circumstances of the case, such interference in the journalist's activities in all such cases could not be considered "necessary in a democratic society." Thus, the ECtHR found out the violation of Article 10 of the Convention. The ECtHR set a fair compensation amount of 13,000 euros.

**Hajibeyli and Aliyev v. Azerbaijan;**<sup>4</sup> *Application №.6477/08 10414/08; 19/04/2018* - This judgment is related to the violation of the right to freedom of expression by refusing the Presidium of the Bar Association of Azerbaijan to admit the applicants to the Bar in 2005-2006.

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<sup>1</sup> <https://hudoc.echr.coe.int/eng?i=001-90356>

<sup>2</sup> <https://hudoc.echr.coe.int/eng?i=001-98401>

<sup>3</sup> <https://hudoc.echr.coe.int/eng?i=001-113299>

<sup>4</sup> <https://hudoc.echr.coe.int/eng?i=001-182173>



The case also found that the State had failed to comply with its obligations under Article 34 of the Convention, like all case materials relating to the applicants' applications before the ECtHR had been taken from Mr. Aliyev's office. Accordingly, the ECtHR ordered a fair compensation of € 16,500 in this case.

***Khadija Ismayilova v. Azerbaijan;*<sup>5</sup> Application №.65286/13 57270/14; 10/01/2019** - The case concerned the applicant's, a well-known investigative journalist, right to privacy (violation of Articles 8 and 10 of the Convention) and freedom of expression related to the events in 2012-2014. Following the publication of articles critical of the president's daughters' involvement in various commercial activities, a letter was sent to the applicant threatening to humiliate her in public if she did not stop publishing investigative articles. In addition, following her refusal, video footage of sexual scenes of her in the bedroom with a hidden camera was posted on the Internet. Around the same time, local newspapers published and disseminated news and articles accusing the applicant of immorality.

In this case, the Court found that the authorities had failed to investigate the actions against the applicant in the context of the threatening letter, the secret recording and dissemination of intimate videos by unknown persons, and the disclosure of personal information in official criminal proceedings. The ECtHR also noted that although it was necessary to protect the threat of public humiliation of the applicant, the government did not provide this protection. Consequently, the ECtHR found that the applicant's right to respect for privacy and freedom of expression had been violated, and compensation of € 16,750 was imposed.

***Tagiyev and Huseynov v. Azerbaijan;*<sup>6</sup> Application №.13274/08; 05/12/2019** - The case involved the prosecution of both journalists, according to the applicants. Domestic courts assessed their articles as inciting ethnic, racial, social, or religious hatred and enmity and sentenced them to three and four years in prison, respectively. The ECtHR did not consider the reasons given by the domestic courts to justify interference in the work of journalists to be relevant and sufficient. The ECtHR also stressed the severity of the sentences imposed on applicants who had been convicted of a crime and sentenced to three and four years' imprisonment but stayed one year and one month in prison. The ECtHR noted that in the presence of other means of interference, the criminal conviction is a very severe sanction. According to the ECtHR, interference in journalists' activities did not meet the test of "necessity in a democratic society." The ECHR awarded the applicants a total of € 25,700 as compensation.

***Ibrahimov and Mammadov v. Azerbaijan;*<sup>7</sup> Application №.63571/16; 13/02/2020** - In the case against Ibrahimov and Mammadov, the applicants were arrested and tried on drug charges. The main reason for their punishment was that the applicants had painted political graffiti on the statue of the former President of Azerbaijan. The ECtHR unanimously ruled that the applicants had been ill-treated by the police and that their inhuman or degrading treatment had not been effectively investigated. Their arrest without charge on suspicion of criminal offenses and their continued pretrial detention violated their right to liberty and security. The ECtHR also found that the punishment of the applicants for painting politically motivated graffiti was a violation of their right to freedom of expression. The ECtHR stressed that the real reason for the arrest and detention of the applicants on drug charges was painting political graffiti. Thus, the ECtHR ruled that Article 18 of the Convention, taken in conjunction with Article 5, was violated.

In its judgment, the ECtHR referred to the Committee for the Prevention of Torture and the United Nations reports, stressing that the government could not refute the allegations that the applicants had been ill-treated. Drug charges did not meet the minimum standards. The Court awarded a total of € 72,000 as pecuniary and non-pecuniary damages.

***Religious community of Jehovah's Witnesses . Azerbaijan;*<sup>8</sup> Application №.52884/09; 20/02/2020** - The applicant-community was a religious community that was not popular in Azerbaijan. The community wanted to import religious literature into Azerbaijan. However, the relevant authorities did not allow the applicant-community to import religious books, citing the hostility of the books to other religions and the potential for social unrest. That prevented the spread of the literature in the country. In this case, the ECtHR ruled that the domestic courts had failed to examine the content of the books and the sensitivity of interfaith relations in the general context. The ECtHR, which ruled that the applicant's right to freedom of expression was violated, set the compensation of € 3,042.

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<sup>5</sup> <https://hudoc.echr.coe.int/eng?i=001-188993>

<sup>6</sup> <https://hudoc.echr.coe.int/eng?i=001-198705>

<sup>7</sup> <https://hudoc.echr.coe.int/eng?i=001-200819>

<sup>8</sup> <https://hudoc.echr.coe.int/eng?i=001-201087>

**Bagirov v. Azerbaijan;**<sup>9</sup> *Application №.81024/12 28198/15; 25/06/2020* - The applicant, in this case, was Khalid Bagirov, a lawyer and member of the Azerbaijan Bar Association. In 2011, Bagirov attended a public meeting to discuss the problems facing the legal profession in Azerbaijan, where he spoke about police violence by referring to a specific case. Following the dissemination of his views in the domestic media, the Baku Main Police Department appealed to the Azerbaijan Bar Association, which in turn initiated disciplinary proceedings against Bagirov. As a result, the Azerbaijan Bar Association suspended his lawyering for a year. Furthermore, the Azerbaijan Bar Association resumed disciplinary proceedings against Bagirov in 2014. The disciplinary proceedings were related to Bagirov's statements while defending politician Ilgar Mammadov in a criminal case. At that time, the ABA appealed to the court to terminate Kh. Bagirov's lawyer activity and the court granted the ABA's request. The courts considered that Bagirov "overshadowed the state" and "damaged the judiciary's credibility" with his statements about the state of the judiciary and, in particular, about a judge.

In its judgment, the ECtHR ruled that the suspension and subsequent termination of Bagirov's lawyer activities did not comply with the Convention. According to the judgment, Bagirov's rights guaranteed by Articles 10 (freedom of expression) and 8 (respect for privacy) of the Convention were violated. The ECtHR emphasized that the reasons given by the domestic courts to support the applicant's disqualification were inadequate and insufficient. It was also determined that the sanctions imposed on the applicant were not commensurate with the intended legitimate purpose. The ECtHR awarded €18,000 as compensation.

**Haji and others v. Azerbaijan;**<sup>10</sup> *Application №.3503/10; 01/10/2020* - In this case, 8 applicants (journalists) were working in different media or independently. Police and people in civilian suits physically abused the applicants during their professional activities. The applicants' complaints were related to the ineffective investigation of the crimes committed against them. The domestic authorities investigated the applicants' cases, and in some cases, a criminal case was opened. However, in no case were the perpetrators of the violence prosecuted. The applicants also argued that their right not to be subjected to torture and the right to freedom of expression were violated.

The ECtHR recognized the physical abuse during his professional activity as a violation of his right to freedom of expression. It also found a violation of Article 3 of the Convention related to other applicants and Article 6 for non-investigation of violence against journalists. The ECtHR awarded € 80,250 as compensation to 8 applicants.

**Avaz Zeynalov v. Azerbaijan;**<sup>11</sup> *Application №.37816/12 25260/14; 22/04/2021* - The case concerned the detention and conviction of the applicant, Avaz Zeynalli, the newspaper's editor-in-chief, on charges of extorting bribes from a member of parliament. The journalist, who denied the allegations, claimed in his complaint that his trial had violated his right to liberty and security (Article 5), a fair trial (Article 6), respect for privacy (Article 8), and freedom of expression (Article 10).

The ECtHR found that the search of the applicant's home, office, and car and seizure of certain items has violated Article 10. The ECtHR ruled that the search and seizure were not commensurate with the legitimate purpose. The case also includes respect for privacy (illegality of search and seizure), the right to liberty and security (inadequacy of pre-trial detention, inability of officials to provide adequate and sufficient grounds for arrest), a fair trial (officials without a court order denouncing the applicant as a criminal; as well as denying the applicant the opportunity to question witnesses). The ECtHR determined €13,000 as compensation.

**Hasanov v. Azerbaijan;**<sup>12</sup> *Application №.52584/09; 08/07/2021* - The applicant was a journalist and newspaper editor. Although the convicted applicant claimed that he was not the author of the controversial article on the war veteran, the domestic courts ruled that the author of the articles was an applicant, wrote under other names and that the articles were insulting in content. As a result, the applicant was sentenced to six months' imprisonment for insult. The ECtHR found a violation of freedom of expression and the right to a fair trial.

The ECtHR found that the applicant's conviction was a violation of his right to freedom of expression in accordance with the law. Furthermore, the ECtHR found that the intervention did not pass the "necessity of a democratic society" test

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<sup>9</sup> <https://hudoc.echr.coe.int/eng?i=001-203166>

<sup>10</sup> <https://hudoc.echr.coe.int/eng?i=001-204683>

<sup>11</sup> <https://hudoc.echr.coe.int/eng?i=001-209346>

<sup>12</sup> <https://hudoc.echr.coe.int/eng?i=001-210839>

(balancing the applicant's right to freedom of expression with the need to protect the plaintiff's reputation; failure to apply standards in accordance with the principles embodied in Article 10; failure to provide adequate grounds for interference). Accordingly, the ECtHR awarded the applicant € 1,700 as compensation.

***Mammadov and Abbasov v. Azerbaijan***<sup>13</sup> *Application No.1172/12; 08/07/2021* - In this case, both applicants were journalists. During a police search in one of the newspaper's offices in 2009, the applicants were not allowed to film, they were ill-treated, and their professional equipment was confiscated. One of the applicants was detained and released an hour later.

The ECtHR ruled that the confiscation of journalists' equipment and restricting the freedom of one of them to one hour in a police car severely restricted their right to access and disseminate information. This intervention did not have any legitimate purpose and was not necessary in a democratic society. The ECtHR found that officials' interference in journalists' activities violated the right to freedom of expression. The applicant's detention for one hour violated his right to liberty and security. The court awarded a total of € 12,500 as compensation.

***Mahmudov and Agazadeh v. Azerbaijan***<sup>14</sup>; *Application No.28083/08; 22/07/2021* - The applicants were the editor-in-chief and employee of a newspaper known for its critical stance. The case involved the prosecution of editor-in-chief and a journalist for an article that allegedly defamed one of Azerbaijan's most prominent political figures, Jalal Aliyev. Following Aliyev's complaint, the journalists were convicted of defamation by the Yasamal District Court on 16 May 2007. Each was sentenced to two years and six months in prison. About a year later, the Supreme Court upheld the sentences of both journalists. However, before that decision of the Supreme Court - in December 2007, the journalists were released under the pardon of the President of Azerbaijan. The ECtHR also ruled that the applicants' convictions violated their right to freedom of expression (determining the balance between the applicant's right to freedom of expression and the need to protect the reputation; failure to apply the standards in accordance with the principles embodied in Article 10; failure to provide appropriate and sufficient grounds to justify the intervention). The ECtHR awarded the applicants € 3,400 as compensation.

***Hasanov and Majidli v. Azerbaijan***<sup>15</sup> *Application No.9626/14 9717/14; 07/10/2021* - In this case, the applicants were two young opposition activists. They were detained by police in July 2013 while distributing leaflets at the Icheri Sheher ("İçəri Şəhər") metro station in Baku. They were taken to the police station and detained overnight. The applicants, against whom an "administrative violation protocol" had been drawn up, were charged with distributing anti-government leaflets, disobeying a lawful order of a police officer and sentenced to 15 days administrative detention. The ECtHR noted that although the government had a different view, the case file showed that the applicants had been detained, was taken to the police, and was punished for distributing leaflets. Noting that the contents of the leaflets had not been examined in domestic courts or other investigations, the ECtHR held that the interference with the applicants' right was not lawful in the light of Article 10 § 2.

The ECtHR also ruled that the domestic trial was generally unfair and recognized a violation of Article 6. The ECtHR awarded the applicants €11,700 as compensation

***Rovshan Hajiyev v. Azerbaijan***<sup>16</sup> *Application No.19925/12 47532/13; 09/12/2021* - The applicant, in this case, was Rovshan Hajiyev (Hajibeyli), editor of the opposition newspaper Azadliq ("Azadlıq"). The lawsuit was about the journalist's information request about the environmental impact of the radar station in the Gabala region and denial of this information request by the relevant authorities. The domestic courts did not also ensure this request. The ECtHR noted in the case that "access to information is a tool for the exercise of an individual's right to freedom of expression, and failure to do so is an interference with that right."

The ECtHR examined the purpose of the information request in question, the nature of the information, and whether the information was available and accessible. The ECtHR noted that the information the applicant was requesting was of public interest. Access to this information played an important role in the applicant's right to receive and disseminate information as a journalist. Failure to provide access to such information is contrary to Article 10 of the Convention. The ECtHR awarded the applicant €1,500 as compensation for the costs of the lawyer services.

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<sup>13</sup> <https://hudoc.echr.coe.int/eng?i=001-210849>

<sup>14</sup> <https://hudoc.echr.coe.int/eng?i=001-211100>

<sup>15</sup> <https://hudoc.echr.coe.int/eng?i=001-212032>

<sup>16</sup> <https://hudoc.echr.coe.int/eng?i=001-213788>

# Article 10

# Freedom of Expression

## *EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN AZERBAIJAN*

2022  
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