

# **LEGAL ENVIRONMENT FOR MEDIA in AZERBAIJAN**

*2022, Annual Analysis*

**MEDIA RIGHTS GROUP** - is a civil society initiative working in Azerbaijan, especially in the field of adapting legislation and practice related to media freedom to advanced standards, protecting media and journalists, promoting freedom of expression and other basic rights, advanced practices.

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## ABOUT THE DOCUMENT

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**This analysis is based on the monitoring and analysis of incidents related to media and journalists in Azerbaijan in 2022. More than 185 such incidents were registered in Azerbaijan in year. The information about the incidents was taken from the news published in the media, the statements of journalists and bloggers who were participants in the incidents and applied for legal assistance.**

***The document consists of 5 sections:***

**In the 1st section, cyber intrusions and attacks that internet resources, journalists, and media workers are subjected to in 2022 are discussed.**

**In the 2nd section, the state of media access to public information was investigated.**

**In the 3rd section, the physical and psychological pressure-threats faced by journalists during the year, and other obstacles to their professional activities were explained.**

**Section 4 is about court cases related to media and journalists. In that section, information is also given about the work of imprisoned journalists.**

**The last section called "Media Legislation" explained the main provisions of the new Law "On Media" that entered into force in 2022. The document also touches on the problems that the application of the law has revealed regarding the right to freedom of expression and media, as well as the problems that will likely be revealed in the next stage.**

## 1. Cyber intrusions (cyber attacks)

In the 2022, Internet resources, journalists, and media workers faced several incidents in cyber space.

Both the website and social media pages of [bastainfo.com](http://bastainfo.com), a resource close to the opposition Musavat Party, were attacked several times. The YouTube page of Toplum TV, which stands out for its independent position, was also targeted by cyber attacks. "Turan" TV channel broadcast from abroad also faced a hacker attack. According to the statement of the head of the channel Ganimat Zahid, the servers of the TV channel were destroyed and the materials were deleted. TV specialists were able to recover the server. In the first half of 2022, access to the website of the Russian RIA-Novosti agency was blocked. The blocking was explained by the fact that RIA-Novosti regularly distributes materials related to Azerbaijan that are prohibited by law.

"Roskomnadzor", the regulatory body of the Russian Federation, has applied a block to the Russian-language websites [oxu.az](http://oxu.az), [haqqin.az](http://haqqin.az), and [minval.az](http://minval.az) belonging to Azerbaijan. The religious sites [interaztv.com](http://interaztv.com) and [eastnews.org](http://eastnews.org) were also blocked. Toplum TV was subjected to a cyber attack again in September. The Facebook page of this media was hacked, more than 26 thousand followers, as well as videos from the last 2 weeks were deleted. When Imran Aliyev, one of the founders of the [meclis.info](http://meclis.info) website, was taken to the Department for Combating Organized Crime of the Ministry of Internal Affairs, his social media accounts were forcibly hacked.

In August, journalist Rasim Mammadli's Facebook profile was stolen. The journalist, who was the editor of [Yenivaz.com](http://Yenivaz.com) news portal, was also the administrator of several Facebook pages. The journalist was able to get his profile back, but at that time, the "Zafaran" and "Gamish" pages, which he administered, were also stolen. One of the pages with 10 thousand followers was deleted, and the other could not be recovered. Currently, that page is being used to promote one of the government agencies. Complaints have been made to relevant institutions for investigation.

In 2022, the American social media holding company Meta Inc. stated in one of its quarterly reports that they discovered and eliminated a cyber espionage network belonging to Azerbaijan. The document states that the cyber espionage group is coordinated by the Ministry of Internal Affairs of Azerbaijan. According to the document, civil society activists, human rights defenders, opposition party and movement members, as well as journalists operating in Azerbaijan, were targeted by coordinated online cyber attacks. However, the ministry denied it. Earlier, similar online threats were revealed during the "Pegasus" investigation. Complaints of journalists who were clearly monitored in that investigation were not effective.

What happened in cyberspace in 2022 did not reveal any new trends, cyber attacks that were noticed in previous years continued. There are no new developments in the investigation of such cases and the punishment of the guilty. Both the appeals of the journalists who were monitored during the "Pegasus" investigation to the state institutions for investigation, and the complaints of the journalists and media who were subjected to a specific cyber attack were not effectively investigated. After exhausting domestic remedies, journalists filed a complaint with the European Court of Human Rights regarding the "Pegasus" investigation. Toplum TV's complaint about the cyber-attacked media has not been investigated. The approach of relevant institutions regarding the ineffectiveness of investigation is discriminatory. For example, Toplum TV was hacked by sending an SMS to the mobile phone of Alasgar Mammadli, one of the founders of that media, but that SMS was seen by others. The complaint of this media to the law enforcement agencies remained uninvestigated. However, in another example, the investigation was effective - the complaints of citizens who were blackmailed by the distribution of personal

video reviews on the Telegram network [were investigated](#) in a short time. The admin of several channels engaged in blackmail on Telegram was detained and brought to justice in a short period of time. No independent, critical media and journalists attacked in the cyberspace have had such a prompt and effective response to the inquiry request.

**An analysis of what happened in the cyber sphere both in 2022 and in the years before reveals several findings. Laws on the fight against cybercrime require updating and development, but the effective application of existing norms can create a much better picture in the direction of solving problems in this field. The criminal legislation of Azerbaijan defines liability for illegal access to the computer system, illegal capture and interference of data, circulation of means for committing cybercrimes, as well as actions that violate privacy. These provisions were edited at least 10 years ago, and in the light of technological development, they need to be further clarified. It is also a serious necessity to take steps towards the application of those norms on equal grounds to everyone. The failure to meet the mentioned requirements is the main reason for not effectively investigating cyberspace attacks. Legislation regulating the protection of personal data contains many problems. This is especially related to the ineffectiveness of the mechanisms that should protect personal data, and the fact that these mechanisms create ample opportunities for convenient and arbitrary use of personal data by state bodies. Lack of sufficient level of knowledge about protection from cyber threats and protection of personal information is one of the main trends that can be noticed.**

## 2. Access to public information

One of the main problems faced by journalists in this field is the creation of obstacles by officials to the information gathering of journalists performing their professional activities. Journalists encountered such incidents more than 49 times in twelve months.

Journalists and bloggers Sevinj Vagifqizi, Alakbar Azayev, Amina Mammadova, Avaz Hafizli, Fatima Movlamli, Sevinj Sadigova, Gunel Aliyeva, Vusala Naciyeva, Tazakhan Miralamli, Nurlan Gahramanli (Libre), Nargiz Absalamova, Vusala Mikayil, Nuray Kamal, Gulnaz Gambarli, Tabriz Mirzayev, Dilara Ghazanfargizi was detained by police officers and other officials, they were not allowed to film. All the incidents happened in Baku.

Gathering information from open court proceedings is problematic for media representatives who are distinguished by their critical position. Journalists Aytan Mammadova, Elshan Balakhanski, Anar Mammadov, Haji Zeynalov were not allowed to collect information from court proceedings several times. They were not given any legal basis.

Obtaining information through surveys is a serious problem. In 29 cases under monitoring in a year, state institutions that have public information did not comply with the requirements of the law "On Access to Information" in relation to any of the information requests sent to them. None of the queries have been fully answered.

The illegality of not responding to the request for information has been challenged in court in several cases. In none of them, the court decisions were in favor of the journalists. In some cases, after filing a complaint with the court or applying to the Ombudsman, who oversees the implementation of the law "On Access to Information", the owners of the information submitted some of the information requested from them.

Analysis of journalists' access to information reveals problems in accessing public information. Legislation governing this area complies with transparency standards. The law "On access to information" gives journalists the right to obtain public information through requests, and if this is not possible, to apply to the courts and the Ombudsman, who supervises the implementation of the law. In addition, the law imposes a duty on the entities considered to be the owners of information to proactively disclose and post public information on their websites. Compliance with this duty is problematic. During the investigation of journalists' requests, it is revealed that all the information requested by journalists through information requests is the information that the owners of the information should disclose proactively, that information should be published on the websites so that everyone can reach it without any request. Since the information is not published on the websites, journalists are forced to obtain it through a request.

**It is not easy for journalists to gather information from courts, especially from court proceedings that are of public interest. Legislation does not impose any restrictions on journalists gathering information from open court sessions. However, these norms are problematic, the collection of information from court sessions is mostly dependent on the decisions of judges.**

**Administrative legislation provides for administrative penalties in the form of fines for information holders who do not comply with the law "On Access to Information" and do not fully respond to journalist inquiries. One of the main reasons for the ineffective functioning of the legislation and the lack of an environment for full and timely response to journalistic inquiries is the non-application of these norms of administrative legislation. So far, no information holder who did not answer the journalist's request and violated the relevant legislation has been brought to justice. In 2022, the Ombudsman, who oversees the implementation of the law "On Access to Information", tried to apply the mentioned provisions of the administrative legislation. Hajigabul District Executive Authority did not respond to journalist Shamistan Haziyeu's request for information. Considering the journalist's appeal, the Ombudsman's office applied to the Hajigabul Court to consider the issue of punishment of the district executive power in accordance with the administrative legislation. However, the court did not grant this request citing technical grounds.**

### **3. Physical-psychological pressure-threats, other obstacles to the professional activity of journalists**

In 2022, at least 44 incidents of physical and psychological harassment of journalists performing their professional activities were recorded in Azerbaijan. Independent, critical internet media representatives collect and disseminate information about small protests and events within the scope of public interest. Most of the journalists who faced oppression while performing their professional activities were representatives of the same media.

On January 7, journalists Alakbar Azayev and Amina Mammadova, who collected information from the protest held by public activist Giyas Ibrahim in front of the Presidential Palace, faced the intervention of police officers and security guards in the area. 2 days later, blogger Avaz Hafizli was also detained while filming in the center of the city, the journalist who was taken to the 9th police station was released an hour later. Sevinj Vagifqizi, a well-known journalist and an employee of Meydan TV, was obstructed by police officers at the place where he was conducting an inquiry in the center of Baku. The police officers who obstructed the journalist cited the new media laws as the basis and stated that the rights of journalists to collect information at will are limited. In February, the journalists who were gathering information about the action that a group of citizens wanted to hold near the Presidential Palace - Fatima Movlamli and azel.tv employee Sevinj Sadighova were detained by police officers. Gunel Aliyeva and Vusala Najiyeva, journalists of Kanal 13 and "Azad Soz internet channels, who recorded the complaints of a group of disgruntled workers gathered near the Presidential Palace, were subjected to violent behavior by the officials. Journalist Tazakhan Miralamli faced pressure while performing his professional activities in Absheron district. Blogger Nurlan Gahramanli (Libre) was detained by the police while filming at the Baku metro station. Journalist Nargiz Absalamova faced the intervention of the police while filming near the "Koroglu" metro station. Vusala Mikayil and Nuray Kamal, employees of Toplum TV internet television, were subjected to violent behavior while performing their professional activities in the territory of Yasamal region. Journalists Gulnaz Gambarli, Tabriz Mirzayev, and Dilara Gazanfargizi, who wanted to report on the action held in front of the Russian Embassy in Azerbaijan in March, were detained by police officers.

Apart from these, Turkan Bashirova, an employee of the "Voice of America" radio station, was detained by police officers during one of the actions held in the center of Baku, and she was not allowed to perform her professional activities for almost an hour. The police officers treated him rudely, according to the journalist, the female police officers gave him painful blows. Ismayil Taghiyev, an employee of the abzas.org news portal, was also subjected to violence during the mentioned action. Reporter Anar Abdulla was detained by the police, taken to the police station, and kept there for several hours before the protest action of the opposition political party activists in September. In November, the protest action held by the activists of the opposition Musavat Party near the Embassy of Iran in Azerbaijan was also accompanied by violence against journalists. Independent journalists Dilara Miriyeva, Elnara Gasimova, employees of "Meydan" TV Aysel Umudova, Aytaj Tapdig, reporter of "Azadlig" newspaper Fatima Movlamli, who prepared a report on the action, faced rude treatment by police officers. The reporter of Qaynarxett.az website Mahluga Usubova announced that she was subjected to violence by the guards of a private enterprise near the settlement of Jeyranbatan. Argument.az news portal employee Elmar Aziz was taken to the Pirallahi District Police Department in December. A day before, the journalist had shared the video footage of traffic police officers taking bribes on his social media page. The journalist said that he was treated rudely and threatened at the police station. The day after the incident, the journalist's parents were also called to the police. Reporter Teymur Karimov announced that the employees of the Special State Security Service injured him while filming in front of the Presidential Administration.

At the beginning of 2022, it became common for journalists and media executives to be summoned to prosecutor's offices and questioned. The General Prosecutor's Office issued a warning to several journalists and media (at least 13) for the articles they wrote or published. The editor-in-chief of Jamaz.info site Fikret Fərəmezoğlu, the head of yenivaz.com news site Anar Karakhanchalli, the journalist Sakhavat Mammadov, who is known for his writings on military topics, the heads of olke.az, manevr.az, gazet.az and manset.az sites were summoned to the General Prosecutor's Office. The cases of F. Faramezoglu, Sakhavat Mammadov, yenivaz.com, olke.az, and manevr.az websites have been sent to the court. They were fined administratively (Code of Administrative Offenses, article 388-1.1, "allowing posting of information prohibited for dissemination).

In the second half of the year, the head of the Jamaz.info site, F. Faramezoglu, was summoned to the prosecutor's office again for his writings. He was given an official warning along with the head of mig.az website Agil Alishov for his articles on military topics. Tofiq Shahmuradov, known for his writings on military topics, was also summoned to the prosecutor's office at that time. Later, the journalist who was brought before the court was administratively arrested for 1 month (Code of Administrative Offenses, article 388-1.1, "allowing posting of information prohibited for dissemination"). The Prosecutor's Office issued an official warning to the well-known independent journalist Heydar Oguz and the head of "Kanal 13" Internet TV channel Aziz Orujov for their writings.

It cannot be said that the working environment is safe for journalists who are known for investigating topics of public interest. In 2022, journalists have faced physical threats and phone calls several times due to their professional activities. In 2022, journalist Aytan Mammadova, who is known for his reports from the courts, and an employee of Radio Liberty, faced the most terrible incident in this aspect. An unidentified person attacked A. Mammadova with a knife and threatened her with her young daughter. Ceyhun Musaoglu, an employee of Missiya TV (Mission TV) internet television, was also threatened for his speech in the program he hosted. It was reported that Imran Aliyev, one of the founders of the meclis.info website, was taken to the Main Department for Fighting Organized Crime of the Ministry of Internal Affairs. Aziz Orujov, head of Kanal13 internet television, was threatened in the center of Baku city, near his family. Tural Sadigli, a blogger who emigrated from Azerbaijan and head of the Azad Soz (Free Speech) channel, also stated that he was threatened with death. In November, Azerbaijani blogger Orkhan Agayev living abroad was attacked in front of his apartment in Berlin and injured with a knife.

Although not common compared to previous years, the trend of opening suspicious criminal cases against journalists and banning them from leaving the country was noticeable in 2022. A criminal case has been opened against Zahir Amanov, a journalist working in the southern region and the editor-in-chief of the newspaper "Cənub xəbərləri" ("South news") with suspicious charges. Saadat Jahangir, an employee of "Azadlig" newspaper, was banned from leaving the country. Binagadi District Court rejected the request to ban from leaving the country of another journalist, "Meydan" TV reporter Sevinj Vagifgizi. Several journalists who are currently in prison, Polad Aslanov, the head of "xəbərman.com", and Elchin Mammadov, the editor of "Yüksəliş Naminə" newspaper, held a hunger strike to protest the way they were treated in prisons, as well as their punishment by order. Avaz Hafizli (Shikhmammadov), a young blogger known for spreading information about events and protests of public interest, was killed by a close relative in February during a personal dispute.

**The national legislation of Azerbaijan protects the freedom of journalists to perform their professional activities from outside interference. Criminal legislation (Criminal Code, Article 163) establishes criminal liability for cases of obstruction of journalists' legal professional activities. Legislation considers coercion or threat of coercion of journalists to disclose information or refusal to disclose information as obstruction of journalists' legitimate professional activity. The following punishments are provided for those who commit this act: a fine from 500 manat to 1000 manat; correction works for up to two years; to be deprived of the right to hold a certain position or engage in a certain activity for a period of up to three years; deprivation of liberty for up to one year;**

**International treaties and agreements, which Azerbaijan is a party of, provide for prompt investigation of all pressures against journalists and prosecution of the guilty. The state should create a safe and favorable environment for journalists to carry out their professional activities freely and without outside interference. The state also has positive obligations regarding the prevention of**



**attacks against journalists, their protection and the prosecution of attackers and those behind them. According to the Resolution of the UN Human Rights Committee No. 33/2 dated 2016, "On the safety of Journalists", all countries are obliged to protect against threats and attacks against journalists through an impartial, quick, comprehensive, independent and effective investigation. States should establish special investigative bodies, especially regarding crimes committed against journalists; victims must have access to appropriate restorative solutions (compensation, immediate and long-term physical and psychological medical support, etc.).**

**In 2022, the majority of journalists who faced various pressures more than 40 times while performing their professional activities filed complaints with law enforcement agencies for investigation. Most of these complaints are investigated, usually a final decision is made at the end of 1 month. In all of these decisions, the demands of journalists (opening criminal cases against those who oppressed them) were rejected. In the decisions taken by the prosecutor's office on the complaints of journalists E. Gasimova, A. Umudova, F. Movlamli, N. Absalamova, the opening of a criminal case was refused. These decisions are based only on the statements of the policemen, the explanations of other persons who were participants and observers of the events complained of by the journalists were not received.**

## **4. Defamation lawsuits (related to libel and insult); Journalists in prison**

Most of the lawsuits related to defamation and insult are related to complaints filed in the order of special prosecution. In at least 16 cases, special prosecutors, most of whom are officials, have demanded that journalists be imprisoned for their articles on matters of public interest.

Jamil Mammadli, a well-known journalist operating in the northern region, was sentenced to correctional labor for 1 year and 6 months based on the complaint of the head of the Executive Power of Guba region, and 20 percent of the journalist's earnings will be deducted for the benefit of the state during that period. Abid Gafarov, the host of "Kim TV" internet television, was sentenced to 1 year in prison.

Avaz Zeynalli, editor-in-chief of Khural newspaper, xural.com news resource and Khural TV internet channel, was appealed to the court in several civil and special charges. Claiming that his honor and dignity was humiliated by the journalist, the MP of the Milli Majlis Etibar Aliyev demanded from the Binagadi District Court to place the duty of paying moral compensation of 11 thousand AZN on Avaz Zeynalli. The deputy also asked to shut down Khural TV internet channel. Kamal Aliyev, head of the Legal Department of the Azerbaijan National Academy of Sciences (ANAS), appealed to the court for the deprivation of liberty of Avaz Zeynalli. The president of the Association of Sports Journalists of Azerbaijan, Eldar Ismayilov, sued the managers of 3 news sites - pravda.az, azsiyaset.com and baku.ws resource in a special prosecution procedure. Journalist Ulviyya Alovlu was sued by singer Flora Karimova, and TV host Khoshgadam Hidayatgizi was sued by a member of the Bar Association, Bahruz Bayramov in a special prosecution procedure.

Ahad Abiyev, the head of the Dashkasan District Executive Power, brought journalist Javid Shiraliyev to court twice on special charges. Businessmen Oktay and Khalid Abuzarli appealed to the court against Vasif Hasanli, the

editor-in-chief of the demokrat.az website, both under special charges and civilly, and demanded the arrest of the journalist and a fine of 50,000 manats. Azerbaijani lawyer and politician Gurban Mammadov, who lives in Great Britain, filed a civil lawsuit against 5 well-known media - ARB TV, REAL TV, qafqazinfo.az, ATV and Turan Information Agency. Rashad Akbaroglu, a journalist working in Jalilabad district, was fined civilly by the court based on the claim of the director of one of the schools in the district.

Journalist J. Mammadli was sued several times by the family members of one of the shopping centers in Khachmaz. The plaintiffs claimed that the expressions used in the context of a private conversation with the journalist insulted their honor and dignity. At first, the court refused to process the claim because it was unfounded. The lawsuit was accepted for the second time and the text of the conversation between the plaintiffs and the journalist was sent for linguistic expertise. Another journalist, Aygun Muradkhanli, was sued by lawyer Aslan Ismayilov for the video she recorded. A. Ismayilov sued the journalist Taleh Shahsuvarli in the court and demanded that he be held criminally responsible for defamation. Azerbaijani billionaire Farhad Ahmadov, who is a citizen of Russia, sued Elchin Ismayilli, the head of that media, according to a report broadcast on the "Şimal Region" internet television. The court rejected the complaint against the journalist accused of defamation. The complaint of "Crystal Absheron" company against journalist Mahammad Ersoy was accepted for processing. The journalist is accused of slander and insult. Journalist Parviz Huseyn, who faced the same accusation, was sued by singer Konul Khasiyeva. The singer, who demanded that the journalist release an apology video in a civil manner, give a rebuttal and pay 40,000 manat compensation, also asked the court to bring him to criminal responsibility. Khayyam Salmanzade, who cooperates with Kanal13 internet television, was sued by the head of the Executive Power of Agdam region, Vagif Hasanov. He demanded that the journalist be deprived of his freedom for slander and insult.

Currently, at least 4 journalists engaged in regular journalistic activities are serving sentences in prison.

Elchin Mammad, head of "Yüksəliş Naminə" newspaper and yukselish.info news resource, has been in prison since March 2020. Blogger Aslan Gurbanov, who was arrested by the State Security Service, was deprived of freedom for 7 years last year. Polad Aslanov, founder and editor of "Xeberman.com" and "Press-az.com" information websites, was detained in 2019 on suspicion of treason and sentenced to 16 years in prison. The Supreme Court reduced his sentence from 16 years to 13 years. Kim TV internet channel host Abid Gafarov was sentenced to 1 year in prison on charges of libel and insult. In addition to those mentioned, Rashad Ramazanov, known as a blogger, was also arrested in May. In May, blogger Eyvaz Yahyaoglu, host of Shirvan TV internet channel, was arrested administratively. In June, the local courts found İlham Aslanoglu, a lawyer who became famous after his blogs about alleged crimes in the army, guilty of insult and sentenced him to 6 months in prison.

In September, the editor-in-chief of Khural newspaper, Avaz Zeynalli, was arrested on charges of bribery. According to the official accusation, the journalist received money from the imprisoned businessman for writings related to him. The journalist was arrested until the trial. A. Zeynalli, who denied the accusations against him, is also charged with the crime of illegally influencing the decision of an official with his writings (Article 312-1.1 of the Criminal Code). In the case of A. Zeynalli, another journalist, Elnur Shukurov, one of the managers of Sada TV, was also arrested until the trial. He is also suspected under Article 312-1.1 of the Criminal Code.

The harshest sentence against journalists in 2022 was the Yasamal Court sentencing Kim TV internet channel host Abid Gafarov to 1 year in prison on charges of slander and insult. The Khachmaz court, at the request of the head of the Guba district executive authority, sentenced journalist Jamil Mammadli to a heavy criminal

penalty - correctional works for 1 year and 6 months. Most of the claims and complaints against the media and journalists were related to slander and insult. Based on such allegations, journalists were taken to court at least 37 times. Apart from the mentioned 2 cases, there were no decisions on other lawsuits and complaints against the journalists, providing for other severe punishments.

**National legislation recommends that courts refer to the case law of the European Court of Human Rights when dealing with claims and complaints related to freedom of expression. According to the precedent law of the European Court on freedom of expression, national courts should consider whether the contentious writings are of public importance - related to a matter of public interest, whether the statement is about political figures, government officials, or ordinary people; whether it originates from the discussions in the society, whether an honest mistake was made, the necessity of interfering with the freedom of expression in a democratic society, whether it arises from an urgent social demand, whether the interference is proportionate to the legitimate aim it pursues.**

In 2022, articles that were the subject of complaints in cases against journalists were related to issues of public interest. However, the courts did not assess whether the writings that are the subject of litigation are related to important public issues or have the meaning of public debate, and did not use such concepts at all. No reference was made to the criteria established by the European Court, either in the decisions to punish journalists or in the decisions rejecting demands against the media. It was not stated in any decision that the criticism allowed against state bodies and public-political figures is wider than other persons, and journalists were required to prove their opinions, without distinguishing between the facts that can be proven and the opinions that cannot be proven. In most cases, court decisions are not justified at all. For example, journalist J.Mammadli was given a heavy criminal sentence for his video program. The contentious content was related to the employment of 200 citizens without their knowledge, embezzlement of their wages by the head of the district administration. The journalist prepared the program based on the letters of those 200 citizens. Although those 200 citizens came to participate in the process, the court did not interrogate any of them, and based its decision on the arguments of the complainant. Despite the fact that the legislation places the burden of proof on the prosecution in criminal cases, the court, by requiring journalists to do so, distinguished journalists from other persons accused of committing a crime, and put them in a more difficult and unequal situation. For example, in the case of A. Gafarov, who was imprisoned for defamation, the task of proving the truth of the controversial content was placed on the journalist. In the cases not related to defamation - in the cases of F. Faramezoglu, S. Mammadov, yeniavaz.com, manevr.az, the courts did not justify their decisions, and they satisfied the request of the prosecutor's office, which demanded the punishment of media and journalists.

## 5. Media legislation

### New law "On Media"

In 2022, the most noticeable event that happened in the field of media in general is the entry into force of the new law "On Media". Without passing the test of public discussion, the new law, which does not comply with the constitutional and conventional conditions regarding media freedom, entered into force in February. With this, the previous relevant laws, which were adapted to the standards of the Council of Europe, despite their

problems, - the laws "On mass media" and "On teleradio broadcasting" have been repealed. The new law was prepared by the Media Agency in accordance with the decree signed by the President of Azerbaijan in January 2021 "On deepening reforms in the field of media".

*The new regulations established by the Law "on Media" can be summarized as follows:*

The new law "determines the organizational, legal and economic bases of activity in the field of media, the general rules of obtaining, preparing, transmitting, producing and broadcasting mass information" in Azerbaijan. Its provisions are made not only to the media established in the territory of Azerbaijan, but also to all media entities outside Azerbaijan whose activities are directed to Azerbaijan. The laws "On Television and Radio Broadcasting" and "On Mass Media", which were the main laws regulating these issues until 2022, were canceled with the entry into force of the new law.

Unlike previous laws, the law defines the concept of journalist. According to the law, *"journalist – a person who works on the basis of an employment agreement at a media entity or individually based on copyright on the basis of an independent contractor agreement, whose main activity is to continuously collect, prepare, edit, produce and transmit information, as well as to express an opinion (to comment) on that information, and who performs this activity for the purpose of gaining an income"*.

The law classifies the media, dividing them into audiovisual media, print media, online media, and information agencies. The law also defines media literacy: *"media literacy – having knowledge about the content of mass information, its transmission and consumption, the ability of critical evaluation and of use in different contexts and of analysis"*. Types of "audiovisual", "terrestrial", "platform", "satellite", "cable", "IPTV", "OTT", "mobile TV" broadcasts of TV and radio broadcasters are defined. Broadcasters are divided into "nationwide" and "regional" broadcasters according to their coverage area. The law also defines measures that should be considered important for media and journalists: *"important event - a public, political, social and economic development of interest to society and intended to be published and (or) broadcast by media entities operating in the country"*.

The new law subjects the activities of the media to the requirements of the laws "On Martial Law", "On State of Emergency", "On Combating Religious Extremism" and "On Combating Terrorism" during military and emergency periods, as well as in operations against religious extremism and terrorism.

The information disseminated in the media must meet the requirements established by law. Requirements defined by the law: *no open calls for forceful change of the constitutional structure, fragmentation of territorial integrity, seizure or retention of power, mass riots, disrespect of state symbols, state language norms must be observed, racial, religious, origin, gender, ethnic and other discrimination must not be propagated, ethnic, racial or religious enmity must not be openly called upon, terrorism, religious extremism, violence and cruelty must not be propagated, as well as information aimed at the financing of terrorism, the organization or conducting of training for the purpose of terrorism must not be disseminated, and open calls for terrorism must not be made, words and expressions, gestures with immoral lexical (swearing) content must not be used, humiliation of honour and dignity, tarnishing of business reputation is not allowed, secret information about a person's family and private life must not be disseminated, there must be no libel, insults or hate speech, actions that are contrary to the protection of health and the environment must not be propagated, facts and developments must be presented impartially and objectively, one-sidedness is not allowed, parapsychology (psychics, mediums, etc.), superstition or other kinds of fanaticism must not be propagated, pornographic materials must not be*

*published (broadcast), information about a person being guilty must not be published (broadcast) without a valid court decision.*

The law also obliges the media to comply with the relevant requirements of the Law of the Republic of Azerbaijan "On protection of children from harmful information" and the Law of the Republic of Azerbaijan "On information, informatization and protection of information". If the content published by online media does not meet the conditions listed above, those media will be blocked by court in accordance with the Law of the Republic of Azerbaijan "On information, informatization and protection of information".

The law also prohibits media and journalists from disseminating the following information: *disseminate in programmes and materials information provided by a person on the condition of confidentiality, disclose the identity of a person who provided information without their consent, disseminate preliminary investigation-related information without the permission of an interrogator, investigator, a prosecutor who performs the procedural management of a preliminary investigation or a court, disseminate actual copies of criminal prosecution materials that are compiled in accordance with the Criminal Procedure Code of the Republic of Azerbaijan and regarded as information documented in accordance with the Law of the Republic of Azerbaijan "On obtaining information", disseminate any information about the identity of underage persons who are suspected, charged or affected without the consent of those persons and their legal representatives.*

The law provides for the protection of journalistic resources. According to the law, journalists must disclose their sources only in the following cases: to protect human life, to prevent serious and particularly serious crimes, to defend a person who is accused of committing a serious and particularly serious crime.

The law prohibits media and journalists from disseminating secret audio, video, and photos. The media can distribute such materials only with the consent of the person whose audio-video, photo was taken secretly and with the decision of the court.

The law sets requirements for media subjects. If the media founder is a physical person, he must live permanently in Azerbaijan and be a citizen of Azerbaijan, if the founder is a legal entity, 75 percent of the charter capital must belong to an Azerbaijani citizen or a legal entity registered in Azerbaijan. The following cannot be a media founder: *persons previously convicted of serious or particularly serious crimes, as well as crimes against public morality; persons whose convictions have not been served or revoked; persons who are regarded by a court as having no or limited legal capacity. Apart from these: political parties and religious organisations may only be founders (participants) of print media; the funding of a media entity by individuals or legal entities of foreign countries that are not its founders, their branches and representative offices, legal entities founded by these persons in the Republic of Azerbaijan, and also foreign countries' state institutions is not allowed.*

State regulation in the field of audiovisual media is carried out by the Audiovisual Council established under the auspices of the National Television and Radio Council. According to the law, this institution is financed from the state budget and other sources not prohibited by law. The council is composed of 7 members appointed for 5 years, including the chairman. They are appointed and dismissed by the President of Azerbaijan. The following persons cannot be members of the Council: those without higher education; those who have dual citizenship or commitments to other states; those holding paid, elected or appointed positions at state bodies (institutions), engaged in other paid activities, except for scientific, pedagogical and creative activities; religious figures; persons whose incapacity or limited legal capacity has been confirmed by a valid court ruling; persons who have

not been cleared of convictions for serious and particularly serious crimes or whose convictions have not been served; persons who are media entities and their founders (participants).

Audiovisual media can operate after obtaining a license. Licenses are issued by the Council through competition. Individuals and legal entities who previously obtained a broadcasting license, but whose license was revoked, can participate in the license competition again only after 3 years have passed. Licenses can be suspended and revoked for different periods by the decisions of the Council in case of violation of the requirements of the law "On Media". Licenses can be revoked by a court on the basis of a claim by the Board only in one case. According to Article 58.4 of the Law: *"If a licensed broadcaster defends the dissemination of open calls for a forcible change of the constitutional order of the Republic of Azerbaijan, disintegration of its territorial integrity, forcible seizure or retention of power, mass riots, incitement to ethnic, racial or religious hatred and enmity, and terrorism, and also information oriented at financing of terrorism and organisation or conduct of trainings for the purpose of terrorism or knowingly enables these calls to be voiced, the licence shall be abolished by a court ruling on the basis of a lawsuit filed by the Council"*.

No license is required to establish print media and online media entities. However, they have to apply to the regulatory state authority to start operating. The law states: *"In order to operate as print media and an online media entity, a legal entity or an individual, respectively, must officially apply to a body designated by a relevant executive authority 7 days prior to the production of a print media product and distribution of the material"*. A positive opinion of the relevant state body should be added to the application regarding the establishment of a religious content print and online media entity. The legislation imposes a condition for online media to be continuous, so that an online media entity is considered to be continuous if it publishes at least 20 mass news items daily for 20 days every month.

Print and online media entities may be suspended or terminated. In the following cases, the regulatory state body files a lawsuit in court to suspend the activities of print and online media subjects for 2 months: *if a foreign or stateless person, as well as a person without higher education is appointed to the position of head of the governing body; if a person who received an administrative penalty for abusing freedom of activity in the field of media and for abusing a journalist's rights commits the same offence within one year from the date of entry into force of the decision to impose an administrative penalty; if it repeats those violations after being warned 3 times during the year for violating the reference and subscription rules while distributing the materials of other media and for distributing the materials prohibited by the "On Media" law; if it is discovered that the media receive funding from abroad;*

The regulatory state body files a lawsuit before the court to terminate the activities of print and online media in the following cases: *if a foreign or stateless person, as well as a person without higher education is appointed to the position of head of the governing body; if the temporarily suspended media commits the same violations again within 2 years, if the rules related to establishment are violated; if the media do not apply to the regulatory state body about their activities;*

The law envisages the creation of a Media Registry by the regulatory state body in order to systematize information on media and journalists operating in Azerbaijan. The law established requirements for inclusion in the Media Register. These requirements differ for media and individual journalists. The requirements for the media are: *they must meet the requirements for media subjects; their operation must be continuous (must publish at least 400 mass news every month); their activities must comply with the requirements of Articles 13.1 (a media entity may use the information and programmes of another media entity, with a reference to them and*

*on a subscription or contractual basis) and 13.2 (in the absence of a subscription or contract, a media entity may only use not more than one third of every piece of information of another media entity and must provide a reference to it.) of Media Law; if they are a legal entity, they must have been registered in the state register of legal entities; if they are an individual, they must have been registered as an individual entrepreneur for taxation purposes; must not have the same or similar logos (emblems) to those of the editorial boards of other media entities that are in the Media Register.*

The law established the following conditions for the inclusion of journalists individually in the Media Register: *must have higher education; must be legally capable; must not have been previously convicted of serious or particularly serious crimes, as well as crimes against public morality; must have served or cleared of conviction; must have an employment agreement with a media entity (journalists who work individually on the basis of copyright must have an independent contractor agreement with at least one media entity); the media entity they work for must have been included in the Media Register; the media entity they work for must operate continuously (except for media entities which have not operated before the date of application); must have at least 3 years of work experience in the field of journalism or must have worked in scientific and pedagogical educational institutions in the field of journalism for at least 3 years; must follow rules of professional ethics during their work as a journalist; a journalist who works individually on the basis of copyright under an independent contractor agreement must have been registered as an individual entrepreneur for taxation purposes.* Media and journalists who do not meet the listed requirements will be refused inclusion in the Media Register.

The law defines the grounds for deregistration of registered media and journalists. Journalists are removed from the Media Register in the following cases: *if a journalist submits a request for this purpose; if he/she is prosecuted for serious and particularly serious crimes; if he/she dies or is declared dead or missing by a valid court ruling; if a media entity for which he/she works or the only media entity for which he/she works individually on the basis of copyright is removed from the Media Register; if it turns out that it does not meet the requirements for inclusion in the Media Registry; In case of disseminating information prohibited by law 3 times during the year;*

The law provides benefits for registered media and journalists: *ordering of official announcements and social advertisements by state bodies (institutions) in media entities; participation in trainings free of charge or on a discounted basis; participation in the projects of the regulatory state body; use of financial discounts and privileges; enjoying benefits related to improvement of social security and financial security.*

The law provides for the issuing of a journalist license valid for 3 years by the regulatory state body to the journalists included in the Media Registry. Journalists with a license privileges: free access to state and municipal museums, galleries, facilities where cultural and social events are held; to be accredited in state bodies and non-governmental organizations. The law specifies that only journalists registered in the register can be accredited in state institutions and other institutions.

The law has set a time limit of 6 months for the establishment of the Media Registry. On September 26, 2022, the President of Azerbaijan signed a decree on the approval of the "Rules for Conducting the Media Register". The formation of the register should be completed by the end of March 2023.

According to the law's transitional provisions, print and online media operating before the new law came into force have to apply to the regulatory state authority to register in the registry. Failure to make this request can

serve as the basis for the suspension of print and online media subjects and their termination. According to Article 65.4 of the law, the regulatory state body files a lawsuit before the court to terminate the activities of print and online media entities that do not apply to the register.

### **About some problematic regulations in the law from the aspect of media and freedom of expression**

**Regarding the concept of journalist, journalistic activity** - The new law does not define "journalistic activity". It gives a common definition to "Media": "tools and means used for periodic or regular publication and (or) dissemination of mass information, as well as an information environment formed through their means". The concept of "journalist" is strictly framed. The law defined the following definition for "journalist": "journalist - a person who works on the basis of an employment agreement at a media entity or individually based on copyright on the basis of an independent contractor agreement, whose main activity is to continuously collect, prepare, edit, produce and transmit information, as well as to express an opinion (to comment) on that information, and who performs this activity for the purpose of gaining an income". This concept basically means 3 specific signs: only (1) having an employment contract with some media or operating under a civil contract; (2) the main type of activity is gathering and disseminating information; (3) persons who perform this activity for income are considered journalists. This concept, which does not allow to engage in journalistic activities freely, is quite restrictive in the light of the Constitution of Azerbaijan and the agreements that Azerbaijan is a party to.

In general, we should note that the last 10-15 years have brought very serious changes to the concept of journalism. Despite the lack of understanding that can bring everyone to a common denominator on what constitutes "journalistic activity" at the moment, international organizations and some courts have given incomplete definitions of "journalistic activity" and have always emphasized the importance of journalists being able to operate freely and citizen journalism. The main thing is that these structures gave the concept of functional "journalism" and this concept includes "individuals who openly communicate with society using new media, provided that they meet certain criteria." For example, the UN Human Rights Committee, in its General Comment No. 34, defines "journalism" as follows: "Journalism is an activity shared by a wide variety of actors, including bloggers, print, internet, and others engaged in individual broadcasting on other platforms, and registration of journalists or licensing is inconsistent with Article 19 of the UN Universal Declaration of Human Rights. Limited accreditation rules may only be allowed if a limited number of journalists are required to be admitted to certain locations or events. Such rules should be applied in accordance with Article 19 of the Declaration and other provisions, without discrimination, based on objective criteria, taking into account that journalism is a field of activity carried out by a wide variety of actors. The Committee of Ministers of the Council of Europe also describes the term "journalist" in a broad sense as above. The Committee's decision No. R (2000) 7 emphasized that the concept of "journalist" means any physical or legal person who is regularly and professionally engaged in collecting information and transmitting it to society through any mass communication. In that document, the Committee also mentions, addressing the states; In accordance with Article 10 of the European Convention on Human Rights, legislative needs should be reviewed for all actors providing services or products to the media ecosystem to protect people's rights to access and disseminate information. Adequate safeguards against interference with Article 10 rights that may have a negative impact should be extended to all actors.

The legal regulations defined by the new law in the context of the concept of "journalist" seem very dangerous in the light of what has been mentioned, as well as in the reality of Azerbaijan. In Azerbaijan, print and broadcast (tele-radio) media are completely under the control of the government, and online media (in general, activity in the context of online news) are also under continuous pressure (weakness of employees' access to information,



pressure on employees who collect information, their lack of investigation, blocking, etc.). Most of the mainstream online media that deliver reliable information and critical content are not local media. Since advertising funds are in the hands of businesses connected to political power, they, as well as independent journalists, are more dependent on free foreign aid. In such a case, making the legal "journalistic activity" subject to a contract condition with some media, in particular, negates the possibilities of free, critical journalists.

According to the tax legislation, those engaged in journalistic activity are already tax registered under this activity code. For statistical or other purposes, it is sufficient to clarify who or what number of individuals from the base of taxpayers are engaged in the profession of journalism. Therefore, the meaning of determining the condition of a journalist to have a contract with some media or other civil contract in the law is not clear.

**Regarding the regulation of the content** - the legislation of Azerbaijan allows for already wide restrictions on the content. The criminal legislation of Azerbaijan provides criminal penalties for defamation and insult. The possibilities for applying administrative responsibility to the content are wider. For example, "Law on information, informatization, and protection of information" defined a wide range of prohibited information: "... false information threatening to harm human life and health, causing significant property damage, mass violation of public safety, disruption of life support facilities, financial, transport, communications, industrial, energy, and social infrastructure facilities, or leading to other socially dangerous consequences; propaganda and financing of terrorism, as well as methods and means of terrorism, information about training for the purpose of terrorism, as well as open calls for terrorism; information on the propaganda of violence and religious extremism, open calls directed to the evocation of national, racial, or religious enmity, violent change of the constitutional order, territorial disintegration, violent seizure or maintenance of power, and organization of mass riots; state secrets; instructions or methods for producing firearms, their component parts, ammunition, and explosive substances; information on preparation and usage of narcotic drugs, psychotropic substances, and their precursors, about locations of their illegal acquisition, as well as information on the location of and methods of cultivation of plants containing narcotic substances; pornography, including information related to child pornography; information on the organization of and incitement to gambling and other illegal betting games; information disseminated with the purpose to promote suicide as a method of solving problems justifies suicide, provides the basis for or incites suicide, describes the methods of committing suicide, and organizes the commission of suicide by several individuals or organized groups; defamatory and insulting information, as well as information breaching the inviolability of private life; information breaching intellectual property rights; other information prohibited by the laws of the Republic of Azerbaijan. Dissemination of information in the mentioned content creates administrative responsibility (fine from 500 to 2000 manats or administrative imprisonment for up to 1 month). This provision is widely applied. The law "On Media" expands the list of these conditions, Article 14 of the law (Requirements regarding information published and (or) disseminated in media) has defined at least 16 conditions related to the content: Information published and (or) disseminated in media must meet the following requirements - open calls must not be made for a forcible change of the constitutional order of the Republic of Azerbaijan, disintegration of its territorial integrity, forcible seizure or retention of power, mass riots; there must be no disrespect for the state symbols of the Republic of Azerbaijan; norms of the state language must be observed; discrimination on grounds of race, religion, origin, gender, ethnicity and other discrimination must not be promoted, and also no open calls must be made for inciting ethnic, racial or religious hatred; terrorism, religious extremism, violence and cruelty must not be propagated, and also, information aimed at financing terrorism, organizing or conducting trainings for terrorist purposes must not be disseminated, and open calls for terrorism must not be made; words and expressions, gestures with immoral lexical (swearing) content must not be used; humiliation of honor and dignity, tarnishing of business reputation is not allowed; secret information

about a person's family and private life must not be disseminated; there must be no libel, insults or hate speech; actions that are contrary to the protection of health and the environment must not be propagated; facts and developments must be presented impartially and objectively, one-sidedness is not allowed; parapsychology (psychics, mediums, etc.), superstition or other kinds of fanaticism must not be propagated; pornographic materials must not be published (broadcast); information about a person being guilty must not be published (broadcast) without a valid court decision; the requirements provided for in the Law of the Republic of Azerbaijan "On protection of children from harmful information" must be complied with; other information provided for in Article 13-2.3 of the Law of the Republic of Azerbaijan "On information, informatisation and protection of information" must not be broadcast. Media entities that do not comply with these conditions are subject to the penalty of "suspension of activity and broadcasting of media products, as well as termination of the activities of those entities."

According to the Constitution of Azerbaijan: *"Everyone is free to legally seek, receive, impart, produce, and disseminate any information. ... Freedom of mass information is guaranteed. State censorship in mass media, including the press is prohibited"*. Article 10 of the European Convention also states that: *"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"*. As can be seen from these texts, freedom of expression protects all forms of expression and does not imply any limitation in terms of content. From the point of view of freedom of expression, it is not important whether the content is valuable or not, whether it is useful for society or not. Such evaluation is subjective, defining the framework of the right to freedom of expression based on those evaluations may open opportunities for arbitrarily limiting this right. Freedom of expression includes the freedom to express and distribute content that others consider useless or unimportant. However, as with any right, the right to freedom of expression has a framework, in the light of which some content can be considered within the scope of freedom of expression, and some outside of that framework. Only after determining whether any content falls within the scope of the right to freedom of expression can one assess whether that content can be restricted. It is for this reason that the European Court considers preliminary restrictions on the press inadmissible and contrary to Article 10 of the Convention. In the law on media content, the conditions listed above are in the essence of the application of prior restrictions for the media. It is true that content that spreads, incites, encourages or justifies hatred may be subject to restrictions in democratic societies, but such restrictions should not be used as a tool to silence media and journalists critical of the government.

It is also useful to refine the conditions set by the Law "on Media" in light of the 3-step review theory applied by the European Court of Justice to determine the compatibility of content restrictions with freedom of expression. Restrictions on freedom of expression should be provided by law. Being provided for in the law is not enough in isolation, it must also meet several criteria. Norms that do not provide clear enough regulation for citizens to regulate their behavior cannot be accepted as law. Citizens should be able to reasonably foresee the consequences of a specific action. A law imposing a limitation must also be clear and written in a way that does not allow for arbitrary application. Content interference must also have a legitimate aim. A limited number of legitimate aims, which are not allowed to be expanded, are specified in part 2 of Article 10 of the Convention: 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. Finally, intervention in the content must also be necessitated by a pressing social need. The text of the law "facts must be presented objectively", "words and phrases with immoral lexical content must not be used" or any other

condition is so general, abstract and widespread that it is not easy to refine them in the light of these criteria. None of the 16 conditions in the Act, as well as those in other related laws, meet this test of "legal certainty".

The conditions defined by the law have the power to have a very serious deterrent effect on the media and journalists, forcing them to self-censor, but also open wide opportunities for arbitrary application. In the application of the law, this already shows itself in examples. Manevr.az news site shared with its readers the news about the schoolboy's suicide attempt, which was spread by most media in the country. The news site also touched on the reasons for the suicide attempt, determined that the student who tried to commit suicide was playing some popular internet game, and stated in the article that the incident took place under the influence of that game. The article concluded with a recommendation that parents should monitor their children's online behavior more closely. However, the local courts found that media guilty of "sharing content that encourages suicide" (Law on Media, Article 14.1.16.) and sentenced it to a heavy administrative fine.

**Regarding the establishment of a single registry of media and journalists** - the Law provides for the establishment of a Media Registry by the regulatory state body. According to the law, the purpose of creating the register is to systematize information about media and journalists operating in Azerbaijan. There is no need to create a special mechanism for the purpose of systematizing information on media and journalists operating in Azerbaijan. Because journalists are registered as individuals, and the media as a legal entity, have passed tax registration accordingly, and information about them is already available in state institutions. In light of this reality, the stated purpose of the law is a rather vague, unclear purpose. Both the conditions established in the legislation for inclusion in the register, the privileges provided for in the legislation for the media and journalists included in the register, and the content of the process of creating the register, which has been going on for 4 months, show that the purpose is not only to "systemize the information about media and journalists operating in Azerbaijan" as stated in the law. According to the official statements of the regulatory state body that created the register, active media have until the end of March to enter the register. A lawsuit will be filed in the courts to assess the legality of the activities of the media that have not applied to enter the register by that time. In the light of what has been mentioned, it is clear that the inclusion of media and journalists in the register will be the main condition for them to be able to engage in legal journalistic activities. As specified in the law, only media and journalists registered in the register will have the possibility of accreditation. Such an approach means that the privileges and advantages that indicate the rights of journalists in various normative acts will be valid in relation to the media and journalists in the register. For example, the criminal legislation of Azerbaijan defines responsibility for obstructing the journalist's professional activity. In addition, the legislation gives journalists the right not to disclose their sources. The legislation also recognizes the right of journalists to access official information of public content more quickly and easily than ordinary citizens. The possibility of non-registered media and journalists to benefit from these rights raises serious questions. In addition, there are possibilities that engaging in journalistic activities without being registered may lead to various charges (for example: illegal entrepreneurship). In the context we have mentioned, the regulation is equivalent to licensing and is clearly incompatible with the standards of the Council of Europe and the UN.

**Regarding the use of secret recordings** - The law allows the media to use and distribute secret audio and video recordings, photo recordings only in 2 cases: (1) the written consent of the person filmed, (2) a court decision. Prohibiting the distribution of covert audio, video recordings and photographs in all cases without written consent or a court order is incompatible with the case law of the European Court. Because, especially in relation to persons who are considered public figures, public interests may in some cases prevail over the right to respect the private life of persons whose secret images have been obtained. In *Mosley v. the United Kingdom*, the ECtHR examined the fair balance between the rights protected by Articles 10 and 8 in the context of the

publication in a newspaper of secretly filmed images of the applicant, who was a public figure. In that case, the applicant complained that the publication of secretly recorded images of him in a newspaper without his knowledge violated his right to respect for private life guaranteed by Article 8. Concluding that Article 8 was not violated, the ECHR emphasized that there is no obligation to inform the persons who are the subject of that content in advance regarding the products that the media intends to distribute. In the light of this decision, it cannot be considered as a proportionate requirement that the media always apply for court permission when using secret footage.

**Regarding the protection of sources** - it cannot be said that the law fully ensures the protection of journalistic sources. According to the law, media and journalists cannot be forced to disclose their sources. The source should be disclosed only if there is a court order. It is emphasized that media, journalists must disclose their sources in 3 cases by court decision (Article 15.3): (1) to protect human life; (2) to prevent serious and particularly serious crimes; (3) 15.3.3. to defend a person who is accused of committing a serious and particularly serious crime. The fact that journalists are forced to reveal their sources even by court decisions has a very negative impact on freedom of speech. In this case, everyone, especially potential sources, will think that journalists can easily be involved in the work of the police, other law enforcement agencies or the courts, and they will be deterred from passing on sensitive information to the media. It is very important to avoid creating the impression that journalists and media are an additional arm or tool of institutionalized powers such as special services, police, and investigative agencies. Dealing with resources requires a very sensitive approach. In the case of *Goodwin v. United Kingdom*, which is one of the exemplary decisions on the protection of sources, the European Court emphasizes that "the protection of sources is very important for the freedom of the press in a democratic society, and the order to open the source has the potential to prevent the realization of this freedom in all cases. Such measures, which are not justified by an imperative need for the public interest, are incompatible with Article 10 of the Convention." The Committee of Ministers of the Council of Europe expresses the same position in its Recommendations No. 7 (2000) regarding "The right of journalists not to disclose their sources of information": "The protection of sources is the main condition for the implementation of journalistic activity and ensuring the freedom of the media. The journalist's right to keep his source confidential should be accompanied by his obligations under Article 10(2) of the Convention." It is permissible to include exceptions to the protection of sources in the law, but it is clear from the text of the provision providing for the exceptions that journalists should disclose their sources in all cases-controversies related to the protection of human life or other interests listed in the law. However, in fact, decisions about the disclosure of resources should be justified by an unavoidable need for public interest.

**Regarding the application of the law**, it cannot be said that the provisions of the law "On Media" providing for the creation of a media registry are applied in accordance with the Constitution of Azerbaijan. According to Article 149 of the Constitution, laws must not contradict the Constitution. According to that article, the force of normative legal acts that improve the legal status of individuals and legal entities, eliminate or alleviate legal liability is applied retroactively. The force of other normative legal acts is not applied retroactively. The provisions of the law "On Media" regarding the media register are applied without exception to both newly created and active media established before the adoption of the law. However, in no case can it be said that these provisions "improve the legal status, eliminate or alleviate legal responsibility".

**The problems revealed by the implementation of the law: about media and journalists who are not included in the register** - The main activity of the regulatory state body related to the application of the law is related to the creation of the media register. The register is being created based on the "Rules for Conducting the Media Register" approved by the President of Azerbaijan on September 26, 2022. According to those rules, only part of

the information included in the register is considered public information. The names of the media included in the register and the list of journalists should be open to the public. Disclosure of information about media owners is not provided for in the rules. The regulatory state body must provide access to public information in the register. However, this requirement of the rules has not been followed until now. Information about which media and journalists are included in the register is closed. It is also inconsistent with national legislation on access to information. The regulatory state body is the owner of the information, it must disclose such information to the public from time to time on its website, that is, without a request. Everyone should be able to get acquainted with the list of media subjects and journalists included in the register. Also, information about how many media applied for registration, how many were registered, how many were refused registration, and the basis of refusal decisions should be shared with the society. These are the requirements of the Law "On Access to Information". However, this kind of information is closed, except for the statements of the officials of the regulatory state body to the media. According to the statement of the state regulatory body, about 200 applications have been submitted to the media register. About 160 media and about 180 journalists who applied were included in the register.

Among those who have been refused entry into the register are both online and print media subjects and individual journalists. Most of the refusal decisions are based on formal grounds, the main reason being the non-sustainability of the activities of the applicant media (the condition of publishing at least 20 news items per day). All these decisions are illegal. For example, the refusal to include the newspapers "Mingachevir Ishikhlari" and "Gundam-Khabar" in the media register was explained by the non-sustainability of the activities of the media that applied. However, the "continuity of activity" condition applies to online media entities. The conditions set by the new law in relation to print media are different: Newspapers which are continuously published at least 1 (one) time a month, have a onetime circulation of more than 100 (one hundred) copies, are published at least 12 (twelve) times a year, and magazines, digests, bulletins and other publications that are published at least 2 (two) times a year are periodical publications. On the same basis, the inclusion of online media subjects "Mingachevir Ishikhlari" and "Gundam-Khabar" in the register was also refused. Along with them, the decision to refuse to include the online media entity 24saat.org in the register was based on the "lack of continuity of activity". Refusal decisions consist of several-sentence templates, and whether the activity is sustainable or not is not explained with specific indicators. For example, the online media entity 24saat.org shared more than 7,000 news items in 2022. Versions of this media are also available in Russian, German, and English. However, the regulatory state body did not explain how it came to the conclusion that the activity of this media is not sustainable. The requests of some journalists to be included in the register individually were rejected. These decisions are also illegal. For example, Aziz Karimov is a photojournalist, photoreporter. For more than 10 years, he has been continuously cooperating with many local and foreign media, especially with "Turan" Agency. Karimov's official request was verbally refused. 2 grounds for refusal were indicated - "lack of minimum three-year work experience as a full-time journalist with a media editorial office" and "a photographer is not considered a journalist." Several other journalists were refused entry into the register individually on the basis that their journalism experience was less than 3 years. However, those journalists have been engaged in this profession for at least 10 years, and according to their professional activities, they have continuously performed the relevant tax and insurance duties. Most of the media entities that were not included in the register challenged the decision of the regulatory state body in court. The final decision on these complaints has not yet been announced.

**About the expected dangers after the formation of the media registry is completed** - Most of the key articles of the law on media are confusing, scattered, and open wide opportunities for abuses during state regulation. The legal status of print and online media entities established after the creation of the single registry, which is one of

the most noticeable reactionary regulations established by the law, was clearly stated in the law: they had to apply to the regulatory state body before starting their activities; if they do not apply, the regulatory state body files a lawsuit in court to assess the legality of their activity (Law on Media, Article 65. Suspension of the operation of print media and online media entities and of the dissemination of media products, as well as termination of the operation of these entities). The legal status of print and online media entities operating before the new law comes into force is unclear in the light of the text of the law. According to the law, those media have to apply to the regulatory state body within 6 months from the date of formation of the Media Register. The law keeps open the status of media that do not apply for the register. The register has not yet been formed, official statements regarding the implementation of the law suggest that Article 65 of the Law will apply to all online and print media. The statement of the Media Development Agency, the regulatory state body: "After the 6-month period specified in the law, we will take the issue of them (print and online media) before the court. The court will decide whether they will continue their activities or not." What is clear from the statement is that after the registry is created, the court will decide whether the activities of the media that did not apply to be included in the registry and whose applications were rejected are legal or not.

**LEGAL ENVIRONMENT FOR MEDIA**  
**in**  
**AZERBAIJAN**

*2022, Annual Analysis*

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