



**Written Comments of ARTICLE 19: Global Campaign for Free Expression
Concerning the Republic of Azerbaijan**

**For Consideration by the United Nations Human Rights Committee
at its 96th Session, 13-31 July 2009**

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I. Executive Summary

ARTICLE 19: Global Campaign for Free Expression (*hereinafter* "ARTICLE 19"), an international human rights organization promoting the rights to freedom of expression and freedom of information worldwide, respectfully submits its written comments concerning the third periodic report on the measures taken by the Government of the Republic of Azerbaijan to implement the rights proclaimed in the International Covenant on Civil and Political Rights. The third periodic report was submitted for consideration by the Human Rights Committee (*hereinafter* "the Committee") at its 96th session on 13-31 July 2009.

ARTICLE 19 is aware of the efforts undertaken by the Government of the Republic of Azerbaijan (*hereinafter* "the Government") to comply with its obligations under the International Covenant on Civil and Political Rights (*hereinafter* "the Covenant") as detailed in its third periodic report to the Committee (*hereinafter* "the Governmental Report").¹ To date, however, these measures have not been sufficient to ensure the effective implementation of the Covenant, particularly with regard to Articles 2, 6, 7, 9, 14, 19, 21, 22 and 25 of the Covenant.

Regarding *Article 2 of the Covenant*, experience of many journalists and media professionals in Azerbaijan shows that the protection against human rights abuses set down in the Covenant remains merely desiderata. Numerous cases of physical attacks towards journalists, including at least at one occasion a case of murder, have not been promptly and impartially investigated by law enforcement authorities, perpetrators have not been prosecuted and adequately sanctioned and victims of attacks have not been compensated. When media professionals launch their own civil lawsuits for compensations, they almost always fail.

Regarding *Article 6 of the Covenant*, ARTICLE 19 submits that the Government has failed to adequately and/or effectively protect every human being's right to life as provided for in Article 6 of the Covenant. In particular, we are concerned that there has been no adequate investigation into the murder of opposition journalist Elmar Huseynov, committed in March 2005. Moreover, there have been credible allegations that the crime was politically motivated and related to Huseynov's investigative journalistic activities. ARTICLE 19, thus, submits that in this case, the Governmental failed to meet the requirements of Article 6 of the Covenant in both substantive and procedural aspects.

Regarding *Article 7 of the Covenant*, ARTICLE 19 is highly concerned that violence and physical attacks against journalists and media professionals continue to be reported at an alarming rate. At the same time, law enforcement authorities systematically fail to investigate these attacks and allegations of ill-treatment in an effective, adequate, impartial and prompt manner. ARTICLE 19 asserts that a high occurrence of these incidents and the lack of effective investigation in them created a climate of impunity and is in violation of the absolute prohibition of torture, cruel, inhuman or degrading treatment laid out in Article 7 of the Covenant. Furthermore, the assaults and other forms of harassment against journalists have had a chilling effect on freedom of expression in Azerbaijan.

¹ UN Human Rights Committee, International Covenant on Civil and Political Rights, *Third Periodic Report: Azerbaijan*, CCPR/C/AZE/3, 10 December 2007; available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/457/28/PDF/G0745728.pdf?OpenElement> (last accessed: 25 June 2009).

Regarding *Article 9 and Article 14 of the Covenant*, ARTICLE 19 wishes to raise concerns about an increase of arbitrary arrests and detention of media professionals, in violation of requirements and procedures established by Article 9. It is of particular worrying that those arbitrary arrests and detentions have been aimed at media professionals reporting critical of the government. At the same time, in several cases, the rights of media professionals to a fair trial were infringed in the criminal proceedings, in violation of Article 14 of the Covenant.

Regarding *Article 19 of the Covenant*, notwithstanding legislative provisions guaranteeing freedom of press, media freedom in Azerbaijan has deteriorated in recent years. Independent media has come under increased pressure since the parliamentary elections in 2005 and the Government has taken a number of measures to silence independent or opposition voices in the society. In practice, TV broadcasting is effectively under government control and independent TV channels have toned down their criticism of the Government due to regulatory and license-granting powers of the National Television and Radio Council. As recently as in January 2009, the broadcasting rights of international radio stations, including the BBC, Radio Free Europe/Radio Liberty and Voice of America, were banned on national frequencies. Although print media have relatively more freedom, low circulation, lack of access to the state distribution system and the poor financial arena limit their media reach. In addition, the Government continues to use criminal defamation and insult, and is increasingly using other seemingly unrelated criminal charges, such as “hooliganism,” to intimidate independent and opposition journalists and silence critical views and scrutiny of wrongdoing by state authorities. Political context of media in both criminal and civil cases can be clearly established: in all documented cases, prosecuted media professionals were associated with independent media or were closely linked to opposition parties. The right to access to information has yet to be fully realized in Azerbaijan, notwithstanding the adoption of legislative framework. The existing laws enabling this right still need to be amended to meet fully international legal standards and the Government has yet to demonstrate clear political will and allocate necessary financial and other resources to their implementation. The research of ARTICLE 19 also shows that the implementation of the existing laws has been deficient, falling short of the Governmental obligations under Article 19 of the Covenant.

Regarding *Articles 21 and 22 of the Covenant*, effective realization of the right to freedom of assembly and freedom of association remains of a high concern. Despite the constitutional provisions providing for peacefully assembly only with prior notification of relevant government bodies, the Government continued to interpret this provision as a requirement for advance permission. In addition, the Government has often interfered with or prevented the work of media professionals in covering instances of citizens attempting to exercise their right to freedom of assembly. As recently as in June 2009, the Government has attempted to adopt restrictive laws governing civil society and media and suppressed lawful demonstrations against these amendments. Although the most restrictive provisions have been omitted from the amendments discussed by the Parliament, the Government is still considering measures to restrict foreign non-governmental organisations working in the country.

Regarding *Article 25 of the Covenant*, the election process of the 15 October 2008 presidential election failed to meet international standards mandated for a meaningful and pluralistic democratic election. The election process was conducted within a restrictive media environment; coverage on TV stations lacked balance both prior to and during the official campaign period, with incumbent President Ilham Aliyev receiving most of the relevant

coverage. As some opposition parties decided not to participate in the election due to longstanding obstacles to equal treatment and equal opportunities to convey their views, there was a limited scope for a credible choice for the electorate as well as lack of broader competition and vibrant political discourse.

In the view of these violations, ARTICLE 19 urges the Committee to take account of these concerns in its consideration of the Governmental Report. Accordingly, ARTICLE 19 recommends that the Government of Azerbaijan addresses its shortcomings in respective areas, introduces necessary legislative changes, and adopts comprehensive policies and mechanisms to both prevent future violations and remedy the past ones. A number of specific measures are proposed to the Government to ensure that its obligations under the Covenant are fully met and that the rights provided by the Covenant are effectively enjoyed by all in the country.

II. Expertise and Interest of ARTICLE 19

ARTICLE 19 is an independent human rights organization that works around the world to protect and promote the right to freedom of expression and the right to freedom of information. It takes its name from Article 19 of the Universal Declaration of Human Rights. ARTICLE 19 monitors threats to freedom of expression in different regions of the world, as well as national and global trends and develops long-term strategies to address them and advocates for the implementation of the highest standards of freedom of expression, nationally and globally. We produce legal standards which strengthen media, public broadcasting, free expression and access to information, and promote these standards with regional and international inter-governmental organizations. We also produce legal analyses and critiques of national laws, including media laws and draft model laws to assist civil society organizations and governments in developing appropriate national standards of protection. Additionally, we advocate for legal and judicial change and undertake litigation in international and domestic courts on behalf of individuals or groups whose rights have been violated.

ARTICLE 19 has regional offices in Africa, Asia, Latin America and the Middle East. It has been working in the South Caucasus, including Azerbaijan, since 2002. In Azerbaijan, it has in particular supported policy and legal reform in areas such as the right to information and decriminalization of defamation. By working in partnership with local civil society groups and by conducting trainings and providing resources ARTICLE 19 has helped to build the capacity of local experts and NGOs to advocate for change, and strengthen the skills of various professional groups to apply freedom of expression and freedom of information principles in their professional practice. Thus, these written comments are based on the direct experience of ARTICLE 19 and its partners in Azerbaijan in the given period.

Although this submission does not constitute a comprehensive survey of the human rights situation in Azerbaijan, ARTICLE 19 believes that the present session of the Committee offers an opportunity to highlight some of the most significant issues related to the right to freedom of expression in which the Government has failed to fulfill its commitments under the Covenant. Hence, we welcome the opportunity for the Committee to utilize our report in

analyzing the Government's submissions and in recommending measures required to ensure the compliance with the Covenant in the future.

III. Discussion

1. Articles 6 and 2 of the Covenant

ARTICLE 19 is highly concerned by credible reports that, at least at one occasion, the Azerbaijan authorities have violated the right to life protected by Article 6 of the Covenant.² At the same time the Government has violated Article 2 of the Covenant, which provides that each person whose rights have been violated “*shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.*” ARTICLE 19 notes that respecting the right to life, in conjunction with the duty to provide an effective remedy, contains a positive obligation for the state parties to conduct timely, exhaustive and impartial investigations into allegations of violations in order to identify the perpetrators and bring to them justice. This obligation mandates investigations into deaths to be of such a nature and undertaken in such a way as, *inter alia*, to enable, when appropriate, the identification and punishment of those responsible. Therefore, investigations must be conducted with all due diligence and must not be inconsistent, superficial, tendentious, or arbitrary.

ARTICLE 19 submits that the Government blatantly violated these obligations in the murder case of Elmar Huseynov.³ It did so by having allowed the development of a climate of impunity for criminal attacks against media professionals; for failing to provide Huseynov with protection in the face of threats; and for failing to adequately investigate Huseynov’s murder and prosecute those responsible for the crime.

Elmar Huseynov, founder and editor of the prominent opposition newsweekly *Monitor*, was shot dead in the stairwell of his apartment building in Baku on 2 March 2005. According to various sources, Huseynov had been under pressure from the state authorities since 1996, when *Monitor* was established; he was facing numerous libel and defamation lawsuits and various legal actions from the authorities, ranging from imprisonment to heavy fines, as well as threats aimed at stopping his investigative journalism. Independent experts believe that the murder resembled a contract-killing and some have indicated that the Government may have played a more direct role in the murder.

² Instances of violation of the right to life are reported each year by the Azerbaijan Committee Against Torture, available at <http://acat-az.org/reports.htm>. Cases are also documented by the U.S. Department of State in its annual Country Reports on Human Rights Practices, available at <http://www.state.gov/g/drl/rls/hrrpt/>.

³ Details of this case have been reported by various sources and the description here provides the summary of the most important aspects. For more information about the case, *see*, for example: the Reporters Without Borders, *Murder of Elmar Huseynov: The investigation should not stop at finding the killers*, May 2005, available at http://www.rsf.org/IMG/pdf/rapport_azerbaidjan_EN.indd.pdf; Azeri Report, *In Memory of Elmar Huseynov*, 2 March 2009; available at http://azerireport.com/index.php?option=com_content&task=view&id=1071; IFEX Alert, *Investigators name chief suspect in murder of opposition editor*, 5 May 2005; Azeri Report, *In Memory of Elmar Huseynov*, 2 March 2009; available at http://azerireport.com/index.php?option=com_content&task=view&id=1071; Rovshan Ismayilov, *Azerbaijan: Investigation of Editor’s Murder Gets Murkier*, 14 November 2006; available at <http://www.eurasianet.org/departments/insight/articles/eav111406a.shtml>; the Committee to Protect Journalists, *Azerbaijan Special Report: Finding Elmar’s Killers*, 16 September 2008; available at <http://216.139.245.96/reports/2008/09/azerbaijan-elmar.php>; Amnesty International, *Three years after editor’s murder, Azerbaijan journalists still abused*, 29 February 2008, available at <http://www.amnesty.org/en/news-and-updates/feature-stories/three-years-editors-murder-azerbaijan-journalists-abused-20080229>; and the Committee to Protect Journalists, *Ex-officer says he plotted editor’s murder; some are skeptical*, 27 July 2006, available at <http://cpj.org/2006/07/exofficer-says-he-plotted-editors-murder-some-are.php>. (All links last accessed: 26 June 2009).

In April 2005, the office of the General Prosecutor, conducting the investigation, reclassified the crime from a "premeditated murder" to an "act of terrorism" intended to destabilize the country; however, the office failed to elaborate on the statement. Under this classification, in April 2005, the investigation was transferred to the Ministry of National Security. Later, in May 2005, the law enforcement authorities named three Georgian citizens as prime suspects in the crime, but disclosed no information about the suspects or their alleged roles. The authorities further claimed they were not able to locate the three suspects and in 2005, filed a request for the extradition of two of them from Georgia, which Georgia declined.

According to available information, up to the time of this submission and four years after the crime, no one has been prosecuted for Huseynov's murder.⁴

The deficiencies in the investigations have been a subject of criticism by relatives of the deceased, human rights defenders and opposition groups. Huseynov's widow, Rushana Huseynova, repeatedly condemned the authorities for a failure to adequately investigate leads and follow up accounts and witness testimonies and involve her in the investigation. ARTICLE 19 notes that in fear of retaliation, Huseynova later left the country and sought asylum abroad. The Public Investigation Committee, a group of close friends of Huseynov formed to monitor the state investigation, asserted that the Government has been deliberately delaying the investigation and has not taken any serious action. Human rights defenders believe that there has been no political will to investigate the murder and to bring perpetrators to justice; and continue to assert that the murder was politically motivated to silence critical voices in the society.

Based on the foregoing, ARTICLE 19 concludes that the investigation into the murder has been seriously flawed and falls short of meeting the requirements set by the Covenant. Moreover, we also note with a concern that the Government made no reference about this case and the measures it has undertaken to investigate it in the Governmental Report. We believe that this strongly indicates that the Government does not consider this issue of relevance for its reporting obligations flowing from the Covenant and attempts to avoid its responsibility for the violations.

2. Articles 7 and 2 of the Covenant

ARTICLE 19 submits that on repeated occasions, the Government has violated Article 7 of the Covenant, which absolutely prohibits cruel, inhuman or degrading treatment alone and in conjunction with Article 2 of the Covenant which provides the right to an effective remedy in cases of violations. Under Article 7 of the Covenant, the Government is not only obliged to refrain from torture or cruel, inhuman or degrading treatment or punishment, but also demonstrate due diligence in taking steps to prevent and investigate human rights abuses by non-state actors. At the same time, the Government has a positive obligation to investigate allegations of ill-treatment and to ensure redress for victims (see, *e.g. Motta v. Uruguay* (R.2/11), ICCPR, A/35/40 (29 July 1980) 132 at para.16). As with the discussion under

⁴ ARTICLE 19 notes that only one person has been convicted for an involvement in the Huseynov murder so far: in July 2006, Turgay Bayramov, an Azerbaijani citizen, was sentenced to a two-year prison term for buying a cell phone and cell phone number in Baku for two Georgian suspects in the case. See Rovshan Ismayilov, *Azerbaijan: Investigation of Editor's Murder Gets Murkier*, 14 November 2006.

Article 6 above, such investigations must be thorough, fair, impartial, and effective, capable of bringing to light the allegations of ill-treatment and to punish those responsible for them.

ARTICLE 19's research shows that there have been numerous cases of violence, physical attacks and abductions, by both state and non-state actors, targeting journalists and media professionals, especially those covering politically sensitive issues. ARTICLE 19 believes that these cases fit a general pattern of official involvement and denial of responsibility of the state authorities. Moreover, when attacks against journalists occur, the law enforcement agencies almost always fail to investigate them promptly, impartially and adequately. Frequently, perpetrators of these attacks are not prosecuted and sanctioned and victims are not compensated. For example, in 2008, there were reportedly 49 incidents involving verbal or physical assaults on journalists; which represents an increase from 41 cases in 2007.⁵ However, the law enforcement agencies began investigations into only 11 of these cases, and only one case (the case Agil Khalil, discussed in more detail below) was brought to a trial.⁶ Similarly, there have been a number of examples of threats and attacks against journalists in 2009, as recent as June 2009, where the law enforcement authorities failed to conduct an effective investigation. When media professional launch their own civil lawsuits for compensations, they almost always fail.

A non-exhaustive list of cases raising concerns as to the ability of journalists and media professionals to access Article 7 and Article 2 protections follow:

- **Attack on Nijat Huseynov⁷**

On 25 December 2006, Nijat Huseynov, a reporter for *Azadliq* newspaper, was attacked and stabbed by four unidentified men. *Azadliq* is one of the biggest opposition newspapers and has been critical of the Azerbaijani authorities; it is also the official newspaper of the opposition Popular Front Party of Azerbaijan. Prior to the attack, Huseynov was investigating corruption and abuses among high-ranking government officials. A few days earlier, he had received phone calls warning that he would be "punished for his bad articles"; hence the *Azadliq* executive claimed the attack was link what he had written. Huseynov suffered head and internal injuries during the attack and had to be admitted to the Musa Nagiyev Hospital in Baku. Even though he claimed he had recognized one assailant as someone who was following

⁵See ARTICLE 19, *South Caucasus: Continued Violence Against Journalists Symptomatic of Ongoing Repression in the Region*, 15 May 2009; available at <http://www.article19.org/pdfs/press/south-caucasus-continued-violence-against-journalists-symptomatic-of-ongoing.pdf>. These statistics have been also reported by other international human rights organizations; see, for example, Human Rights Watch, *Letter to Secretary Gordon in advance of his trip to Armenia, Azerbaijan and Georgia*, June 5, 2009, available at <http://www.hrw.org/en/news/2009/06/05/letter-secretary-gordon-advance-his-trip-armenia-azerbaijan-and-georgia>; and the letter of members of Azerbaijani civil society to the United Nations General Assembly, 14 April 2009, available at <http://www.demcoalition.org/site09-2008/pdf/Azerbaijan%20letter%202009%20UN%20Human%20Rights%20Council%20Elections.pdf>. (All links last accessed: 26 June 2009).

⁶ *Ibid.*

⁷ Details of this case have been reported by various sources and the description here provides the summary of the most important aspects. For more information about the case, see, for example, the US State Department, 2008 Human Rights Report: Azerbaijan, 25 February 2009; available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>; Baku Pages, *Two Azeri opposition journalists attacked*, 25 December 2006; available at http://www.bakupages.com/pubs/ai/12124_en.php; of the Protection International, *Reporter with opposition daily beaten and stabbed outside his home*, available at http://www.protectionline.org/spip.php?article1685&decoupe_recherche=reporteros. (All links last accessed: 26 June 2009).

him for weeks prior to the attack, the law enforcement authorities failed to proceed on this lead. No information is available on the state of the investigation and more than three years since the attack, nobody has been prosecuted for it.

- **Attack on Hakimeldostu Mehdiyev⁸**

On 22 September 2007, Hakimeldostu Mehdiyev, regional correspondent for the opposition newspaper *Yeni Musavat*, was attacked, and detained without cause by several officials of the Ministry of National Security in the Nakhchivan Autonomous Republic. The attack has been directly linked to Mehdiyev's critical reporting on social issues and human rights abuses in the republic: he has repeatedly criticized Nakhchivan authorities for gas and electricity shortages in the republic and had also written on corruption and human rights abuses by local officials. While Nakhchivan, an exclave of Azerbaijan, has autonomous status in certain matters, the harassment of this journalist and his family fall under the Government's jurisdiction.

On the given date, the Ministry of National Security agents forcibly detained Mehdiyev, took him to local headquarters in the village of Jalilkand in the Sharur district of Nakhchivan, beat him severely, and warned him to stop his critical reporting. Mehdiyev was further harassed by police in the following days (for more details, *see below*, the comments to Articles 9 and 14 of the Covenant).

Mehdiyev complained about his treatment to various authorities, including the Ministry of Interior, to the Prosecutor General, to the Nakhchivan Supreme Council Chairman, and the National Security Ministry's Sharur Region Branch. He demanded compensations for the moral and physical damage he suffered while in detention, as well as compensation for his brothers' trade objects which were destroyed while he was in prison. However, so far, there has been no investigation into his case and none of the requests were answered by the authorities.

ARTICLE 19 notes that Mehdiyev and his family continue to face pressure and harassment. For example, in 2008, Mehdiyev's right to freedom of movement was violated as local authorities prevented him from traveling outside his village. In January 2009, two of Mehdiyev's colleagues received phone calls from an unknown caller threatening to bomb their office. Also in January 2009, Mehdiyev was assaulted during an event organized by an opposition party to commemorate the birthday of the founder of the first Azerbaijan Republic. In March 2009, he had a car crash after his car was allegedly tampered with.

- **Attack on Uzeir Jafarov⁹**

On 20 April 2007, Uzeyir Jafarov, an editor of daily *Gundalik Azerbaijan* (the newspaper's office was closed in May 2008 by the Ministry of Emergency Situations,

⁸ Details of this case have been reported by several sources. *See*, for example, the Committee to Protect Journalists, *Letter to His Excellency Ilham Aliyev, President of Azerbaijan*, 27 September 2007, available at <http://cpj.org/2007/09/cpj-urges-president-to-halt-persecution-of-reporters.php>; *see also* the Human Rights House, *One More Journalist Beaten*, 7 October 2007; available at <http://humanrightshouse.org/noop/page.php?p=Articles/8298.html&d=1> (both links last accessed: 26 June 2009).

⁹ Information on this case has been reported by a number of international organizations, summary is provided here. For more details, *see*, for example, the US Department of State, 2007 Country Report on Azerbaijan, 11 March 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100548.htm>. Also, *see*, IFEX, *Alert: Editor of critical newspaper brutally beaten after protesting conviction of colleague*, 24 April 2007, available at http://www.ifex.org/azerbaijan/2007/04/24/editor_of_critical_newspaper_brutally; the Committee to Protect Journalists, *Azerbaijan Special Report: Finding Elmar's Killers*, 16 September 2008; the Institute for Reporter Freedom and Safety, *Press release of 27 June 2007*; available at <http://www.lenta.cjes.ru/?m=6&y=2007&lang=eng&nid=486>. (All links last accessed: 26 June 2009).

which cited violations of fire safety regulations, effectively suspending the publication), was attacked by two men as he was leaving his office in Baku. Prior to the attack, Jafarov had written articles about corruption in the Azerbaijani Ministry of Defense and also testified in defense of his editor, Eynulla Fatullayev, who was convicted and remains imprisoned on criminal libel and other charges. He sustained serious head injuries in the attack and had to be hospitalized.

Jafarov claimed he had recognized one of his attackers as an officer from the Yasamal District Police Department in Baku and gave the names of five witnesses to police. He also filed a complaint against the Yasamal District Prosecutor's Office and the Yasamal District Police Department; however, the law enforcement has never contacted the witnesses. Rafiq Aliyev, Yasamal District Police Investigator, later alleged there was no evidence to support Jafarov's claims, and the investigation was stopped. Also, Ramil Usubov, the Minister of Internal Affairs, publically stated that Jafarov had injured himself.

- **Attacks on Agil Khalil¹⁰**

In 2008, Agil Khalil, another journalist with the opposition newspaper *Azadliq*, was repeatedly attacked due to his investigative work. On 22 February 2008, Khalil was assaulted by persons he believed to be officials from the National Security Ministry while attempting to research the illegal cutting down of olive trees on a Baku municipal estate. He sustained several minor injuries in the attack.

In spite of video evidence of the incident captured on a passerby's mobile phone, the law enforcement authorities did not carry out a serious investigation into the incident.

Khalil pursued his investigation into the events he had witnessed on 22 February 2008. On 13 March 2008, he was attacked again: he was stabbed in the chest as he was leaving the Azerbaijan Publishing House where his office is located, by four unknown assailants. He sustained serious injuries, was hospitalized and immediately had to undergo a surgery. Khalil alleged the people involved in the stabbing had been watching him for several days and attempted to silence him due to his journalistic activities.

Instead of seriously pursuing the investigation, the Government launched a smear campaign against Khalil, claiming that he was a homosexual and was stabbed by a former lover, Sergey Strekhalin. Strekhalin was charged and tried for the attacks and on 15 July 2008, he was sentenced to 18 months in prison by a Baku District Court. However, Khalil repeatedly denied that Strekhalin was the person that stabbed him.

Numerous international observers, including those from the OSCE, Reporters Without Borders, and the International Committee for Protection of Journalists, raised concerns

¹⁰ Details of the all attacks on Khalil have been also reported by a number of sources, and the information provided here represents their summary. For more information, see, for example, IFEX, *Alert: Journalist assaulted while investigating environmental destruction*, 25 February 2008, available at http://www.ifex.org/azerbaijan/2008/02/25/journalist_assaulted_while_investigating; OSCE, *Press release: OSCE representative calls on Azerbaijani law enforcement to stop harassing and discrediting investigative journalists*, 11 April 2008, available at <http://www.osce.org/item/30628.html>; IFEX, *Alert: Journalist, previously beaten over article on logging, stabbed in chest*, 14 March 2008, available at http://www.ifex.org/azerbaijan/2008/03/14/journalist_previously_beaten_over; Radio Free Europe/Radio Liberty, *Azerbaijan: Investigative Journalist Hospitalized After Stabbing*, 14 March 2008, available at <http://www.rferl.org/content/article/1079639.html>; Eurasianet, *Azerbaijan: Attack on Journalist Prompts Fresh Concerns about Media Freedom*, 20 March 2008, available at <http://www.eurasianet.org/departments/insight/articles/eav032008b.shtml>; and the Reporters Without Borders, *Another attempt to murder opposition journalist Agil Khalil*, 9 May 2008, available at http://arabia.reporters-sans-frontieres.org/article.php3?id_article=26944. Footage of the 22 February 2008 attack can be seen at <http://www.irfs.az>. (All links last accessed: 26 June 2009).

about the investigation into the attacks against Khalil. Miklos Haraszti, the OSCE Representative on Freedom of the Media, publically denounced the proceedings, criticizing that instead of investigating the connection between the beating and the stabbing of Agil Khalil, the prosecution has started a campaign to discredit him.¹¹

On several occasions, Khalil was prevented by Azerbaijani authorities from leaving the country. On 7 May 2008, he was attacked again twice by unidentified persons. He reported that someone tried to push him under an approaching train at the “28 May” underground railway station, but he managed to avoid falling off the platform. Later the same day, when leaving the newspaper’s headquarters, two men grabbed his arms and twisted them but he managed to break loose and get away. Khalil believes that the attackers were trying to kidnap him.

As a result of these attacks, at the end of July 2008, Khalil left the country in pursuit of safety.¹²

- **Attacks on Emin Huseynov¹³**

On 14 June 2008, Emin Huseynov, a reporter and chair of the Institute for Reporters’ Freedom and Safety (*hereinafter* “IRFS”), was arrested at the Ataturk Cafe in Baku, while covering in a professional capacity an event celebrating the 80th anniversary of the birth of Ernesto Che Guevarra. The peaceful event was interrupted by police from the 22nd police department of the Nasimi District of Baku. During the police raid, Huseynov and twenty-two other people, including two IRFS researchers, were arrested. At the police station, after protesting against the photographing and fingerprinting of other detainees, Huseynov was taken into a separate room by four police officers, and one of the officers reportedly threatened to kill and bury him. Huseynov also claims that in the separate room, he was attacked by the police officers (struck on the back of the neck with a gun handle several times), sustaining injuries. He requested medical assistance, which, at first, the police department refused. Later, he was taken to the Centralised Emergency Medical Assistance Hospital where he was placed in intensive care for three days, hospitalized for 24 days and treated for head and brain trauma. As a result of his injuries, Huseynov lost fifty percent of his hearing and he has still continued to receive treatment for his injuries in 2009.

So far, no effective investigation has been conducted into the case. The Nasimi District Police Department only took a statement from Huseynov and obtained a forensic medical examination. Nonetheless, already on 16 June 2008, Radio Free Europe/Radio Liberty quoted a Nasimi District Police Department official saying that Huseynov’s injuries were self-inflicted. Such a statement raises serious concern that the authorities in charge of the investigation are not acting independently but have pre-determined the outcome. Huseynov also claims that when the hospital employees

¹¹ See OSCE, *Press release: OSCE representative calls on Azerbaijani law enforcement to stop harassing and discrediting investigative journalists*, 11 April 2008.

¹² See Eurasianet, *Azerbaijan: Opposition Journalist Leaves for France*, 26 July 2008; available at <http://www.eurasianet.org/departments/insight/articles/eav072608.shtml> (last accessed: 26 June 2009).

¹³ Details of this case have also been reported by various sources, summary is provided here. See, for example, Front Line, *Azerbaijan: Human Rights Defender Emin Huseynov in Intensive Care Following a Beating Whilst in Detention*, 16 June 2008, available at <http://www.frontlinedefenders.org/node/1470> the Letter of members of Azerbaijani civil society to the United Nations General Assembly, 14 April 2009; IFEX, *Alert: Court rejects journalist’s lawsuit*, 22 June 2009; available at http://www.ifex.org/azerbaijan/2009/06/22/huseynov_lawsuit_rejected; and Human Rights Watch, *Letter to the Prosecutor General of Azerbaijan Regarding the Detention of Emin Huseynov*, 24 June 2008, available at <http://www.hrw.org/en/news/2008/06/24/letter-prosecutor-general-azerbaijan-regarding-detention-emin-huseynov>. (All links last accessed: 26 June 2009).

learned how he had sustained his injury, they changed his diagnosis from a concussion and head trauma to “stress syndrome”, which they said was causing his high blood pressure.

Huseynov filed a civil lawsuit against the Ministry of the Interior, the Nasimi District Police Department and the Nasimi District Police Department Office No. 22 for “subjection to pressure”, seeking AZN 50,000 (approx. US\$ 62,000) in compensation from each of the defendants. His petition was rejected on 17 June 2009 by the Nasimi District Court; the appeal proceedings are pending.

- **Attacks on Eldaniz Elgun**¹⁴

Eldaniz Elgun, a renowned television journalist and former director of the Space TV news department, claims that he was stabbed on 15 March 2008, several days after the stabbing of Agil Khalil (*see above*). Elgun claims that three strangers assaulted him near the Narimanov subway station and stabbed him in the region of his heart. He asserts that he concealed the incident and only received treatment at his home in order to avoid retribution from authorities. In particular, Elgun claimed that he feared “a similar retribution as Agil Khalil had to experience”. However, he submitted that the Government was responsible for this attack and it followed a series of threats and interrogations by the Ministry of National Security over several years.

- **Attacks on journalist in Nahrem, in Nakhchivan**¹⁵

On 27 August 2008, Radio Liberty correspondents Malahat Nasibova and Ilgar Nasibov, and Baku-based Institute for Reporters' Freedom and Safety correspondent Elman Abbasov, were assaulted while reporting on a confrontation between the police and residents of the village of Nahrem, in the Autonomous Republic of Nakhchivan. The journalists claim that the attackers included members of the village's administration and the chairman of the municipality. They were seriously injured and their equipment was destroyed in the attack. Journalists also reported that local police officers were present and witnessed the incident, but did nothing to intervene.

Subsequently, the journalists attempted to file a complaint at the Nahrem police department. However, almost a year later, there is no information available about the status of the investigation and nobody was prosecuted for these attacks.

- **Assaults on journalists related to the “Flower Holiday”**¹⁶

¹⁴ For further details on this case, *see*, for example, the US State Department, *2008 Human Rights Report: Azerbaijan*, 25 February 2009; *see also* BBC Monitoring, *Azerbaijan - Media Safety: TV journalist concealed case of stabbing*, 20 October 2008, available at: http://www.newssafety.org/index.php?view=article&catid=452%3AAzerbaijan-media-safety&id=10313%3Aatv-journalist-concealed-case-of-stabbing&option=com_content&Itemid=100316 (last accessed: 26 June 2009).

¹⁵ For more details, *see* IFEX, *Alert: Three journalists assaulted while trying to report on altercation in Nakhchivan, their equipment broken*, 27 August 2008, available at http://www.ifex.org/azerbaijan/2008/08/27/three_journalists_assaulted_while. *See also* the Amnesty International, *the Amnesty International Report 2009: State of the World's Human Rights*, available at <http://thereport.amnesty.org/en/regions/europe-central-asia/azerbaijan> (both links last accessed: 26 June 2009).

¹⁶ For further information about the case, *see* ARTICLE 19, *South Caucasus: Continued Violence Against Journalist Symptomatic of Ongoing Repression*, 15 May 2009, available at <http://www.article19.org/pdfs/press/south-caucasus-continued-violence-against-journalists-symptomatic-of-ongoing.pdf>. *See also* IFEX, *Alert: Journalists harassed by police while attempting to cover student protests*, 12 May 2009, available at http://www.ifex.org/azerbaijan/2009/05/12/journalists_harassed_by_police; Impunity Watch, *Spate of Attacks on Journalists in Ex-Soviet Republics in Recent Months*, 23 May 2009, available at http://www.impunitywatch.com/impunity_watch_middle_eas/2009/05/spate-of-attacks-on-journalists-in-exsoviet-republics-in-recent-months.html. All links last accessed: 26 June 2009.

On 10 May 2009, police officers of the Police Department No. 39 of the Sabail District of Baku used physical violence against several journalists who attempted to cover protests by a group of local youths against the “Flower Holiday”, the annual celebration of the birthday of former President Heydar Aliyev. Journalists included Durna Safarli, Radio Liberty correspondent, Afgan Mukhtarli and Layla Ilgar, employees of “Yeni Musavat” newspaper and Elchin Hasanov, newspaper employee of “Yukselish Namina”.

News media reported that members of public were beaten during the police interference with the protests and approximately 50 demonstrators were detained for a number of hours on the given day. Durna Safarli went to the Police Department No. 39 to investigate the case; there, she was subjected to physical pressure and insulted by the police. Afgan Mukhtarli and Leyla Ilgar were also attacked in front of the Police Department No. 39 when they tried to get information about the arrests; and when Elchin Hasanov attempted to help them, he was also subject to assault. No information is available about the investigation into these attacks despite numerous complaints and calls of international organizations for investigation.

- **Assaults on journalists related to the mosque destruction**¹⁷

On 26 April 2009, police used force against three media workers – journalist Nijat Suleymanov, TV operator Elmin Muradov and TV service employee Azer Balayev – all from independent *ANS TV*. The three media workers were investigating the destruction of a mosque at M. Mukhtarov Street in Baku and filming on the ground. They approached Mohubbet Huseynov, the Yasamal District Police Department Chief, to learn according to what decision the building was being destroyed. Huseynov refused to respond and ordered police in the area to confiscate the film equipment and cassettes in the reporting crew’s possession. Over 30 police used force to take the equipment and cassette from the journalists. During the clash, the *ANS* film crew’s equipment was broken. Police eventually returned the broken equipment to *ANS*, but not the video cassette.

In response to the incident, the Ministry of Interior stated that the incident has been investigated; however, later, the Yasamal District Police Department declared that the journalists attacked police and the use of the force was their fault.¹⁸ No information is available about the results of the investigations into the incident.

3. Articles 9 and 14 of the Covenant

In recent years, various international and domestic organizations documented a number of politically motivated criminal convictions and trials of media professionals critical of the government. The reports pointed out that too often, journalists have been arrested and detained on fabricated charges, convicted without a fair trial and sentenced to excessive prison terms. ARTICLE 19 submits that arrests and trials in many cases of media professionals did not meet international standards mandated by Articles 9 and 14 of the

¹⁷ Details of the case have been reported, for example, by the Institute for Reporters’ Freedom and Safety, *Azerbaijan - Media Safety: ANS employees roughed up by police*, 27 April 2009, available at http://www.newssafety.org/index.php?option=com_content&view=article&id=13034%3Aans-employees-roughed-up-by-police-&catid=452%3AAzerbaijan-media-safety&Itemid=100316. The photo evidence is available at *ANS*: <http://www.anspress.com/index.php?albumid=470>. (All links last accessed: 26 June 2009).

¹⁸ See the statement of Sadig Gozelov, the Press Service Director of the Ministry of Interior, for *ANS*, <http://www.lenta.cjes.ru/?m=4&y=2009&lang=eng&nid=170> (last accessed: 26 June 2009).

Covenant. In majority of these cases, media professionals have been prosecuted for defamation and libel (which constitute criminal offence in Azerbaijan); but there have been several cases where media professionals were imprisoned on other criminal charges seemingly unrelated to their journalistic activity, as, for example, "hooliganism" or "bribery". With a number of media professionals currently imprisoned, Azerbaijan has been repeatedly reported as a country with the highest number of journalists imprisoned in Europe.¹⁹

The following cases can be mentioned as examples of such violations (the list is not exhaustive):

- **Case of Hakimeldostu Mehdiyev**²⁰

As described above (see discussion to Articles 7 and 2 of the Covenant), Hakimeldostu Mehdiyev, journalist for the opposition newspaper *Yeni Musavat*, was attacked and detained by several officials of the Ministry of National Security in the Nakhchivan Autonomous Republic on 22 September 2007. Mehdiyev was forcibly taken to local headquarters in the village of Jalilkand in the Sharur district of Nakhchivan, and held there for several hours. During the detention, the law enforcement put pressure on Mehdiyev to stop his investigative activities and warned him not to report the incident. On the following date, on 23 September 2007, police raided Mehdiyev's home, arrested him on charges of disobeying law enforcement officials, and took him to a district judge who immediately ordered him jailed for 15 days. He was imprisoned immediately in Nakhchivan's Boyuk Duz prison, where authorities refused to allow visitation rights to his family. On 27 September 2007, he was released without any explanation. Despite a number of complaints launched by Mehdiyev against authorities, he has received no redressed for beaten and arbitrary detention.

- **Case of Qanimat Zahid**²¹

On 10 June 2008, the Baku Appellate Court upheld a decision of the Baku District Court to sentence Qanimat Zakhidov, editor-in-chief of the *Azadliq* newspaper and brother of prominent then-imprisoned journalist Sakit Zakhidov, to four years imprisonment for "hooliganism and causing damage to the health of a person."²² Zahid had been in pre-trial detention since 10 November 2007 on allegations that he insulted a woman in the street and assaulted another man, Vusal Hasanov (reportedly a

¹⁹ See for example, the Committee to Protect Journalists, *Tenth Azerbaijani journalist imprisoned*, 6 December 2007, available at <http://cpj.org/2007/12/tenth-azerbaijani-journalist-imprisoned.php> (last accessed: 26 June 2009). See also, the Committee to Protect Journalists, *Journalists in Prison*, 5 December 2007, available at <http://www.wan-press.org/3may/2008/articles.php?id=572>. (Both links last accessed: 26 June 2009).

²⁰ Details of this case have been reported by several sources. See, for example the Committee to Protect Journalists, *Letter to His Excellency Ilham Aliyev, President of Azerbaijan*, 27 September 2007; available at <http://cpj.org/2007/09/cpj-urges-president-to-halt-persecution-of-reporters.php>; see also the Human Rights House, *One More Journalist Beaten*, 7 October 2007; available at <http://humanrightshouse.org/noop/page.php?p=Articles/8298.html&d=1> (both links last accessed: 26 June 2009).

²¹ Details of the case have been reported by various independent sources. See for example, Amnesty International, *Azerbaijan: Independent Journalist Under Siege*, June 2009, available at <http://www.amnesty.org/en/library/asset/EUR55/004/2009/en/c6269115-c883-44d0-bffc-ac8a7be8ee4b/eur550042009en.pdf>; or the Letter of the Freedom of the Press Committee America to His Excellency Ilham Aliyev, President of Azerbaijan, from 14 July 2008, available at <https://www.opcofamerica.org/content/view/4448/53>. See also, ARTICLE 19, *Azerbaijan: Press Freedom Under Attack*, 14 March 2008, available at www.article19.org/pdfs/press/azerbaijan-press-freedom.pdf. All links last accessed: 26 June 2009.

²² The charges were brought under Article 221 (hooliganism) and Article 127 (deliberate causing of minor serious harm to health) of the Criminal Code of Azerbaijan of 1 September 2000; available at: <http://www.unhcr.org/refworld/docid/4417f82d4.html> (last accessed: 26 June 2009).

former policeman), who intervened to protect the woman. Invited to testify as the victim of an attack by the police, Zahid was instead arrested as a suspect. According to his attorney, Zahid's rights to fair trial were repeatedly infringed during the proceedings. The charges were launched against him despite contradictory testimonies from prosecution witnesses and the absence of any documentation of the bodily harm Zahid supposedly inflicted. The eyewitnesses for the defense were barred from testifying. The incident was allegedly filmed by a traffic camera, and the footage was used to identify and summon witnesses for the prosecution; however, the footage was no longer available when defense lawyers called for it to be examined by the court. The first instance decision (from 7 March 2008) was issued in an unannounced and unscheduled court session; and the date and time of the hearing was not publicly communicated in advance to his lawyers. Moreover, Zahid was given the maximum penalty allowed by law, a penalty disproportionate to the nature of the alleged crime. ARTICLE 19 wishes to point out that prior to the arrest, Zahid has been subject to prolonged harassment by the authorities for his critical work. In September 2007, Minister of Economic Development filed a defamation lawsuit over an *Azadliq* article alleging misuse of ministry funds, which resulted in the paper printing a rebuttal. In October 2007, a state traffic police official filed a similar complaint over an article describing alleged corruption. The harassment of Zahid, the initial charges and the subsequent development of the case, in particular the manner of its handling by the judiciary, raise strong concerns that the Government charged Zahid deliberately in order to silence him for his work.

- **Case of Sakit Zahidov**²³

Sakit Zahidov (also known as Mirza Sakit), prominent poet, satirist and reporter for the *Azadliq* newspaper, was arrested on 23 June 2006 on spurious charges of possessing and distributing illegal drugs. Zahidov and other opposition journalists alleged that evidence had been planted on him in order to incriminate him and claimed that the authorities targeted him because of his political activities. The incident of his arrest appeared only shortly after a senior ruling party official publicly criticized his writing and one week after the publication of a collection of his poems, which often refer to government corruption. According to available information, the trial of Zahidov (opened on 18 August 2006) suffered of serious shortcomings: apparently contradictory medical evidence presented to the trial to prove he had used illegal substances; arrest protocol was written twice; a number of important witnesses were not called for questioning at the trial and appeal; and allegedly, Zahidov's own testimony was partially omitted from the final protocol used as a record of the trial, and his attorneys were not given access to all the evidence used in the proceedings. On 4 October 2006, Zahidov was sentenced to three years' imprisonment; whilst in prison, in October 2008, he was allegedly severely beaten by prison guards.

Although Zahidov was released from prison on 9 April 2009, after two years and nine months in prison, based on the amnesty issued by the Azerbaijan's Parliament, the failure of the Government to ensure a fair trial in his case remains unaddressed.

²³ For more information on this case, see, for example, the Human Rights House, *Sakit Zahidov: "The case against me is a lie and provocation!"*, 01 September 2006, available at <http://humanrightshouse.org/Articles/650.html>; Amnesty International, *Azerbaijan journalist pardoned after almost three years in prison*, 16 April 2009, available at: <http://www.unhcr.org/refworld/docid/49ec1a6e1a.html>; Radio Free Europe/Radio Liberty, *Azerbaijan: Journalist's Prison Sentence Denounced As Political*, 4 October 2006, available at: <http://www.rferl.org/content/Article/1071796.html>. (All links last accessed: 26 June 2009).

- **Case of Novruzali Mamedov**²⁴

Novruzali Mamedov is an academic and a former editor of now-defunct *Talyshi Sado*, a monthly newspaper of a small ethnic Talysh minority (a group of about 100,000 people who live mainly in the southern part of Azerbaijan, along the border with Iran).²⁵ Published in the Talysh language, the paper had a circulation of around 1,000 and ran news and features on the history and culture of the Talysh minority, as well as poetry and prose from Talysh authors. In addition to being the editor, Mamedov headed the Institute of Linguistics of the Azerbaijan National Academy of Science and was a head of the Talysh Cultural Centre (also closed now).

On 3 February 2007, Mamedov was detained for 15 days in Baku on charges of “resisting law enforcement” when police officers allegedly asked him to provide identification. He was detained incommunicado in the detention center of the Ministry of National Security, with neither family members nor lawyers able to visit him. Two weeks later, on 17 February 2007, the Ministry of National Security charged him with treason (under Article 274 of the Azerbaijan Criminal Code). The charges stated that he was publishing *Talyshi Sado* with Iran’s financial backing, that he was “distributing Talysh nationalist ideas,” “attempting to destroy the foundations of the Azerbaijani state,” and spreading “a negative image of Azerbaijan” internationally. After more than 16 months detention, on June 24 2008, Mamedov was found guilty of high treason and sentenced to 10 years in prison. The sentence was passed at a closed trial that fell short of international human rights standards, including denial of access to his defense lawyer. The proceedings were allegedly closed to the public on grounds that sensitive matters were to be discussed and the safety of prosecution witnesses allegedly needed to be ensured. The sentence was later upheld by the appeal court and by the Supreme Court of Azerbaijan (on 11 June 2009). Given the nature of the charges and the way how the trial was conducted, Mamedov's lawyer and colleagues claim the case was fabricated and unsubstantiated.

4. Article 19 of the Covenant

ARTICLE 19 acknowledges the existence of extensive legislation guaranteeing the freedom of expression, freedom of press and the right to access to information, as detailed in the Governmental Report. However, research and direct experience of ARTICLE 19 in the country clearly indicates that the Government has directly violated its obligations mandated by Article 19 of the Covenant in several ways: a) by failing to create an environment where the media can work independently, freely, effectively and without fear of retribution; b) by using criminal law provisions on defamation and insult to suppress critical voices in the society; c) by abusing civil defamation provisions and administrative measures to harass

²⁴ For more details about the case, see, for example, PEN International, *Azerbaijan: 10-year sentence for editor*, 4 July 2008, available at <http://www.internationalpen.org.uk/go/news/azerbaijan-10-year-sentence-for-editor>; the Committee to Protect Journalists, *Azerbaijan: Journalist slammed with 10 years in prison for alleged treason*, 25 June 2008, available at <http://www.cpj.org/news/2008/europe/azer25jun08na.html>; Today.Az, *Azerbaijan's Supreme Court dismisses appeal of newspaper editor-in-chief charged with high treason*, 11 June 2009; available at <http://www.today.az/news/society/53074.html>; and the Committee to Protect Journalists, *2008 Prison Census: 125 journalists jailed, Journalists in prison as of December 1, 2008*, available at <http://www.cpj.org/imprisoned/2008.php#azer> (All links last accessed: 26 June 2009).

²⁵ In 1993, the Talysh minority, primarily Shia Muslim, claimed self-determination under the leadership of the Talysh National Movement. Their autonomy claim did not reach public support and was suppressed. It is believed that the movement remains active. For more on the Talysh see <http://www.azerb.com/az-talyshstan.html> (last accessed: 26 June 2009).

independent media; and d) by failing to fully realize the right to freedom of information as provided in the existing legislation. These violations are discussed in more detail below.

a) Media independence

Media independence and pluralism are fundamental to any functioning democracy and free society. Hence, under Article 19 of the Covenant, the Government is obliged to create an environment where the media can work independently, freely, effectively and without fear of retribution.

ARTICLE 19 is aware of a number of positive developments in Azerbaijan in relation to functioning of media; especially, the transformation of media from a state-run system into a variety of new media outlets, legal guarantees of freedom of press and prohibition of censorship and liberalization of registration procedures for print media, as outlined in the Governmental Report. Despite these developments, there are a number of problems in relation to functioning of media, in particular:

- ***Independence of broadcasting***²⁶

Although both government-controlled and privately-owned broadcasters exist in Azerbaijan, it has been asserted that the Government exercises a significant control over television; television is considered the most influential news medium and the main source of information in the country. Azerbaijan has two state TV channels, *AZTV* and *Idman Azerbaijan*, and the National Public Broadcaster. All of three are funded through the state budget and *AZTV* is under the direct control of the Azerbaijan presidential staff. As the result, they fail to give balanced and impartial news and information and reflect the broader spectrum of views in the society.

The only independent channel with national reach, *ANS TV*, has reportedly toned down its criticism of the Government since the National Television and Radio Council, the state media regulator, temporarily suspended its license in November 2006. Although its license was later renewed and it resumed broadcasting five months later, it changed its editorial content and it no longer gives live airtime to opposition politicians. In respect to private broadcasters such as *Space TV*, *Lider TV*, *ATV*, and *Khazar TV*, questions have been raised with regards to their ownerships and the transparency of ownership, suggesting that they controlled by the government or its loyalists. Such control can be also detected from preferences when providing the annual licensing by the National Television and Radio Council of Azerbaijan (*hereinafter* “the NTRC”). The governmental *AZTV* paid AZN 110 (approximately US\$ 137) for its annual license, whereas independent *ANS TV* was required to pay AZN 33,000 (approximately US\$ 41.030) for the same license.

- ***Restrictions on foreign broadcasting***²⁷

²⁶ See the Committee to Protect Journalists, *Azerbaijan Special Report: Finding Elmar's Killers*, 16 September 2008. See IREX, Media Sustainability Index - Europe & Eurasia 2009, available at http://www.irex.org/programs/MSI_EUR/2009/azerbaijan.asp (last accessed: 26 June 2009).

²⁷ See ARTICLE 19, *Azerbaijan: Government to close channels for last remaining independent broadcasters in the country*, 5 November 2008, available at www.article19.org/.../azerbaijan-government-to-close-channels.pdf; see also Voice of America, *Azerbaijan Needs Free Media*, 2 January 2009, available at <http://www.voanews.com/uspolicy/2009-01-04-voa7.cfm> (both links last accessed: 26 June 2009).

At the end of 2008, the National Television and Radio Council announced that from 1 January 2009, it would suspend the broadcasting rights of international radio stations from broadcasting on national frequencies. The decision affected primarily the BBC, Radio Free Europe/Radio Liberty and Voice of America's international radio services on the Azerbaijan FM band. These foreign radios are considered to be a crucial alternative source for local and international news and provide forum for independent and opposition politicians and commentators to speak. Although they are now broadcasting their programs in Azerbaijan through satellite, cable network and internet, the majority of the population in Azerbaijan do not have access to internet and/or shortwave radios. Therefore, the suspension deprived a large number of population access to diverse viewpoints and curtailed the freedom of expression in a significant level. ARTICLE 19 believes that this restriction was a political decision aimed at further limiting the free flow of alternative views and opinions in the country.

- ***Problems affecting print media***

Compared to TV broadcasting, the print media scene in Azerbaijan is relatively diverse. However, the main reasons why many print media cannot be considered fully independent sources of information for the public is their lack of sufficient resources in contrast to government controlled media outlets, low circulation and problems with distribution, especially in the regions.

According to local experts, selective distribution of advertisements remained a major problem for financial development. Independent editors claim that businessmen fear retaliation for placing advertisements in media that are not government controlled or are not friendly to the government.²⁸

Further, there is no effective distribution system for print media which would include all media outlets. Major distribution companies, as for example Azermetbuatyayim, are reportedly selective in distribution of independent and opposition newspapers and there is no regular delivery of newspapers to the regions or even within the capital city. A recent case, from June 2009, can be mentioned as an example of this restrictive distribution. It was reported, that since 15 June 2009, the Goychay region Police Department Chief Vugar Mammadyarov, banned the sale of *Bizim Yol*, *Azadliq* and *Yeni Musavat* newspapers, in connection to the articles printed in the newspapers about an action conducted in Baku city by the relatives of arrested businessman Chingiz Mayilov from Goychay.²⁹

Importantly, high number of incidents of physical attacks towards media professionals (*see above*, in the discussion to Articles 6, 7 and 2 of the Covenant) and the use of criminal sanctions towards critical journalist (*see below*, section on criminal defamation) have had a chilling effect on media. Local groups asserted that fewer reporters are willing to cover sensitive topics, such as corruption, President Aliyev and his family, high level officials, and even murder cases (as illustrated by the case of Eynulla Fatullayev above).

b) Criminal defamation

²⁸ See IREX, Media Sustainability Index - Europe & Eurasia 2009, available at http://www.irex.org/programs/MSI_EUR/2009/azerbaijan.asp (last accessed: 26 June 2009).

²⁹ See the Institute for Reporters Freedom, *Ban Allegedly Imposed on Newspaper's Sale in Goychay*, 19 June 2009, available at <http://www.irfs.az/content/view/2477/28/lang.eng> (last accessed: 26 June 2009).

According to the Azerbaijan Criminal Code,³⁰ defamation (slander) and insult are criminal offences, punishable by a range of harsh sentences, from heavy fines to up to three years of imprisonment. ARTICLE 19 believes that these provisions constitute a serious obstacle to freedom of expression in Azerbaijan and have a strong chilling effect on the media's independence. Together with other international organizations, including the Parliamentary Assembly of the Council of Europe³¹ and the OSCE³², ARTICLE 19 has previously raised concerns about the existence of these provisions in Azerbaijan legal system and recommended the Government to repeal them.³³ We point out that there is a growing body of international law and authoritative international statements that hold that criminal defamation laws, *per se*, are contrary to the right to freedom of expression. Namely, these provisions represent a disproportionate response to the problem of harm to reputation; while civil defamation laws have proven perfectly adequate to protect reputations. Even if the possibility of prison sentences were removed, it would still leave in place a number of unacceptable punishments, including correctional work and restricted freedom and heavy fines that can threaten the financial viability of media outlets and journalists. Importantly, the current legislation does not make it clear that the onus of proof of all elements of the offence is on the prosecution and that the standard of proof is the criminal one of beyond all reasonable doubt. Absent these conditions, criminal defamation laws fail to conform to fundamental principles of criminal law, also protected as human rights, and also represent a breach of the right to freedom of expression.

ARTICLE 19 also wishes to draw the attention of the Committee to an overwhelming evidence, that the Government has been using these laws (as well as other criminal charges, mention in the discussion on Articles 9 and 14 above) to intimidate independent and opposition journalists, silence lawful expression of dissent and instill self-censorship among journalists. In many documented cases, the prosecution failed to prove that the statements allegedly made have been proven false, or that the accused have acted either with knowledge of the falsity of statements made or with the intention of causing harm; in some cases it was even unclear whether the accused journalists authored the articles that formed the basis of the

³⁰ See the Criminal Code of the Azerbaijan Republic, adopted on 30 December 1999, entry into force on 01 September 2001.

According to Article 147: Defamation, *defamation* is distribution of obviously false information which discredit honour and dignity of any person or undermining his reputation in public statement, publicly or in mass media shown products; and it is punished by fine of hundred up to five hundred of the nominal financial unit, or by public works for the term of till two hundred forty hours, or by corrective works for the term of up to one year, or imprisonment for the term of up to six months. According to Article 147.2, defamation, that is connected with accusation of committing serious or especially serious crime can be punished by corrective work for the term of up to two years, or deprivation of freedom for the term of up to two years, or imprisonment for the term of up to three years.

According to Article 148: Insult of the Criminal Court, *insult* means deliberate humiliation of honour and dignity of a person, expressed in the indecent form in the public statement, publicly or in mass media shown product, and can be punished by fine of three hundred up to one thousand of the nominal financial unit, or by public works for the term of up to two hundred forty hours, or by corrective work for the term of up to one year, or imprisonment for the term of up to six months.

³¹ See the statement of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe from 18 December 2007, available at <http://www.neurope.eu/articles/81107.php>PACE concerned about abuse of defamation laws (last accessed: 26 June 2009).

³² See the OSCE Office in Baku, *OSCE supports decriminalizing libel and insult in Azerbaijan*, 6 February 2007; available at http://www.osce.org/baku/item_2_23198.html (last accessed: 26 June 2009).

³³ See ARTICLE 19, *Note on Proposed Amendments to Laws of the Republic of Azerbaijan Relating to the Protection of Reputation*, September 2004, available at <http://www.article19.org/pdfs/analysis/azerbaijan-def-amendment.pdf> (last accessed: 26 June 2009).

defamation charges brought against them. Some recent cases of criminal prosecutions of journalists for defamation are listed here.

- **The two cases of Eynulla Fatullayev**³⁴

Eynulla Fatullayev is founder and senior editor of the Russian language newspaper *Realny Azerbaijan* and *Gundelik Azerbaijan*, that were known for criticizing government officials. In May 2007, both newspapers closed down after a series of inspections of their premises by the authorities. Fatullayev himself was harassed repeatedly by authorities; e.g. in July 2004, he was beaten in the street in Baku, following articles he published that were critical of government officials; in 2005, he received anonymous threats for a series of articles following his visit to Nagorno Karabakh, in which he advocated dialogue with the Armenians of Karabakh; in October 2006, his father was kidnapped and released only after an announcement that the newspapers would temporarily stop publishing; and in 2007, Fatullayev faced death threats after reporting to the investigation into the murder of his former colleague Elmar Huseynov.

The first criminal case concerns articles posted earlier in 2007 on internet and were attributed to Fatullayev but which he denied writing. The articles alleged that both Azerbaijanis and Armenian forces were responsible for the massacre of hundreds of ethnic Azeri civilians from the village of Khojali in 1992, during the 1991-1994 war in Nagorno Karabakh. On 20 April 2007, Fatullayev was convicted of defamation of both the population of Khojali and Azerbaijani war veterans and sentenced to two and a half years' imprisonment by the Yasamal District Court. On 6 June 2007, the sentence was upheld by the appeals court; and on 21 August 2007, the Supreme Court of Azerbaijan dismissed the cassation appeal and upheld the sentence.

In the second criminal case, on 30 October 2007, Fatullayev was sentenced to an additional eight and a half years' imprisonment on charges of terrorism (under Article 214.1 of the Azerbaijan Criminal Code), incitement of ethnic hatred (under Article 283.2.2 of the Azerbaijan Criminal Code) and tax evasion (under Article 213.2.2 the Azerbaijan Criminal Code). The prosecution in this case was based on article Fatullayev published in his newspaper, arguing that the Azerbaijani support of United States foreign policy would make them more likely to be attacked by Iran, and mentioning some possible targets in Azerbaijan that could be attacked. On 16 January 2008, the charges were confirmed by the Baku Court of Appeal; and on 3 June 2008 by the Azerbaijani Supreme Court. Further, all *Realny Azerbaijan's* assets were seized by authorities and a large fine (the equivalent of US\$ 58,000) was imposed.

- **Case of Ali Hasanov**³⁵

³⁴ For more information on the first case, see ARTICLE 19, *Azerbaijan: Journalist Imprisoned for Defamation*, 3 May 2007, available at <http://www.article19.org/pdfs/press/azerbaijan-defamation-pr.pdf>. See also Amnesty International USA, feature on Azerbaijan: *Eynulla Fatullayev - journalist harassed and imprisoned*, available at <http://www.amnestyusa.org/individuals-at-risk/banned-books/banned-books-week-eynulla-fatullayev/page.do?id=1091238>; and Amnesty International, *Azerbaijan: Independent Journalist Under Siege*, June 2009.

For more information about the second sentence, see, PEN American Center, *Azerbaijan: Sentence against editor Eynulla Fatullayev upheld*, 31 January 2008; available at <http://www.pen.org/viewmedia.php/prmMID/2664/prmID/1610>; and International PEN, *Azerbaijan: Eynulla Fatullayev*, available at <http://www.internationalpen.org.uk/index.cfm?objectid=95B06741-E0C4-ED84-0F98146DCED06916> (all links last accessed: 26 June 2009).

On 14 November 2008, Ali Hasanov, editor of the daily newspaper *Ideal*, was sentenced to six months in prison on criminal defamation and insult charges. The case against him was filed in September 2008 by a Nagorno-Karabakh war veteran, Sabira Makhmudova, who claimed that two articles published in *Ideal* in August 2008, alleging that she was connected to a prostitution ring, harmed her honour and dignity. Hasanov admitted that the newspaper had published the two articles, but were written by an individual using a pseudonym. He also denied any involvement in their publication as he had only become editor of the paper after the two articles were published. Nonetheless, Hasanov was convicted and imprisoned. On 11 April 2009, he was released after serving all but one month of his sentence in connection with the amnesty act signed by the Azerbaijan Parliament.

- ***Case of Faramaz Novruzoglu and Sardar Alibeyli***³⁶

On 30 January 2007, the Narimanov District Court sentenced Faramaz Novruzoglu, reporter, and Sardar Alibeyli, editor-in-chief of the weekly independent newspaper *Nota Bene*, to two years in imprisonment and 18 months of corrective labour respectively for libeling the Minister of Internal Affairs and the Chairman of the State Committee on Diaspora issues. The case was launched after they reported on alleged corruption in the Ministry of Internal Affairs.

- ***Asif Merzili and Zumrud Mammadova***³⁷

On 7 April 2009, Asif Merzili, editor-in-chief of *Tezadlar* newspaper, and Zumrud Mammadova, a journalist at *Tezadlar*, were sentenced by the Yasamal District Court to a year in prison and six months of corrective labor respectively. They were charged with defamation and insult towards managers and professors of Azerbaijan International University, by publishing series of articles about the AIU rector and his university, as well as about AIU Chair Head Mahir Abdullayev who was missing in 2003 under unknown conditions.

Although on 9 April 2009, the sentences were annulled by the appeal court and the Merzili case was returned to the first instance court for reconsideration, the case sends a strong message that critical voices in the society are not tolerated by the Government and that the Government is ready to use criminal defamation to prevent public debate and stifle open criticism of the Government, public officials and other powerful people.

c) Abuse of civil defamation and harassment of media

³⁵ For more information about this case, see, PEN, *Appeal: Sakit Zakhidov and Ali Hasanov*, Letter to Their Excellencies Ilham Aliyev, President of Azerbaijan and Ramil Usubov, Minister of Internal Affairs, 22 April 2009, available at <http://www.pen.org/viewmedia.php/prmMID/3450/prmID/1610>; IFEX, *Editor sentenced to six-month jail term for defamation, convicted deputy editor in hiding*, 19 November 2008, available at http://www.ifex.org/azerbaijan/2008/11/19/editor_sentenced_to_six_month_jail/; and IFEX, *Editor Ali Hasanov released from prison*, 16 April 2009, http://www.ifex.org/azerbaijan/2009/04/16/hasanov_released. (All links last accessed: 26 June 2009).

³⁶ See OSCE Office in Baku, *OSCE voices concern over imprisonment of journalists in Azerbaijan*, 31 January 2007; available at <http://www.protectionline.org/spip.php?article1999>. See also Amnesty International Report 2009 – Azerbaijan, 28 May 2009.

³⁷ See IFEX, *Newspaper editor Asif Merzili sentenced to one year in jail for defamation*, 7 April 2009 available at http://www.ifex.org/azerbaijan/2009/04/07/newspaper_editor_asif_merzili_sentenced/; IFEX, *Journalist Sakit Zahidov, editor Asif Merzili freed from prison*, 14 April 2009, http://www.ifex.org/azerbaijan/2009/04/14/journalist_sakit_zahidov_editor; and Turkish Weekly, *Arrested Chief Editor Released In Azerbaijan*, 9 April 2009, available at <http://www.turkishweekly.net/news/71530/-arrested-chief-editor-released-in-azerbaijan.htm>. (All links last accessed: 26 June 2009).

Apart of use of criminal law to silence criticism of the Government and other powerful figures in the society, cases in which civil defamation was used to censor freedom of expression have been also recorded. International organizations, including the OSCE, observed that government officials or those closely connected to the Government are predominantly plaintiffs in such civil defamation suits against independent media, and the courts almost always impose significant fines.³⁸ The case of Leyla Yunus is illustrative of this problem.³⁹

- Leyla Yunus is a prominent human rights defender and director of the Azerbaijani Institute of Peace and Democracy. In December 2008, the Minister of Internal Affairs, Ramil Usubov, accused her of libel against the police and the Ministry of Internal Affairs. The suit was launched in relation to an interview of Yunus, published on 3 December 2008 on the website Day.Az, where she claimed that the right to a fair trial was not respected in Azerbaijan. She also gave examples of trials related to the kidnapping of a girl in 2005, and of two young girls in 2007 for the purposes of their further trafficking by police officers. However, she simply repeated court testimonies of several men tried for the kidnapping in an open trial which Yunus monitored. The Ministry claimed that making these statements, Yunus "groundlessly" insulted the ministry during an ongoing investigation and has caused moral damages to the "professional reputation of the police". The Ministry demanded a fine of AZN 100,000 (equivalent to approximately US\$ 124,332) to be levied against her. Although the lawsuit was dropped by the Ministry in February 2009, it demonstrates the abuse of civil defamation for political purposes. With this respect, ARTICLE 19 notes that it is now very well established that public figures should tolerate a higher degree of criticism than ordinary citizens as by assuming political functions, they knowingly open themselves to much closer scrutiny of public and should consequently display a greater degree of tolerance than ordinary members of the public.⁴⁰

In addition to law suits for defamation and heavy fines, independent newspapers, that are critical of the authorities, have been subjected to various other forms of harassment. For example:

- In November 2006, the State Committee for Property Control initiated a case to evict *Azadliq* from its premises, which they occupied based on a 1992 signed agreement with the mayor of Baku, (the agreement authorized *Azadliq* to use the premises free of charge, under article 291 of the Civil Code). However, in July 2006, the State Committee wrote to *Azadliq* asking it to pay rent arrears from 1997 until 2006. The newspaper refused to pay in the absence of a rental contract, but said it would be ready to pay after one was signed. They committee did not respond to this proposal and instead initiated a lawsuit to get *Azadliq* evicted for illegal occupancy.⁴¹

³⁸ See the OSCE Office in Baku, *OSCE supports decriminalizing libel and insult in Azerbaijan*, 6 February 2007.

³⁹ See for example, Human Rights Watch, *Azerbaijan: Halt Libel Case Against Rights Defender, Government Intolerance of Criticism Undermining Free Expression*, 21 January 2009, available at <http://www.hrw.org/en/news/2009/01/20/azerbaijan-halt-libel-case-against-rights-defender>; or the Front Line, *Accusations made against human rights defender, Ms Leyla Yunus*, 14 January 2009, available at <http://www.frontlinedefenders.org/node/1764> (last accessed: 26 June 2009).

⁴⁰ See, for example, decision of the European Court of Human Rights, *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, para 42.

⁴¹ For details of this case, see, the Letter of ARTICLE 19, to His Excellency, Ilham Aliyev, the President of Azerbaijan, 23 November 2006, available at www.article19.org/pdfs/letters/azerbaijan-Azadliq.pdf; or the

- On May 2007, *Realny Azerbaijan* and *Gundelik Azerbaijan*, two newspapers founded by the now imprisoned journalist Eynulla Fatullayev, that had the largest circulations among print outlets in the country, were shut down for alleged fire safety violations. Subsequently, on 26 May 2006, the owner of the premises where they were located suddenly rescinded their lease. Ministry of Emergency Situations and Ministry of National Security personnel evicted staff from the premises, confiscated computer hard drives, and sealed their offices shut, hence, effectively closing them.⁴²
- It has been also reported that the Government has taken administrative actions against organisations which do business with opposition media. For example, in January 2008, the printing house which prints *Azadliq* and other media critical of the Government, Chap Evi, was subjected to an unscheduled tax inspection, and reasons for the inspection were not provided.⁴³

d) Right to information⁴⁴

ARTICLE 19 commends the Government for adopting the legislative framework for the right to freedom of information in Azerbaijan. The Law on the Right to Obtain Information (*hereinafter*, “the FOI Law”), enacted in December 2005, has been widely considered as progressive and a demonstration of positive political will to realize the right to freedom of information as a fundamental right guaranteed in international human rights law.⁴⁵ Further provisions on access to information are provided by several other laws, including the Code of Civil Procedures and the Code on Administrative Offences. ARTICLE 19 recognizes the adoption of this legislation as an important step forward for the establishment of open and transparent public governance.

Nonetheless, the FOI Law contains several problematic provisions and fails to include several important factors necessary for full realization of the right to freedom of information. In particular, the regime of exceptions is too broad; the law does not address the question of notification of third parties; the relationship between this law and secrecy legislation is unclear; and the legislation does not include any provisions either on sanctions for obstruction of access.

Moreover, ARTICLE 19 points out that the adoption of legislation is only the first step in making the right to access information a reality and must be followed by an effective implementation. This requires a genuine commitment to being transparent and opening up to

Reporters Without Borders, *Authorities try to evict opposition newspaper*, 25 October 2006, available at <http://www.rsf.org/Authorities-try-to-evict.html>.

⁴² See the Reporters Without Borders, *Fifteen journalists seek political asylum in protest against closure of newspapers*, 13 June 2007, available at <http://www.rsf.org/Number-of-journalists-seeking.html>; and Human Rights Watch, *Letter to the Prosecutor General of Azerbaijan Regarding the Detention of Emin Huseynov*, 24 June 2008.

⁴³ See ARTICLE 19, *Azerbaijan: Press Freedom Under the Attack*, 14 March 2008, available at www.article19.org/pdfs/press/azerbaijan-press-freedom.pdf.

⁴⁴ Information summarized in the section is based on a forthcoming comprehensive report of ARTICLE 19 on the right to freedom of information in Azerbaijan. See, ARTICLE 19, *Time to Reset the code locks: Realizing the right to know in Azerbaijan after the adoption of the 2005 Law on the Right to Obtain Information*, scheduled for publication in September 2009, more information available on request from the Europe Programme of ARTICLE 19.

⁴⁵ See for example: *Freedom of Information, A Comparative Legal Survey*, 2008, 2nd edition, Toby Mendel, p. 43

scrutiny all levels of government, allocation of adequate resources, improvement of records and information management systems and infrastructure and provision of education for the public and state bodies on their rights and obligations under the law. None of these have been so far realized in Azerbaijan. Namely,

- According to Article 57 of the FOI Law, the Information Ombudsman, the head of the body entrusted with the handling of complaints against a refusal to grant access to public data, should have been appointed within six months of the enactment of the law; that is in June 2006. However, more than 3 years later, the Ombudsman has not been appointed and no further information is available as to when this would be done. Absence of the appointment to this office has been perceived as one of the main obstacles for the effective implementation of the law and has widely criticized by international and domestic organizations.⁴⁶ In the absence of this body, that would provide guidance and could intervene in such disputes, the only avenue against refusals to provide information is through the court system. However, seekers of information rarely take advantage of this possibility due to lack of resources, lengthy court proceedings and general mistrust of the society towards judiciary.
- The FOI Law also requires state bodies to appoint an official or establish an information department and provide information service. Establishment of such services has been delayed in many cases, including some ministries; for example, the Ministry of Defense does not have such services in place to date. Similar problems surround the e-governance component of the FOI Law: according to Article 56 of the FOI Law, state authorities are obliged to create their own internet information resources “as soon as practicable, but no later than 1 year from the publication of the Law”; municipalities have a 3 year time limit. Although some municipalities have set up their own websites, most municipalities do not have such information resources. In addition, both on national and local level, the information provided on the websites is not in line with the legal requirements and is rarely up to date.
- No information is available in respect of training of officials and awareness raising initiatives for the public at large.
- Implementation of the existing provisions by a variety of state institution is highly problematic. Civil society monitoring of the responses to inquiries submitted under the FOI law has showed very poor results: for example, the report of Europe’s Commissioner for Human Rights, Thomas Hammarberg, from his visit to Azerbaijan in September 2007, pointed out that only 20% of the requests made pursuant to the law had been responded to, half of those responses being negative.⁴⁷ In January 2008, an NGO research showed that only 25% of requests for information were answered by

⁴⁶ See for example, also, the Directorate General of Human Rights and Legal Affairs, Directorate of Monitoring (GRECO), Council of Europe, Joint First and Second Round Evaluation, Compliance Report on Azerbaijan, Greco RC-I/II (2008) 4E, from 10 October 2008, adopted by GRECO at its 39th Plenary Meeting (Strasbourg, 6-10 October 2008), available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2008\)4_Azerbaijan_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)4_Azerbaijan_EN.pdf); <http://www.mediaryights.az/index.php?lngs=eng&id=20> (last accessed: 26 June 2009).

⁴⁷ See, the Report of the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, on his visit to Azerbaijan on 3 - 7 September 2007, CommDH(2008)2, 20 February 2008, available at <https://wcd.coe.int/ViewDoc.jsp?id=1251577&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (last accessed: 26 June 2009).

state institution.⁴⁸ Research of the Media Rights Institute, conducted from October 2006 to May 2009, released in May 2009, showed similarly disturbing results: during the given period, state authorities did not provide answers to requests from the media in seven out of ten cases. Out of 960 inquiries submitted to government institutions, only 304 were responded to.⁴⁹

- ARTICLE 19, together with local partners also conducted its own study between August and October 2008, submitting a small sample of 40 written information requests under the FOI Law to governmental institutions (e.g. to the Parliament, municipalities, the judiciary and administrative structures in Baku, Ganja and Sumgait). The research showed great inconsistencies in the implementation of existing provisions, both at national level as well as outside Baku and in the regions, indicating a greater need for further coordination and training.

5. Articles 21 and 22 of the Covenant

As indicated in the Governmental Report, the Azerbaijan legislation law provides for both freedom of assembly and freedom of association. However, available information indicates that the Government has severely restricted these rights in practice on a number of occasions, in contradiction to its commitments under Articles 21 and 22 of the Covenant. Most notably:

- The legislation stipulates that groups may peacefully assemble only with prior notification of relevant government bodies; however, the Government interprets this provision as a requirement for advanced permission from the Baku mayor's office. For example, on 25 April 2008, the opposition Musavat party filed a notice with the Baku municipal authorities about a rally in one of three locations in central Baku, in compliance with the freedom of assembly law. Their notice was denied, which Musavat appealed with the Court. The first instance court and the Baku Appellate Court decided in favor of the Baku authorities; the case is currently pending with the Supreme Court.⁵⁰
- On 24 December 2008, Baku police reportedly broke up a demonstration against a constitutional referendum planned for 2009 whose provisions included the elimination of presidential term limits. During the rally in front of the Constitutional Court, police reportedly arrested 10 people on site, of whom 3 were subsequently detained.⁵¹
- On 10 May 2009, the Baku police used physical force against protestors marching against the commemoration of the "Flower Holiday," a celebration of the birthday of

⁴⁸ See, Azerbaijan National Committee for European Integration, Progress Assessment on the Action Plan which Azerbaijan signed with the European Union, January 2008, available at http://www.enpi-programming.eu/wcm/dmdocuments/azerbaijan_civil%20soc%20progress%20assessment%202008.pdf (last accessed: 26 June 2009).

⁴⁹ See, the Media Rights Institute, *Serious problems in the sphere of Freedom of Information remain in Azerbaijan*, 15 May 2009, available at www.top7.az or at <http://www.mediarights.az/index.php?lngs=eng&id=20> (last accessed: 26 June 2009).

⁵⁰ See, the US State Department, *2008 Human Rights Report: Azerbaijan*, 25 February 2009.

⁵¹ *Ibid.*

the late President Heydar Aliyev. News media reported that police had arrested and detained for a number of hours up to 50 students involved in the protests.⁵²

- As recently as in June 2009, the Government attempted to pass amendments to several laws governing civil society and the media. Following the civil society protests on 30 June 2009, the most restrictive provisions were omitted from the passed legislation. However, some amendments, which have been adopted, retain restrictive provisions such as those concerning financial reporting and registration of foreign non-governmental organisations. For example, foreign groups will be unable to open offices using international funding, unless there is a formal agreement between Azerbaijan and the country of origin. Moreover, it is not clear why these amendments were proposed in the first place as they have a potential to cripple the ability of independent organizations to monitor human rights abuses in Azerbaijan and hold the Government to account for its actions. With respect to the process prior to adoption of these amendments, ARTICLE 19 notes that on 30 June 2009, demonstrators, protesting against the adoption of the amendments, ahead of the parliamentary session in Baku, were not allowed to march towards parliament. They had their placards forcefully taken away, reportedly by plain-clothes national security officers.⁵³
- Instances of violation of the right to freedom of assembly have been reported also ahead of the presidential election in October 2008. During the pre-election period, the Baku officials denied requests by an opposition coalition to hold rallies in the center of the city. By contrast, the ruling Yeni Azerbaijan Party, was allowed to hold a large rally in a central square on the evening of 15 October 2008. In addition to this, the Government broke up several opposition and the Baku municipal authorities reportedly denied permit requests for demonstrations and insisted on venues far from the city centre, effectively preventing several planned rallies.⁵⁴

6. Article 25 of the Covenant

ARTICLE 19 submits that the Government violated its obligations under Article 25 of the Covenant by failing to conduct the Presidential election in October 2008 in accordance to international standards for meaningful and pluralistic democratic elections.

International observers reported a number of shortcomings and deficiencies in both pre-election period and during the election day, 15 October 2008.⁵⁵ In relation to media, ARTICLE 19 notes with concern that the election campaign was conducted within a restrictive media environment noted above. Independent monitoring revealed that broadcast

⁵² See ARTICLE 19, *South Caucasus: Continued Violence Against Journalists Symptomatic of Ongoing Repression in the Region*, 15 May 2009.

⁵³ See ARTICLE 19, *Azerbaijan: Civil Society and the Media Out of Immediate Danger?*, 1 July 2009, available at <http://www.article19.org/pdfs/press/azerbaijan-civil-society-and-the-media-out-of-immediate-danger-.pdf> (last accessed: 1 July 2009).

⁵⁴ See the US State Department, *2008 Human Rights Report: Azerbaijan*, 25 February 2009; and the OSCE, *OSCE/ODIHR Election Observation Mission Final Report from the Presidential Election on 15 October 2008*, 15 December 2008, available at http://www.osce.org/documents/odihr/2008/12/35699_en.pdf (last accessed: 26 June 2009).

⁵⁵ See, the OSCE, *OSCE/ODIHR Election Observation Mission Final Report from the Presidential Election on 15 October 2008*, 15 December 2008; and the US State Department, *2008 Human Rights Report: Azerbaijan*, 25 February 2009.

media in general did not provide balanced coverage of the campaign, thus limiting the possibility of the electorate to make an informed choice. All monitored TV channels devoted a significant portion of their coverage to State authorities and their activities. The incumbent President Ilham Aliyev received the most relevant coverage while his competitors received hardly any news coverage. As some opposition parties decided not to participate in the election due to longstanding obstacles to equal treatment and equal opportunities to convey their views, there was a lack of broader competition and vibrant political discourse.

IV. Conclusions and Recommendations

ARTICLE 19 urges the Government of Azerbaijan to address its shortcomings in respective areas, introduces necessary legislative changes, and adopts comprehensive policies and mechanisms to both prevent future violations and remedy the past ones. Specifically, we recommend that, *at minimum*, the Government immediately undertakes the following measures:

- Conduct a thorough, prompt and impartial investigation, in conformity with international legal standards, into the murder of Elmar Hüseynov. The Government should regularly provide comprehensive information to the public about the scope, methods, findings and progress of investigations in this case, in order to minimize its chilling effect on independent media;
- Adopt and implement thorough policies to prevent further attacks on media professionals in the course of their professional activities, and introduce comprehensive measures addressing institutionalized impunity for these attacks;
- Investigate promptly and impartially all reported incidents of physical attacks and ill-treatment against journalists and media professionals and prosecute the perpetrators of such crimes; as well as ensure that victims are provided with adequate methods of redress for violations suffered;
- Initiate an independent review of all cases of journalists imprisoned in connection with their professional work, with a view to release all those wrongfully imprisoned;
- Ensure that no criminal charges are brought against journalists as a result of their professional activities or lawful exercise of their right to freedom of expression;
- Ensure that all arrests, detention and trials of media professionals are in accordance with international standards on deprivation of liberty and fair trial; in particular, ensure that the right to access to lawyers, the right to present and challenge evidence and the right to proper notification about all proceedings to those accused and their attorneys, are respected;
- Create and maintain an environment in which the media can work independently, freely, effectively and without fear of retribution, namely:
 - Adopt comprehensive measures for diversity of broadcast media and strengthened independence of public service broadcasting;

- Repeal the existing impediments to foreign broadcasting; in particular, immediately lift the suspension of the broadcasting rights of the BBC, Radio Free Europe/Radio Liberty and Voice of America on national frequencies;
 - Abolish restrictive provisions on print media and provide a framework in which all print media, including those critical of the Government, can reach society at large and can function as fully independent sources of information;
 - Ensure that regulatory measures on media are not abused to silence and harass those media critical of the Government and state authorities;
 - Eliminate criminal defamation and amend the legislation on civil defamation to meet international legal standards, especially ensuring that the legislation provides for a greater degree of criticism of public officials and institutes a reasonable monetary cap on damage rewards;
- Adopt necessary changes to the Law on the Right to Obtain Information, namely, to introduce limitation to the regime of exceptions, address the question of notification of third parties; clarify the relationship between this law and secrecy legislation, and introduce provisions on sanctions for obstruction of access;
 - Ensure proper implementation of the Law on the Right to Obtain Information, in particular, appoint without delay an Information Ombudsman, make sure that the state bodies meet their obligations under the Law, provide comprehensive training to all institutions concerned by the Law on their duties and make sure that they respond to all requests for information in timely manner and in compliance with the legal provisions;
 - Remove all legal restrictions that hinder the professional activities of civil society and ensure that the state authorities refrain from restrictive interpretation of existing provisions on the right to assembly and the right to association;
 - Ensure that all new legislative processes on laws related to civil society and media are transparent and involve key stakeholders such as the media, NGOs and independent experts.

FURTHER INFORMATION:

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