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## Azerbaijan: the contracting space for freedom of expression

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### Introduction

This briefing summarizes some of Amnesty International's main concerns regarding the failure of the authorities in Azerbaijan to guarantee freedom of expression in accordance with their international commitments and obligations.

Amnesty International is extremely concerned that over the last two years there have been repeated encroachments on the rights of members of civil society, and in particular journalists, to exercise their rights to freedom of expression in Azerbaijan. Seemingly prompted by the prominent role of the free dissemination of information in the changes of regime in Georgia and Ukraine in 2003 and 2004 respectively, sanctions against opposition or independent journalists in Azerbaijan have become both more frequent and more serious.

Amnesty International has documented a number of developments of particular concern. First, the organization has received numerous reports regarding the harassment, including physical abuse, of journalists by law enforcement officials, a trend that has risen sharply during politically sensitive periods such as election campaigns.

Second, unidentified actors have carried out a series of violent attacks on journalists which have resulted in life-threatening injuries or even death. These incidents have not been thoroughly, effectively or independently investigated, and have had a chilling effect on freedom of expression in the country. The fact that no one has been brought to justice for the

attacks, and that in most cases the identity of the assailants remains unknown, has also contributed to a climate of impunity for assaults and other forms of harassment against journalists.

Third, Amnesty International has received information indicating that there has been an increase in the number of politically motivated arrests. In at least one case, a prominent opposition journalist has been arrested on questionable drugs charges and imprisoned after an unfair trial. Also, the authorities continue to use criminal defamation charges as a means to silence critical views and scrutiny of official wrongdoing. The fact that the victims in virtually all cases are closely linked to opposition parties and independent media suggests a political context to these cases.

These abuses have taken place within a context in which the authorities have reportedly used regulatory and license-granting powers to effectively prevent the professional activity of media outlets known for their relative objectivity and independence. These actions have ranged from the forcible eviction of media outlets from their long-term premises to the withholding of broadcast frequencies on legal grounds which independent journalists claim are politically motivated. In a context where judicial independence is lacking and legal guarantees of appeal have been ignored, enforcement measures taken against alleged violators of administrative rules can assume the character of silencing independent or opposition voices.

These developments have taken place despite the fact that the right to freedom of opinion and expression is enshrined in the Azerbaijani Constitution, according to which '[E]veryone may enjoy freedom of thought and speech' (Article 47). Furthermore, in a meeting with the Secretary General of the non-governmental organization (NGO) Reporters Sans Frontières in April 2005, President Ilham Aliyev reportedly explicitly stated that it was "unacceptable for government officials to attack journalists". Azerbaijan also has an obligation to promote and protect the right to freedom of expression as a State Party to a number of international treaties, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR; Article 10) and the International Covenant on Civil and Political Rights (ICCPR; Article 19).

## **Harassment and ill-treatment of journalists by law enforcement officials**

Amnesty International has received information regarding a number of incidents in which security or police forces have allegedly beaten and intimidated journalists. Such incidents have appeared to increase during politically sensitive periods such as election campaigns, in purpose and effect preventing journalists from exercising their profession. Amnesty International wrote to the Azerbaijani Government on 3 August 2006 with requests for information about a number of the cases mentioned below, but has to date received no reply.

Ill-treatment and harassment of independent journalists by law enforcement officials were widespread in the period leading up to the 6 November 2005 parliamentary elections. Replicating events at the time of the October 2003 presidential election, journalists were regularly harassed and in some cases beaten in the run-up to the election. Other methods were also used to curtail freedom of expression. For example, law enforcement officials confiscated the 2 August 2005 edition of the daily opposition newspaper *Azadlıq* ('Freedom'), while simultaneously arresting a number of *Azadlıq* staff (they were subsequently released without charge).

Azerbaijani journalists and international press freedom organizations reported numerous instances of assaults against journalists covering rallies by the opposition bloc *Azadlıq* in the election campaigning period. For instance, four journalists covering an unauthorized *Azadlıq* rally in the capital city Baku were reportedly assaulted and had their equipment broken on 27 September 2005, despite holding up press cards or wearing blue jackets issued by the Press Council in an effort to make journalists easily identifiable with the aim of protecting them from attack. A further 14 journalists were allegedly beaten at another, unauthorized *Azadlıq* rally on 9 October 2005. As noted in the summary of cases transmitted to Governments and replies received which the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted to the 62<sup>nd</sup> session of the Commission on Human Rights, on this occasion police officers dressed in civilian clothes reportedly used baseball bats and truncheons to beat, amongst others, journalists attempting to report on the events taking place.<sup>1</sup> The freedom of expression organization Article 19 reported a further six incidents in which journalists were assaulted alongside demonstrators. All of these assaults were allegedly carried out by law enforcement officials, whether in uniform or plain clothes. As noted above, Amnesty International has not received a response from the Government of Azerbaijan to requests for information about the investigation of these allegations.

The harassment and ill-treatment of journalists by law enforcement officials have not been confined to the context of election campaigns. In December 2004 **Alim Kazimli**, a photojournalist for the opposition newspaper *Yeni Müsavat* ('New Equality'), reportedly had an argument with officials at the Narimanov district police department. During the argument an office manager at the police department allegedly struck Alim Kazimli with a telephone after he had protested against alleged bribe-taking in that office and identified himself as a *Yeni Müsavat* journalist. Shortly thereafter, Alim Kazimli suffered a stroke. He never regained consciousness and died in June 2005. Alim Kazimli's family and colleagues believe that his stroke was brought on by the argument and alleged assault. Despite the fact that Alim Kazimli's family filed a complaint against the police department and his case was taken up by the Representative for Freedom of the Media of the Organization for Security and Co-

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<sup>1</sup> UN document E/CN.4/2006/55/Add.1, 27 March 2006

operation in Europe (OSCE), to Amnesty International's knowledge there has been no investigation into these allegations.<sup>2</sup>

## **Assaults by unknown actors**

In addition to the harassment and ill-treatment of independent journalists by law enforcement officials, Amnesty International has documented a number of incidents in which journalists have been seriously assaulted by unknown actors, including one fatal and two near-fatal incidents in which outspoken opposition journalists Elmar Hüseynov, Fikret Hüseynli and Baxaddin Xaziyev were attacked, as detailed below. Of special concern in this context is the fact that no one has been brought to justice for these attacks and there has reportedly been little or no investigative activity. Amnesty International has written to the Azerbaijani Government expressing its concern at this situation, but has not received a reply.

As a state party to international human rights instruments such as the ICCPR and ECHR, Azerbaijan is obliged not only to ensure that state officials respect human rights, but also to demonstrate due diligence in taking steps to prevent and investigate human rights abuses by non-state actors, and to ensure redress for victims. In this context, Amnesty International is concerned by the apparent failures on the part of the authorities to prevent assaults against journalists and to ensure the thorough and independent investigation of such assaults where they have taken place.

In March 2005 **Elmar Hüseynov**, editor-in-chief of the outspoken weekly newspaper *Monitor* ('Monitor'), was shot and killed by unidentified individuals as he was arriving home at his apartment building in Baku. Elmar Hüseynov's colleagues at *Monitor*, as well as international press freedom organizations such as the International Freedom of Expression Exchange, ascribed his murder to the political content of the newspaper, which closed following his death. Amnesty International is concerned that despite the complexities of the case and international concern expressed about it, including by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the investigation of the murder has been politicized, obstructing an independent or effective process. In April 2005 investigators in the Ministry of National Security announced that six suspects of Georgian citizenship had been detained in connection with the murder, but no motive or evidence linking the six to Elmar Hüseynov's killing was offered. The crime was then also reclassified from a 'premeditated murder' to an 'act of terrorism' without explanation or rationale. No further progress was made with the investigation. Yet on 25 July 2006, Hacı Mammadov, a former Ministry of Internal Affairs official charged with running a

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<sup>2</sup> Miklós Haraszti, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, "Assessment Visit to Azerbaijan. Observations and Recommendations", 14 July 2005, p.7. [http://www.osce.org/documents/rfm/2005/07/15783\\_en.pdf](http://www.osce.org/documents/rfm/2005/07/15783_en.pdf)

gang involved in a series of high-profile murders and kidnappings, admitted to Elmar Hüseynov's murder while giving testimony at his trial. Hacı Mammadov claimed that he carried out the killing at the behest of former Minister of Economic Affairs Farhad Aliyev, who was arrested in October 2005 on charges of plotting a coup d'état. Friends of Elmar Hüseynov have pointed out, however, that although he wrote articles to the effect that Farhad Aliyev was corrupt, he also acknowledged that Farhad Aliyev had invested significantly in the Azerbaijani economy. In their view, this raises questions about the basis for any motive Farhad Aliyev might have had in ordering Elmar Hüseynov's assassination. Hacı Mammadov's trial continues.

On 6 March 2006 an *Azadlıq* correspondent, **Fikret Hüseynli**, was abducted, beaten and left for dead on the outskirts of Baku by unidentified men. He was allegedly tied up, had his fingers broken and was stabbed in the neck. After he had collapsed, his captors left him by the side of the road. Fikret Hüseynli had earlier received threatening phone calls telling him to stop publishing articles and leave journalism. It is thought these threats and the attack were related to articles written by Fikret Hüseynli about corruption in high office in Azerbaijan and the criminal activities of oligarchs in the country. Amnesty International is unaware of any significant investigative activity into Fikret Hüseynli's case at this time.

On 18 May 2006 **Baxaddin Xaziyev**, editor-in-chief of the opposition *Bizim Yol* ('Our Way') newspaper and Deputy Chairman of the Popular Front of Azerbaijan party, was abducted and beaten by unidentified men, who allegedly told him to stop writing 'critical articles'. After beating him, the men drove their car over his legs and left him on the shores of a lake outside Baku. Baxaddin Xaziyev was later hospitalized with serious injuries, including a broken left leg. The last edition of *Bizim Yol* published prior to the attack had featured reports on alleged corruption in the oil and fishing industries, in which several high-ranking officials were mentioned by name; the newspaper had also run a series of articles on corruption in the preceding weeks. Amnesty International met with Baxaddin Xaziyev in July 2006, when he was convalescing at a relative's apartment due to fears he would be targeted again if he returned to his home. According to Baxaddin Xaziyev the police have shown no interest in the investigation of this crime; they also allegedly recorded the crime as a case of minor injury, rather than abduction and grievous bodily harm. Furthermore, the police allegedly imputed the assault to matters relating to his personal life rather than Baxaddin Xaziyev's journalistic activities. No progress has been made in the investigation, to Baxaddin Xaziyev's knowledge.

On 24 December 2006 the press secretary of the opposition Azerbaijan National Independence Party **Ali Orucov** was assaulted by unknown assailants a short distance from his home. Ali Orucov's neighbours reportedly intervened to stop the assault, but the assailants later returned to threaten Ali Orucov in his apartment; reportedly, neighbours again intervened to deter the assailants. Ali Orucov claimed that he had been shadowed by unknown men for a number of days, after he had published an article in the *Rating* ('Rating') newspaper criticizing the government. He suffered bruising and a fractured finger as a result of the assault.

On 25 December 2006 another *Azadlıq* journalist, **Nicat Hüseynov**, was attacked by unknown men at 11.30am as he left his home in Baku for work. He was thrown to the ground, beaten and attacked with a knife. He was later hospitalized with internal injuries, head injuries and a minor stab wound. He had published a number of articles on the subject of corruption in high office for the *Azadlıq* newspaper, and claimed that he had received a number of threatening phone calls in the period preceding the attack. These calls allegedly referred to Nicat Hüseynov's journalistic activities.

These cases are of particular concern given the close association of the journalists involved with oppositional political views or parties. It is journalists associated with explicitly opposition media – *Yeni Müsavat*, *Azadlıq*, *Monitor*, *Bizim Yol* – who have most consistently been subjected to harassment. By contrast there have been no reported cases of attacks on journalists working for pro-governmental media over the past 18 months. The failure to vigorously investigate the cases cited above indicates a pattern which Amnesty International believes demonstrates that the Azerbaijani authorities are failing in their duty to ensure independent, impartial, effective and thorough investigations and to bring those responsible for attacks against journalists to justice. These failures are contributing to a climate of impunity for such attacks, as well as a working environment for journalists marked by fear and self-censorship.

## Politically motivated arrests

Politically motivated arrests of journalists in Azerbaijan are not new. For example, in October 2003 editor-in-chief of the opposition daily *Yeni Müsavat*, **Rauf Arifoğlu**, was arrested on a charge of organizing civil disorder and held for 17 months. More recently, there have been a worrying number of instances in which the authorities have used criminal defamation laws as a means to silence opposition journalists (see below). There is also one case where an opposition journalist has been convicted on charges of possession of illegal narcotics which Azerbaijani human rights activists believe were planted on his person. Sakit Zahidov was sentenced to three years' imprisonment in October 2006 after an unfair trial.

**Sakit Zahidov**, a well-known journalist and satirist for *Azadlıq*, was arrested on a charge of possession of illegal narcotics with intent to distribute on 23 June 2006 by Interior Ministry personnel belonging to its anti-narcotics department. A statement issued by the Ministry alleged that 10 grams of heroin had been found on Sakit Zahidov's person and confiscated following his arrest. Sakit Zahidov, his brother and editor-in-chief of the *Azadlıq* newspaper Qanimat Zahidov, and other prominent opposition journalists claim that his arrest was politically motivated and that a police officer planted the heroin on Sakit Zahidov in order to incriminate him. His supporters believe that Sakit Zahidov was convicted on account of the satirical column he wrote for *Azadlıq*, in which he regularly criticized the Azerbaijani government. They formed a committee campaigning for his release, which has appealed to the Council of Europe to review his case.

Sakit Zahidov's trial opened on 18 August 2006. A large number of public figures, human rights activists and journalists came to attend the trial, but were unable to gain access as the preliminary hearing reportedly took place in a small room holding only 25 people. No recording of the hearing was permitted, and it is therefore difficult for Amnesty International to ascertain what evidence was presented to prove whether Sakit Zahidov had used illegal substances. According to representatives of the committee formed to campaign for his release no independent or conclusive evidence of the use of illegal substances was presented at the trial. Furthermore, important witnesses were reportedly not called to give testimony and Sakit Zahidov's own statements in his defence were reportedly not included by the court secretary in the transcript of proceedings. On 4 October Sakit Zahidov was sentenced to three years' imprisonment in Baku Court on a reduced charge of "possession of drugs for the purpose of personal consumption". Sakit Zahidov lodged an appeal against his conviction, which was heard on 15 December. No new evidence or witnesses were heard at the hearing and his appeal was rejected.

On 24 December Sakit Zahidov was moved to the maximum security prison facility at Qobustan, where Azerbaijani human rights activists have previously documented human rights violations and severe prison conditions.

Amnesty International is not in position to be able to verify the apparently contradictory medical evidence presented at Sakit Zahidov's trial. However, in view of the uncertainty surrounding the medical evidence presented and concerns surrounding the conduct of the trial, the organization calls for an immediate retrial in compliance with international fair trial standards.

## **Criminal Defamation Suits against Journalists**

Numerous criminal defamation suits were brought against journalists publishing materials critical of official wrongdoing under Articles 147 and 148 of the Azerbaijani Criminal Code, dealing with 'slander' and 'insult' (see Appendix II). Amnesty International does not believe the criminal justice system is the appropriate channel for resolving defamation cases better settled under civil law. Where penalties are severe, including heavy fines or imprisonment, defamation cases can result in grave violations of the freedom of expression. Defamation laws should not provide any special protection for public officials, and it is well established in international law that public officials should tolerate more, rather than less, criticism than private individuals. The use of defamation laws with the purpose or effect of preventing legitimate criticism of government or public officials or the exposure of official wrongdoing or corruption cannot be justified. Particularly in the current climate of the repression of freedom of expression in Azerbaijan, Amnesty International believes that criminal defamation laws have been used by the authorities to silence lawful expression of dissent and instil self-censorship among journalists. It was not evident from the proceedings against journalists accused of defamation that statements allegedly made have been proven false by

complainants, nor has it been proved that the accused have acted either with knowledge of the falsity of statements made or with the intention of causing harm to complainants. According to reports, in some cases it was even unclear whether the journalists accused of defamation wrote the articles that formed the basis of the defamation charges brought against them.

In August 2006 the Ministry of Internal Affairs filed separate charges against four opposition or independent newspapers, *24 Saat* ('24 Hours'), *Azadlıq*, *Milli Yol* ('National Path') and the Russian language newspaper *Realny Azerbaydzhan* ('Real Azerbaijan'). All the charges related to the publication by these newspapers of materials alleging the involvement of Minister of Internal Affairs Ramil Usubov in the criminal activities of the gang allegedly headed by former Ministry official Hacı Mammedov. **Eynulla Fatullayev** of the *Realny Azerbaydzhan* newspaper was given a two-year suspended sentence on 26 September and he and his newspaper were required to pay fines equivalent to US\$ 11,500 and US\$ 6,000 respectively. Imposition of these fines caused the newspaper to temporarily cease publication. The same Ministry's charge against **Fikret Faramazoglu**, editor-in-chief of the newspaper *24 Saat*, resulted in a one-year suspended sentence for the journalist on 25 August; the sentence was upheld by the Court of Appeal on 9 October.

**Shahin Agabeyli**, editor of the opposition newspaper *Milli Yol*, was arrested in Baku on 9 August 2006 for allegedly refusing to present himself in court on three charges of defamation. He was given a caution and fined the equivalent of US\$ 600 on the first two charges and sentenced to one year's imprisonment on the third charge. However, after he had served two months of his sentence President Ilham Aliyev pardoned Shahin Agabeyli on 23 October 2006. **Samir Adigozalov**, editor of the *Böyük Millet* ('Great Nation') newspaper, who had served eight months of a one-year sentence for defamation was also pardoned..

## Harassment of independent media

In a further trend outspoken independent media outlets have been accused of violating administrative and regulatory standards, with consequences that have regrettably resulted in the disruption of their professional activities.

On 13 October 2006, the First Economic Court of Azerbaijan passed a decision to evict all occupants of a building in Baku housing the offices of a number of opposition and independent media outlets. The building, at 33 Xagani Street, was closely associated with the opposition newspaper *Azadlıq*, which began publication in 1989 and later became the press organ of the Popular Front of Azerbaijan, whose regime was replaced by that of current President Ilham Aliyev's father in 1994. *Azadlıq*'s management maintains that the premises, which originally belonged to the Ministry of Education, were granted to the newspaper in 1992 by decree of the Baku mayor for 'free and limitless use'. By 2006 the building housed not only the *Azadlıq* newspaper, but also the *Bizim Yol* newspaper, *Turan* news agency, the Institute of Reporter Freedom and Safety (a media freedom NGO with close links to *Azadlıq*),

the independent journalists' association Yeni Nesil and two internet newspapers, *Kiv.Az* and *Times.Az*.

On 4 July 2006 the State Property Committee (SPC) sent a demand to *Azadliq* for the payment of rent amounting to over 30,000 Azerbaijani manats (approximately US\$ 26,000), which it claimed was owed by the newspaper for the nine-year period 1997-2006. The SPC alleged that *Azadliq*'s continued occupancy of the building contravened both a 1997 presidential decree on the use of state property and Article 291 of the Azerbaijani Civil Code on continued occupancy without contract of property transferred from the state. These claims have been refuted by *Azadliq*'s management, which claimed that on successive occasions in 1997, 2000 and 2004 it sought to formalize its occupancy of the premises on a contractual basis. *Azadliq* claimed that the Azerbaijani authorities refused to cooperate in these efforts, leaving the occupants of the building in a legally ambiguous situation.

On 7 November an unauthorized and peaceful demonstration outside the SPC was dispersed by the police, reportedly with excessive use of force. *Azadliq* journalist and director of the Institute for Reporter Freedom and Safety, Emin Hüseynov, was reportedly thrown to the ground and beaten by police. Another unauthorized but peaceful rally on 23 November was similarly dispersed.

On 24 November police, reportedly including special operations teams, took control of the building at 33 Xagani Street and forcibly removed its occupants. Equipment belonging to the occupants of the building was also removed, piled into vehicles and taken to new locations, reportedly designated for the media outlets concerned by the courts. Some computers and documentation were allegedly destroyed in the process. Claims for compensation in respect of these losses were lodged with the No.1 Economic Court by the Popular Front of Azerbaijan Party, the newspaper *Bizim Yol* and the journalists' association Yeni Nesil.

Amnesty International is not in a position to comment on the status of legal occupancy of the building at 33 Xagani Street. Yet the organization is concerned that in combination with human rights abuses perpetrated against independent journalists, the efforts to evict *Azadliq* and others may be seen as further attempts to intimidate and muzzle independent voices in the Azerbaijani media. *Azadliq*'s removal from the premises cannot be seen in isolation from physical assaults perpetrated against its journalists and the arrest of others on questionable grounds, the fact that the newspaper has lost every one of 13 law suits taken out against it between June and October 2006, the accumulation as a result of debts amounting to some \$200,000 and the banning of the newspapers' journalists from reporting on the trial of Hacı Mammadov. Taken together, these developments suggest a concerted pattern of harassment aimed against *Azadliq* and its employees which Amnesty International finds disturbing.

On the same day as the eviction of *Azadliq* the *ANS* television and radio station was temporarily taken off the air as a result of alleged standards violations. *ANS* was first

established in 1991 and became Azerbaijan's most popular and professional television station, with a reported audience of some 2.5 million in Baku and the surrounding areas. It was also widely acknowledged as the most objective, a factor noted in successive election monitoring reports published by the OSCE, although to term it 'oppositional' would be a simplification. As of June 2006 *ANS* also rebroadcast *Voice of America* and *Radio Free Europe/Radio Liberty* programmes in Azerbaijan. This complicated the relationship between *ANS* and the authorities, as Western programming is perceived as more critical of the Azerbaijani Government than Russian or Turkish programmes.

*ANS*' legal status as a broadcaster first came into question in 2003 when its broadcasting licence was not renewed. According to Vahid Mustafayev, director of *ANS*, the renewal date for *ANS*' licence was postponed a number of times pending the creation of the National Television and Radio Council (NTRC) and the 2005 parliamentary elections. On 24 November 2006, the same day as the eviction on Xagani Street, the NTRC issued a decision not to renew *ANS*' licence on the grounds of some 11 alleged violations of administrative standards and nine warnings issued to *ANS* in respect of these violations. Although *ANS* disputed these allegations no opportunity was reportedly granted by the authorities to verify the claims made and *ANS* was taken off the air the same day. Amnesty International is concerned that the immediate enforcement of this decision, coinciding with the eviction of *Azadlıq* and other media outlets from their premises, contributed to an atmosphere of intimidation against the independent media sector.

Following numerous appeals by international organizations and Azerbaijani civil society *ANS* was permitted to resume broadcasting on a temporary basis on 12 December, pending the completion of a tender for its frequencies on 5 January 2007. *ANS* will participate in the tender.

Amnesty International is not in a position to comment on the status of compliance by Azerbaijani media outlets with regulatory and administrative standards. Yet the organization is concerned that the enforcement of administrative and regulatory standards may be being abused to target independent and opposition media outlets. Both the concentration of violations in the independent media sector and the concentration of cases within a very short period of time appear to have the effect of intimidating the independent media. The fact that state-appointed regulatory bodies have repeatedly enjoyed the benefit of the doubt over media outlets in disputes about standard violations is also a source of concern.

## **In conclusion**

Given its concerns about the obstacles faced in exercising the right to freedom of opinion and expression in Azerbaijan, Amnesty International considers that the following measures would go some way towards securing freedom of expression in Azerbaijan:

- The Azerbaijani Government should provide for information to be disseminated to the general public by the relevant investigative agencies on the scope, methods, findings and progress of investigations into attacks on journalists, including the murder of Elmar Hüseynov. Such cases should not be considered closed until they are effectively investigated and those responsible are brought to justice. The perpetuation of investigations with no clear outcome and the lack of transparency surrounding such cases only contribute further to the climate of impunity for attacks on journalists.
- Acts of harassment or violence allegedly perpetrated by law enforcement personnel, including against journalists, must be thoroughly and independently investigated with the perpetrators brought to justice. Although leading officials have issued a number of public statements, these have so far proved insufficient to protect journalists in the course of their professional activities. Instead, measures that tackle institutionalized impunity need to be put in place.
- The Azerbaijani authorities must ensure that no criminal charges are brought against journalists solely as a result of the lawful exercise of their right to freedom of expression. All trials of journalists charged with criminal offences must be conducted in accordance with international standards of fairness. In this respect, the Azerbaijani authorities should immediately ensure a retrial for Sakit Zahidov under conditions complying with international fair trial standards.
- The Azerbaijani authorities should refrain from using criminal defamation as a means to silence dissent and instil self-censorship. Where penalties are severe, including heavy fines or imprisonment, defamation suits can result in grave violations of the freedom of expression. Severe penalties for charges of defamation are currently serving to both occlude official malpractice and to obstruct the development of media professionalism in handling scrutiny of public office.
- The apparently concerted and targeted enforcement of regulatory standards and the concentration of reported violations in the independent media sector can result in an atmosphere of intimidation restricting freedom of expression. The Azerbaijani authorities must ensure that regulatory standards are not abused to single out and intimidate independent media outlets.
- The Azerbaijani Government should implement the recommendations of the United Nations Human Rights Committee, the Parliamentary Assembly of the Council of Europe and the OSCE Representative on Freedom of Media.

**Appendix I: Excerpts from the Azerbaijani Constitution (unofficial translation)**

***Article 47. Freedom of thought and speech***

- I.        Everyone may enjoy freedom of thought and speech.
- II.       Nobody may be forced to either promulgate or renounce his/her thoughts and convictions.
- III.      Propaganda provoking racial, national, religious and social discord and animosity is prohibited.

***Article 50. Freedom of information***

- I.        Everyone is free to look for, acquire, transfer, prepare and distribute information.
- II.       Freedom of mass media is guaranteed. State censorship in mass media, including the press, is prohibited.

**Appendix II: Excerpts from the Criminal Code of the Azerbaijani Republic (unofficial translation)**

***Article 147. Slander***

147.1. Slander, defined as the distribution of obviously false information discrediting the honour and dignity of any person, or the undermining of any person's reputation in a public statement or materials circulated in a public domain or the mass media – is punishable by a fine of one to five hundred of the nominal financial unit, or by community service for a term of up to two hundred and forty hours, or by corrective labour for a term of up to one year, or imprisonment for a term of up to six months.

147.2. Slander combined with the accusation of committing serious or especially serious crimes is punishable by corrective labour for a term of up to two years, or deprivation of freedom for a term of up to two years, or imprisonment for a term of up to three years.

***Article 148. Insult***

Insult, defined as the deliberate humiliation of a person's honour and dignity, expressed in unacceptable terms in a public statement or materials circulated in a public domain or the mass media, is punishable by a fine of three hundred to one thousand of the nominal financial unit, or by community service for a term of up to two hundred and forty hours, or by corrective labour for a term of up to one year, or imprisonment for a term of up to six months.

***Article 234. Illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics, psychotropic substances***

234.1. The illegal purchase or storage without intent to sell narcotics or psychotropic substances in quantities exceeding those necessary for personal consumption is punishable by imprisonment for a term of up to three years.

234.2. The illegal purchase or storage with intent to sell, the preparation, manufacture, processing, transportation, transfer or sale of narcotics or psychotropic substances is punishable by imprisonment for a term of three to seven years with or without the confiscation of property.

234.3. The manufacture, purchase, storage, transfer, transportation or sale of substances with intent to illegally manufacture and process narcotics or psychotropic substances is punishable by imprisonment for a term of up to three years with or without the confiscation of property.

234.4. The acts described in Articles 234.2 and 234.3 of the present Code, committed:

234.4.1. by the prior arrangement of a group of persons or an organized group;

234.4.2. repeatedly;

234.4.3. in large quantities – is punishable by imprisonment for a term of five to twelve years with the confiscation of property.

[...]

### **Appendix III: UN Treaty body recommendations and follow-up reply by the government (Human Rights Committee)**

Following consideration of Azerbaijan's second report on its implementation of the ICCPR in November 2001, the UN Human Rights Committee said in its concluding observations that:

22. The Committee is concerned at the extensive limitations on the right to freedom of expression of the media. While noting the explanations given by the delegation with regard to this issue, the Committee remains concerned at reports of harassment and criminal libel suits used to seek to silence journalists critical of the Government or public officials, as well as the closure of print media outlets and the imposition of heavy fines, aimed at undermining freedom of expression (art. 19).

The Committee urges the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression. Criminal defamation legislation should be brought into line with article 19 by ensuring a proper balance between the protection of a person's reputation and freedom of expression.<sup>3</sup>

In follow-up information submitted by the Azerbaijani government in March 2003, the authorities claimed that:

46. Favourable conditions now exist in Azerbaijan for the free expression of any thoughts in the mass media and the reporting of any facts which do not constitute State secrets or restricted material.

47. Under article 47 of the Constitution, everyone has the right to freedom of thought and speech, and no one may be compelled to express his or her thoughts and convictions publicly or to renounce them. Campaigning and publicity which arouse discord or enmity on racial, ethnic, religious or social grounds are forbidden.

48. Under the Mass Information Media Act, freedom of information in the mass media is founded on State guarantees of the right of citizens to seek, receive, prepare, transfer, produce and disseminate information by lawful means. No restrictions are placed on the establishment, ownership, use or exploitation of mass media, or the right to seek, receive, prepare, transfer, produce and disseminate information through the mass media, except for cases mentioned in the legislation on the subject.

49. State censorship of the mass media, and the creation and funding of special State bodies or posts for that purpose, are prohibited. State bodies, municipalities, institutions, enterprises and organizations, voluntary associations, officials and political parties have no right to vet information and material disseminated through the mass media or to ban its dissemination, except where they are the authors of information or interviews.

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<sup>3</sup> UN document CCPR/CO/73/AZE, 12 November 2001

50. In accordance with Azerbaijani legislation, civil, administrative, criminal or other proceedings may be brought in the event of any interference by citizens, State bodies, municipalities, institutions, enterprises and organizations, political parties, voluntary associations or officials in the lawful activities of the founders, publishers, editors, distributors or journalists of the mass media, for example through censorship, interference with professional activities, the unlawful seizure or destruction of all or part of a print run, the coercion of a journalist to disseminate or not to disseminate or broadcast information, the placing of restrictions on the transfer of information to a journalist or the refusal to transfer information, except for information enjoying protection under the law, failure to provide a reply to a journalist's question within the deadline stipulated by law, and the violation of other journalists' rights laid down in the law.

51. It is forbidden to use the mass media for the following purposes: disclosure of secrets protected under the law, forcible overthrow of the constitutional order, attacks on the integrity of the State, advocating war, the use of force or brutality, arousing ethnic, racial or social discord or intolerance, making use of the name of a prestigious source to disseminate hearsay, lies or prejudiced publications which demean the honour and dignity of citizens, pornographic material or calumnies, or to commit other illegal acts.

52. On 28 December 2001 the Mass Information Media Act was amended to provide that the production and dissemination of an organ of the mass media may be halted temporarily or ended only by decision of the person responsible for such an organ or a court. Seven days' notice of the creation of a printed organ of the mass media must be given to the appropriate Government body. Government authorization is not required for the creation of such organs.

53. More than 500 mass media organizations are currently operating in Azerbaijan, including newspapers, journals, television production companies, information agencies and over 30 television/radio channels.

54. In order to ensure public monitoring of compliance with legislative requirements relating to the mass media, to regulate the production and broadcasting of material on electronic media and the Internet, to strengthen links and trust between State bodies and the mass media, and also to broaden the scope for freedom of speech, thought and information, the President issued a decree on 20 June 2001 entitled "Strengthening State stewardship of the mass media". On 27 December 2001 the President issued an order on additional measures to strengthen State stewardship of the mass media.

55. Under article 46 of the Constitution, "everyone has the right to protect his or her honour and dignity. The State shall safeguard personal dignity. Nothing shall justify degradation of the individual".

56. Under article 57 of the Constitution, citizens have the right to criticize the activities or work of State bodies, their officials, political parties, trade unions and other voluntary associations, and also the activities and work of individual citizens. Prosecution for such criticism is forbidden. Insults and calumny cannot be considered to be criticism.

57. Article 147 of the Criminal Code provides that calumny - the dissemination of information known to be false which tarnishes the honour and dignity of another person or undermines his or her reputation in a public statement, a work produced in public or the mass media - is a criminal offence.

58. Article 148 of the Code provides that insults - demeaning the honour and dignity of another person in an unseemly manner in a public statement, a work produced in public or the mass media - constitute a criminal offence.

59. Under article 23 of the Civil Code, an individual may apply to the courts to demand the retraction of information which tarnishes his or her honour and dignity or business reputation or violates his or her personal privacy or personal inviolability, if the person who has disseminated such information fails to demonstrate that it is true. This procedure is also followed in the case of partial publication of factual information when such action harms a person's honour, dignity or business reputation. Action to protect the honour and dignity of an individual is permitted even after the death of the person concerned, at the request of interested persons. If information which tarnishes the honour, dignity or business reputation of an individual or violates his or her personal privacy is disseminated in the mass media, it is subject to retraction in the same mass media. If the information is recorded in an official document, the document must be modified, and interested persons must be informed accordingly. The procedure relating to retraction in other circumstances is laid down by a court. Where the mass media have published information which harms an individual's rights or interests protected under the law, he or she has the right to publish a rejoinder in the same mass media. An individual in respect of whom information which tarnishes his or her honour, dignity or business reputation has been disseminated has the right to demand retraction of such information and also to demand compensation for the harm caused by its dissemination. If it is not possible to establish who disseminated the information which tarnished the individual's honour, dignity or business reputation, the person in respect of whom such information was disseminated has the right to demand a declaration that such information is not true. The rules set out in this article concerning protection of the business reputation of an individual are applied *mutatis mutandis* to protection of the business reputation of a corporation.<sup>4</sup>

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<sup>4</sup> UN document CCPR/CO/73/AZE/Add.1, 26 March 2003