

Comments and reports of the State Security Service of the Republic of Azerbaijan
on Comparative Study on blocking, filtering and take-down of illegal internet content
in the Council of Europe member states concerning Azerbaijan
prepared by the Swiss Institute of Comparative Law

(accordingly)

On chapter "2. Legal Framework"

Concerning section "Prohibition of national, racial, religious discrimination, racism, xenophobia and hate speech" (page 62):

By the shown, the article 61.1.6 of the Criminal Code of the Republic of Azerbaijan intends like aggravating circumstance of a punishment beside the other conditions, perpetration the crime on national, racial and religious discrimination; the Article 154.1 by the other basis prohibits infringement of equality by the ethnic belonging, language and religious belief; the Article 167 prohibits the prevention of implementing the religious rites; the Article 283 prohibits national, racial and religious enmity, humiliation of national honour and discrimination. The Article 103 of the Criminal Code criminalize the genocide; the Article 111 defines criminalization of the acts accomplished with a purpose of the organization and maintenance of superiority of one racial group for destroying of other racial group (apartheid); paragraph 2.12 of the Article 120 (aggravating circumstances of the deliberate murder) defines more aggravating punishment for the conditions of the deliberate murder of a person for the reason of national, racial or religious enmity or hostility.

Concerning section "Unlawfulness of calls for and propagation of terrorism" (page 63):

"Council of Europe Convention on the Prevention of Terrorism" signed in Warsaw on May 16, 2005 approved by the Law of the Republic of Azerbaijan of February 03, 2014 No.891-IVQ. For implementation of the Warsaw Convention to the Criminal (domestic) Legislation by the Law of the Republic of Azerbaijan of March 04, 2014 No.919-IVQD, the new articles which provide criminal liabilities such as "Public appeals to terrorism" and "Conducting exercises with a terrorism purpose" were included into the Criminal Code of the Republic of Azerbaijan.

According to the article 214-2 of the Criminal Code of the Republic of Azerbaijan "Public appeals to terrorism" as a crime Public appeals to commit offenses stipulated for - attack on persons or establishments, which use international protection, terrorism, conducting exercises with a terrorism purpose, capture of the hostage, stealing of airship, ship or railway train, sea robbery, illegal handling with radioactive materials, plunder or extortion of radioactive materials, attempt on life of the state or public authority (act of terrorism), creation of a armed formations or groups, which are not provided by the legislation, diversion as well as the distribution of materials with similar content punished by imprisonment for a period of up to five years.

Act on conducting exercises with a terrorism purpose defined by the article 214-3 of the Criminal Code of the Republic of Azerbaijan provides criminal liability of the men, who are getting training on methods of committing offenses and the men, who are taking part organization or conducting exercises stipulated for these above-stated acts the use of firearms, explosives or devices, toxic substances, other common unsafe practices or technical means to commit.

At the part Note of this Article a person who commits an act stipulated for by conducting exercises with a terrorism purpose shall be exempt from criminal liability if he contributed to the prevention of criminal acts being a purpose of such exercises, identifying those involved in such exercises, organized such trainings, persons financed such trainings by timely notification of the authorities or by another method, and his act was free of components of crime.

In accordance with the classification in the article 15 of the Criminal Code of the Republic of Azerbaijan the acts which describing in article 214-2 and article 214-3 on nature and degree of action defined as serious crimes and especially serious crimes.

Struggle against the International terrorism

In direction to prevent the way of the terrorists to the conflict regions and the struggle against the international terrorism was entered the new Article (283-1) to the Criminal Code of the Republic of Azerbaijan by the Law of the Republic of Azerbaijan dated 14 march 2014 under number 919-IVQD. According to the Article 283-1 of the Criminal Code "Creation of stable group to participate in the armed conflicts outside the Republic of Azerbaijan" – defines punishment by imprisonment from 9 to 12 years for involvement of citizens of the Republic of Azerbaijan or stateless persons permanently residing in the Republic of Azerbaijan, to armed conflicts outside the Republic of Azerbaijan with a purpose to disseminate religious teachings, under the pretence of performing religious rites, or due to religious hatred, or conducting military exercises for this purpose, or creation of stable group for this purpose and management of such group, and from 12 to 15 years if the same acts committed with involving the minors. Participation in those groups, exercises or armed conflicts is punished by imprisonment from 7 to 11 years. According to the part Note of this Article a person who commits an act stipulated for in Articles 283-1.1 - 283-1.3 of the Code, shall be exempt from criminal liability if he contributed to the prevention of criminal acts provided for by these articles by timely notification of the authorities or by another method, and his act was free of components of crime.

Struggle against religious extremism

In order to prevent radical religious extremist forces in the Republic of Azerbaijan was adopted the Law of Azerbaijan Republic "On struggle against Religious extremism" dated 4 december 2015. This law defines the legal and institutional framework to struggle against religious extremism, fixes civil rights and duties of the state bodies carrying out the fight against religious extremism.

According to article 1 of the Law religious extremism (religious extremist activities) means the actions directed to violent change of the constitutional system of the Azerbaijan Republic, including to change of her secular character, and also to violation of territorial integrity of the state or to the forcible seizure of power; creation of illegal armed groups or groups and participation in them; implementation of terrorist activity; participation in armed conflicts outside the Azerbaijan Republic; the actions directed to incitement of national, social or religious hatred, humiliation of national advantage, restriction of the rights or definition of superiority of citizens on a national, racial, social or religious feature; compulsion of the person to shiving of religion (religious trend), including to implementation of religious practices and rituals or participation in such ceremonies and rituals, and also coercion to receiving religious education, making public appeals to committing such acts; preparation, storage or distribution of the religious and extremist materials, that is the materials calling for implementation of religious and extremist activity either proving, or justifying such activity; financing religious extremism because of religious strife, religious radicalism or religious fanaticism.

**Summary of opinion
of the Ministry of Communications and High Technologies
of the Republic of Azerbaijan on the part of a comparative
analysis document concerning Azerbaijan prepared by
the Swiss Institute of Comparative Law
on blocking, filtering and take-down of illegal internet content
in member states of the Council of Europe**

- It is proposed to re-edit the 2nd paragraph of the Section 1 (*title "Legal Sources"*) since the opinion concerning Azerbaijan's legal system is suggested in a distorted form;
- The 2nd reference on the Section 1 (*title "Legal Sources", page 59*) points out that the "Cyber-crime" Convention was ratified in the Republic of Azerbaijan by the Law dated 03.02.2014. However, taking into consideration that the Republic of Azerbaijan has ratified this Convention by the Law ref. Nr. 874-IIIQ, dated 30.09.2009, it would be reasonable to amend the 2nd reference accordingly;
- It is proposed to replace the words "*Azerbaijani Republic*", "*Azerbaijan Republic*" with the correct "the Republic of Azerbaijan" wherever appropriate on the document;
- To indicate the name of the Ministry of Communications and High Technologies as "the Ministry of Communications and High Technologies", but not like "the Ministry of High Technologies and Communication".
- "*Rules for Using Internet Communication Services*" have been revoked pursuant to the decision (*Ref. Nr. 0002, dated 03.03.2015*) of the Ministry of Communications and High Technologies. Since the references, which have been made to the "Rules for Using Internet Communication Services", has no any legal effect, it is proposed to withdraw the references made to the mentioned Rules on pages 66, 67, 69, 70 of the Report;
- The Section 2 of the Report (*title "Legal Framework", subtitle "Responsibilities of intermediaries", page 66*) indicates that the legislation does not contain any provision concerning the definition and liabilities of the intermediary. However, it is worth noticing that the Article 31 of the Law of the Republic of Azerbaijan "On Electronic Signature and Electronic Document" (*Ref. Nr. 602-IIQ, dated 09.03.2004*) provides for "Rights, responsibilities and liabilities of the intermediary", whereas the Article 12 of the Law of the Republic of Azerbaijan on "E-Trade" (*Ref. Nr. 908-IIQ, dated 10.05.2005*) provides for "liabilities of the intermediary".

**The commentary of the Republic of Azerbaijan to the relevant part of the
“Comparative study on blocking, filtering and take-down of illegal internet
content”.**

The last sentence of the second paragraph of the “Legal Sources” section of the study stating that “Due to inexistence of the rule of law and authoritarian inclination of the nature of the political system, the real effective mechanisms ensuring implementation of numerous new laws on political and civil rights are lacking” is to be omitted as being unfounded on facts and baseless.

The recourse to article 323.2 of the Criminal Code in the third paragraph under the heading “Defamation and insult, privacy, protection of honour and dignity of the president of Azerbaijan” is mistaken, as because it is not “accusation of committing less serious or serious” but “serious or especially serious” crime that are punishable by imprisonment for up to 5 years.

Furthermore, we would like to emphasise that there has not been a single case of imprisonment in the Republic of Azerbaijan on the basis of article 283 of the Criminal Code since 2011 and propose to add this vital fact in paragraphs under the heading “Prohibition of national, racial, religious discrimination, racism, xenophobia and hate speech”.

Regarding the second paragraph under the heading “Criminalization of pornography and child pornography” we note that article 171-1 (Child pornography turnover) has been added to the Criminal Code.

With regard to the eighth sentence of the second paragraph under the heading “Blocking websites and access to Web 2.0 services, filtering” we note that the words “Prosecutor General’s Office” should be omitted, as according to article 19 of the Law on Mass Media “the appeal for the termination of the production and distribution of a mass media can be filed by the Ministry of Interior, the Ministry of Justice and the State Security Service”.

**Ministry of Justice of the
Republic of Azerbaijan**