

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 15/05/2024

DH-DD(2024)549

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1501st meeting (June 2024) (DH)

Communication from an NGO (Media Defence) (02/05/2024) concerning the group of cases Khadija Ismayilova v. Azerbaijan (Application No. 65286/13).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1501^e réunion (juin 2024) (DH)

Communication d'une ONG (Media Defence) (02/05/2024) relative au groupe d'affaires Khadija Ismayilova c. Azerbaïdjan (requête n° 65286/13) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

To:

DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
F-67075 Strasbourg Cedex
France



E-mail: dgi-execution@coe.int

2 May 2024

Submission pursuant to Rule 9.2 of the Committee of Ministers' Rules on the Khadija Ismayilova Group of Cases v. Azerbaijan (Applications nos. 65286/13, 57270/14 and 35283/14) and on the Mammadli Group of Cases v. Azerbaijan (Application no. 30778/15)

1. This submission is made by Media Defence to the Committee of Ministers (hereinafter – “the Committee”) of the Council of Europe in respect of the Khadija Ismayilova Group of Cases v. Azerbaijan (Applications nos. 65286/13, 57270/14 and 35283/14) and the Mammadli Group of Cases v. Azerbaijan (Application no. 30778/15) in accordance with Rule 9.2 of the Rules of the Committee for the supervision of the execution of judgments and of the terms of friendly settlements.¹
2. This submission is provided in order to inform the Committee about the status and recent developments on the implementation of the aforementioned judgments related to the cases of Khadija Ismayilova.

The organisation

3. Media Defence is a non-governmental organisation that provides legal support and helps defend the rights of journalists, bloggers, and independent media across the world. It is based in London and works closely with a world-wide network of experienced human rights lawyers, as well as local, national, and international organisations who are all concerned with defending journalists and independent media against criminal and civil claims. As part of its mandate, Media Defence engages in strategic litigation to protect and promote freedom of expression. It has intervened in many cases before the Court, including *Axel Springer AG v. Germany* (No. 2) (Application no. 48311/10), *Couderc and Hachette Filipacchi Associés v. France* (Application no. 40454/07), *Defli AS v. Estonia* (Application no. 64560/09), *Magyar Helsinki Bizottság v. Hungary* (Application no. 18030/11), *Bryan and others v. Russia* (Application no. 22515/14), *Levada Centre v. Russia* (Application no. 16094/17) and *Pal v. the UK* (Application no. 44261/19).
4. Media Defence represents Ms Ismayilova in two of the cases referred to in paragraph 1 above, *Khadija Ismayilova v. Azerbaijan* and *Khadija Ismayilova v. Azerbaijan (no. 2)*, and in two further applications currently pending before the Court (Application no. 71556/16, filed on 22 November 2016, and Application no. 8410/20, filed on 7 February 2020). These submissions are informed in part by Media Defence’s ongoing conversations with individuals who have experienced first hand the recent

¹ The judgments of the Court are enclosed.

intensification of the crackdown on independent journalism and who have chosen to remain anonymous due to anticipated repercussions and security concerns.

Brief summary of the cases

5. The case *Khadija Ismayilova v. Azerbaijan* concerns “a serious, flagrant and extraordinarily intense” interference with the private life of Ms Ismayilova, a prominent Azerbaijani investigative journalist. Ms Ismayilova had published articles alleging corruption involving the President of Azerbaijan and his family. Following the publication, she received threatening letters demanding that she cease her activities. Intimate videos of her, recorded on hidden cameras installed in her apartment, were disseminated on the Internet. The Court found that the authorities had failed to effectively investigate the very serious interferences with her private life in violation of Article 8 of the Convention. The Court further held that authorities made unjustified public disclosures of sensitive private details about her that were obtained in the course of the criminal investigation, un further violation of her rights under Article 8. It also considered that the acts committed against Ms Ismayilova were “linked to her journalistic activity” and found that the authorities’ failure to carry out an effective criminal investigation, and the unjustified disclosures, were “contrary to the spirit of an environment protective of journalism”, in violation of Article 10 of the Convention. The Court ordered the Government to pay Ms Ismayilova EUR 15,000 in respect of non-pecuniary damage.²
6. The case *Khadija Ismayilova v. Azerbaijan (no. 2)* concerns the arrest and pre-trial detention of Ms Ismayilova on charges of incitement to suicide, high-level embezzlement, illegal entrepreneurship, large-scale tax evasion and aggravated abuse of power. The Court found Ms Ismayilova’s arrest and detention to be unlawful, in violation of her rights guaranteed by Article 5. It also held that statements made by the prosecutor, which referred to Ms Ismayilova as guilty before she had been found to be guilty according to the law, violated her right to be presumed innocent under Article 6. Furthermore, the Court found that Ms Ismayilova’s arrest and pre-trial detention were “driven by improper reasons and that the actual purpose of the impugned measures was to silence and to publish the applicant for her journalistic activities” in violation of Article 18 in conjunction with Article 5. The Court ordered the Government to pay Ms Ismayilova EUR 20,000 in respect of pecuniary and non-pecuniary damages.³
7. The case *Khadija Ismayilova v. Azerbaijan (no. 3)* concerns a newspaper article published in 2012 after the online publication of the first intimate video of Ms Ismayilova mentioned above in paragraph 5, which compared her to a well-known pornographic performer. The Court found that the authorities failed to comply with their positive obligation to secure the protection of her right to respect for her private life enshrined in Article 8 of the Convention as domestic courts had failed to conduct an adequate balancing exercise between the rights concerned in a civil case brought by Ms Ismayilova.

Individual measures

Khadija Ismayilova v. Azerbaijan (Applications nos. 65286/13, 57270/14) and Khadija Ismayilova v. Azerbaijan (no. 3) (Application no. 35283/14)

² ECtHR, *Khadija Ismayilova v. Azerbaijan*, App. No. 65286/13 and 57270/14, 10 January 2019.

³ ECtHR, *Khadija Ismayilova v. Azerbaijan (no. 2)*, App. No. 30778/14, 27 February 2020.

8. We respectfully submit that the Government has failed to properly vindicate Ms Ismayilova's rights in a way that is consistent with the Court's findings.
9. Despite the Government's claim to the contrary,⁴ Ms Ismayilova's sensitive private information, which has been obtained by authorities over the course of the investigation, continues to be available in the public domain⁵ including state run media.⁶ In particular, the highly sensitive information addressed in App. no 65286/13, including articles portraying Ms Ismayilova and her lifestyle as immoral and corrupt, as well as her address, had been published on 13 March 2012 in the newspaper 'Yeni Azerbaijan' (New Azerbaijan, an official media instrument of the ruling Yeni (New) Azerbaijan Party, and on 16 March 2012, in the government-controlled newspaper 'Ses' (Voice), a self-proclaimed "media mouthpiece" of the ruling party.⁷ The article in the newspaper "Yeni Azərbaycan" (New Azerbaijan) under the title "Xədicə İsmayilova göründüyü və olduğu kimi"⁸ ("Khadija Ismayilova as she seems and as she is") and the article in 'Ses' newspaper under the title "Not surprising"⁹ have still not been removed from the internet portals of these newspapers. In addition, the article which is subject to the Court's judgment in App. no. 35283/14, continues to be publicly accessible.¹⁰ The violations of Ms Ismayilova's right to private life, as guaranteed by Article 8, are therefore ongoing.
10. With respect to the criminal investigation into the threatening letter, and the secret filming and dissemination of intimate videos, it is submitted that the Government has failed to take sufficient and appropriate steps to investigate the violations of Ms Ismayilova's rights. The Court found that authorities had failed, *inter alia*, to adequately obtain and record a statement from an important witness and had not properly recorded or possibly even actively avoided to record said statement which was highly relevant to the case. In addition, authorities failed to provide information showing any steps had been taken to identify the person who had sent the threatening letter, the owners and/or operators of the websites on to which the videos had been uploaded, or the identity of their uploaders. Furthermore, authorities have not investigated whether the violation of Ms Ismayilova's rights was linked to her work as a journalist, despite the fact that the Court considered such a line of inquiry necessary.
11. It its 1475th meeting on 19-21 September 2023, the Committee reminded Azerbaijani authorities to take the Court's findings into account when carrying out the re-opened investigation.¹¹ However, as noted by

⁴ Government of Azerbaijan, Communication from the authorities concerning the case of Khadija Ismayilova v. Azerbaijan (26 June 2023), para 4, available at [https://hudoc.exec.coe.int/ENG#f122execidentifier%22:\[%22DH-DD\(2023\)766E%22\]](https://hudoc.exec.coe.int/ENG#f122execidentifier%22:[%22DH-DD(2023)766E%22])

⁵ See for instance: <https://qafqazinfo.az/news/detail/bxedice-ismayilovanin-cinayet-isinde-sok-adlarb-16639> and https://azertag.az/xeber/Jurnalistin_sexsi_erizesi_esasinda_baslanmis_cinayet_isinin_istintaqi_tam_obyektiv_aparilir-170033

⁶ https://azertag.az/xeber/Jurnalistin_sexsi_erizesi_esasinda_baslanmis_cinayet_isinin_istintaqi_tam_obyektiv_aparilir-170033

⁷ See also ECtHR, *Khadija Ismayilova v. Azerbaijan* (application no. 65286/13 and 57270/14, §14, 10 January 2019.

⁸ https://yeniazərbaycan.com/Siyaset_e9392_az.html

⁹ <https://sesqazeti.az/news/articles/220116.html>

¹⁰ <https://sesqazeti.az/news/articles/319937.html>

¹¹ Committee of Ministers, 1475th meeting, 19-21 September 2023 (DH), CM/Del/Dec(2023)1475/H46-4, available at [https://hudoc.exec.coe.int/ENG#f122execidentifier%22:\[%22CM/Del/Dec\(2023\)1475/H46-4E%22\]](https://hudoc.exec.coe.int/ENG#f122execidentifier%22:[%22CM/Del/Dec(2023)1475/H46-4E%22])

the Committee's Secretariat, despite the fact that the Court has clearly indicated several steps to be taken, no tangible results have been achieved by investigating authorities.¹²

12. In their most recent action report to the Committee on 4 April 2024, the Government did not report on any substantial steps that had been taken since their last submissions. On the contrary, the submissions are largely identical, noting only a follow-up letter to US authorities and vaguely referring to the investigations into new claims made by Ms Ismayilova in 2022. At no point since 2022 has Ms Ismayilova been updated about the status of the investigation, nor has she received any information about the investigation's content or scope. It is particularly noteworthy that authorities have failed to contact her regarding information on the bank accounts which were used for creating the US-hosted website on which the videos were published. Ms Ismayilova has obtained this information during domestic proceedings which she has pursued in the US in 2012 and has offered it to Azerbaijani authorities to assist their investigation. Authorities also failed to investigate claims made by Rufat Safarov, a former political prisoner, who had been held in the same prison as Elchin Guliyev and reported that the former chief of Anti-Terror Center of the Ministry of National Security had told him about his involvement in the operation.
13. It is particularly worrisome that the investigation has so far demonstrated a manifest absence of due diligence in examining crucial elements and connections in the sequence of the offences under scrutiny, such as the route followed from the source to the receiving end of the video materials by media outlets. Such actions would have high prospects of success in tracing back the impugned material to the perpetrators and their instigators and could be carried out immediately. Such investigative actions is particularly important in the light of the fact that these pro-government media outlets disseminated the intimate materials rapidly and almost simultaneously after they had been uploaded onto newly-established internet portals while other independent news outlets had refused to publish them. These patterns, the timing and possible links between the outlets and the perpetrators who had installed the cameras were not duly investigated. Authorities also failed to investigate possible legal consequences for the outlets who published Ms Ismayilova's private information. The superficial investigative steps taken by authorities so far preclude the possibility of conducting an effective investigation in line with international standards. More than five years after the Court's judgment has become final, this lack of any tangible progress and any substantive investigative steps by authorities raises concerns about the Government's willingness to adopt effective individual measures and implement the Court's judgment.
14. Notably, in its 1451st meeting on 6-8 December 2022, the Committee noted regarding Ms Ismayilova's case that "the possibility for the applicant to continue her work as a journalist without hindrance is also an important individual measure, which is closely linked to the general measures."¹³ It is respectfully submitted that the Government has failed to implement any measures to create an environment in which Ms Ismayilova can carry out her journalistic work. On the contrary, she continues to be subjected to harassment by Azerbaijani authorities. For instance, on 6 March 2024, the office of Toplum TV, one of Azerbaijan's last remaining independent news outlets¹⁴ for which Ms Ismayilova works as editor in chief,

¹² 1475th Meeting Notes, 19-21 September 2023 (DH):

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ac759b

¹³ Committee of Ministers, 1451st meeting. 6-8 December 2022 (DH), CM/Del/Dec(2022)1451/H46-3, available at [https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22CM/Del/Dec\(2022\)1451/H46-3E%22%5D%7D](https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22CM/Del/Dec(2022)1451/H46-3E%22%5D%7D)

¹⁴ CPJ, Azerbaijani police raid Toplum TV, detain journalists over alleged currency smuggling (11 March 2024), available at <https://cpj.org/2024/03/azerbaijani-police-raid-toplum-tv-detain-journalists-over-alleged-currency-smuggling/>

was raided by police. Authorities arrested seven staff members, including the news outlet's founder, and sealed the office. Ms Ismayilova was questioned by authorities in connection with the criminal proceedings brought against her colleagues,¹⁵ and a new travel ban was imposed. Ms Ismayilova is unsure as to the extent of the travel ban and against whom specifically it is directed. It may affect her, but she has been unable to confirm whether this is the case due to the opaque nature of the decision-making of the authorities. In addition, Toplum TV's YouTube channel is no longer operating after it has been subject to a hacking attack during which its name was changed and all videos deleted.¹⁶ At the time of this submission, Toplum TV is not operating and Ms Ismayilova is *de facto* prevented from carrying out any journalistic work.

Khadija Ismayilova v. Azerbaijan (no. 2)(Application. no. 30778/15)

15. The damages awarded by the Court to Ms Ismayilova have been paid by the Government although there was some unnecessary delay caused to Ms Ismayilova in accessing the money. In addition, despite the findings of the Court in *Khadija Ismayilova v. Azerbaijan (no. 2)*, Azerbaijani authorities have so far failed to quash her criminal conviction and to expunge her criminal record.
16. With regard to the cases in the Mammadli Group, the Committee has urged Azerbaijani authorities "to eliminate all the negative consequences by ensuring prompt quashing of the remaining seven applicants' convictions, their erasure from their criminal records and the elimination of all other consequences of the criminal charges brought against them, including by fully restoring their civil and political rights."¹⁷ As noted by the Committee, the guilty verdict of Ms Ismayilova makes her "unable to stand for election, hold public service or fully exercise their professional activities", in particular she is not able to obtain journalistic accreditation under the Media Law.¹⁸ Due to these considerations and as the judgments have become final several years ago, the Secretariat has expressed its "profound concern" that no action had been taken by authorities.¹⁹
17. Ms Ismayilova is not aware of any steps taken by the Government to implement the Court's judgment, including by quashing her conviction and expunging her criminal record. In its most recent submission on the Mammadli Group dated 4 April 2024, the Government did not address the question of progress made or indicate any intent to implement individual measures.²⁰
18. Ms Ismayilova has suffered long-lasting damage to her personal and professional life as a result of the violations of her rights. Ms Ismayilova has been forced to lead a more restrictive life compared to her situation prior to the violation of her Convention rights, both offline and online, because she is in fear of

¹⁵ Jam News, In Azerbaijan, well-known journalist was interrogated in the Toplum TV case (14 March 2024), available at <https://jam-news.net/well-known-journalist-was-interrogated-in-azerbaijan/>

¹⁶ Yevgeniya Markova, In Azerbaijan, independent media face growing repressions of press freedom (16 April 2024), available at <https://ijn.net.org/en/story/azerbaijan-independent-media-face-growing-repression-press-freedom>

¹⁷ Committee of Ministers, 1492nd meeting, 12-14 March 2024 (DH), CM/Del/Dec(2024)1492/H46-4, available at [https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22CM/Del/Dec\(2024\)1492/H46-04E%22%5D%7D](https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22CM/Del/Dec(2024)1492/H46-04E%22%5D%7D)

¹⁸ 1492nd Meeting Notes, 12-14 March 2024 (DH):
<https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22CM/Notes/1492/H46-04E%22%5D%7D>

¹⁹ Ibid.

²⁰ Government of Azerbaijan, Action Report: Mammadli Group (application no. 47145/14 and others) (4 April 2024), available at [https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22DH-DD\(2024\)385E%22%5D%7D](https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22DH-DD(2024)385E%22%5D%7D)

more attacks. The violations found by the Court have negatively affected her relationships with her family and friends, her career and her ability to conduct journalistic activity.

19. Ms Ismayilova continues to be subjected to harassment and surveillance by state authorities. As outlined above, phones used by her as well as her niece have been infected with Pegasus spyware.²¹ In addition, Ms Ismayilova has been hindered from continuing her work as a journalist, due to the recent arrests and repressive measures against her and her colleagues at Toplum TV. The Azerbaijani authorities have thus so far not only utterly failed to take meaningful, result-oriented measures to ensure an international standards-compliant investigation into the crimes committed against Ms Isamayilova, which would be capable of resulting in *restitutio in integrum*; they furthermore, and most worryingly, continue moving down the path of inflicting further injury to Ms Ismayilova's very same core rights that were established by the Court to have been breached in the context of the present judgments.

General measures

Media Law

20. On 30 December 2021, the Media Law was adopted in Azerbaijan. Its provisions have been widely criticised, including by the Council of Europe's Venice Commission²² and the Committee's Secretariat.²³ Media Defence is particularly concerned over several provisions, including restrictions on information sharing, mandatory obligations to disclose journalistic sources under specific circumstances and the lack of independence of media regulators. It has therefore submitted an amicus brief in a pending domestic court case which challenges the authorities' refusal to grant licenses to numerous media outlets under this new law. Despite the Committee's request to update on measures to bring the Media Law in line with the Council of Europe's standards,²⁴ the Government has failed to address this issue in its most recent submissions.
21. It is submitted that the Media Law violates international standards on freedom of expression, as it provides for excessive control over the media and journalistic profession and undermines the principles well-established in the Court's caselaw on Article 10. Despite the Government's claims to the contrary,²⁵ there is no indication that the law can have any positive effects on the media environment. Instead, its provisions, as well as the repealing of the pre-existing main laws regulating the media, create a more unfavourable media environment, eradicating self-regulation opportunity for the media and journalists and handing over media regulation to state authorities.

²¹ Forensic examination by Amnesty International has found traces of Pegasus spyware on Ms Ismayilova's phone, confirming that the attacks were conducted continuously and repeatedly since 2019 with latest attempts as recent as May 2021. Report available at: <https://www.amnesty.org/en/documents/doc10/4487/2021/en/>

²² Venice Commission, Azerbaijan: Joint Opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the Law on Media, (20 June 2022), Opinion No. 1078/2022, [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)009-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)009-e).

²³ 1475th Meeting Notes, 19-21 September 2023 (DH): https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ac759b

²⁴ Committee of Ministers, 1475th meeting, 19-21 September 2023 (DH), CM/Del/Dec(2023)1475/H46-4, available at [https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22CM/Del/Dec\(2023\)1475/H46-4E%22%5D%7D](https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22CM/Del/Dec(2023)1475/H46-4E%22%5D%7D)

²⁵ Government of Azerbaijan, Action Report: Khadija Ismayilova group (19 May 2022), pp. 2-3, available at [https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22DH-DD\(2022\)549E%22%5D%7D](https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22DH-DD(2022)549E%22%5D%7D)

22. One of the articles of the Media Law which have already been implemented is Article 14, which imposes restrictions for media content. This provision does not comply with the requirements of the Convention to justify a restriction of Article 10 and grants the government excessive leeway to control the exercise of freedom of expression. As the Court has repeatedly pointed out, prior restraint of the press is incompatible with Article 10. In addition, the provision serves no legitimate purpose, is vague, offers broad opportunities for abuse, and its application is unforeseeable. In particular the requirement for the media to “present facts and events impartially and objectively” and “not to allow one-sidedness” creates an easy pathway for strangling freedom of expression. In addition, Article 10 of the Convention not only protects information and ideas which are welcome and considered harmless, but also those who offend, shock or disturb as pluralism, tolerance and broadmindedness are essential factors in a democratic society.
23. The provisions of the new Media Law, including Article 14, create ample opportunities for state authorities to put pressure on journalists. As of 30 July 2022, the Prosecutor’s Office had issued warnings under Article 14 of the Media Law to at least seven journalists and social media activists related to comments they made in the context of public discussions.²⁶ Similar warnings were received by Tofiq Shakhmurov, a journalist covering military issues²⁷ and Vugar Mammadov, the editor-in-chief of Hurriyet newspaper,²⁸ who subsequently faced administrative imprisonment for a month. Such practices not only prevent journalists from reporting, but also lead to self-censorship.
24. The new Media Law also contains several other provisions which are harmful to the media landscape in Azerbaijan. For instance, it seeks to create a Media Register under the control of the government. So far, the regulatory body has refused the registration of over 40 media outlets. By law, the register is open to the public, however, the regulatory authority has failed to fulfil this requirement. Which media has been refused registration is not disclosed and only becomes public knowledge where the media outlets initiate legal action against the refusal. The well-known and independent “24saat.org” ltd, which owns online media entities such as “24saat.org” and “az24saat.org”, newspapers “Daryaz”, “Gundem-Xeber”, “Mingechevir ishiglarlari” and “Real and Ashkar”, online media resources “mi-news.az”, “dogruxeber.az”, “gundemxeber.az” and the journal “Kirpi TV” have challenged their registration refusal in court. The refusal was justified with the outlets’ alleged failure to provide assurances of respect for technical formalities foreseen by the law, such as the daily production of 20 pieces of authentic news content and dissemination of information produced by other (local and foreign) media outlets without contract or subscription thereto.
25. The refusal of a registration creates serious challenges for the media outlets to continue their public interest reporting. It makes it much more difficult to obtain public information from institutions, restricts access to official institutions, briefings and press conferences and prevents them from obtaining accreditation. These restrictions fail to meet the three-part test, in particular do they not serve a legitimate aim and are not necessary in a democratic society, and thus constitute a unjustified interference with Article 10.
26. The above considerations can be considered early alarming signs of the consequences of the enforcement of the Media Law. The law furthermore introduces more stringent and ambiguous content regulation

²⁶ See the Prosecutor’s statement here: <https://genprosecutor.gov.az/az/post/5448>

²⁷ Turan, Netizen arrested for posting about army, several more wanted (27 July 2022), available at <https://turaz.az/en/politics/netizen-arrested-for-posting-about-army-several-more-wanted>

²⁸ Turan, CPJ urged Azerbaijani authorities to release journalist Vugar Mammadov (29 July 2023), available at <https://turaz.az/en/politics/cpj-urged-azerbaijani-authorities-to-release-journalist-vugar-mammadov-767918>

criteria, which are so far not actively enforced, and grants the regulatory body the authority to challenge the legality of unregistered organisations in court. Under Article 78.3 of the Media Law, print and online media entities must apply to the regulatory body within six month of the Register's creation, or else they may face legal verification through a court intervention. As from the end of 2023, the regulatory state agency started to apply Article 78 of the Law. It submitted a court claim asking to cancel the activity of two media outlets which refused to apply to the register. Domestic courts adopted decisions decisions, suspending the activity of sites such as dia.az news portal²⁹ and amia.az who are well-known for their critical and independent stance. Immediately after the court decisions, the outlet's websites have been blocked.

27. The Media Law's provisions and enforcement do not comply with international standards. Moreover, it is highly likely that its enforcement will continue to have more adversary effects for media freedom in Azerbaijan.
28. *Favourable environment for journalists*
29. The Committee has previously recommended before the establishment of an environment which is favourable to the exercise of their freedom of expression by journalists.³⁰ In addition, the Convention obliges member states to investigate violence and threats against journalists. While Azerbaijani legislation theoretically satisfies these obligations, authorities in practice continue to harass and surveil independent journalists. This includes the misuse of highly intrusive spyware against those critical of the government, which does not only allow authorities to access all data stored on the device, its microphone and camera, but also compromises the confidentiality of journalistic sources as well as the journalists' privacy. In addition, the knowledge or suspicion of being targeted with spyware can lead to self-censorship and creates a chilling climate for journalists in Azerbaijan. In 2021, the Organised Crime and Corruption Reporting Project released a report, in which it documented the use of Pegasus spyware by governments against journalists, human rights defenders, political figures and others.³¹ The list of phone numbers illegitimately targeted with Pegasus spyware contained approximately 245 Azerbaijani numbers, including the number of Ms Ismayilova.³² In addition, Ms Ismayilova's niece has been targeted with Pegasus spyware.³³
30. Furthermore, in the last five to six years, independent journalists in Azerbaijan have faced systematic repression and arrests. In many cases, authorities have tempered with professional equipment, deleted

²⁹ Turan, Baku Court of Appeal (BCA) suspends activity of website dia.az (15 November 2023), available at <https://turan.az/en/social/baku-court-of-appeal-bca-suspends-activity-of-website-diaaz>

³⁰ CoE Committee of Ministers, Recommendation CM/Rec(2016)4[1] on the protection of journalism and safety of journalists and other media actors (13 April 2016), available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016806415d9

³¹ See OCCRP, *The Pegasus Project* available at https://www.occrp.org/en/the-pegasus-project/?_gl=1*6hmb4f*_ga*Mjg0ODExMDE0LjE2NjI0OTQxMjg.*_ga_NHCZV5EYYY*MTY2MzMyNzA1Ny4zLjAuMTY2MzMyNzA1OC41OS4wLjA.

³² OCCPR, Life in Azerbaijan's Digital Autocracy: 'They Want to be in Control of Everything' 18 July 2021, available at: <https://www.occrp.org/en/the-pegasus-project/life-in-azerbaijans-digital-autocracy-they-want-to-be-in-control-of-everything>

³³ OCCPR, Elmira Rahimova, available at <https://cdn.occrp.org/projects/project-p/#!/profiles/151>

footage, prevented live broadcasting etc. Between 2017 and 2019, 409 attacks on journalists were recorded.³⁴ In the following two years, around 200 attacks and/or threats against media workers in Azerbaijan were recorded per year.³⁵ Harassment of journalists continues, including through physical assault, legal pressure and obstacles hindering them from carrying out their professional activities.³⁶ Many of these journalists failed to obtain assistance from relevant law enforcement authorities when seeking to hold the perpetrators accountable.

31. The Committee's Secretariat has stressed that the cases in the Mammadli Group have shown a "troubling pattern of arbitrary arrests and detentions of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law" which must not continue.³⁷ However, Azerbaijani authorities continue their crackdown on independent media in the country. As noted by RSF, "virtually the entire media sector is under official control" and independent news sites were forced to shut down or are facing repressions.³⁸ For instance, between November 2023 and January 2024, six journalists working for the independent outlet Abzas Media were arrested on charges of smuggling after they had reported on alleged corruption of high-ranking officials in Azerbaijan.³⁹ On 18 April 2024, the founder and chief executive of Meclis.info, Imran Aliyev, was also arrested on smuggling charges.⁴⁰ As outlined above, journalists working for Toplum TV have experienced similar repressions and several of them currently remain in pre-trial detention, have been questioned by authorities, are subject to a travel ban and are prevented from continuing their public interest reporting.
32. Azerbaijani authorities continuously fail to protect journalists' right to private life enshrined in Article 8 of the Convention and to carry out effective investigations into violations of journalists' rights. For instance, in early 2023, the private correspondence of journalist Aytaj Akhmedova was published without her authorisation⁴¹ and with the aim of discrediting her. Ms Akhmedova is a journalist for Meydan TV, an outlet well-known for its critical standpoint which had been forced to leave Azerbaijan after being subjected to legal pressure. Her complaint to authorities seeking an investigation and criminal prosecution of the perpetrators was not addressed.
33. At the same time, provisions in Azeri law which on paper protect journalists are not implemented. For instance, while over the past five years, more than 200 incidents in which journalists were prevented from carrying out their work were recorded, Article 163 of the Azerbaijani Criminal Code on "obstructing the

³⁴ Justice for Journalists, Attacks on journalists, bloggers and media workers in Central Asia and Azerbaijan (2017-2019) (22 May 2020), available at <https://jff.fund/attacks-on-journalists-bloggers-and-media-workers-in-central-asia-and-azerbaijan-2017-2019/#azerbaydzhan>

³⁵ See Justice for Journalists, Attacks on media workers in 2020. Group 1: Azerbaijan, Tajikistan, Turkmenistan (14 June 2021), available at https://jff.fund/report-2020_1/#az and Justice for Journalists, Attacks on media workers in 2021. Group 1: Azerbaijan and Central Asia (3 October 2022), available at https://jff.fund/report_2021_2/

³⁶ See for examples of attacks against journalists: Justice for Journalists, Elmaddin Shamilzade, available at <https://jff.fund/jff/elmaddin-shamilzade-6/>; Sevinj Sadygova, available at <https://jff.fund/jff/sevinj-sadygova-4/>; Jamila Azimova, available at <https://jff.fund/jff/jamila-azimova/>

³⁷ 1492th Meeting Notes, 12-14 March 2024 (DH):

<https://hudoc.exec.coe.int/ENG#%7B%22execidentifier%22:%5B%22CM/Notes/1492/H46-04E%22%7D>

³⁸ Reporters Without Borders, Azerbaijan, available at <https://rsf.org/en/country/azerbaijan>

³⁹ JAM news, Sixth arrest in the Abzas Media case in Azerbaijan (15 January 2024), available at <https://jam-news.net/abzas-media-case-arrests-continue/>

⁴⁰ CoE safety of journalists platform, Azerbaijani Journalist Imran Aliyev Arrested on Smuggling Charges (23 April 2024), No. 70/2024, available at <https://fom.coe.int/en/alerte/detail/107640886:globalSearch=false>

⁴¹ Justice for Journalists, Aytaj Akhmedova, available at <https://jff.fund/jff/aytaj-akhmedova/>

legal professional activity of journalists” has not been applied in a single case. For instance, when well-known journalist Aytan Mammadova was threatened and attacked with a knife by an unknown person, likely in connection with her reporting on a criminal trial,⁴² authorities opened an investigation only under Article 134 of the Criminal Code (threat of murder or grave harm) and not under above mentioned Article 163. At the same time, the Court has found a violation of Article 10 of the Convention by Azerbaijan in numerous cases in past years.⁴³

Recommendations

34. Having regard to the facts mentioned above, Media Defence respectfully requests that the Committee urge the Government to take the following steps to fully implement the Court’s judgments in the present cases:

Regarding individual measures:

- a) conduct the investigation in respect of the interference with Ms Ismayilova’s private life in a manner that is consistent with international human rights standards and the findings of the Court in the case of *Khadija Ismayilova v. Azerbaijan*;
- b) immediately and comprehensively take such action as will ensure that all private content relating to Ms Ismayilova that was the subject matter of the cases *Khadija Ismayilova v. Azerbaijan* and *Khadija Ismayilova v. Azerbaijan (no. 3)*, not least the details disclosed by the prosecutor in the context of the criminal investigation, be permanently removed from online;
- c) initiate proceedings to swiftly quash Ms Ismayilova’s criminal conviction; erase her criminal record and investigate, prosecute and punish those responsible for the violation of her rights with a view to achieving *restitutio in integrum* in respect of the violation found by the Court under Article 18 in conjunction with Article 5 in the *Khadija Ismayilova v. Azerbaijan (no. 2)* judgment;
- d) without delay, take steps to ensure Ms Ismayilova is not hindered in her work or day to day life, including by lifting the travel ban and ensuring her ability to continue her journalistic activities without interference;

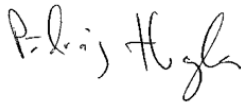
Regarding general measures:

- e) disclose, in a complete, transparent and comprehensive manner, all decisions and authorisations for the use of Pegasus spyware and other digital surveillance measures against journalists and investigate, prosecute and punish those responsible, as required with a view to ensuring non-repetition of the violation established by the Court under Article 18 in conjunction with Article 5 of the Convention;
- f) recalling Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favorable environment for quality journalism in the digital age as well as a positive obligation of the State to:
 - create a favourable and enabling environment for carrying out journalistic activities;

⁴² Turan, A criminal case has been opened on the fact of the attack on journalist A. Mammadova/UPDATED/ (9 May 2022), available at <https://turaz.az/en/social/a-criminal-case-has-been-opened-on-the-fact-of-the-attack-on-the-journalist-amammadova-updated>

⁴³ See for instance: ECtHR, *Mammadov and Abbasov v. Azerbaijan*, App. no. 1172/12, 8 July 2021 and ECtHR, *Haji and Others v. Azerbaijan*, App. nos. 3503/10 and 7 others, 1 October 2020.

- take immediate steps in order to effectively guarantee the freedom of expression and safety of journalists in Azerbaijan, including by ending the deprivation of liberty and discontinuing the criminal prosecution of independent journalists in Azerbaijan under trumped-up charges; lifting the travel bans and other sanctions imposed on journalists in connection with those criminal investigations; and allowing independent news outlets, including Toplum TV, to continue reporting;
 - investigate in a manner compliant with the requirements of the Convention all cases involving unlawful conduct against journalists perpetrated in the last three years, and to provide to the Committee all relevant information on legal proceedings and their results;
 - establish and implement a specific action plan for the capacity-building of the judiciary in respect to ensuring the balance between the right to respect for private life and the right to freedom of expression, in accordance with the Court's caselaw;
 - and amend the domestic legislation, including the Media Law, on the basis of the Venice Commission's recommendations;
- g) given the dire situation for media workers in Azerbaijan, and the ongoing crackdown on independent media, to schedule the case for examination again in December 2024, and to instruct the Secretariat of the Committee to prepare an interim resolution if no progress is demonstrated by authorities.



Pádraig Hughes
Legal Director
Email: padraig.hughes@mediadefence.org