

Draft list of questions for CDMSI members on the implementation of Council of Europe standards related to safety of journalists and other media actors

1) Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?

According to Article 59 of the “Law on Mass Media”, any interference on the part of citizens, state bodies, municipalities, entities, enterprises and organizations, political parties, public associations or government officials with the lawful activities of media founders, publishers, editorial offices, broadcasters and journalists, including the application of censorship, breach of professional independence, illegal confiscation and removal of all or part of the print-run, coercion of journalists into not publishing (circulate) a report, the introduction of restrictions on journalist rights to access information or to deny access to it except for the information protected by laws of the Republic of Azerbaijan, failure to respond to journalistic enquiries in the timeframe established by legislation of the Republic of Azerbaijan, as well as failure to grant other journalistic rights established by the said Law, may lead to civil, administrative, criminal and other implications according to laws of the Republic of Azerbaijan.

According to Article 163 of the Criminal Code of the Republic of Azerbaijan, hampering journalists in their legitimate professional activities by forcing them to circulate or not to circulate information by using or threatening to use violence is punishable by a penalty from 100 to 500 manats or corrective work for a period of up to one year. The same acts committed by government officials abusing their position is punishable by a ban to hold a certain position or to engage in certain activities for a period of up to three years or corrective work for a period of up to two years or imprisonment for a period of up to one year.

2) Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?

The Azerbaijan Press Council established by the First Congress of Azerbaijani Journalists in 2003 aims to ensure self-governance of media outlets and regulate the relationships among the media, state bodies, municipalities, legal entities and individuals. Although the Press Council as a public association does not have any legally established mechanisms of pressure, it helps the media reach out-of-court settlements on claims and complaints against them. The Press Council and other media organizations monitor cases of illegal pressure on the media and their representatives, make them public and raise such issues with relevant government agencies. In addition, a commission of the Press Council comprised of representatives of the Ministry of Internal Affairs, public associations and mass media investigates cases of illegal pressure on journalists and raises the issue with relevant authorities for further action.

On 21 December 2010, the Milli Majlis of the Republic of Azerbaijan introduced changes to the Laws “On Human Rights Ombudsman” and “On access to information”, granting the powers of ombudsman for information issues to the human rights ombudsman. Three additional departments were established within the office of ombudsman. The ombudsman has been granted the authority to raise a journalistic enquiry with a relevant state body and require its execution within legal frames.

It is also worth mentioning that according to the latest parliamentary election of 1 November 2015, a total of 11 media representatives are now represented on the Milli Majlis today. They are very sensitive to any restrictions on media activities, facilitate official parliamentary enquiries and raise issues with relevant state bodies.

3) Is the confidentiality of journalists' sources of information protected in both law and practice?

According to the Constitutional law of the Republic of Azerbaijan adopted in 2000, the exercise of the freedom of speech and information may be subject to such restrictions in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. This Article is fully consistent with Clause 2 of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The protection of the confidentiality of sources of information is governed by the Law "On mass media".

According to Article 11 of the Law "On mass media", the editor responsible for publishing (airing) information and/or journalist can't be forced to disclose the source of information except for cases stipulated in the legislation. In all cases, a journalist may be required to disclose the source of information only by a valid court ruling. No-one other than courts can require a journalist to disclose the source of information, including state bodies and senior officials.

According to Article 11 of the Law "On mass media", the editor and/or journalist may be required by a court of law to disclose the source of information only in the following cases:

- For the protection of human life;
- To prevent a serious crime and to defend someone charged with or accused of committing a serious crime.

In order to force a journalist to disclose the source of information, it is necessary to prove that this is being done for the purposes of Article 11 of the Law "On mass media" and that it is impossible to obtain the required information by other means.

According to Article 284 of the Criminal Code, government officials and civil servants to whom state secrets have been entrusted, persons dealing with state secrets, persons knowing and disseminating state secrets, and persons knowing state secrets due to their service position are responsible for disseminating information that constitutes state secret.

Neither administrative nor criminal liability of a journalist is envisaged for the dissemination of state secrets. If a journalist obtains such information by accident, or if such information is disclosed by the person responsible for protecting it, responsibility for that lies squarely with this person.

A journalist may be held accountable for disseminating a state secret only if he/she has familiarized him/herself with such information in a manner prescribed under Article 21 of the Law "On state secrets" and if he/she assumed a commitment before state authorities not to disseminate such information.

A journalist can be held accountable only in the following cases:

- If he/she has dealt with state secrets before, worked in a state body dealing with state secrets and obtained information about a state secret at that time;
- If he/she has worked as a detective, investigator or prosecutor before becoming a journalist, or if he/she has acted as a judge, court worker, prosecutor, defense counsel, expert, interpreter, etc. in a closed court hearing;
- If he/she has acted as a suspect, witness, victim, representative, etc. in a closed court hearing examining a state secret;
- If he/she has been admitted to an enterprise dealing with state secrets and has been explained that such information is considered a state secret.

4) Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?

According to Article 147 (Slander) of the Criminal Code of the Republic of Azerbaijan, slander is punishable by a fine of 100 to 500 manats or community work for a period of up to 240 hours, or corrective works for a period of up to one year or imprisonment for a period of six months. According to Article 148 (Insult against honor and dignity) of the Criminal Code of the Republic of Azerbaijan, it is punishable by a fine of 300 to 1,000 manats or community work for a period of up to 240 hours, or corrective work for a period of one year or imprisonment for a period of six months.

In 2009, a moratorium was introduced on Articles 47 of the Criminal Code of the Republic of Azerbaijan. Courts do not accept claims involving slander and insult, and these issues are now examined in accordance with administrative procedures.

5) What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, exceptio veritatis (defence of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?

According to Decision No 3 of the plenary session of the Supreme Court dated 21 February 2014, when cases on claims relating to Articles 147 and 148 of the Criminal Code of the Republic of Azerbaijan are examined, it is necessary to establish in all cases that the rights and freedoms stipulated under Article 30 of the Constitution (right to intellectual property), parts II and III of Article 32 (right to secrecy of private and family life), 46 (right to protection of honor and dignity), 47 (freedom of speech and expression) and 50 (freedom of information), Article 8 (right to respect for private and family life) and 10 (freedom of expression) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to extensively apply the case law of the European Court of Human Rights.

6) In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?

There are no provisions in Azerbaijani laws that would grant any privileges to government officials. National legislation states that all citizens are equal before law regardless of their position, social status, religion, race and ethnicity.

7) Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?

Restriction of access to information is governed by the Law of the Republic of Azerbaijan “On state secrets” adopted in 2004. At the same time, the Law of the Republic of Azerbaijan “On the right to information” adopted in 2005 stipulates cases and conditions for restricting access to service information. Restriction of any other information the dissemination of which is not prohibited by law is not allowed. In addition, in cases where access to information should be restricted, government officials should provide the media with an explanation. In particular, according to the Order of the President of the Republic of Azerbaijan “On measures related to security on the line of contact between Azerbaijani and Armenian armed forces” dated 24 September 2014, the Ministry of Defense is responsible for providing timely information about the situation in front-line regions.

8) Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities

and police services? Are these made available to representative organisations of lawyers and media professionals?

Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011.

Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)

Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity

Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007

Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment

Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.

Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns

Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content

Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings

Belgrade Conference of Ministers Resolution No 3 Safety of journalists

The decisions and resolutions of the international organizations of which Azerbaijan is a member are translated and disseminated by state bodies, representative offices of such organizations in Azerbaijan and national NGOs, as well as the representative office of the European Union in Azerbaijan.