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## Committee on Legal Affairs and Human Rights

# Threats to life and safety of journalists and human rights defenders in Azerbaijan

## Introductory memorandum

Rapporteur: Ms Hannah Bardell, United Kingdom, Member not belonging to a Political Group

### 1. Introduction

1. This introductory memorandum is based on a motion for a resolution tabled on 02 May 2022,<sup>1</sup> which expressed concern at the growing level of violence, intolerance and threats against Azerbaijani journalists, bloggers, and human rights activists. The motion referred to cases where journalists and human rights defenders were injured, threatened, and even killed, with insufficient action being taken by the Azerbaijani authorities to protect those individuals. This included the cases of well-known LGBTI activist and blogger, Avaz Shikhmammadov (also known as Avaz Hafizli) and renowned blogger and human rights activist, Bakhtiyar Hajiyev.

2. The motion additionally referenced how investigative journalists had been threatened by the Azerbaijani security service to stop anti-corruption investigations against public officials, including death threats or the threat of serious injury. The motion called for the Assembly to study the cases of these murders, assassination attempts, and threats to life, of Azerbaijani journalists, bloggers and human rights activists working within Azerbaijan and abroad. Finally, the motion said that the Assembly should call on the Azerbaijani government to guarantee the safety of journalists and human rights defenders in full compliance with the European Convention on Human Rights ("the Convention") and the Court's case-law.

3. On 11 October 2022 the committee appointed me as rapporteur and on 13 October 2022, the Committee on Culture, Science, Education and Media appointed Stefan Schennach (Austria, SOC) as a rapporteur for opinion. Stefan Schennach's opinion will be useful in this matter, and I look forward to working with him.

4. In this introductory memorandum I will set out some of the most high-profile recent cases of killings or violence against journalists and human rights defenders in Azerbaijan; including Avaz Hafizli, Bakhtiyar Hajiyev and Mahammad Mirzali. Whilst the most high-profile cases might be small in number, they are nonetheless shocking. It is important that the authorities take timely and effective action to investigate and, as appropriate, bring criminal proceedings in respect of such acts. I will therefore look forward to hearing from the authorities as to how their processes work to take such effective enforcement action as well as to hearing about progress in individual cases.

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\* Document declassifié par le Comité le 22 mars 2023.

<sup>1</sup> [Doc. 15521](#) Référence no 4659 of 24 June 2022.

5. As concerns threats to the safety and life, it can be harder to ascertain the scale of the problem. This will particularly be the case where such threats and intimidation may have been successful in silencing journalists and civil society actors, or where such threats may not have been made public, or have not been so well publicised. I have included the recent case of Ayten Mammadova, as well as the threats received by Mahammad Mirzali, as examples of the sorts of threats received. I will also seek out information about other cases and wider trends, including on the nature and frequency of such threats, as this work progresses. In this context, I welcome information on this in particular from those who have been affected by such threats and intimidation.

6. Violence and threats of violence against journalists and human rights defenders rarely occur in a vacuum. It is therefore not enough for a State to merely respond to such acts through after-the-event investigations; it is also necessary for the State to take action to prevent and combat such acts in the first place. This involves ensuring adequate protective measures are in place for individuals considered to be at risk, but also more generally creating an environment that supports free speech and where it is clear that strong action would be taken in response to any such attacks on journalists and human rights defenders.

7. In a healthy, vibrant democracy, it is crucial to establish a culture and society that facilitates and champions freedom of expression, pluralism and the crucial role played by human rights defenders and civil society. There are concerns that cases of threats and acts of violence to the life and safety of journalists and human rights defenders could be facilitated by, and form part of, a wider climate of intolerance towards free speech and pluralism in Azerbaijan. Indeed, a wider picture of repression against journalists and civil society in Azerbaijan has been documented in previous work of the Council of Europe organs, as well as in the work of other bodies.

8. As part of this work, I intend to seek to understand the attitudinal or structural challenges within Azerbaijan that may need to be addressed in order to best support, encourage and champion freedom of expression and pluralism within Azerbaijani democracy and thereby secure the safety of journalists and human rights defenders. My intention with this work is to propose practical and effective solutions to assist the authorities in fulfilling their positive obligations to guarantee the safety of journalists and human rights defenders.

## **2. Recent threats to the life and safety of journalists and human rights defenders in Azerbaijan**

9. It is worth recalling briefly the existence of previous threats to the life and safety of journalists and human rights defenders in Azerbaijan. This includes the murder, in 2005, of prominent investigative journalist Elmar Huseynov,<sup>2</sup> the murder in 2011 of journalist Rafiq Tagiyev (against whom Iran had issued a fatwa), and the murder in 2015 of journalist Rasim Aliyev (following criticism of a footballer).

10. More recently, on 4 June 2021, two journalists, Maharram Ibrahimov and Siraj Abishov, were killed when the vehicle that they were travelling in hit a land mine near the region of Nagorno-Karabakh.<sup>3</sup> Given the conflict in the region, there has been little accountability for their deaths, although concerns have been raised about the risks of landmines in unknown locations for those operating in the region, including journalists – and efforts have been undertaken to demine some of these areas.

11. According to the Justice for Journalists Foundation, there were 215 attacks on journalists in Azerbaijan in 2021, nearly one-and-a-half times more than in 2017, suggesting the situation has worsened. The number of non-physical attacks (cyberattacks) more than doubled between 2020 and 2021.<sup>4</sup> For 2021, the Council of Europe's Platform for the Protection of Journalism and Safety of Journalists reported 3 active alerts, 2 journalists killed (with impunity), and 4 journalists in detention.<sup>5</sup>

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<sup>2</sup> [FBI Case File Shows How Azerbaijan Botched Investigation Into Journalist's Death - OCCRP.](#)

<sup>3</sup> [Maharram Ibrahimov - Committee to Protect Journalists \(cpj.org\).](#)

<sup>4</sup> [Attacks on Media Workers in 2021: Azerbaijan](#), *Justice for Journalists*, 3 October 2022.

<sup>5</sup> [Azerbaijan: Platform to Promote the Protection of Journalism and Safety of Journalists](#), accessed 13 December 2022.

As noted above, the two journalists were Maharram Ibrahimov and Siraj Abishov, both killed when the vehicle that they were travelling in hit a land mine near the region of Nagorno-Karabakh.

12. The Media Rights Group, in its analysis for 2022, notes “at least 44 incidents of physical and psychological harassment of journalists performing their professional activities” in Azerbaijan in 2022.<sup>6</sup> It states “It cannot be said that the working environment is safe for journalists who are known for investigating topics of public interest. In 2022, journalists have faced physical threats and phone calls several times due to their professional activities”. In addition to the cases of Aytan Mammadova and Avaz Hafizli (set out below), they noted “Ceyhun Musaoglu, an employee of Missiya TV (Mission TV) internet television, was also threatened for his speech in the program he hosted (...) Aziz Orujov, head of Kanal13 internet television, was threatened in the centre of Baku city, near his family. Tural Sadigli, a blogger who emigrated from Azerbaijan and head of the Azad Soz (Free Speech) channel, also stated that he was threatened with death. In November, Azerbaijani blogger Orkhan Agayev living abroad was attacked in front of his apartment in Berlin and injured with a knife.”<sup>7</sup>

13. I have selected below four recent examples of threats to the life and safety of journalists and human rights defenders in Azerbaijan to illustrate the challenges faced by those operating within this space. I am, however, conscious that in addition to those whose cases are well-publicised, there will inevitably be others who have been threatened or attacked but whose cases are less well-known.

### 2.1 *Murder of journalist and LGBTI rights activist Avaz Hafizli, 22 February 2022*

14. Avaz Shikhmammadov (a.k.a. Avaz Hafizli) was killed at home in Baku on 22 February 2022 by his cousin. Avaz Hafizli was a well-known young LGBTI activist, who was known for his courageous work in highlighting cases of injustice or violence against the LGBTI community in Azerbaijan - often in the face of significant homophobia and transphobia.<sup>8</sup> He also worked as a reporter for the independent video news website, Kanal 13, where he covered a range of issues, including LGBTI rights. He took part in rallies against the new media law in Azerbaijan and staged protests demanding the government to end discrimination against LGBTI persons. Last year, he chained himself to the fence outside the chief prosecutor’s office to protest a lack of action against threats to the gay community.<sup>9</sup>

15. Avaz Hafizli’s cousin, Amrulla Gulaliyev, confessed to killing his cousin over a dispute relating to Avaz Hafizli’s sexuality, having gone to his house to confront him about his sexuality and activism on the topic.<sup>10</sup> Amrulla Gulaliyev has been convicted of his murder and sentenced to nine years and six months in prison. Whilst the law enforcement authorities have taken swift action in investigating this case and in prosecuting the perpetrator, there are criticisms that the sentence is unduly lenient given the brutal nature of the murder and that it is a hate crime (it is very much on the lower end of sentencing for a murder, contrary to the severity of the crime). There are also concerns that little has been done to investigate more fully into the context of the killing, in particular to explore the extent to which it was linked to his activism, journalism, or identity, and what could be done to prevent such tragic deaths in the future, such as better laws against hate speech. This case also raises significant questions about the extent of preventive and protective actions being taken to ensure that human rights defenders, and in particular those in the LGBTI community, are adequately protected in Azerbaijan, and to ensure that swift action is taken for any hate speech or threats to their life and safety.

16. The level of threats and insults from society in Azerbaijan against those highlighting issues of homophobia and transphobia is significant (including often from family members), and yet little seems to have been done to take action against those encouraging threatening behaviour or hate speech, let alone to protect Avaz Hafizli.<sup>11</sup> Indeed, there are concerns that wider societal stigma in relation to the LGBTI community seems also prevalent in the police attitudes to this case.

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<sup>6</sup> Media Rights Group, “Legal Environment For Media in Azerbaijan, 2022, Annual Analysis”, p. 6.

<sup>7</sup> Media Rights Group, “Legal Environment For Media in Azerbaijan, 2022, Annual Analysis”, p. 8.

<sup>8</sup> [Obituary | Avaz Hafizli \(oc-media.org\)](https://oc-media.org/obituary-avaz-hafizli/).

<sup>9</sup> [Azerbaijan Mourns Tragic Killing of Gay Rights Activist and Reporter \(voanews.com\)](https://voanews.com/news/azerbaijan-mourns-tragic-killing-of-gay-rights-activist-and-reporter/).

<sup>10</sup> [Man Who Brutally Killed LGBTQ+ Activist Sentenced to 9.5 Years \(advocate.com\)](https://advocate.com/news/man-who-brutally-killed-lgbtq-activist-sentenced-to-9-5-years/); [Murderer of queer Azerbaijani journalist sentenced to 9 years \(oc-media.org\)](https://oc-media.org/murderer-of-queer-azerbaijani-journalist-sentenced-to-9-years/).

<sup>11</sup> [Journalist chains himself to Prosecutors’ gate in Azerbaijan \(oc-media.org\)](https://oc-media.org/journalist-chains-himself-to-prosecutors-gate-in-azerbaijan/).

*2.2 Kidnapping, violence and a wider pattern of persecution against human rights activist Bakhtiyar Hajiyev, 21 April 2022*

17. Bakhtiyar Hajiyev, a well-known blogger and human rights activist, former political prisoner, and outspoken critic of the authorities, was abducted from the street on 21 April 2022 by four masked men. He was forced into a car, abducted, beaten, tortured and subjected to inhuman treatment. The assailants filmed themselves urinating on him as part of an effort at humiliation.<sup>12</sup> He claimed that the men demanded that he admit to having been instructed to write critical posts about the Interior Minister Vilayat Eyvazov. When he denied any such instructions, he was stripped and they demanded he delete his posts about the Minister as well as those about Fuad Muradov, a pro-government activist. He reported that they threatened to rape and kill him if he continued to criticise the Minister. He was then abandoned in a remote area, where they left him bound with duct tape and blindfolded. Bakhtiyar Hajiyev has accused the Interior Ministry of orchestrating his kidnapping in order to warn him against criticising the Minister. The Government has said that it is investigating these events.

18. This incident is part of a wider pattern of persecution against Bakhtiyar Hajiyev, which has many elements. Most recently Bakhtiyar Hajiyev was arrested on 9 December 2022. He has been detained since then on charges of hooliganism (relating to a dispute with a neighbour about a kitten), however the charges are widely considered to be persecution for his political activities, with some alleging that these are linked to recent US sanctions on an Azerbaijani official.<sup>13</sup> Bakhtiyar Hajiyev has been on a hunger strike since 9 January 2023 and it is understood that his health is seriously deteriorating. On 13 February, the PACE co-rapporteurs for the monitoring of Azerbaijan, expressed profound concern over the continuing detention of Bakhtiyar Hajiyev, noting that his detention was “widely believed to be connected to his activism” and expressing “utmost concern” for the state of his health. The co-rapporteurs said “Unfortunately, Mr Hajiyev’s case illustrates a ‘troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human rights defenders through retaliatory prosecution and misuse of criminal law in defiance of the rule of law’”.<sup>14</sup> This detention has received general international condemnation, with the charges being widely understood as politically motivated.<sup>15</sup>

19. Prior to these recent incidents, Bakhtiyar Hajiyev faced similar treatment in 2011 from the authorities. On 4 March 2011, he was questioned by police about social media posts related to an upcoming anti-government protest, scheduled for 11 March 2011.<sup>16</sup> He was arrested later on 4 March 2011 on charges relating to evading military service (notwithstanding his request to perform alternative service). On 7 March 2011, he gave his lawyer, Elchin Namazov, a letter stating that he had been beaten, tortured, and threatened with sexual abuse while in custody, and his lawyer witnessed such signs of physical abuse when he visited him in detention. Although this abuse was reported to the prosecutor’s office, it was apparently not investigated.<sup>17</sup> Later in 2011 he was sentenced to two years imprisonment. Following widespread condemnation of his detention and conviction, he was released early for good behaviour on 4 June 2012.

*2.3 Threats to kill journalist Ayten Mammadova and her daughter, 8 May 2022*

20. Journalist Ayten Mammadova, known for covering lawsuits of public interest including criminal cases, was attacked on the evening of 8-9 May 2022 in the lift in her building in Baku. A man entered the lift, held a knife to her throat, threatened to kill her and her young daughter and demanded that she stop writing about a trial.<sup>18</sup> Ayten Mammadova contacted the police after the attack. Medical examinations confirmed traces of a knife blade on her throat. The Ministry of Internal Affairs has confirmed that a criminal case has been initiated.

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<sup>12</sup> [Activist claims to have been kidnapped over criticism of Azerbaijani minister \(oc-media.org\)](https://oc-media.org/).

<sup>13</sup> [Bakhtiyar Hajiyev Arrested for a Month and 20 Days, Prominent activist detained following U.S. sanctions on Azerbaijani official | Eurasianet](#).

<sup>14</sup> [PACE monitors call on Azerbaijan authorities to immediately release Bakhtiyar Hajiyev \(coe.int\)](https://coe.int/).

<sup>15</sup> [Calling for the Release of Bakhtiyar Hajiyev - United States Department of State; Washington calls for the release of imprisoned Azerbaijani activist Hajiyev \(oc-media.org\)](#).

<sup>16</sup> [Azerbaijani Activists Under Pressure Ahead Of Protest Day \(rferl.org\)](https://rferl.org/).

<sup>17</sup> [Azerbaijan: Activist Sentenced in Political Trial | Human Rights Watch \(hrw.org\)](https://hrw.org/).

<sup>18</sup> [Azerbaijani Journalist Ayten Mammadova Was Attacked, Received Death Threats in Baku, English Jamnews, 9 May 2022](#).

21. It was unclear what trial the attacker was referring to, but Ayten Mammadova had been recently focussing on the trial of the disappearance and murder in 2019/2020 of Narmin Guliyeva, a 10-year-old resident of the Dondar Gushchu village of the Tovuz region in Azerbaijan. The defendant in the trial, Ilkin Suleymanov, stated that he was forced to confess to the murder after being tortured. During the process, a number of discrepancies were recorded in the testimonies of witnesses and increased focus has been given to the case given these concerns.

*2.4 Attempted assassination of Mahammad Mirzali and possible links to transnational repression, 6 October 2020, 14 March 2021 and 12 June 2022*

22. Well-known blogger and social-media opposition activist, Mahammad Mirzali, has been repeatedly attacked including being shot, stabbed and severely beaten.<sup>19</sup> He was arrested, together with his father at a protest in 2013 and tortured. In 2016 he left Azerbaijan after coming under increasing pressure from the Azerbaijani authorities and now lives in France as a refugee. He regularly receives threats to his life and safety and has been violently attacked. President Aliyev has denied any involvement in these attacks.<sup>20</sup>

23. On 6 October 2020, Mahammad Mirzali was attacked in France as he got into his car. His assailant shot him through the car window with a handgun, wounding him in the shoulder – he managed to drive away and get medical help. The perpetrator of this attack has not been identified.

24. On 14 March 2021, Mahammad Mirzali was stabbed 16 times and seriously wounded in an attack, in which he lost three litres of blood and required lengthy surgery.<sup>21</sup> The attackers reportedly attempted to cut out his tongue. The Ministry of Internal Affairs of Azerbaijan has said that Azerbaijani authorities had nothing to do with the attack in France. Four attackers (three from Azerbaijan, one from Georgia) were arrested and charged with attempted murder.<sup>22</sup>

25. Another suspected conspiracy to murder Mahammad Mirzali occurred in June 2022. On 12 June 2022, French police arrested two suspected hit men at a motorway toll near Angers. One was an Azerbaijani armed with a pistol, another was a Moldovan of Turkish origin. Both were driving Polish-registered cars and had Mahammad Mirzali's address at the destination in their GPS devices, one having a picture of Mirzali in his telephone.<sup>23</sup> Reporters Without Borders (RSF) has called for this latest apparent attempt to murder Mirzali on French territory to be addressed by the French and Azerbaijani governments at the highest level.

26. In addition to the horrific violence that he has been subjected to, Mahammad Mirzali's case also exemplifies the level of threats that journalists and activists can receive. Mahammad Mirzali told RSF he gets "an average of 2,000 threatening messages a day, especially on YouTube." He said the typical one consists of a profile photo with a Kalashnikov accompanied by some clearly threatening words such as "I'm here."

27. In addition to these violent attacks and threats of violence, there are many other incidents involving the blogger and his family. In January 2018, authorities in Azerbaijan arrested Mahammad Mirzali's father Fazil Mirzaliyev and his brother-in-law Elman Agayev, allegedly in an effort to get Mahammad Mirzali to remove material posted on a Facebook page "Made in Azerbaijan".<sup>24</sup> Defamation claims have been brought against Mahammad Mirzali in France, largely unsuccessfully, including a defamation suit brought by a former Azerbaijani deputy economy minister. In 2021, an anonymous person threatened to publish intimate photos of the blogger's sister and her husband if he did not stop his blogging.<sup>25</sup> Apparently such photographs were then circulated.

<sup>19</sup> ['Soon Enough I'll Be Killed': Threats Against Azerbaijani Dissident Intensify After Armenian Media Interview \(rferl.org\).](https://www.rferl.org/content/Soon-Enough-Ill-Be-Killed-Threats-Against-Azerbaijani-Dissident-Intensify-After-Armenian-Media-Interview/28272641.html)

<sup>20</sup> [Azerbaijan's President offers placating words in response to RSF's criticism | RSF.](https://www.rsf.org/azerbaijans-president-offers-placating-words-in-response-to-rsf-s-criticism_12022020.html)

<sup>21</sup> [Exiled Azerbaijani blogger Mahammad Mirzali stabbed at least 16 times in knife attack in France - Committee to Protect Journalists \(cpj.org\).](https://www.cpj.org/2021/03/14/azerbaijani-blogger-mahammad-mirzali-stabbed-at-least-16-times-in-knife-attack-in-france/)

<sup>22</sup> [Azerbaijani blogger living in France stabbed, threatened | RSF.](https://www.rsf.org/azerbaijani-blogger-living-in-france-stabbed-threatened_12022021.html)

<sup>23</sup> [Hit men sent to France to kill Azerbaijani blogger who is Aliyev foe | RSF.](https://www.rsf.org/hit-men-sent-to-france-to-kill-azerbaijani-blogger-who-is-aliyev-foe_12022022.html)

<sup>24</sup> [Out of reach? How Azerbaijan punishes the families of political emigres - MEYDAN.TV \(d9mc3ts4czbpr.cloudfront.net\); Blogger's Relatives Taken to Police Office – IRFS.](https://www.meydan.tv/en/news/azerbaijan-punishes-the-families-of-political-emigres-2018-01-18/)

<sup>25</sup> [В Азербайджане оппозиционера шантажировали интимным видео его сестры \(jam-news.net\); Mirzali Mahammad on Twitter: "Mr. Ambassador, although today is international Women's Day, the ladies in my family cannot celebrate it. Because of my political activity, we are being blackmailed with the video tape of my sister's private life. My sister Nigar's life is in danger in Azerbaijan." / Twitter; Mahammad Mirzali – Azerbaijan Internet Watch \(az-netwatch.org\).](https://www.jam-news.net/en/azerbaijan/mirzali-mahammad-on-twitter-mr-ambassador-although-today-is-international-womens-day-the-ladies-in-my-family-cannot-celebrate-it-because-of-my-political-activity-we-are-being-blackmailed-with-the-video-tape-of-my-sister-s-private-life-my-sister-nigar-s-life-is-in-danger-in-azerbaijan/)

### 3. Wider climate of repression of journalists and human rights defenders in Azerbaijan

28. Violence and threats of violence against journalists and human rights defenders usually do not occur in a vacuum. They can be deterred, or conversely, facilitated, by the wider culture of tolerance (or intolerance) towards free speech and pluralism in a country. This is evident in Azerbaijan where a number of tools have been used to intimidate and repress journalists and civil society, often misusing legal tools to seek to suppress freedom of expression. Not only is such misuse problematic in and of itself, but it risks creating a societal culture where there is a lack of tolerance for free speech and pluralism.

29. One of the best-documented areas relates to concerns around the misuse of criminal law to prosecute journalists and human rights defenders. This has been documented previously in the case-law of the ECtHR (as set out below). By way of recent examples, on 30 November 2022 Gultakin Hajiyeva, a member of the coordination centre of the National Council of Democratic Forces, was arrested on charges of slander.<sup>26</sup> On 10 September 2022 Avaz Zeynalli, owner and chief editor of the independent news outlet Xural TV, and Elchin Sadigov, a prominent human rights lawyer, were detained for four months on charges related to bribery, which they rejected, stating that their detention was politically motivated.<sup>27</sup> On 15 February 2022 Sevini Sadygova, a reporter at independent news website Azel.tv, and Fatima Mövamlı, a reporter for independent news website Azadliq, were detained while covering a protest in Baku.<sup>28</sup>

30. Despite adverse ECtHR judgments in *Mahmudov and Agazade v Azerbaijan*<sup>29</sup> and widespread condemnation from the Council of Europe and other international organisations, criminal defamation laws continue to exist in Azerbaijan, which include substantial prison sentences for defamation. The existence of these laws is part of the wider picture contributing to a climate of disdain for free speech and for journalism. The ECtHR judgment dates from 2008, this is therefore now more than 14 years that Azerbaijan has failed to comply with a final, binding judgment of the Court to remove prison sentences for defamation in its criminal law. Such a failure to act in a reasonable timeframe is not compatible with Azerbaijan's clear international legal obligations under article 46(1) ECHR to implement that judgment. Moreover, almost 10 years ago, the Venice Commission adopted its Opinion on the Legislation pertaining to the Protection against Defamation of the Republic of Azerbaijan. In particular, the Venice Commission found it "worrying that, in spite of the authorities' repeatedly stated commitment to work towards decriminalisation, defamation is still associated with excessively high criminal sanctions, including imprisonment."<sup>30</sup>

31. In 2021, as part of the Pegasus revelations, it was revealed that at least 180 journalists, including those from Azerbaijan, may have been targeted for surveillance. Peter Omtzigt (Netherlands, EPP), in his introductory memorandum on Pegasus and similar spyware, noted an astounding number of 48 journalists as potential targets in Azerbaijan.<sup>31</sup> Therefore there are suspicions that the Azerbaijani authorities might have used cyber tools to target journalists.

32. Other methods of pressure on the media used in Azerbaijan include SLAPPs (Strategic Lawsuits Against Public Participation), financially crippling lawsuits often filed in another country<sup>32</sup>. One example of such litigation concerns the defamation claims brought in France against Mahammad Mirzali, as mentioned above.

33. In addition to the above practices, the regulatory environment for the media has become more difficult recently with the adoption of draconian laws to control the media and curtail freedom of expression.<sup>33</sup> The Venice Commission has examined the new Law on Media and came to the conclusion that, in the context of

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<sup>26</sup> [Gultakin Hajiyeva released from police, but investigation against her continues](#), 30 November 2022.

<sup>27</sup> [Azerbaijan Detains a Journalist and His Lawyer](#), VOA, 13 September 2022.

<sup>28</sup> [Azerbaijani Journalists Detained, Beaten for Covering Protest](#), *Committee to Protect Journalists*, 15 February 2022.

<sup>29</sup> [MAHMUDOVS AND AGAZADE v. Azerbaijan](#) | Application N°: 35877/04 | Date(s) of Judgment: 18/12/2008.

<sup>30</sup> [Opinion on the Legislation Pertaining to the Protection against Defamation of the Republic of Azerbaijan](#), Adopted by the Venice Commission, at Its 96th Plenary Session, (Venice, 11-12 October 2013).

<sup>31</sup> Pieter Omtzigt (Netherlands, EPP), Introductory Memorandum ([AS/Jur \(2022\) 04](#)) "Pegasus and Similar Spyware and Secret State Surveillance", 8 April 2022.

<sup>32</sup> [Azerbaijan: SLAPPs, Media Freedom and the Prevention of "Open Justice"](#), *The Foreign Policy Centre*, 28 November 2022.

<sup>33</sup> [New Azerbaijan Media Law Increases Restrictions on the Press](#), *Committee to Protect Journalists*, 10 February 2022.

an already extremely confined space for independent journalism and media in Azerbaijan, the Law will have a further “chilling effect”.<sup>34</sup>

34. In addition to the above issues affecting freedom of expression, the wider situation affecting the freedom of the press, human rights defenders and pluralism in Azerbaijan has been the focus of Council of Europe bodies since Azerbaijan’s accession to the Council of Europe in 2001. I have set out some of those key findings below as they help to understand the context within which violence or threats of violence against journalists and human rights defenders can occur.

### 3.1. *Parliamentary Assembly*

35. The Parliamentary Assembly was the first body of the Council of Europe to recognise that the problem of increasing persecution of journalists and restrictions on media freedom in Azerbaijan was systemic, and indeed reports highlighting such concerns, as well as concerns for those operating in the civil society space have persisted on a regular basis since 2002.<sup>35</sup>

36. Some of these Resolutions raised concerns more specifically in relation to violence incidents directed against journalists. In [Resolution 1505 \(2006\)](#) "Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan", the Assembly called on the authorities to promptly investigate the attacks on journalists and prosecute the perpetrators. Such attacks included Fikret Huseynli and Rustem Makayilli who were kidnapped and beaten up; the brutal assault on Bahaddin Haziyevev; and the murder of Elmar Huseynov. Again in 2007, the Assembly urged the authorities to properly investigate attacks and threats against journalists, noting that censorship, prosecutions, intimidation, or even physical threats to journalists still occurred in Azerbaijan ([Resolution 1548 \(2007\)](#) "Progress of the Assembly’s monitoring procedure").

37. In [Resolution 1614 \(2008\)](#) "The functioning of democratic institutions in Azerbaijan", the Assembly expressed great concern at the harassment and intimidation of opposition journalists through defamation court proceedings, imprisonment, physical attacks and threats. It condemned the recurrent attacks against the opposition newspapers, reporters, and staff using arrests, judicial proceedings, and violence, as well as intimidation through financial pressure.

38. In 2014, the Rapporteur on ‘Strengthening the role and protection of human rights defenders in Council of Europe member States’, Mailis Reps (Estonia, ALDE), stated that the situation of human rights defenders in Azerbaijan had dramatically deteriorated since her last visit to Azerbaijan in November 2013.<sup>36</sup> There were instances of fabricated charges leading to long-term imprisonment; violent repression in detention facilities including ill-treatment, torture or death; and threats and physical attacks against human

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<sup>34</sup> [Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law \(DGI\) of the Council of Europe on the Law on Media](#), Adopted by the Venice Commission at Its 131st Plenary Session (Venice, 17-18 June 2022).

<sup>35</sup> [Resolution 1305 \(2002\)](#) "Honouring of obligations and commitments by Azerbaijan", which highlighted ‘cases of interference with freedom of expression, pressure on the independent media and harassment of journalists’ including the unacceptable use of administrative measures to restrict the freedom of the media’. [Resolution 1358 \(2004\)](#) "Functioning of democratic institutions in Azerbaijan" highlighted concerns that the press were self-censoring due to intimidation by the executive. [Resolution 1545 \(2007\)](#) "Honouring of obligations and commitments by Azerbaijan" focussed on the impact of the defamation laws, leading to intimidation and self-censorship of journalists, noting the cases of Nijat Huseynov and Sakit Zahidov, and the closure of newspapers and television channels. [Resolution 1660 \(2009\)](#) "Situation of human rights defenders in Council of Europe member states" noted that human rights defenders in the Caucasus region (including Azerbaijan) faced repression, murder, abduction, arbitrary arrests, and detention. [Resolution 1747 \(2010\)](#) "State of democracy in Europe and the progress of the Assembly’s monitoring procedure" confirmed that journalists were arrested on questionable grounds in Azerbaijan, with persecutions or even physical threats still occurring. [Resolution 1750 \(2010\)](#) "The functioning of democratic institutions in Azerbaijan" condemned the arrests, intimidation, harassment, and physical threats of journalist Eynulla Fatullayev, and civic activists Emin Milli and Adnan Hajizade. It called for decriminalisation of defamation. [Resolution 1917 \(2013\)](#) "The honouring of obligations and commitments by Azerbaijan" expressed alarm at reports from human rights defenders and NGOs about the alleged use of fabricated charges against activists and journalists. In [Resolution 1920 \(2013\)](#) "The state of media freedom in Europe", the Assembly condemned the prosecution, detention, and imprisonment of Internet users for having expressed political criticism of the government in Azerbaijan, and deplored the excessive application of criminal laws on defamation. [Resolution 2095 \(2016\)](#) "Strengthening the protection and role of human rights defenders in Council of Europe member States" expressed concerns about the growing number of reprisals against human rights defenders in a number of Council of Europe member States, including in Azerbaijan.

<sup>36</sup> [Azerbaijan: Rapporteur Expresses Concern at Human Rights Defenders Situation](#), 20 June 2014.

rights defenders and members of their families.<sup>37</sup> Linked to this were systematic hindrances to the enjoyment of related fundamental rights such as the rights to freedom of expression (including intimidation of journalists and bloggers, limited access to information through restrictions on opposition media, provisions on defamation), freedom of assembly (restrictions on the holding of rallies) and freedom of association (restrictive and arbitrary NGO legislation).

39. In [Resolution 2062 \(2015\)](#) "The functioning of democratic institutions in Azerbaijan", the Assembly condemned Azerbaijan's consistent policy of cracking down on human rights and expressed deep concern about the growing number of attacks on independent media and people who support freedom of expression. It called for an end to the "systemic repression" of human rights defenders, the media and those critical of the government, including politically motivated prosecutions. It recommended taking the measures necessary to ensure an independent and impartial review by the judiciary of cases involving journalists and others expressing critical opinions. The Assembly was alarmed by reports concerning the increase in criminal prosecutions against NGO leaders, journalists, lawyers, and others who express critical opinions, based on trumped-up charges, especially Intigam Aliyev, Anar Mammadli, Leyla Yunus, Arif Yunus, Rasul Jafarov, Khadija Ismayilova and Rauf Mirgadirov. The Assembly classified these incidents as "systemic" harassment.

40. In [Recommendation 2085 \(2016\)](#), the Assembly recommended the creation of a platform for the protection of human rights defenders. The Committee of Ministers, in response preferred reliance on the Commissioner for Human Rights for protecting human rights defenders. The Assembly reiterated this idea in [Recommendation 2133 \(2018\)](#).

41. In 2017, in [Resolution 2184 \(2017\)](#) "The functioning of democratic institutions in Azerbaijan" and [Resolution 2185 \(2017\)](#) "Azerbaijan's Chairmanship of the Council of Europe: what follow-up on respect for human rights?", the Assembly remained concerned that human rights defenders in Azerbaijan were being persecuted on a systemic level and called on the authorities to put an end to systemic repression of human rights defenders, the media and those critical of the government, including politically motivated prosecutions.

42. In [Resolution 2225 \(2018\)](#) "Protecting human rights defenders in Council of Europe member States", the Assembly set out some standards, noting that member States should not only refrain from any acts of intimidation or reprisals against human rights defenders but also protect them against attacks or harassment by non-State actors. Human rights defenders should have access to effective domestic remedies with respect to violations of their rights, especially those related to their work. Also, member states should conduct effective investigations into all acts of intimidation or reprisals against human rights defenders, and especially cases of assassinations, physical attacks, and threats. The Assembly noted with concern that over the past few years the number of reprisals against human rights defenders had been on the rise. Many human rights defenders had been subject to judicial, administrative or tax harassment, smear campaigns and criminal investigations launched on dubious charges, often related to alleged terrorist activities, or purportedly concerning national security. Some had been threatened, physically attacked, or arbitrarily arrested, detained, or imprisoned. Others had even been assassinated. As a result, the space for action by human rights defenders was becoming more and more restricted, exposing them to ever greater risks. According to rapporteur Egidijus Vareikis (Lithuania, EPP/CD), the persecution of human rights defenders in Azerbaijan was of a systemic character.<sup>38</sup>

43. The 2019 [Information Note](#) AS/MON (2019) 18 "Honouring of obligations and commitments by Azerbaijan" enumerates recent concerns and threats to freedom of expression and media freedom, including examples of persecution of independent journalists. It also records how such concerns apply equally to NGO activists working in the field of human rights and democracy.

44. In [Resolution 2317\(2020\)](#) "Threats to media freedom and journalists' security in Europe, there are specific references to Azerbaijan and in particular to the "present hostile environment which seriously curtails media freedom", misuse of the criminal law and other pressure on independent journalism. In [Resolution 2322 \(2020\)](#) "Reported cases of political prisoners in Azerbaijan", the Assembly, recalling that the Court had issued a very large number of judgments arising from "arbitrary arrest and detention of opposition politicians,

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<sup>37</sup> [AS/Jur \(2014\) 03](#), 24 January 2014.

<sup>38</sup> Report ([Doc. 14567](#)) 06 June 2018.



civil society activists, human rights defenders and critical journalists”, concluded that “there can no longer be any doubt that Azerbaijan has a problem of political prisoners and that this problem is due to structural and systemic causes”. In [Resolution 2362 \(2021\)](#) “Restrictions on NGO activities in Council of Europe member States”, it noted continued concerns in relation to shrinking civil society space and restrictive legislation in Azerbaijan.

45. As can be seen from the above, which is but a selection of the Assembly Resolutions on this topic, there have been long-running concerns at the health in Azerbaijan of freedom of the press, freedom of expression and the space for civil society to operate. It has also been previously recognised that human rights defenders and journalists have been subjected to numerous forms of persecution and reprisals often for expressing opinions or otherwise exercising their right to freedom of expression. Moreover, even six years ago, the Assembly had already made the links between the repressive actions of the authorities towards journalists and human rights defenders and how such a climate can undermine the safety of journalists and create a climate of violence against those who express divergent views. Whilst I will of course approach the current situation with an open mind, it does seem that the concerns raised in the motion for a resolution are part of a recurrent problem in Azerbaijan requiring a specific focus and perhaps bespoke measures in order to find adapted solutions to the situation in Azerbaijan. I will also aim to work closely with the General Rapporteur on Human Rights Defenders in furthering this work.

### 3.2. Commissioner for Human Rights of the Council of Europe

46. As for the Parliamentary Assembly, successive Commissioners for Human Rights have similarly been alive to concerns relating to respect for freedom of expression, freedom of the press and pluralism in Azerbaijan. Thomas Hammarberg, in 2007 noted reports of instances of violence against journalists, closures of newspapers, a lack of diversity in the electronic media, and imprisonments of journalists on account of their writings.<sup>39</sup> In 2010 and 2011, he reiterated the need to decriminalise defamation and specifically pointed out the systemic character of the persecution of human rights defenders and journalists by unjustified or selective criminal prosecution, threats, harassment, and violence.<sup>40</sup>

47. The subsequent Commissioner for Human Rights, Nils Muižnieks, in 2013 and 2014, regretted the deterioration of the situation with respect to freedom of expression, assembly, and association, with “unacceptable” practices of unjustified selective criminal prosecution of human rights defenders expressing dissenting views, including journalists, bloggers, and activists.<sup>41</sup> He requested the release of all persons who were in detention because of their views, specifically mentioning the cases of Parviz Hashimli, Abdul Abilov, and Omar Mammadov.<sup>42</sup> In public statements, the Commissioner condemned the conduct of Azerbaijani authorities in individual cases, such as the arrest of Rasul Jafarov, the imposition of a travel ban on Emin Huseynov,<sup>43</sup> and the sentencing of Leyla Yunusova and Arif Yunus.<sup>44</sup> In another, high profile case involving the sentencing of journalist Khadija Ismayilova, he made a joint public statement together with the then OSCE Representative on Freedom of the Media, Dunja Mijatović.<sup>45</sup>

48. Both Commissioner for Human Rights Muižnieks and Commissioner for Human Rights Mijatović have issued a number of letters and statements requesting the release of human rights defenders, with individual cases often highlighting systemic problems.<sup>46</sup> Between 2015 and 2018, Commissioners Muižnieks and

<sup>39</sup> [Report Following the Visit to Azerbaijan from 3 to 7 September 2007](#), 20 February 2008.

<sup>40</sup> [Azerbaijan: “Freedom of Expression Must Be Protected as a Matter of Priority” Says Commissioner Hammarberg](#), 5 February 2010. [Observations on the Human Rights Situation in Azerbaijan Freedom of Expression, Freedom of Association, Freedom of Peaceful Assembly](#), 29 September 2011.

<sup>41</sup> [Report Following the Visit to Azerbaijan from 22 to 24 May 2013](#), 6 August 2013; [Country Visit: Azerbaijan. Stop Reprisals against Human Rights Defenders](#), 24 October 2014.

<sup>42</sup> [Observations on the Human Rights Situation in Azerbaijan: An Update on Freedom of Expression, Freedom of Association, Freedom of Assembly, and the Right to Property \(CommDH\(2014\)10\)](#), 23 April 2014.

<sup>43</sup> [Concerns Over The Situation Of Human Rights Defenders In Azerbaijan](#), 7 August 2014.

<sup>44</sup> [Commissioner Appalled by Sentences against Leyla and Arif Yunus](#), 13 August 2015.

<sup>45</sup> [OSCE Representative and Council of Europe Commissioner for Human Rights Condemn Sentencing of Journalist Khadija Ismayilova in Azerbaijan](#), 1 September 2015.

<sup>46</sup> Letter to the Minister of Internal Affairs of Azerbaijan ([CommHR/NM/Jp 037-2017](#)), 9 October 2017; [Statement: Azerbaijan Should Release All Persons Detained Because of Their Views Expressed or Legitimate Civic Activity](#), 17 May 2017; [Statement: Commissioner Calls on the Authorities of Azerbaijan to Drop Charges against Mehman Huseynov](#), 7 January 2019; Letter to the Minister of Internal Affairs of Azerbaijan, Vilayat Eyvazov ([CommHR/DM/Sf 007-2020](#)), 25 February 2020; Letter to the President of Azerbaijan, Ilham Aliyev ([CommHR/DM/Sf 002-2022](#)), 18 January 2022; [Statement “Azerbaijans Authorities Should Immediately Release Human Right Lawyer Elchin Sadykov and Journalist](#)

Mijatović intervened before the Court in the cases of Anar Mammadli, Intigam Aliyev, Leyla Yunusova and Arif Yunusov, Rasul Jafarov, Hilal Mammadov, Khalid Bagirov, Khadija Ismayilova, and Emir Huseynov.<sup>47</sup> They considered that the situation of human rights defenders in Azerbaijan was grave, with these incidents demonstrating a serious and systematic human rights problem as part of a more general crackdown on human rights defenders, which had only intensified over time. Commissioner Mijatović's visit to Azerbaijan in 2019 confirmed the continuation of the troubling pattern of persecution that the Court had already recognised in its judgments.<sup>48</sup>

49. More recently, Commissioner Mijatović continues regularly to raise cases of journalists or human rights defenders. For example, on 13 September 2022, in a statement relating to two individual cases, Commissioner Mijatović expressed concerns about the trial and the detention of Mr Sadykov, a well-known human right defender, who had been defending activists, independent journalists and opposition figures in Azerbaijan, and Mr Zeynalli, an independent journalist who had also been previously subjected to intimidation and judicial harassment for his critical stances.<sup>49</sup>

### 3.3. *European Court of Human Rights*

50. The Court has received many applications from Azerbaijani journalists and human rights defenders alleging violations of their rights because of systemic persecution, such as misuse of criminal law through unfair prosecutions, or a refusal to investigate the complaints where the journalists and human rights defenders are victims.

51. One such group of judgments relates to the excessive criminalisation of defamation by law. As mentioned above, the leading case on this is *Mahmudov and Agazade v Azerbaijan*.<sup>50</sup> Journalists Rovshan Mahmudov and Yashar Agazade were both convicted in 2004 to imprisonment for publishing an allegedly defamatory article depicting a corruption scheme. The journalists were subsequently given an amnesty from serving their prison sentence, however the Court nevertheless considered the criminal sanctions of imprisonment to be disproportionate. As will be seen below, despite numerous efforts to draft a law to address this problem, no such law has yet been introduced to comply with the general measures required by this judgment, whose execution has now been pending for nearly 14 years.

52. Concerns with the defamation legislation are not merely theoretical but have a practical impact on freedom of the press and freedom of expression in Azerbaijan. In 2021, in *Mahmudov and Agazade v Azerbaijan*, the Court found the same type of violation in a recent case involving the same journalists, who were again convicted for publishing other allegedly defamatory articles.<sup>51</sup> In *Fatullayev v Azerbaijan*, Eynulla Fatullayev, an editor of a prominent opposition newspaper, was convicted on two counts of defamation and terrorist threats and sentenced to eight and a half years' imprisonment, along with criminal fines and the confiscation of the newspaper's assets. The Court found that this punishment was not only unjustified but also grossly disproportionate and therefore in breach of the applicant's right to freedom of expression.<sup>52</sup>

53. Another major theme in ECtHR judgments concerns the systemic abuse of power through arbitrary criminal proceedings, the use of detention or other forms of repression to punish political opposition, including journalists and human rights defenders. In *Najafli v Azerbaijan*, Mr Najafli was beaten by police in 2005 while reporting on an unauthorised political demonstration, even though he had announced himself to

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[Avaz Zeynalli and Stop Intimidating and Harassing Civil Society Activists and Independent Media Actors](#)", 13 September 2022.

<sup>47</sup> [CommDH\(2018\)23](#), 28 September 2018; [CommDH\(2016\)42](#), 22 November 2016; , 16 January 2016; [CommDH\(2015\)7](#), 30 March 2015; [CommDH\(2015\)6](#), 16 March 2015; [CommDH\(2015\)10](#), 16 April 2015; [CommDH\(2015\)8](#), 30 March 2015; [CommDH\(2015\)5](#), 19 February 2015.

<sup>48</sup> [Report Following the Visit to Azerbaijan from 8 to 12 July 2019](#), 11 December 2019; [Country Visit "Azerbaijan Should Ease the Pressure on Free Speech, Improve the Situation of Lawyers and Continue to Work towards Better Livelihood Opportunities for IDPs"](#), 12 July 2019.

<sup>49</sup> <https://www.coe.int/en/web/commissioner/-/azerbaijan-s-authorities-should-immediately-release-human-right-lawyer-elchin-sadykov-and-journalist-avaz-zeynalli-and-stop-intimidating-and-harassing>.

<sup>50</sup> *Mahmudov and Agazade v Azerbaijan*, No. 35877/04 (Judgment, 18 December 2008).

<sup>51</sup> *Mahmudov and Agazade v Azerbaijan*, No. 28083/08 (Judgment, 22 July 2021).

<sup>52</sup> *Fatullayev v Azerbaijan*, No. 40984/07 (Judgment, 22 April 2010).

be a reporter. The Court found a breach of Articles 3 and 10 of the Convention.<sup>53</sup> In *Avaz Zeynalov v. Azerbaijan*, the Court found a violation of Article 10 of the Convention on account of the searches and seizures carried out in the home, workplace, and vehicle of Avaz Zeynalov, a journalist accused of receiving a bribe from a member of the Parliament at that time, in return for not publishing compromising information.<sup>54</sup>

54. *Emin Huseynov v. Azerbaijan* relates to the arbitrary detention and ill-treatment by police in 2008 of Emin Huseynov, an independent journalist, for reasons he perceived to be connected with his journalistic activity. The Court found violations of his rights to liberty, prohibition of ill-treatment, and freedom of assembly.<sup>55</sup> Emin Huseynov has subsequently brought another case relating to his deprivation of nationality which left him stateless.<sup>56</sup>

55. *Hilal Mammadov v. Azerbaijan* concerns the treatment in 2012, of a former academic and editor-in-chief of a newspaper, and leader of the Talish minority. He was arrested and beaten by police on bogus charges of drug possession. The Court found violations of his right not to be subjected to ill-treatment and of his right of individual petition under the Convention.<sup>57</sup> It was unable to examine his complaints about the arbitrary detention because of the parallel individual communication to the Working Group on Arbitrary Detentions, which subsequently found violations of Hilal Mammadov's right to liberty in connection with other rights, including freedom of expression.

56. Rasul Jafarov and Natig Jafarov, both prominent human rights and political activists, were arrested in 2014 and 2016 in connection with alleged irregularities in the financial activities of several NGOs. In *Rasul Jafarov v. Azerbaijan* and *Natig Jafarov v. Azerbaijan*, the Court found that their arrest and detention were carried out for reasons other than those prescribed by the Convention, i.e. arbitrarily to hinder their activities as human rights defenders or opposition politicians.<sup>58</sup> In these cases (and the ensuing cases in this list), the Court found that the violations had an arbitrary character rooted in the attitudes of the Azerbaijani authorities, manifested by the misuse of power in violation of Article 18 of the Convention.<sup>59</sup>

57. Intigam Aliyev, a well-known human-rights lawyer and civil-society activist, was arrested in the context of the same events and on the basis of similar charges as Rasul Jafarov. In *Aliyev v. Azerbaijan*, the Court found a pattern of arbitrary arrest and detention of government critics, civil society activists, and human-rights defenders through retaliatory prosecutions and misuse of criminal law in breach of Article 18.<sup>60</sup> In *Hajibeyli and Aliyev v. Azerbaijan*, the Court found a violation of Articles 10 and 34. Intigam Aliyev and another human rights lawyer, Annagi Hajibeyli, were refused admission to the Bar because of the views that they had expressed about the state of the legal profession in Azerbaijan.<sup>61</sup> In *Bagirov v. Azerbaijan*, the Court found a violation of Articles 10 and 8 when Khalid Bagirov, a lawyer, was suspended for public criticism of police brutality and later disbarred for disrespectful remarks about a judge made in courtroom when representing Ilgar Mammadov.<sup>62</sup>

58. In the cases of *Yunusova and Yunusov v. Azerbaijan* and *Yunusova and Yunusov v. Azerbaijan (No 2)*, Arif Yunusov, a human rights activist, was arrested in 2014, beaten by a prison guard and his cellmate, refused medical assistance, and kept in inhumane conditions of detention. His wife, Leyla Yunusova, a researcher, was arrested by the Azerbaijani security service under the charges of high treason and kept in inhumane conditions of detention. Both were hindered by the government from sustaining their applications before the Court, in breach of the right of individual petition.<sup>63</sup> Later, the Court found that their detention was applied for the purpose of silencing and punishing them for their NGO activities.<sup>64</sup>

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<sup>53</sup> *Najafli v. Azerbaijan*, No. 2594/07 (Judgment, 2 October 2012).

<sup>54</sup> *Avaz Zeynalov v. Azerbaijan*, No. 37816/12, 25260/14 (Judgment, 22 April 2021).

<sup>55</sup> *Emin Huseynov v. Azerbaijan*, No. 59135/09 (Judgment, 7 May 2015).

<sup>56</sup> *Huseynov v. Azerbaijan* (communicated), No. 1/16 (16 April 2018).

<sup>57</sup> *Hilal Mammadov v. Azerbaijan*, No. 81553/12 (Judgment, 4 February 2016).

<sup>58</sup> *Rasul Jafarov v. Azerbaijan*, No. 69981/14 (Judgment, 17 March 2016); *Natig Jafarov v. Azerbaijan*, No. 64581/16 (Judgment, 7 November 2019).

<sup>59</sup> "...That is especially appropriate in this case, since the preparatory works to the Convention clearly show that Article 18 was meant to be its version of the administrative-law notion of misuse of power." *Merabishvili v. Georgia*, No. 72508/13 (Judgment, 28 November 2017).

<sup>60</sup> *Aliyev v. Azerbaijan*, No. 68762/14, 71200/14 (Judgment, 20 September 2018).

<sup>61</sup> [Hajibeyli and Aliyev v. Azerbaijan](#), No. 6477/08, 10414/08 (Judgment, 19 April 2018).

<sup>62</sup> *Bagirov v. Azerbaijan*, No. 81024/12, 28198/15 (Judgment, 25 June 2020).

<sup>63</sup> *Yunusova and Yunusov v. Azerbaijan*, No. 59620/14 (Judgment, 2 June 2016).

<sup>64</sup> *Yunusova and Yunusov v. Azerbaijan (no. 2)*, No. 68817/14 (Judgment, 16 July 2020).

59. *Mammadli v Azerbaijan* relates to the unlawful detention of Anar Mammadli in 2013, with the purpose of punishing him for criticising the Government, silencing him as an election observer, NGO activist and human rights defender. His criminal proceedings were instituted in connection with alleged irregularities in the financial activities of an NGO, where he was the president, only a few days after the issue of the NGO's preliminary report concerning the results of the last presidential elections.<sup>65</sup>

60. The case of *Ismayilova v Azerbaijan* illustrates another, more elaborate method of persecuting journalists other than arbitrary detention and trumped-up criminal accusations. Khadija Ismayilova, a well-known investigative journalist, published articles alleging corruption involving the president and his family. In 2012, after threats demanding her to cease her investigations, hidden cameras were installed in her flat, and intimate videos of her were disseminated on the Internet. Following this, in 2014, she was arrested based on a false claim and then detained on the same accusations as previous human rights defenders, charged to a large extent with the "alleged illegal activities of some NGOs".<sup>66</sup>

61. In a 2017 judgment, *Huseynova v Azerbaijan*, relating to the adequacy of investigations into the murder in 2005 of prominent journalist Elmar Huseynov, the Court found a procedural violation of Article 2 (right to life) and considered "that the applicant's allegations that the killing of her husband was related to his activities as a journalist were not at all implausible. The magazine that he had operated independently had a reputation of being strongly critical of the Government and the opposition; its publication or dissemination had been interfered with by the authorities; and over thirty civil and criminal proceedings had been brought against him. It was apparent that his murder could have a "chilling effect" on the work of other journalists in the country. In such circumstances, there was every reason for the investigating authorities to explore with particular diligence whether the murder, which appears to have been carefully planned, could be linked to Elmar Huseynov's journalistic activities, or to come up with another plausible explanation for the motives behind the murder."<sup>67</sup>

62. Through individual judgments of the Court, one can therefore detect a pattern of ongoing violations of the Convention in Azerbaijan regarding the rights of human rights defenders and journalists. Whilst the need to exhaust domestic remedies and the backlog of the ECtHR means that these cases tend to relate to facts from some years ago, these findings are nonetheless crucial in identifying the scale and severity of the issues which seem to continue to beset human rights defenders and journalists in Azerbaijan.

#### 3.4. Committee of Ministers' role in supervising the execution of ECtHR judgments

63. The Committee of Ministers has, for 14 years, been supervising the execution of *Mahmudov and Agazade v Azerbaijan*, concerning violations of the right to freedom of expression due, in particular, to criminal sanctions for defamation.<sup>68</sup> The Committee of Ministers has adopted four interim resolutions and many decisions. It has called on Azerbaijan to implement three sets of measures: first, to remove prison sentences for defamation and insult; second, to prevent the arbitrary application of other criminal provisions (such as terrorism, incitement to violence, racial or religious hatred crimes, etc.); and third, to prevent the Public Prosecutor's Service and the executive authorities from making public statements about the innocence of the accused journalists and human rights defenders. Little to no tangible progress has been made in addressing these issues. Information is awaited on possible measures to amend the legislation on defamation to remove lengthy prison sentences.<sup>69</sup>

64. For several years the Committee of Ministers has also been supervising the execution of the *Mammadli* group (formerly the *Ilgar Mammadov* group), concerning the problem of misusing criminal law with the intent to silence human rights defenders and journalists.<sup>70</sup> The *Mammadli* group is complex and involves

<sup>65</sup> *Mammadli v. Azerbaijan*, No. 47145/14 (Judgment, 19 April 2018).

<sup>66</sup> *Khadija Ismayilova v. Azerbaijan*, Nos. 65286/13 and 57270/14 (Judgment, 10 January 2019); *Khadija Ismayilova v. Azerbaijan* (no. 2), No. 30778/15 (Judgment, 27 February 2020).

<sup>67</sup> *Huseynova v. Azerbaijan*, No. 10653/10 (Judgment, 13 April 2017).

<sup>68</sup> [MAHMUDOV AND AGAZADE v. Azerbaijan](#) | Application N°: 35877/04 | Date(s) of Judgment: 18/12/2008 | Judgment(s) became final: 18/03/2009 | Latest Decision: CM/Del/Dec(2022)1443/H46-4.

<sup>69</sup> [1443rd meeting \(DH\), September 2022 - H46-4 Mahmudov and Agazade group v. Azerbaijan \(Application No. 35877/04\) \[CM/Del/Dec\(2022\)1443/H46-4\]](#).

<sup>70</sup> [MAMMADLI v. Azerbaijan](#) | Application N°: 47145/14 | Date(s) of Judgment: 19/04/2018 | Judgment(s) became final: 19/07/2018 | Latest Decision: CM/Del/Dec(2022)1451/H46-4.

a number of cases many of which are set out above, and which are considered particular high priority given the finding of violations of Article 18 ECHR which can indicate politically motivated violations of human rights. As part of the implementation of these judgments, general measures are required aimed at preventing the authorities from misusing criminal law or other coercive measures against government critics, journalists and human rights defenders. This includes improvements to the independence of the judiciary and the prosecuting authorities.<sup>71</sup> In its last interim resolution, the Committee of Ministers urged the Azerbaijani authorities to put an immediate end to the continuous violations of the those in the group who had still not received restitutio in integrum through a quashing of their conviction by the Supreme Court.<sup>72</sup> It stressed that quashing the convictions of these human rights defenders remained a key general measure that would establish a solid and consistent national judicial practice against retaliatory and abusive detentions and prosecutions.<sup>73</sup>

65. In addition to its work supervising the execution of judgments, the Committee of Ministers also adopted, in February 2022, the Council of Europe's Action Plan for Azerbaijan for 2022-2025.<sup>74</sup> This Action Plan contains a number of actions for enhancing the effectiveness of the Convention system at the national level, including by ensuring freedom of expression and the media, and freedom of assembly.

66. The Committee of Ministers has, additionally, adopted [Recommendation CM/Rec\(2016\)4](#) on the "Protection of journalism and safety of journalists and other media actors", which is a landmark standard setting document on the topic of the protection of journalists. This Recommendation provides specific guidelines to member States in the areas of prevention and protection of journalists. Related information concerning the safety of journalists is also very informative.<sup>75</sup>

### 3.5. Secretary General

67. Successive Secretary Generals have highlighted concerns at attacks on journalists and human rights defenders in Azerbaijan and suggested solutions. In 2005, then Secretary General Terry Davis strongly condemned the murder of Elmar Huseynov, calling it an attack on freedom of expression in Azerbaijan.<sup>76</sup> In 2009 Secretary General Thorbjørn Jagland, expressed concerns at the very harsh sentences imposed on Adnan Hadjizadeh and Emin Mili, considering that this sequence of events would have an inevitable chilling effect on freedom of expression in Azerbaijan.<sup>77</sup> Later, following another attack against journalists perpetrated by security staff of a state-owned company, SG Jagland called for better protection of journalists, encouraging the authorities to take up the Council of Europe's offer of assistance and advice, as well as to critically review the authorities' attitudes towards media, civil society, and public criticism in general.<sup>78</sup>

68. More recently, Secretary General Marija Pejčinović Burić made the issue of protecting journalists one of the priorities of her mandate. She issued Information documents on "Safety of journalists"<sup>79</sup> and "Current trends in threats to Freedom of Expression: interference with the coverage of public events, broadcasting bans and strategic lawsuits",<sup>80</sup> drawing conclusions and devising further steps to improve the situation.

### 3.6. Council of Europe Platform to promote the protection of journalism and the safety of journalists

69. The Council of Europe Platform to promote the protection of journalism and the safety of journalists is a vital tool to help react swiftly and to highlight risks to the safety of journalists. Recent alerts on the platform relating to Azerbaijan concern the adoption of the new law on media freedom;<sup>81</sup> and the use of Pegasus spyware on Azerbaijani journalists including Khadija Ismayilova, Sevinc Vaqifqizi and Jasur Sumerinli.<sup>82</sup>

<sup>71</sup> [CM/ResDH\(2021\)426](#).

<sup>72</sup> [CM/ResDH\(2022\)251 \(Interim Resolution\)](#).

<sup>73</sup> [1451st meeting \(DH\), December 2022 - H46-4 Mammadli group v. Azerbaijan \(Application No. 47145/14\) \[CM/Del/Dec\(2022\)1451/H46-4\]](#).

<sup>74</sup> Council of Europe Action Plan for Azerbaijan 2022-2025 ([CM\(2022\)21-Final](#)), 16 February 2022.

<sup>75</sup> [Safety of journalists](#)

<sup>76</sup> [Murder of Journalist in Azerbaijan Is an Attack on Freedom of Expression](#), 3 March 2005.

<sup>77</sup> [Freedom of Expression under Pressure in Azerbaijan](#), 12 November 2009.

<sup>78</sup> [Secretary General Calls for Better Protection of Journalists in Azerbaijan](#), 20 April 2012.

<sup>79</sup> Information Document ([SG/Inf\(2021\)2](#)) Safety of Journalists, 4 February 2021.

<sup>80</sup> Information Document ([SG/Inf\(2021\)36](#)) Current Trends in Threats to Freedom of Expression: Interference with the Coverage of Public Events, Broadcasting Bans and Strategic Lawsuits, 22 November 2021.

<sup>81</sup> [Platform to promote the protection of journalism and safety of journalists \(coe.int\)](#).

<sup>82</sup> [Platform to promote the protection of journalism and safety of journalists \(coe.int\)](#).

### 3.7. Other international organisations

70. The OSCE Representative on Freedom of the Media plays an important role in this field. The current Human Rights Commissioner Dunja Mijatović, in her time as OSCE Representative on Freedom of the Media, cooperated with then Human Rights Commissioner Nils Muižnieks to raise issues for mutual concern, such as the case of Khadija Ismaylova (as set out above).<sup>83</sup> The current OSCE Representative, Teresa Ribeiro, recently published a legal analysis of Azerbaijani media law with recommendations to authorities.<sup>84</sup> Previous OSCE Representatives were also very active in identifying the causes of the problem<sup>85</sup> and in raising concerns with the Azerbaijani authorities in relation to persecuted journalists and human rights defenders.<sup>86</sup> Reports and guidance published by the OSCE on the topic of freedom of expression are also informative.<sup>87</sup>

71. The UN special procedures within the Human Rights Council also noted the systemic character of the problems relating to respect for freedom of expression and the protection of human rights defenders in Azerbaijan. In 2014, the experts condemned the growing tendency to prosecute prominent human rights defenders in Azerbaijan, and urged the Government to show leadership and reverse the trend of repression, criminalisation and prosecution of human rights work in the country.<sup>88</sup> In 2015, experts condemned the custodial sentences of prominent Azerbaijani human rights activists as manifestly politically motivated and representative of the continuing repression of independent civil society in Azerbaijan.<sup>89</sup> In 2017, the Special Rapporteur on the situation of human rights defenders in his report concluded that human rights defenders were increasingly at risk in Azerbaijan and did not feel safe because of increasingly restrictive legislation, the criminalisation of their actions, and a lack of access to justice.<sup>90</sup>

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<sup>83</sup> [OSCE Representative and Council of Europe Commissioner for Human Rights Condemn Sentencing of Journalist Khadija Ismaylova in Azerbaijan](#), 1 September 2015.

<sup>84</sup> [OSCE Media Freedom Representative Publishes Legal Analysis of Azerbaijani Media Law, with Recommendations to Authorities](#), 24 February 2022.

<sup>85</sup> [Harassment and Violence against Journalists in Azerbaijan Is Deplorable, Says OSCE Media Freedom Representative, Calling for Swift Investigation](#), 12 February 2020; [OSCE Representative Désir Warns about Negative Implications for Media Freedom Following Judicial Ruling against Journalist in Azerbaijan](#), 22 February 2019; [OSCE Media Freedom Representative Calls on Azerbaijan to Revise State Aid System for Press and Allow for Environment Favourable to Media Pluralism](#), 20 February 2019; [OSCE Media Freedom Representative Seriously Concerned about Blocking of Internet in Azerbaijan, Urges Reform to Laws and Regulations Affecting Media](#), 10 August 2018; [OSCE Representative Reiterates Call on Authorities in Azerbaijan to Decriminalize Defamation](#), 17 November 2016; [OSCE Media Freedom Representative Calls on Azerbaijan Authorities to End Restrictive Measures Detrimental to Journalists Freedom and Safety](#), 18 December 2017.

<sup>86</sup> [Another Prison Sentence Handed down to a Journalist in Azerbaijan Worrying, OSCE Representative Says](#), 29 December 2015; [In a Letter to Foreign Minister of Azerbaijan OSCE Representative Calls for Release of Blogger Mehman Huseynov and Dropping of Criminal Charges against Him](#), 9 January 2019; [OSCE Media Freedom Representative Désir Condemns Jailing of Investigative Journalist Afgan Mukhtarli in Azerbaijan](#), 12 January 2018; [OSCE Media Freedom Representative Welcomes Release of Journalist Aziz Orudjev in Azerbaijan](#), 6 April 2018; [OSCE Representative Marks 5th Anniversary of Journalists Murder in Azerbaijan: Reiterates Call to End Impunity](#), 23 November 2016; [OSCE Representative on Freedom of the Media Calls for Immediate Release of Journalist Mehman Aliyev in Azerbaijan](#), 27 August 2017; [OSCE Representative Saddened by Tragic Death of Azerbaijani Journalists Ibrahimov and Abishov](#), 4 June 2021.

<sup>87</sup> OSCE and ODIHR, [Human Rights Defenders in the OSCE Region. Our Collective Conscience](#), 2007; [Human Rights Defenders in the OSCE Region: Challenges and Good Practices](#), 2008; [Guidelines on the Protection of Human Rights Defenders](#), 2014; [Joint Conference by the Swiss OSCE Chairmanship and the OSCE Office for Democratic Institutions and Human Rights \(ODIHR\) with the Support of the Incoming Serbian OSCE Chairmanship](#). The OSCE and Human Rights Defenders: The Budapest Document 20 Years On. 10-11 June 2014 (2014); OSCE, ODIHR, and European Parliament, [Networking and Advocacy Strategies for Human Rights Defenders from Central Asia and South Caucasus](#), 19 March 2018; [The Situation of Human Rights Defenders in Selected OSCE Participating States. The Final Report of the First Assessment Cycle \(2017-2019\)](#), 2021.

<sup>88</sup> [Persecution of Rights Activists Must Stop – UN Experts Call on the Government of Azerbaijan](#), 19 August 2014.

<sup>89</sup> [“Deeply Distressing” – UN Experts Condemn Latest Prison Sentencing of Rights Defenders in Azerbaijan](#), 20 August 2015.

<sup>90</sup> UNGA, Report of the Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Azerbaijan from 14 to 22 September 2016 ([A/HRC/34/52/Add.3](#)), 20 February 2017. Azerbaijan: [UN Experts Visit to Assess the Situation of Human Rights Defenders](#), 9 September 2016; [End of Mission Statement by Special Rapporteur on the](#)

72. The Working Group on Arbitrary Detention has also found violations of the rights of human rights defenders through the use of deprivation of liberty, often in relation for the exercise of freedom of expression, including in the cases of Hilal Mammadov,<sup>91</sup> Rashad Ramazanov,<sup>92</sup> and Huseyn Abdullayev.<sup>93</sup>

#### 4. Preliminary conclusions and proposals for further work

73. The motion for a resolution refers to two recent awful cases of violence against journalists and human rights defenders in Azerbaijan, and sadly there are other recent cases to add to that list. Whilst individual cases of killings or violence might be small in number, this seems to form part of a wider picture of threats and repression against journalists and civil society in Azerbaijan.

74. This wider pattern of repression of journalists and human rights defenders is not new in Azerbaijan and has been documented in the work of the Council of Europe bodies, including the Platform to promote the protection of journalism and the safety of journalists; the European Court of Human Rights; the Assembly; the Commissioner for Human Rights; and the Committee of Ministers – as well as by other bodies such as the OSCE Representative on Freedom of the Media and the UN Special procedures within the Human Rights Council.

75. As my preliminary conclusion, I am minded to consider that the sad cases of threats to the safety and life of journalists and human rights defenders in Azerbaijan are linked to a culture of intolerance and repression of critical voices more generally in Azerbaijan. Addressing these issues is thus linked ultimately to strengthened democratic institutions and values within Azerbaijani society and public bodies, including a better understanding of the crucial and valued role that investigative journalists and human rights defenders play in a thriving healthy society. More specifically, it is also vital to ensure that thorough, timely police investigations take place to investigate, and where appropriate prosecute, any instances of violence or threats against journalists or human rights defenders to ensure that no culture of impunity is permitted. This requires assiduous action, in particular, on the part of the prosecutor's office to ensure that all appropriate action is taken in response to violence or threats of violence against journalists. As is clear from previous Council of Europe work on this topic, these challenges within Azerbaijani society and with the authorities have been prevalent for some time and therefore it is perhaps time for some fresh thinking and action to tackle these issues.

76. As part of this important work, I intend to hold a hearing before the committee, to hear from those with experience of being human rights defenders and journalists in Azerbaijan, seeking to understand their experience and what best might be done to move away from a climate in which such attacks are considered acceptable. I will also write to the Azerbaijani authorities to seek an up-to-date account of actions taken both to investigate and take criminal action against those who threaten the safety of journalists and human rights defenders – as well as what actions they are taking to create a culture and climate in which pluralism and freedom of expression are encouraged. I would also like to conduct a fact-finding visit in Azerbaijan to hold talks with the authorities, as well as with journalists and human rights defenders. Finally, I propose that this introductory memorandum be declassified immediately after the committee meeting.

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[Situation of Human Rights Defenders](#), 22 September 2016; [UN Human Rights Expert Calls on Azerbaijan to Rethink Punitive Approach to Civil Society](#), 22 September 2016.

<sup>91</sup> *Opinion concerning Hilal Mammadov (Azerbaijan)*, [No. 59/2013](#) (Working Group on Arbitrary Detention 22 November 2013). The Working Group considered Hilal Mammadov was arbitrarily detained in retaliation for the exercise of his freedom of expression.

<sup>92</sup> *Opinion concerning Rashad Ramazanov (Azerbaijan)*, No. 12/2018 (Working Group on Arbitrary Detention 19 April 2018).

<sup>93</sup> *Opinion concerning Huseyn Abdullayev (Azerbaijan and Turkey)*, [No. 48/2020](#) (Working Group on Arbitrary Detention 26 August 2020).