

Institute for Reporters' Freedom and Safety

Azerbaijan and the European Union: A Policy Dilemma



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www.irfs.org

September 2013

Acronyms

| | |
|---------------|---|
| AP | – Action Plan |
| AZN | – Azerbaijan New Manat |
| AZTV | – Azerbaijan Television and Radio Broadcasting Closed Joint-Stock Company |
| BBC | – British Broadcasting Corporation |
| CETS | – Council of Europe Treaty Series |
| CIS | – Commonwealth of Independent States |
| CoE | – Council of Europe |
| EaP | – Eastern Partnership |
| ECHR | – European Convention on Human Rights |
| ENP | – European Neighborhood Policy |
| EU | – European Union |
| FM | – frequency modulation |
| ICCPR | – International Covenant on Civil and Political Rights |
| MEP | – Member of the European Parliament |
| MoU | – Memorandum of Understanding |
| NGO | – non-governmental organization |
| NTRC | – National Television and Radio Council |
| OECD | – Organisation for Economic Co-operation and Development |
| OSCE | – Organization for Security and Co-operation in Europe |
| PCA | – Partnership and Cooperation Agreement |
| RFE/RL | – Radio Free Europe/Radio Liberty |
| TACIS | – Technical Assistance for the Commonwealth of Independent States |
| UDHR | – Universal Declaration of Human Rights |
| UN | – United Nations |
| UNCAC | – United Nations Convention Against Corruption |

Acknowledgements

This report is a publication of the Institute for Reporters' Freedom and Safety (IRFS). The report was written by Gulnara Akhundova, program manager for International Media Support (IMS), based on research she conducted with the Institute for Reporters' Freedom and Safety (IRFS) researchers Gunay Ismayilova and Parviz Azizov, and IRFS CEO and chairman Emin Huseynov. It was edited by human rights consultant Rebecca Vincent. An edited version of the content of this report has also been published as part of a broader IRFS report examining Azerbaijan's implementation of its commitments with various human rights bodies.

This report has been published thanks to generous support from the International Media Support (IMS).



Summary

Over the past 10 years, Azerbaijan has been developing an increasingly close relationship with the European Union (EU), with a particular focus on energy cooperation. As stated on the website of the EU Delegation to Azerbaijan,¹ the EU is seeking “an increasingly close relationship with Azerbaijan, going beyond cooperation, toward gradual economic integration and a deepening of political cooperation.”

Although the goal of joining the EU has never been a top priority for the Aliyev regime, energy and economic cooperation with the EU have consistently been on the agenda, under the principle of “equal partnership.”

Both Ilham Aliyev and his father, late former President Heydar Aliyev, declared their commitment to European values, but in reality, prioritized the need to consolidate power domestically, even at the expense of tarnishing their democratic credentials and of jeopardizing their relations with the West. While building the façade of democracy in Azerbaijan, both presidents tried to use the West as a counterbalance against excessive Russian influence – a strategy that gave them leverage to bargain with the West over human rights violations at home.

Continuing EU-Azerbaijan cooperation on energy security is doubtless at the top of the agenda. The Southern Gas Corridor is a very important issue, not only for Azerbaijan, but also for the whole region. But Azerbaijan’s deteriorating human rights situation is of equal and immediate concern.

Azerbaijan has been in a downward spiral when it comes to democracy and human rights for many years. Since Azerbaijan committed itself to a number of reforms in a jointly signed Action Plan in 2006,² the rights to freedom of expression, assembly and association have been dramatically curtailed, despite the fact that these rights are explicitly guaranteed by the Azerbaijani Constitution and international human rights treaties to which Azerbaijan is party.

The expansion of energy cooperation between Azerbaijan and the EU has resulted in a shrinking space for dissent. There is an endless list of prominent government critics, journalists, opposition voices, watchdogs and ordinary individual protesters whose fundamental rights have been restricted and brutally violated since Azerbaijan signed the EU/Azerbaijan Action Plan in 2006.

There have been numerous well-documented cases of human rights violations, particularly in relation to opposition parties, human rights defenders, independent media and youth activists.

¹ See the website of the EU Delegation to Azerbaijan: <http://bit.ly/15rKlgZ>

² The EU/ Azerbaijan Action plan is available at <http://bit.ly/14TCKE9>



Oil pump in Baku. Photo: Wikipedia

The run-up to the October presidential election has been marked by a sharp rise in policies designed to muzzle the political opposition and civil society activism. The incumbent president enjoys full control of the legislature, the media, and the judiciary in carrying out these troubling initiatives. The ambition is simple: to eliminate independent NGOs, media, and any other groups or individuals that deal with political or public policy matters.

In its democracy-promotion strategy for Azerbaijan, the EU acted more as a “soft power” with a strategy based around dialogue, cooperation and education. Today, a more tougher and more nuanced approach is needed for the EU both to improve its political influence in Azerbaijan, and to address the country’s deteriorating human rights record.

Introduction

"Of course, Azerbaijan is our partner. I truly believe that an open discussion involving all possible means is the best way to resolve the issues. Of course, it is necessary to support all democratic reforms. I personally believe, this is my personal opinion, that President Aliyev as the head of sovereign Azerbaijan is very committed to the modernization of the country. He pays special attention to the image and credibility of this country."

- European Commission President Jose Manuel Barroso³

"I want to thank you personally, Mr. President, and your Commission for the sustained support you have given to Azerbaijan in issues of democratic development, protection of human rights and political reforms. Your suggestions and advice, as well as the contacts between us, are extremely important. They contribute to changes in Azerbaijan."

- President of the Republic of Azerbaijan Ilham Aliyev⁴

Relations between Azerbaijan and the EU date back to the early 1990's, when support from the European Commission was extended to the Commonwealth of Independent States (CIS) countries under the TACIS program.⁵ A Partnership and Cooperation Agreement entered into force in 1999 and in 2003, the EU engaged further with Azerbaijan through its European Neighborhood Policy.⁶ In May 2009, relations were further strengthened when Azerbaijan joined the Eastern Partnership.⁷

In the energy sector, Azerbaijan is a key strategic partner for the EU, both as a producer and transit country. As explicitly stated in the Memorandum of Understanding (MoU) aimed at establishing a partnership on energy between Azerbaijan and the EU, signed in Brussels on 7 November 2006, "The energy sector remains one of the important elements in the EU-Azerbaijan bilateral relations."⁸ There is no mention of human rights in the current MoU.

³ Joint press conference of President of the Republic of Azerbaijan Ilham Aliyev and European Commission President Jose Manuel Barroso, Brussels, 21 June 2013, <http://bit.ly/18dRj5s>

⁴ Ibid

⁵ Tacis program (2000-2006), <http://bit.ly/1dcvXe2>

⁶ See more at http://eeas.europa.eu/enp/index_en.htm

⁷ See more at <http://bit.ly/17Wcb52>

⁸ MoU on Strategic Partnership between Azerbaijan and the EU http://ec.europa.eu/energy/international/doc/mou_azerbaijan_en.pdf

The principal objective of cooperation between the EU and Azerbaijan is to support the country's reform agenda and to develop an increasingly close relationship, principally within the framework of the policy objectives defined in the Partnership and Cooperation Agreement (PCA) of June 1999⁹ and the EU-Azerbaijan ENP Action Plan of 14 November 2006.¹⁰ The latter sets out the priority areas for cooperation, including strengthening democracy, and the protection of human rights, fundamental freedoms, and the rule of law.

According to the EU Neighborhood Barometer,¹¹ a European Commission-funded survey, Azerbaijanis largely felt that the current state of relations between Azerbaijan and the EU was sufficient. Most of those asked wanted a greater EU role in democracy (59%) and human rights (51%), with smaller percentages looking for a greater role in economic development (48%) and trade (47%).

According to "Towards a Stronger Partnership,"¹² an annual "neighborhood package" of the European Commission which examines the progress achieved of each of European Union neighbors in implementing the reforms agreed with the EU, Azerbaijan "addressed only a few of the key recommendations." The report noted Azerbaijan's unwillingness to discuss the issue of political prisoners, stated that journalists and civil society activists faced "harassment," said that legislation on free speech and elections fell short of international standards, and also said that the judiciary was not independent.

Economic prosperity and relative stability in Azerbaijan – the clearly dominant factors in EU decision-making on Azerbaijan – have failed to address Azerbaijan's deteriorating human rights record and guarantee fundamental freedoms for its citizens. Instead of implementing the promised reforms, the Aliyev regime has further tightened its authoritarian control of public life by adopting a series of draconian laws and stepping up measures to harass and intimidate those who dare to voice critical opinions.

This report addresses the role of the EU in promoting democracy in Azerbaijan, with a particular focus on the challenge of addressing the competing issues of energy resources and human rights in an authoritarian context. The report examines the status of implementation of EU commitments as laid out in the Partnership and Co-operation Agreement (PCA), and the ENP action plan. This, in turn, provides insights into how the EU could play a greater role in promoting democratic practices and human rights in Azerbaijan.

⁹ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part. http://eeas.europa.eu/delegations/azerbaijan/documents/eu_azerbaijan/eu-az_pca_full_text.pdf

¹⁰ Summary of EU-Azerbaijan relations <http://bit.ly/163TQi2>

¹¹ The EU Neighborhood Barometer – an opinion polling and media monitoring device which is part of the EU-funded Regional Communication Program – aims at assessing knowledge and perception of the EU Neighborhood Policy and its cooperation activities and programs. <http://eastbook.eu/en/2013/05/country-en/poland-en/enpi-barometer-taking-the-eu-pulse-in-the-eastern-neighbourhood/>

¹² "European Neighborhood Policy: Working Towards a Stronger Partnership," the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, 20 March 2013 http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_comm_conjoint_en.pdf



Recommendations

Recommendations to the European Union:

If the European Union (EU) is a community of values, then its global duty should be to focus on promoting human rights and fundamental freedoms.

An energy security partnership between the EU and Azerbaijan is valuable and productive, but it should be rooted in mutual respect for human rights. When entering a Memorandum of Understanding (MoU) or even a legal agreement with Azerbaijan on energy cooperation, the EU should include human rights reforms as an explicit requirement for cooperation.

The revolutions in the Arab and Middle Eastern states, many of which are energy and resource rich, demonstrated the illusory nature of stability. If the security of energy-rich countries is important to the EU, then it is necessary to build security from the bottom up, and that means starting with respect for basic human rights.

In authoritarian countries, human rights issues are rarely resolved domestically. The three resolutions of the European Parliament on Azerbaijan's human rights record, as well numerous statements from EU and EC officials, have addressed some of the human rights issues in the country. However, these resolutions and statements have not been enough. The need to protect and support human rights in Azerbaijan must be voiced by the highest-level EU officials in their negotiations with the government of Azerbaijan.

For instance, in negotiating the Association Agreement,¹³ the EU should stay true to its conditionality commitment and impose concrete benchmarks for Azerbaijan in exchange for greater political and economic integration. Any framework for advanced relations between the EU and Azerbaijan should include a strong human rights component. This approach perfectly aligns with EU policy, and is consistent with the 2012 EU Strategic Framework on Human Rights and Democracy,¹⁴ adopted by EU foreign ministers and endorsed by EU heads of government and state in 2012.

Brussels should act to improve its political influence in Azerbaijan by building stronger human rights and democratization initiatives designed to improve Azerbaijan's human rights record – at both the national and international level. The EU should act to help build and further strengthen institutions that are capable of influencing both citizens and policymakers in the long term. The

¹³ Association Agreements are international agreements that the European Community / European Union has concluded with third countries with the aim of setting up an all-embracing framework to conduct bilateral relations. See more: <http://eeas.europa.eu/association/>

¹⁴ 2012 EU Strategic Framework on Human Rights and Democracy, <http://bit.ly/KXgi8R>

EU should also support the development of independent media outlets with the intention of promoting free expression in the country.

In summary, Brussels should impose clear benchmarks for improvements on human rights violations if the EU is to succeed in persuading Baku to respect its human rights commitments.

Recommendations to the Government of Azerbaijan:

One of the challenges for Azerbaijan's foreign affairs and investment policy remains a persistent image and credibility gap, which emerged out of the country's failure to live up to its international commitments. Many analysts believe there is lack of consensus within the ruling elite, and that the failure to implement those commitments is largely the result of uncertainty about the real preferences and intentions of President Ilham Aliyev. Azerbaijan can bridge its credibility gap only by introducing long-awaited reforms in the justice sector and in the field of freedoms of expression, assembly and association.

Both today's needs and the long-term interests of the Azerbaijani people are not best served by the human rights violations that are undermining Azerbaijan's democratic development and long-term stability. The Azerbaijani government must allow space for peaceful protest, critical opinion and opposition, and end all forms of harassment and suppression of civil society and independent media. It must free all political prisoners and fully respect its obligations with regard to fundamental freedoms under international law.

Chapter One: Partnership framework

The EU-Azerbaijan Partnership and Cooperation Agreement

The EU-Azerbaijan Partnership and Cooperation Agreement (PCA)¹⁵ entered into force in 1999, with the goal of promoting respect for democracy, the rule of law and human rights, as well as market economy reforms, trade liberalization and cooperation in a wide number of sectors. The PCA is the legal framework for the Azerbaijan- EU relationship.

Title I, General Provisions, Article II of the agreement¹⁶ states that “respect for democracy, principles of international law and human rights as defined in particular in the United Nations Charter,¹⁷ the Helsinki Final Act¹⁸ and the Charter of Paris for a New Europe,”¹⁹ inter alia, “constitute essential elements of partnership” with Azerbaijan.

According to Article 17 of the Agreement,²⁰ Azerbaijan shall cooperate with the EU “on all questions relevant to the establishment or reinforcement of democratic institutions, including those required in order to strengthen the rule of law, and the protection of human rights and fundamental freedoms according to international law and OSCE principles.”

The EU and Azerbaijan are currently negotiating an Association Agreement to succeed the PCA. This Association Agreement will significantly deepen Azerbaijan’s political association and economic integration with the EU.

Eastern Partnership

The Eastern Partnership (EaP) was launched in 2009 in Prague. It is an initiative to strengthen relations between the EU and six partner countries: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, and Ukraine. The EaP seeks to bring its partners closer to the EU and promote stability, good governance and economic development. This initiative is based on shared values such as democracy, the rule of law, respect for human rights and basic freedoms, market economy and sustainable development.

¹⁵ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part. http://eeas.europa.eu/delegations/azerbaijan/documents/eu_azerbaijan/eu-az_pca_full_text.pdf

¹⁶ Ibid

¹⁷ Charter of the United Nations, <http://bit.ly/BXKec>

¹⁸ Helsinki Final Act, <http://bit.ly/1gd34OE>

¹⁹ Charter of Paris for a New Europe, <http://bit.ly/14zH2nT>

²⁰ Title VII. Cooperation on matters relating to democracy and human rights. Article 71. http://eeas.europa.eu/delegations/azerbaijan/documents/eu_azerbaijan/eu-az_pca_full_text.pdf



**President of Azerbaijan Ilham Aliyev and
European Council president – Herman Van Rompuy . Photo: www.president.az**

The EaP's progress is assessed during high-level summits every two years and the annual foreign ministers' meeting. The EURONEST Parliamentary Assembly, formed on 3 May 2011, is a parliamentary forum to promote political association and further economic integration between the European Union and the Eastern European Partners. Euronest is mandated to contribute to the strengthening, development and visibility of the Eastern Partnership, as the institution responsible for parliamentary consultation, supervision and monitoring.

European Neighborhood Policy

Azerbaijan is a partner country within the European Neighborhood Policy (ENP). Through the ENP, the EU works with its southern and eastern neighbors to achieve the closest possible political association and the greatest possible degree of economic integration. This goal builds on the common interests and on values — democracy, the rule of law, respect for human rights, and social cohesion.

A joint EU-Azerbaijan Action Plan was adopted by the EU-Azerbaijan Cooperation Council in November 2006. It is based on the Partnership and Co-operation Agreement (PCA) of July 1999, and provides a comprehensive and ambitious framework for joint work with Azerbaijan in all key areas of reform. In May 2009, Azerbaijan and the European Union signed a Joint Declaration on Eastern Partnership.

Since Azerbaijan joined the ENP in 2004 and the ENP's action plan for Azerbaijan was adopted on 14 November 2006, the authorities have introduced a series of restrictive laws, harassed and intimidated the media, and interfered in the work of human rights NGOs

Chapter Two: The ENP Action Plan crackdown

Azerbaijan has made a number of international commitments to protect human rights. The fundamental rights to freedom of expression, assembly, and association are guaranteed and protected by provisions of international instruments and treaties signed and ratified by the Government of Azerbaijan – notably the Universal Declaration of Human Rights (UDHR),²¹ the International Covenant on Civil and Political Rights (ICCPR),²² and the European Convention on Human Rights.²³

In addition, Azerbaijan has been receiving international assistance from multilateral and bilateral donors to further human rights protection, including from the European Union (EU), the Organization for Security and Co-operation in Europe (OSCE), and the Council of Europe (CoE).

On 14 November 2006, Azerbaijan signed an action plan with the EU, in the framework of the ENP²⁴. The five-year Action Plan set out the priority areas for cooperation, including strengthening democracy, and the protection of human rights, fundamental freedoms, and the rule of law. The action plan referred to the country's international commitments, including those before the Council of Europe, in the fields of democracy, the rule of law and human rights.

On 28 December 2006, the President of Azerbaijan signed a Decree on the National Action Plan on the Protection of Human Rights.²⁵ The decree states that guaranteeing human rights and civil liberties is a nationwide task in Azerbaijan. The text was promulgated by the President bearing in mind the priorities determined by the UN "Millennium development goals"²⁶ and by the Third Summit of the Council of Europe²⁷ in the field of human rights protection, democracy and rule of law, to expand activities in this sphere.

The EU has been monitoring Azerbaijan's progress in implementing the Action Plan, and issues annual progress reports. In the latest progress report²⁸ released in March 2013, Brussels criticized

²¹ Universal Declaration of Human Rights, Article 19, Freedom of expression, <http://bit.ly/1arHbE>

²² International Covenant on Civil and Political Rights, Article 19, Freedom of expression, Article 21, Freedom of assembly, Article 22, Freedom of Association, <http://bit.ly/110fsO0>

²³ European Convention on Human Rights, Article 10, Freedom of expression, Article 11, Freedom of assembly and association, <http://bit.ly/ZsNzNM>

²⁴ <http://bit.ly/1d13Le8>

²⁵ <http://bit.ly/13E4DCy>

²⁶ UN «Millennium development goals," <http://bit.ly/18QKVCj>

²⁷ The Third Summit of the Council of Europe, <http://bit.ly/15fF3oy>

²⁸ ENP Country Progress Report 2012 – Azerbaijan, <http://bit.ly/13Zuzsu>

Baku for its deteriorating human rights record. The report, in the usual soft tone, noted regret that Azerbaijan had “addressed only a few of the key recommendations.”

The report noted Azerbaijan’s unwillingness to discuss the issue of political prisoners, stated that journalists and civil society activists faced “harassment,” said that legislation on free speech and elections fell short of international standards, and also said that the judiciary was not independent.

The report emphasized that “corruption continues to be the main obstacle to development of entrepreneurship and economic diversification in Azerbaijan” and mentioned that the country had finalized its second anti-corruption strategy, asking citizens to inform the authorities about corruption, notably via hotlines.

The report suggested that Azerbaijan needed to make significant further efforts to meet its commitments to building a deep and sustainable democracy, including electoral processes, the protection of human rights and fundamental freedoms, and independence of the judicial system.

Azerbaijan has failed to a large degree to fulfill the specific actions concerning human rights stipulated in the ENP Action Plan for the country. This chapter presents a brief analysis of the status of implementation of the ENP Action Plan by Azerbaijan.

The fight against corruption

Ensure that the Criminal Code, and in particular the definition of bribery and corruption related offences, are in line with international standards such as the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption and Civil Law Convention on Corruption, and the OECD Convention on combating bribery of Foreign Public Officials in International Business Transactions, in order to ensure adequate prosecution and conviction;

Improve the normative-legislative framework for the fight against corruption, in conformity with the UN Convention against Corruption, the CoE Criminal Law Convention on Corruption and the Council of Europe Civil Law Convention on Corruption;

EU- Azerbaijan Action Plan, Priority 4: Improve the business and investment climate, particularly by strengthening the fight against corruption

In 2005, Azerbaijan ratified the United Nations Convention Against Corruption,²⁹ thereby undertaking the obligation to “take such measures as may be necessary to enhance transparency

²⁹ UNCAC Signature and Ratification Status as of May 29,2013, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;³⁰

While the Azerbaijan ENP progress report³¹ recognized the “progress noticed in fighting against money laundering and trafficking of human beings,” pointing out that there are hotlines for citizens to complaint, IRFS believes there is still long way for Azerbaijan to go in terms of fighting corruption.

Indeed, the Azerbaijani government adopted a National Action Plan on the Open Governance Partnership,³² a “multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.”³³ But, as has been widely demonstrated, a government’s commitment to anti-corruption is almost directly related to the independence and freedom the news media enjoys in that country. So while Azerbaijan may have signed onto an important accord, a vital domestic resource that would normally hold the government accountable – a watchdog press – has been silenced.

However, Azerbaijan has not signed the updated Council of Europe Convention on money laundering and financing of terrorism (CETS No. 198),³⁴ or the Council of Europe Convention on Access to Official documents (CETS No.205). The Convention has been open for signature since 2009³⁵ and is the first binding international legal instrument to recognize a general right of access to official documents held by public authorities³⁶. To date, 14 countries, including Azerbaijan’s neighbor of Georgia, have signed the document, and six countries have ratified it.³⁷ The document will go into effect once it has been ratified by 10 countries.

In the most worrisome move, on 6 July 2012, President Aliyev signed into law amendments³⁸ limiting the disclosure of information by corporate entities, which had been adopted by Parliament on 12 June 2012.

³⁰ United Nations Convention Against Corruption. Doc. A/58/422, December 14, 2005. http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

³¹ ENP Country Progress Report 2012 – Azerbaijan, <http://bit.ly/13Zuzsu>

³² National Action Plan on the Open Governance Partnership <http://bit.ly/SG9I97>

³³ For more information about the Open Governance Partnership see <http://bit.ly/qW85Np>

³⁴ Council of Europe Convention on money laundering and financing of terrorism Convention (CETS No. 198) Status as of: 13/9/2013 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=198&CM=&DF=&CL=ENG>

³⁵ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=205&CM=1&DF=&CL=ENG>

³⁶ Council of Europe Convention on Access to Official Documents. Summary of the Treaty. <http://conventions.coe.int/Treaty/EN/Summaries/Html/205.htm>

³⁷ Council of Europe Convention on Access to Official Documents CETS No: 205 Status as of: 13/9/2013 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=205&CM=1&DF=&CL=ENG>

³⁸ Azerbaijan President Signs Law on Corporate Disclosure, <http://bit.ly/1dcC2r5>



Ilgar Mammadov, Chair of the ReAI (Republican Alternative) movement and Director of the Council of Europe School for Political Studies in Baku. Photo: Turan Agency

The amendments to the 2005 law on commercial information prohibit government officials from distributing information about companies if doing so “contradicts the national interests of Azerbaijan in political, economic, and monetary policy, the defense of public order, the health and moral values of the people, or harms the commercial or other interests of individuals.” The reforms also make the release of information contingent upon receiving permission from all individuals named in the records.

The laws on the right to obtain information and the state registration of legal entities were also amended. The amendments extend the scope of “legitimate public interests” protected in Article 3 of the Constitutional Law of the Republic of Azerbaijan on Regulation of the Exercise of Human Rights and Freedoms, and use language that lacks precision and clarity.

The amendments to the law on state registration of legal entities makes secret the registration information of commercial legal entities, including information about their founders and shareholders. Such information can now only be disclosed on the basis of an inquiry to the courts and investigative bodies, to the subjects of operational search activities in cases specified by law, and to financial monitoring bodies in the cases and manner specified by the law “on the struggle against legalization of funds or other property obtained through criminal means and financing of terrorism.” According to the bill, this information can only be disclosed to relevant bodies, lawyers, and third parties following the consent of the information owner.

The amendments contradict Article 10.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, 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.” The amendments also contradict provisions of the UN Convention against Corruption and the UN’s Global Counter-Terrorism Strategy.³⁹

The amendments can be viewed as an action by the Azerbaijani government to reject the obligations it had previously undertaken before the Azerbaijani people and the international community to fight corruption. They increase restrictions on freedom of information and breach the principles of transparency and public control over the activity of legal entities. From now on, it will be difficult for journalists to investigate instances of corruption, as they may face punishment under these new amendments.

Protection of human rights, fundamental freedom and the rule of law

Improve the organization of the judiciary, with a view to ensuring its independence, impartiality and efficiency, including with regard to the procedure for appointment and promotion, statutory rights and obligations of judges and prosecutors;

EU- Azerbaijan Action Plan, Priority 3: Strengthen the protection of human rights and fundamental freedoms and of rule of law, in compliance with international commitments of Azerbaijan (PCA, CoE, OSCE, UN)

According to both Azerbaijani legislation and international law, the judiciary system must act in a way that it is fully independent from the legislative and executive powers. However, Azerbaijani courts fail to make fair decisions in politically motivated cases and cases involving journalists. As such, these cases are not investigated properly and judgments are unfair. The European Court of Human Rights has issued a number of judgments about unfair consideration of cases by local Azerbaijani courts and has recognized violations of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Ensure ratification (by 2006) and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

Ibid

Although Azerbaijan has joined this convention, cases of torture still occur. Detained and arrested persons are subjected to torture in the places where they are held. For instance, people detained or arrested at public demonstrations are tortured: they are handcuffed and pulled by their arms and the handcuffs injure their hands and arms. In one recent case, the former head of the Musavat Party’s youth organization, Tural Abbasli, experienced an unusual form of torture in prison; he was handcuffed to a central heating radiator.

³⁹ UN’s Global Counter-Terrorism Strategy, <http://bit.ly/1euCYLo>

Develop an independent public broadcasting service (television and radio services);

Ibid

In order to carry out public broadcasting, Ictimai Television (Public Television) was established in Azerbaijan in 2005, along with Ictimai Radio. However, this TV channel and radio station operates like a state broadcaster rather than a public service broadcaster. The focus mainly on the activities of government representatives, while opposition representatives are either ignored or covered in a negative way. In addition, IRFS notes that despite its obligations to develop public service broadcasting and to abolish state broadcasters, the government has opened two new state TV channels, Medeniyyet TV (Culture TV) and Idman TV (Sports TV), in addition to the already existing AZTV instead of advancing public broadcasting. Furthermore, the public service broadcaster, Ictimai TV, fails to fully fulfill its duties envisaged in the "Law on Public TV and Radio Broadcasting." Ictimai TV is a member of the European Broadcasting Union, but a statement given by Ictimai TV in which it claimed that its votes given for the Russian performer at the Eurovision 2013 Song Contest were not counted, was far from professional. Also, the fact that the person who was elected as Ictimai TV's director in the last election is a member of the ruling Yeni Azerbaijan Party, suggests that this TV channel operates under the control of the authorities.

Ensure proper implementation of the Law on Freedom of Information;

Ibid

Access to Information is a fundamental right provided for in the Republic of Azerbaijan's Constitution. According to Article 50.I, "Everyone is free to look for, acquire, transfer, prepare and distribute information."⁴⁰ In addition, Article 57 of Azerbaijan's Constitution guarantees citizens "the right to appeal personally and also to submit individual and collective written applications to state bodies."⁴¹ The state bodies receiving these appeals must respond to the appeals in the manner established by law.⁴²

The right to access to information is defined in the law on the right to obtain information, which was adopted in 2005. Certain provisions of this law guarantee the public "right to know." However, in 2012, parliament adopted a series of regressive amendments to the law on the right to obtain information, the law on the state registration of legal entities, and the law on commercial secrets.

On 6 July 2012, President Aliyev signed into law amendments limiting disclosure of information by corporate entities, which had been adopted by parliament on 12 June 2012. Strongly criticized by pro-transparency groups, the changes curtail public access to information about the ownership of commercial entities, the amount of their charter capital, ownership structure, and other similar data. These amendments, known as the "corporate secrecy amendments" became effective in October 2012.

⁴⁰ Constitution of the Republic of Azerbaijan. Article 50.I. <http://en.president.az/azerbaijan/constitution/>

⁴¹ Constitution of the Republic of Azerbaijan. Article 57.I. <http://en.president.az/azerbaijan/constitution/>

⁴² Constitution of the Republic of Azerbaijan. Article 57.II. <http://en.president.az/azerbaijan/constitution/>

In 2010, the authority of Information Ombudsman was delegated to the Human Rights Ombudsman, and provisions concerning the Information Ombudsman were removed from the law in 2012.

Promote growth of civil society and its organised forms (human rights NGOs, associations, etc). Alleviate the current cumbersome procedures required for NGO registration;

Ibid

The Azerbaijani government is not interested in the development of civil society. Non-governmental organizations are denied registration in Azerbaijan, which was mentioned in the European Parliament resolution of 2013,⁴³ which urged the Azerbaijani authorities to grant the Azerbaijan Human Rights House unconditional authorization to reopen, and to register the Election Monitoring and Democracy Studies Centre and the Human Rights Club without further delays or administrative burdens. The Azerbaijani government hinders the activity of human rights NGOs, warns them without good reason, and impedes their events held in Azerbaijan's regions. The government has recently made restrictive amendments to the NGO law,⁴⁴ which stipulate that NGOs receiving donations of more than 200 AZN (approximately 190 EUR) outside of a formal grant agreement will be subject to heavy penalties. Those NGOs failing to register new grants with the government will pay fines ranging from 1,500 AZN (1,428 EUR) to 15,000 AZN (approximately 14,800 EUR) in addition to possible property confiscation.

Promote respect for religious and cultural diversity, including through community-based education, training and awareness-raising programs;

Ibid

The freedoms of religion and conscience are not fully respected in Azerbaijan. Girls wearing the hijab (headscarf) face problems in schools and universities, and the believers protesting against this are arrested on various charges. Cultural figures and artists are not respected either. Composer and songwriter Huseyn Abdullayev has been criminally prosecuted over his song and video clip "Susma" (Don't stay silent), which touches upon the human rights situation in Azerbaijan. The singers who performed the song were also summoned to the police.

⁴³ European Parliament resolution on Azerbaijan: case of Ilgar Mammadov, <http://bit.ly/14TDQ2M>

⁴⁴ See more at <http://www.icnl.org/research/monitor/azerbaijan.html>

Chapter Three: The EU's response to Azerbaijan's repression of fundamental freedoms

"The reality in Azerbaijan is harsh. We see many arbitrary restrictions on the media. We see the exercise of free speech effectively criminalized. We see violent attacks on journalists. In fact the Azeri government had promised earlier this year, before the Eurovision Song Contest, to ensure press freedom, but situation actually got worse. I made clear that these things are unacceptable."

Neelie Kroes, Vice-President of the European Commission, 10 November 2012⁴⁵

In addition to the ANP Action plan, the Azerbaijani government has defied the majority of the recommendations put forward in the European Parliament's resolutions on the country. Below is a summary of important points, where the Azerbaijani authorities failed to meet the expectations of the European Union.

European Parliament resolution on Azerbaijan – 9 June 2005

In the run-up to the November 2005 parliamentary elections, the repressive environment intensified, and the EU decided to join efforts by the international community to encourage Azerbaijan's compliance with international human rights standards. The European Parliament resolution T6-0243/2005⁴⁶ "strongly condemns the disproportionate use of force by the police against members of the opposition and youth movement activists exercising their rights to freedom of expression and peaceful assembly" and "Notes that the arrest and detention of opposition activists was politically motivated, welcomes the release of all those arrested and calls for a full investigation into the events, including into the responsibility of the police."

Despite the EU's condemnation, the Azerbaijani authorities continued to ban all kinds of protest-like gatherings of opposition and dissent in the city center. Even actions not political in nature,

⁴⁵ Neelie Kroes, Vice-President of the European Commission, 10 November 2012, <http://bit.ly/164qzo6>

⁴⁶ European Parliament resolution on Azerbaijan, 9 June 2005, <http://bit.ly/17WgiOJ>

organized by ordinary people (victims of various cases of human rights abuse), youth and civil society groups are not sanctioned, and if they go on and hold their gatherings anyway, they face serious consequences such as use of excess force by police, detention and even imprisonment on fabricated charges such as hooliganism or drug possession.

In November of 2012, the President of Azerbaijan signed into law amendments⁴⁷ to the law on freedom of assembly that dramatically increased the penalties for organizing or participating in unsanctioned protests.

In Azerbaijan, police brutality continues to go unpunished. Police often use violence when any unauthorized protest or similar gathering takes place; there is filmed evidence of inhumane treatment of peaceful demonstrators, protesters and even ordinary people (during forced property evictions) by the police. With the exception of a few cases (when police officers acting violently against citizens were subject to disciplinary measures), full investigations are generally not conducted the perpetrators go unpunished. Instead of calling for humane and tolerant behavior towards citizens, the president of Azerbaijan publicly announced in July that no single policeman in Azerbaijan would be punished, which has increased the confidence of policemen that they will not be punished for using force.

The resolution "strongly condemns" the murder of Elmar Huseynov in March 2005; "reiterates its support for pluralism, democracy and the rule of law"; calls on the authorities "to do everything possible" to bring the perpetrators to justice; urges the government to lift the restrictions imposed on the media, to stop the harassment, intimidation and detention of journalists who dare to criticize the government, and to protect the personal safety and professional integrity of journalists performing their duties.

Eight years have passed since the murder of journalist Elmar Huseynov, and no one has been brought to justice for his death, despite the fact that immediately after the crime, the authorities pledged to solve it and punish the perpetrators.

After relatively little progress at the beginning of the investigation thanks to the help of foreign investigative teams, there has been a deadlock in the investigation, and currently no visible active investigative measures are in progress.

Since Huseynov's murder, Azerbaijani journalists continued to face reprisals for crossing certain "red lines" in reporting. The most recent example is the arrest of journalist Sardar Alibeyli, who believes that he was targeted for criticizing top-ranking government officials.

Harassment, blackmailing and intimidation of media actors continues. Employees of Radio Free Europe/Radio Liberty's Azerbaijani Service, Khadija Ismayil and Yafez Ekremoglu, have recently been subjected to such pressure. Sexual blackmail has also been attempted against journalists. Ismayilova, as well as *Azadliq* newspaper editor Azer Ahmadov, both faced serious violations of their privacy when sex videos taken of each of them by hidden camera were posted online – Ahmadov in 2010 and Ismayilova in 2012 and again in 2013.

⁴⁷ See more at <http://bit.ly/1aJ0PoZ>



Neelie Kroes European Commissioner for Digital Agenda.

Photo: Monika Ermert

Physical attacks against journalists and other forms of pressure did not cease after Huseynov's murder. Two particularly egregious cases should be noted. Editor-in-chief of *Tolishi Sedo* newspaper Novruzali Mammadov, who was arrested on trumped-up charges, became seriously ill in prison and died in 2009 as a result of a lack of medical care. Two years later, in 2011, another independent journalist, Rafiq Tagi, was brutally stabbed on his way home from work, and died four days after the attack. In 2012 alone, 19 cases of violence occurred against independent and pro-opposition journalists.⁴⁸ Representatives of the government and pro-government media rarely face physical violence. In total, more than 200 journalists have been violently attacked since Huseynov's murder.

European Parliament resolution of 17 December 2009 on Azerbaijan: freedom of expression

In 2009, freedom of expression significantly deteriorated in Azerbaijan. In the run-up to the 2009 municipal elections, the government employed many tactics to undermine the role of independent mass media. Changes and amendments made to the Constitution and other legislative acts served to restrict the work of media.

As of 1 January 2009, foreign radio broadcasters – including the BBC, Radio Free Europe/Radio Liberty (RFE/RL), and Voice of America – were banned from Azerbaijan's airwaves. Despite calls

⁴⁸ IRFS 2012 Annual Freedom of Expression Report, Azerbaijan Critical Voices Struggling for Survival <http://bit.ly/13ZyjKA>

from local and international organizations, the government did not decriminalize defamation. As a consequence, a number of newspaper editors were jailed on charges of defamation during the year.

In November 2009, two bloggers, Emin Milli and Adnan Hajizade, were sentenced to two and two and a half years in prison for a July incident in which they were apparently attacked by two men and then arrested for "hooliganism," while their attackers were set free. At the end of the year, a drug provocation was exercised against imprisoned editor-in-chief of *Gundalik Azerbaijan* and *Realniy Azerbaijan* newspapers, Eynulla Fatullayev.

On 17 December 2009, the European Parliament adopted the strongly worded resolution RC-B7-0266/2009, on the freedom of expression situation in Azerbaijan. The resolution pointed to "the deterioration" of media freedom in Azerbaijan and "deplored" the practice of arresting, prosecuting and convicting opposition journalists on various criminal charges. The resolution called on the Azerbaijani authorities to release the imprisoned journalists immediately.

Implementation update: The Azerbaijani authorities continued to imprison journalists in reprisal for their reporting. As of September 2013, there were eight journalists behind bars in Azerbaijan: Nijat Aliyev, editor-in-chief of *www.azadxeber.net*; Araz Guliyev, editor of *www.xeber44.com*; Fuad Huseynov, freelance journalist; Hilal Mammadov, editor-in-chief of *Tolishi Sedo* newspaper; Faramaz Novruzoglu, freelance journalist; Tofiq Yagublu, correspondent of *Yeni Musavat* newspaper; and Avaz Zeynalli, editor-in-chief of *Khural* newspaper. Putting journalists behind bars serves to stifle the few remaining outspoken, independent and critical media voices, and has a serious chilling effect on other journalists as well, leading to practices of self-censorship, which are widespread in the country.

Furthermore, the MEPs recall the March 2005 statement by President Ilham Aliyev, in which he asserted that the rights of every journalist were protected and should be defended by the state. The resolution stresses that the safety of media workers "must be improved as a matter of urgency" and calls on the Azerbaijani authorities to address the lack of police investigation into cases of violence and harassment against journalists.

Implementation update: This statement by the president remained purely rhetorical. In fact, journalists' rights are not protected by law-enforcement agencies; cases of harassment, physical attacks and other violations committed against journalists are not seriously investigated. Lawsuits initiated by journalists are not successful in court. Even though there is clear evidence⁴⁹ demonstrating police violence against journalists covering public demonstrations, in his congratulatory speech made on National Police Day on 2 July 2013, the President stated that no member of police forces

⁴⁹ Police officer attacks journalist Rasim Aliyev, PHOTO/IRFS: <http://on.fb.me/17Kx1o4>

would be punished.⁵⁰ Moreover, despite the President's assurance that Elmar Huseynov's killers would be found within 40 days, no one has been brought to justice in the past eight years.

Three and half years after this call from the EU, crimes against journalists are still not thoroughly investigated; investigations are usually stopped halfway and not completed. Various reports by journalists ranging from threatening e-mails, text messages or phone calls to physical attacks are not adequately addressed by law-enforcement agencies. In short, the safety of journalists is still not sufficiently ensured. Defamation is still considered a criminal offence, and instead of decriminalizing it, recently the authorities extended its scope to online content.

The resolution urges the Azerbaijani authorities "to take immediate steps to allow individuals to engage in peaceful, democratic activities;" to allow such activities to be organized freely and without government interference; and to protect journalists, following a wave of violence against media representatives.

Implementation update: Not only have the authorities not created favorable conditions for NGOs and youth organizations, but they interfered and hindered their activities. The closure of Free Thought University,⁵¹ interruption of a documentary film festival dealing with human rights in Lankaran city,⁵² and the forced closure of an exhibition dedicated to human rights organized by the Human Rights House Azerbaijan⁵³ are clear examples.

Last but not least, the resolution urged the Azerbaijani authorities to renew the FM radio licenses of the BBC, Radio Free Europe/Radio Liberty, and Voice of America, calling them "important, objective and valuable independent sources of quality public-service information and restricts media plurality in Azerbaijan."

Implementation update: None of these radio stations have been able to renew their FM licenses ever since, as the authorities do not want alternative and unbiased news to reach citizens. Exercising tight control over the broadcast media of the country and over the state media regulator (the NTRC), the government decides who should operate in the broadcast media sphere, where many of the players are their own close companies.

⁵⁰ Ilham Aliyev: Police Will Not Be Punished, 2 July 2013, www.contact.az: <http://bit.ly/1ajmUGY>

⁵¹ Statement on the Closure of the Free Thought University Facility in Azerbaijan delivered by Political Counselor Christopher Robinson to the Permanent Council, Vienna April 18, 2013, www.contact.az: <http://bit.ly/16e3K4z>

⁵² Authorities Banned Lankaran Film Festival on Human Rights, 6 April 2013, www.contact.az: <http://bit.ly/1fPkznR>

⁵³ Ibid

European Parliament resolution on Azerbaijan: the case of Ilgar Mammadov – June 2013

The criminal case against human rights defender and opposition leader Ilgar Mammadov generated a serious reaction in Western capitals, and underscored serious shortcomings of the Aliyev regime in fulfilling Azerbaijan's international human rights commitments.

On 11 June 2013, the European Parliament adopted resolution B7-0297/2013⁵⁴ to express "serious concern" over reports by human rights defenders and domestic and international NGOs about the alleged use of fabricated charges against politicians, activists and journalists. The resolution condemns any intimidation, arrest, detention or prosecution of opposition party leaders or members, activists, journalists or bloggers solely "because they have expressed their views and exercised their fundamental rights and freedoms in accordance with international standards."

Implementation update: Despite repeated calls by the international community, the authorities seem unwilling to change their stance by releasing detained and jailed critical journalists and activists, behaving in a tolerant manner, and refraining from the further use of fabricated charges.

The resolution calls on the Azerbaijani authorities unequivocally to respect freedom of the press and media, both online and offline, and to secure freedom of expression.

Implementation update: The authorities and all state officials subordinate to the central government must respect freedom of the press and media, by refraining from targeting journalists and media outlets in their speeches, or suing them for defamation. Instead, they should cooperate with the press and media representatives, by providing them with requested information and helping them improve public transparency. However, the Ministers of Emergency Situations and Internal Affairs, the son of the Minister of Transportation, the head of the Baku Metro, and other persons close to the authorities, claimed exorbitant sums of compensation from *Azadliq* and *Yeni Musavat* newspapers, which have been partially awarded by courts. As a result of steep court-ordered fines, *Azadliq* has encountered severe financial problems; the newspaper owes a significant debt to the publishing company, which continues to cause problems for the newspaper's publication.

The resolution calls on the Azerbaijani authorities to reform the country's defamation legislation so that defamation is dealt with by means of proportionate fines rather than imprisonment.

Implementation update: Defamation remains a criminal offense in Azerbaijan, despite the widespread and long-standing call from the international community for the abolishment of criminal defamation provisions. In light of this, the Azerbaijani government must speed up steps

⁵⁴ European Parliament resolution on Azerbaijan: case of Ilgar Mammadov, <http://bit.ly/14TDQ2M>

to adopt a defamation law in order to replace grievous criminal penalties by proportionate amount of fine. This year, the Azerbaijani parliament adopted a bill that criminalized online defamation, which is already beginning to have a serious chilling effect on online freedom of expression.⁵⁵ The new provisions have already been applied in one case.⁵⁶ In August, a regional court sentenced Mikayil Talibov to one year of “corrective labor” during which time 20 percent of his monthly income would be deducted into the state budget. The charges were filed in connection with Talibov’s comments on a Facebook page he created on 26 March 2013, which uses in its title the name of the bank he had worked for, calling it “Unjustbank.”

The resolution calls on the Azerbaijani authorities to respect the right to freedom of assembly of the Azerbaijani population.

Implementation update: Azerbaijani citizens are deprived of chances to hold their gatherings in central squares of the city, being offered only remote venues, despite the fact that there are sufficient suitable places near the city center too. Also, authorities continue to use excessive force against protesters, which must be addressed. The right to peaceful freedom of assembly must be guaranteed.

⁵⁵ Azerbaijan extends criminal defamation to Internet speech, Committee to Protect Journalists, New York, 14 May 2013: <http://bit.ly/15KuADk>

⁵⁶ Azerbaijan: First criminal conviction for online defamation, Amnesty International, 21 August 2013: <http://bit.ly/17QVgPv>



Conclusion

Although Azerbaijan has more political prisoners than any other Eastern European country, the EU has failed to push for their release, or for other human rights reforms in Azerbaijan. The EU-Azerbaijan cooperation has continued alongside the ongoing harassment, intimidation, detention and imprisonment of activists, human rights defenders, critical journalists and civil society activists by the Azerbaijani authorities in an attempt to silence critical voices and political opponents.

There is an established perception of the EU among both the Aliyev regime and the Azerbaijani opposition as a credible, albeit silent political actor. While quiet diplomacy does work in some cases, there is a clear need for the EU to play a stronger role in promoting human rights in Azerbaijan. The EU's failure to pressure the Azerbaijani government for democratic change may serve to discredit the EU in the eyes of Azerbaijani society.

In the energy sector, Azerbaijan is a key strategic partner for the EU, both as a producer and transit country. The Memorandum of Understanding (MoU) aimed at establishing a partnership on energy between Azerbaijan and the EU does not have mention human rights. Although the MoU is not binding, it suggests that there could be legal agreements in the future. It is important that any possible future energy agreements between Azerbaijan and the EU contain human rights reforms as a necessary pre-condition for cooperation.

Brussels should set clear benchmarking on human rights by making concrete, measurable improvements in the area of human rights an explicit requirement for closer relations with the EU. Such benchmarks should clearly lay out specific steps Azerbaijan must take to address human rights violations.

In parallel, Brussels should act to improve its political influence in Azerbaijan by building stronger human rights and democratization initiatives designed to improve Azerbaijan's human rights record – at both the national and international level. The EU should act to help build and further strengthen institutions that are capable of influencing both citizens and policymakers in the long term. The EU should also support the development of independent media outlets with the intention of promoting free expression in the country.

In summary, Brussels should impose clear benchmarks for improvements in human rights practices if the EU is to succeed in persuading Baku to respect its human rights commitments.



Gunashli platform offshore Azerbaijan
Photo: PAAFE



Crackdown on peaceful protest in downtown Baku
Photo: IRFS, Mehman Huseynov



Azerbaijan and the European Union: A Policy Dilemma

Institute for Reporters' Freedom and Safety

www.irfs.org

September 2013

Cover photo: Ilham Aliyev, President of Azerbaijan, on the left, and José Manuel Barroso, President of the European Commission. Source: www.president.az



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This report has been published thanks to generous support from the International Media Support (IMS).