

Brief review of the new Media Law of Azerbaijan

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Background

A new Media Law of Azerbaijan was adopted by the Parliament of Azerbaijan on 30 December 2021¹. It consists of 78 articles and differs from the old law in terms of scope and issues regulated by it. The new Media Law led to conflicting views in the society.

According to the Government, the new media law intends to bring this area in line with international standards, modernize the country's media legislation as well as to improve the professionalism of journalists. Their arguments for this statement include, among others:

- the new law interprets the concept of a "journalist" in a much broader and pluralistic context and extends it not only to those working officially in any media entity, but also to those acting as freelancers or working for the websites.
- the licensing, applies only to television and radio broadcasting whereas establishment of a media entity is subject to notification register.
- special attention is paid at protecting the copyright of information published or broadcasted via media.²

According to independent experts, the text of the law raises serious concerns about its compliance with international human rights standards concerning freedom of expression and media freedom³. Their arguments for this statement include, among others:

- the law was adopted without broad and meaningful public consultations.
- it overregulates the media field and the profession of journalism contrary to the principles of free, independent, uncensored media and pluralism that are essential in a democratic society.
- it grants discretionary powers to state authorities regulating the media sector, including through licensing.

¹ For Azerbaijani version of the Law see <https://president.az/az/articles/view/55399>. Entered into force since 8 February 2022.

² Letter of Media Development Agency to the Commission for human rights of the Council of Europe, 14 January 2022, at <https://rm.coe.int/reply-by-the-authorities-of-azerbaijan-to-the-letter-of-the-council-of/1680a54990>

³ <https://arqument.az/az/media-haqqinda-qanun-layihesi-ile-bali-aciq-muraciet/>

- It introduces several limitations to the financial, legal, and operational activities of media companies and entities.⁴

Council of Europe also expressed its concern concerning the new Media Law in Azerbaijan. In a letter made public, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, invited the President of Azerbaijan to use his authority to return a recently adopted media law to the Milli Majlis to proceed to its substantial revision. The Commissioner believes the law overregulates the media field and the profession of journalism, contrary to the principles of free, independent, uncensored media and pluralism⁵.

Legal Review

The Government introduced several novelties and new concepts in the newly adopted Media Law. Also, it provides for increased state control and regulation of the media. Its implications will need to be assessed based on monitoring of its implementation in the coming period. Below we present important novelties and restrictions related to the new Media Law.

Definition of online media

- For the first time the Law defines the status of an online media. According to Article 60, the subjects of online media can be individuals or legal entities. Online media outlets are considered sustainable if they publish at least 20 media items a day. The rationale behind measuring sustainability of online media is unclear.

Seek, receive, and impart information

- The provisions of the Law do not apply to correspondence between users using information technology. It only applies for the dissemination of mass information. (Article 3.2.2).
- The law imposes strict restrictions on the collection of information in the military, state of emergency, censorship, special operations against religious extremism, and counter-terrorism operations. For instance, according to article 8.2. information on a special operation against religious extremism is provided to the public in the form and volume determined by the body conducting the operation.
- Article 14 of the law defines the requirements for information published and (or) disseminated in the media. According to these requirements which are particularly worrisome, the use of words, expressions, and gestures with immoral lexical (swearing) content should not be allowed. (Article 14.1.6). Facts and events must be presented impartially and objectively, and one-sidedness must not be allowed. (Article 14.1.11).
- Article 21.1.1 of the law states that if the person against whom the secret audio or video recording or photo was taken has written consent to the use or dissemination of these materials, as well as, if necessary, measures have been taken to protect the rights and freedoms of another person (persons) established by the Constitution of Azerbaijan,

⁴ Ibid.

⁵ See: <https://www.coe.int/en/web/baku/-/azerbaijan-new-media-law-raises-serious-human-rights-concerns-and-should-be-changed>

confidential audio and video recordings, photographs may be used or distributed. The said provision almost prohibits the dissemination of all information obtained in secret, regardless of its content. The consequences of violating these provisions can be administrative and/or criminal punishments.

Journalists

- It provides a new definition of journalist (Article 1.1.4): *"A journalist is a person operating under an employment contract in a media entity or individually under a civil law contract on a copyright basis, the main activity of whom is to continuously collect, prepare, edit and produce, transmit information, as well as to comment on that information and who carries out this activity for the purpose of gaining income"*. The definition is narrow, and it excludes for e.g., citizen-journalism and non-profit journalism. If a person does not match the criteria defined in this law (for e.g., if you have a degree in journalism but don't have a contract you cannot be considered as a journalist for the purposes of this law), then they can be disallowed to participate for reporting purposes on public events such as meetings, mass gatherings or events organized by government etc. It is yet to be seen how this is implemented in practice.

Media entities

- According to article 26 of the Law, if the founder of a media entity is an individual, s/he must be a citizen of the Republic of Azerbaijan permanently residing in Azerbaijan. If the founder is a legal entity, its share in the authorized capital (75 percent) must belong to a citizen(s) of the Republic of Azerbaijan permanently residing in Azerbaijan and (or) a legal entity (legal entities) registered in the Republic of Azerbaijan.
- Article 26.5 limits funding of a media subject only to individuals or legal entities (both local and foreign) that are its founders, and thus bans funding from state bodies of foreign states.
- Political parties and religious organizations can only own print media (they cannot own for e.g., TV or radio stations according to Article 26.4).

Audio-visual media entities

- The law introduces a concept of "Audio-visual media entities" which is classified into 6 types: terrestrial broadcasters, platform broadcaster, platform operator, multiplex operator, infrastructure operator, and bespoke broadcasting service provider (Article 27).
- According to the article 43.1, regulation in the field of audio-visual media is carried out by a 7-member Audio-visual Council of the Republic of Azerbaijan. The activities of the Council are financed from the state budget and other sources are not prohibited by law. The members of the Council with a term of office of 5 years are determined by the executive authority. The new regulations make the Council more dependent on the executive branch. CSO representatives cannot be members of the Council if they generate income from employment contract, service contract, etc.

Media Register for media and journalists

- Article 70.1 states that journalists included in the Media Register shall be issued a journalist's card. According to article 71.1.2, journalists who have been issued a journalist's card have the right to be accredited by state bodies (institutions), enterprises and

organizations, and non-governmental organizations. Media entities may accredit journalists included in the Media Register with the consent of state bodies (institutions), enterprises and organizations, non-governmental organizations and in accordance with the accreditation rules established by them. (Article 72.1)

- The state creates a Media Register to systematize information on media and journalists, issues certificates to media and journalists included in the register in a centralized manner. (Article 73) According to article 73.9. except for the list of media subjects and journalists, other information included in the Media Register is not open to the public. According to article 74, journalists applying for inclusion in the Media Register must have higher education, full legal capacity, must not have been previously convicted of serious or particularly serious crimes, as well as crimes against public morals. Persons with limited legal capacity cannot be included in the register.