



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Miklós Haraszti**

14 July 2005

Assessment Visit to Azerbaijan

Observations and Recommendations

The OSCE Representative on Freedom of the Media Miklos Haraszti, accompanied by Adviser Alexander Ivanko, and Research Officer Ana Karlsreiter, visited Baku, Azerbaijan, from 11 to 15 April 2005. The trip was made at the invitation of the Government of Azerbaijan and was organised by the Ministry for Foreign Affairs and by the OSCE Office in Baku. The purpose of the trip was to assess the current state of media freedom in the country and to provide the authorities with recommendations on further compliance with OSCE commitments. The Representative appreciates the co-operative approach of Azerbaijani authorities during his trip. The Report was prepared with the assistance of the OSCE Office in Baku, whose staff provided substantial research on the media situation.

The Representative was received by the President of the Republic of Azerbaijan, Ilham Aliyev.

He also engaged in talks with:

- Foreign Minister Elmar Mammadyarov;
- Minister of Justice Fikrat Mammadov;
- Minister of Internal Affairs Ramil Usubov;
- Prosecutor-General Zakir Garalov;
- Head of the Social-Political Department of the Presidential Administration Ali Hasanov;
- Deputy Minister of National Security Fuad Iskandarov;
- Members of Parliament including the Speaker, Murtruz Aleskerov;
- Several other senior Government officials;
- Journalists, editors and managers from different media outlets, both print and electronic;
- Representatives of national and international non-governmental organisations;
- Foreign diplomats.

The OSCE Representative took part in a one-day roundtable on frequency licensing, organized by the OSCE Office in Baku.

General overview

Although the assessment visit of the Representative had been agreed and prepared long before the visit, the recent murder of the prominent editor and journalist **Elmar Huseynov** unavoidably became one of the focal points of the Representative's stay. This case attracted world-wide attention and placed media issues in the country under international scrutiny.

The crime was strongly condemned by the President, and it has been declared to have been solved with Georgian citizens identified as the perpetrators. Nevertheless, in actual fact **very limited information** was released to the public about the investigation, the suspects, or their alleged motives.

Criminal handling of defamations, as well as huge fines for civil damages, is still legal in Azerbaijan, and these two factors have contributed to a climate of self-censorship in journalism. However, after the Huseynov murder in March this year, **a practical moratorium of criminal or civil libel suits** by officials against journalists or media outlets was put in place. The initiative for the moratorium came personally from the President of the Republic.

Violence against journalists also occurred in the country, especially after the 15-16 October 2003 mass demonstrations in the wake of the Presidential elections. No law enforcement officers were charged with perpetrating violence against journalists. In a positive development, when in May 2005 a journalist was again assaulted by police during a demonstration, the officer responsible was disciplined.

Quite a number of **adequate legal provisions** have been adopted since the country's independence, like the Law on Mass Media in 1999, the Law on Freedom of Information in 1998, the Law on TV and Radio Broadcasting in 2002, and the Law on Public Television in 2003/2004.

The multitude of views expressed, even high politicisation, in the printed press indicates that **pluralism has taken hold**. However, diversity does not extend much beyond the print media which has a very low circulation, and is financially and professionally weak.

In this situation it is hard to overestimate the importance of television, the main source of information for the citizens. Unfortunately, the new broadcasting laws have not remedied the situation in the electronic media. **No new licenses were issued to private televisions. The transformation of state broadcasting has only concerned Channel 2, while Channel 1 will continue to be state-run.** The management chosen to run these new television channels has widely been criticised as not being independent.

The Representative's pilot assistance **training project on government-media relations**, originally proposed by Foreign Minister Mammadyarov, will take place from the 18th until the 20th July in Baku.

The murder of editor Elmar Huseynov

Elmar Huseynov, the most prominent independent journalist in the country, and editor of the only investigative public-affairs magazine, *Monitor*, was gunned down in front of his apartment on 2 March 2005 in Baku.

His murder sparked world-wide outrage as Huseynov was one of the most harassed journalists in the country, and had been prosecuted on several occasions. Owing to criminal defamation laws so typical for so many countries in the OSCE region, he had to serve six months in prison in 2001/2 after a libel suit brought by Baku's mayor. In November 2004, a court ordered his property to be confiscated to make him pay the equivalent of a USD 20,000 fine connected with a 2003 libel lawsuit.

The Representative and his Office staff mourned Huseynov's death as they had known him personally, and had been impressed by his lively and professional performance as a panellist at their Office's first South-Caucasus Media Conference held in Tbilisi in October 2004.

The resolve of the authorities to roll up the case

All official interlocutors of the Representative stressed that the authorities were doing their best to find the perpetrators of this crime. "We will do our best to disclose who did this; if we do not, it will have a negative impact on our country," President Aliyev told the Representative. The President underlined that he was personally overseeing the investigation.

The Foreign Minister put it even more bluntly: "To find those behind this murder is important for the survival of the State. This assassination was purely political, with a chief aim to create instability."

The same resolve – and the same confidence about the motives behind the crime – was evident in the discussions of the Representative with the Minister of Justice, the Minister of Internal Affairs, the Prosecutor-General, and, in a closed-door meeting, with the Deputy Minister of State Security.

The determination to roll up the case was also underlined by the decision to invite international crime experts, among them Turkish police, to support the investigation.

Lack of public information about the investigation

From the very beginning, the investigation was not accompanied with any modicum of transparency. The public were offered a great variety of allegations in the media, but no facts from the authorities.

This was the case especially after the first month, when the “murder case” was re-classified into a “terrorist act”, and the investigation was taken over by the Ministry of State Security. At that moment, the already scant flow of information had entirely stopped, and not even false allegations emerging in the press have since been refuted by the authorities.

Prior to the Ministry of State Security taking over, the Prosecutor-General had designated a press officer to deal only with this case. However, as of early April, this practise was discontinued. The Representative suggested to several senior officials that because of major public interest, regular information on the Huseynov murder should be provided to the media. The authorities insisted that their secretive policy serves best the interest of a successful completion of the investigation.

As of the time of writing, the information policy has not been changed even as the authorities have finally announced the case “to be solved”.

The results of the investigation so far

On 29 June 2005 the Prosecutor-General Zakir Garalov announced that the authorities had identified Huseynov’s assassins.

Teymuraz Aliyev and Tahir Khubanov were named as the “killers”, both citizens of Georgia. Garalov said that Azerbaijan asked the Georgian authorities and Interpol for their assistance in the search. According to the Prosecutor-General, only once these two persons had been arrested, could the identity of those who masterminded the murder be established.

Neither possible motives nor supporting facts were provided with this statement.

Rushana Huseynova, Huseynov’s wife is not satisfied with the final results of the investigation: “How could the Prosecutor General say that they have solved this crime if they haven’t yet found the assassins not to mention the persons who ordered the assassination?”

Sahbaz Xuduoglu from the Elmar Huseynov foundation has even accused the National Security Ministry of still withholding information about the investigation and has

threatened to take the Ministry to court. Some media outlets agreed to support Mr. Xuduoglu and his endeavour.

Unrefuted ‘domestic versions’ of the crime

Clarification is particularly needed as several other possible leads have emerged since the murder, both in public allegations in the press, and in the conversations of the Representative during his visit.

What everybody agrees upon, from the opposition to the authorities, is that this murder was committed not for some trivial reasons that could have involved Huseynov’s private life, but because of his professional work, and that it was politically motivated. In that sense it is also a clear attack on freedom of the media in Azerbaijan.

Among the “domestic perpetrators” versions, the most concrete suggestion in the press was an alleged link to an arrested local kidnapping gang, led by a certain Hadji Mammadov who at the time of the murder was a senior Interior Ministry official. He and his gang were arrested three days after the murder of Huseynov, with the help of the Turkish police expert team.

The identification of the Mammadov gang as the murderers of Huseynov came as a result of a statement of a senior Turkish police officer Ramazan Er at a press conference in April in Ankara.

Dissatisfied with the lack of either information or rebuttal about this possible link, the Representative contacted Turkish diplomats working in Baku. Back in Vienna, the Office also sought clarification from Mr. Er’s successor, Mr. Ismail Caliskan. He said that Mr. Er’s statement had been misinterpreted and that the two crimes were not linked as far as the Turkish investigation results were concerned. In fact, Mr. Er only told the media that the Azerbaijani Government asked the Turkish police for assistance in two separate investigations: firstly the unrelated kidnappings and secondly the murder of Elmar Huseynov.

However, even if no ‘domestic’ motives proved to be valid, neither have the alleged ‘foreign-related’ political destabilization motives, widely emphasised by almost all official interlocutors, been supported by facts so far.

Until the real motives of the perpetrators of the murder of Elmar Huseynov are identified and proven in court, the public can not consider the case as closed, and confidence in the investigation stands in jeopardy.

Until then, the Government should provide the public with as much information as possible on the investigation, in order to minimize the chilling effect on journalism caused by the murder.

A practical moratorium on libel cases since the Huseynov murder

Criminal handling of defamations is still legal in Azerbaijan, but since March this year, no new cases of criminal or civil libel suits have been reported as filed by officials against journalists or media outlets.

The explanation for this welcome development was given by President Ilham Aliyev in his meeting with the Representative. The President stressed that he had never sued and never would sue newspapers for defamation and that he had urged members of his government to do the same.

He issued that appeal for the first time in his speech to Azerbaijan's Security Council on 3 March. He strongly condemned the murder of magazine editor Elmar Huseynov (committed on the previous day). At the same time, he called on senior government officials not to file lawsuits against the media. (It is widely known that Elmar Huseynov used to be a frequent victim of libel accusations by officials.)

Since then, the President reiterated his call on numerous occasions. In May, in a televised meeting with executives of a media company, he even warned that he would dismiss from office any members of his government who sued journalists for libel.

The importance of this move could be illustrated by past examples. Prior to this practical moratorium, public officials often took newspapers to both criminal and civil court. The criminal defamation and insult conviction rate was relatively low, but the civil cases resulted in financial damages which were able to bankrupt the press ventures

While several Parliament members understand the chilling effect of libel provisions on free discussion of public issues, others seem to be less ready for a legislative change. In conversations with Milli Mejlis (Parliament) deputies, the Representative was told that the need for criminal defamation is justified by libellous articles in the newspapers. "This is a preventive measure," said one deputy.

A practical moratorium on libel and defamation procedures is enforced solely by the authority of President Aliyev. While his initiative is a highly welcome development, the moratorium needs to be based on broad public consensus among the countries politicians, and converted into law. As a next step, criminal form of libel and defamation should be abolished, and civil damages should be capped by a rational ceiling.

Violence against journalists

The clashes between police and demonstrators during the post-election events of 15-16 October 2003 and the murder of Elmar Huseynov drew the attention of the international and Azerbaijani public to the problem of violence against journalists. After the demonstrations in October 2003, 70 journalists complained to the Press Council of being mistreated by the authorities. These numbers were corroborated by state officials. Press Council President Afalutun Amashov told the Representative, that of the 70 journalists, 44 complained about being beaten by the police. A joint investigation by the Ministry of Interior and the Press Council did not yield any perpetrators. No police officers were disciplined internally.

Nevertheless, the Minister of Interior in his conversation with the Representative agreed that the relationship between his Ministry and the press could be improved. "We have to be tolerant towards criticism," the Minister told the Representative. In this spirit, a joint commission was established with the Press Council that through irregular meetings has tried to deal with police-press matters.

In addition, the Ministry and the Press Council agreed on issuing special vests to journalists covering demonstrations so that in future the police would avoid targeting them, especially if such demonstrations turn violent. (It is not clear who or which agency, state or non-state, would decide on who is a *bona fide* journalist.) These vests have been provided to the newspapers, with additional ones given to the Press Council.

The case of Farid Teymurkhanli, a correspondent for the Russian language daily Zerkalo became a test case in this regard. On 21 May 2005 in Baku, Teymurkhanli, although wearing the official vest with the word "Press" clearly visible, was beaten up by a security officer while covering a demonstration. However, for the first time the officer responsible for the incident was dishonourably discharged from the police force, and prohibited from ever serving the public again.

The circumstances of the case of Alim Kazimli remain unsolved. This reporter and photographer who worked with Yeni Musavat was allegedly beaten up by police officers when applying for identification documents at the Narimanov District Police Department in Baku on 28th December 2004.

Following an intervention in January 2005 by the Representative, Foreign Minister Mammadyarov stated that no beating of Mr. Kazimli had been confirmed by the investigation.

Alim Kazimli was hospitalized for a couple of days after the incident, and he died on 19 June 2005 from a cerebral haemorrhage. According to some sources, his death could have been caused by whatever ensued on 28 December 2004.

All cases of violence should be thoroughly investigated. Any police officers implicated in harassing or beating journalists should be disciplined. Especially in view of the upcoming parliamentary elections, measures should be taken to ensure the safety and security of reporters, especially those covering public gatherings.

The state of broadcasting

Both government-controlled and privately-owned broadcasters exist in Azerbaijan. About 88% of the population of the capital and 93% of the population outside of the capital consider TV to be the main source of information.

Today there are five nation-wide TV and radio companies operating in Azerbaijan. They are both producers and broadcasters of programs for more than 80% of the territory of the country. State *AzTV* has two channels (one of them currently being transformed into a public service broadcaster—see chapter below). The other channels are the legally private and independent companies *ANS*, *ATV*, *Lider* and *Space*. All the private channels except *ATV* transmit via satellite.

Currently there are 12 regional TV and radio companies operating in Azerbaijan: two in Ganja, Guba and Nakhchivan and one respectively in Sumqait, Lenkoran, Mingachaur, Zakatala, Tovuz and Khachmaz. The broadcasting time of these channels is limited and they have few of their own programs. These TV channels mainly focus on entertainment and on movies.

There are several foreign TV and radio companies broadcasting on the territory of Azerbaijan in accordance with inter-governmental agreements. These are mainly Turkish (*TRT1*, *STV*, *KANAL D*) and Russian (*ORT*, *RTR*), as well as several radio-stations: *BBC*, *Radio France International*, *Voice of America*, *Europa+* and *Freedom* which was not able to get an FM frequency for a long period of time.



Lack of licensing for private broadcasters

President Aliyev characterized private TV channels as “more or less neutral, although some are more pro-government and some are more pro-opposition.” Other interlocutors described them as “more or less government-friendly” although some of them were also described as being “more business than politically oriented”.

All existing private broadcasting companies have received their licenses quite directly from government before *the Law on TV and radio broadcasting* was adopted in 2002. This provision was prepared in consultation with the Council of Europe. It should install an impartial mechanism for the allocation of frequencies, in order to replace the existing set of licenses issued by the authorities during a legal vacuum.

Unfortunately, despite this law being in vigour, no new TV licences have been issued since 2002.

To address this problem, the OSCE Office in Baku organised a one-day roundtable on frequency licensing in which the Representative took part. It became clear that there were many unanswered questions related to this matter.

At the roundtable, even Ali Hasanov, the Head of the Social-Political Department of the Presidential Administration which is dealing with mass communications, acknowledged the many contradictions in the existing legal framework. He agreed it was these legal deficiencies that were responsible for the delay in the licensing procedures.

It seemed clear from many statements made at the roundtable that the lack of any new licenses was not simply a technical problem. On the technical side, the American NGO IREX was producing a frequency map that should be finalized sometime in August. Nevertheless, some experts noted that there were already open frequencies available as a result of the closure of some broadcasters, but these ones were not being utilized.

The real problem is that on 11 October 2002, three days after the Law on TV and radio broadcasting came into force, another legal provision was issued by the President: Regulations on the National Council on TV and Radio. It is the task of the Council to issue the licenses. On the other hand, no budget relevant to this task has been provided for them.

The Council consists of nine members appointed by the President for six years. The lack of any concrete criteria for appointing members of the Council as well as the participation of the President in this process seriously undermines the independence of the Council.

Several other players involved in the provision of licenses, including the Justice and Economic Development Ministries, the Telecommunications Ministry, the Frequency Committee of the Cabinet of Ministers (includes Defense, Health and National Security

representatives). This multi-headed approach makes it almost impossible for any broadcaster to try to receive a license.

Given this multi-headed structure, potential political motivations (mentioned often at the roundtable) could always be explained in vague technical terms. As one media expert put it: “This is not a legal problem but a political one, there is lack of will to provide for independent TV.”

According to Hasanov’s presentation at the roundtable, earlier this year the Cabinet of Ministers was ordered by the President to remove in one month all the legal and institutional obstacles standing in the way of licensing, but it failed to do so.

At their separate meeting, Ali Hasanov told the Representative that he did not expect any new licences to be issued before the November 2005 elections.

No explanation was given for this unusual inefficiency in Azerbaijan’s Presidential democracy.

The adequate legal and institutional framework for licensing for new, independent private broadcasters should be established as soon as possible. The country’s National TV and Radio Council should be made more independent, and its functions should be made much clearer. It should be allocated a special budget. A frequency map should be provided as soon as possible. In view of the upcoming parliamentary elections, at least the open frequencies could be issued to new broadcasters tendering for a license.

Disputed transformation of state-owned *Channel 2* into public *ITV*

In 2005, a public service broadcaster, known as *ITV*, was established based on *Channel 2* of state-owned *AzTV*. (See the sub-chapter below regarding the fate of *Channel 1*.)

In meetings with the Representative, all senior officials praised this important step, with President Aliyev describing it as a “positive development.”

However, the appointment of the new Director General of *ITV* has disappointed many of those who demand a transformation of state TV into public.

Ismail Omarov was elected to the post of station director by the *ITV* board on 16 April with six votes out of a possible nine. He is a controversial figure because, as a journalist on government-run television, he frequently accused the Azerbaijani opposition of high treason.

Some 30 representatives of political parties, NGOs, and the media attended the founding meeting in Baku on 20 April of a movement named *Ellik Televiziya* (Public Television), the aim of which is to lobby for the creation of a truly independent public broadcaster.

According to Jahangir Mammedli, Chairman of the Broadcasting Council of the Public TV and Radio Company of Azerbaijan, the Public TV will become operational in August this year. On the other hand, Mammedli pointed out that the 3 Million USD provided by the government for the public channel is not sufficient. In order to become fully operational, the new PBS would need at least 30 Millions USD.

Channel 1 remains state TV

It is controversial that only *Channel 2* of state TV is transformed, which is also the financially weaker channel of *AzTV*. Following a Presidential Decree from March 2005, *Channel 1*, state TV's more prosperous and technologically better equipped arm will remain state-owned.

This is so despite the fact that it will become a joint stock company, and 49 percent of its shares will be privatised (based on the same decree but not on any media law).

This way, the unusual situation has occurred where a country has both a 'state' and a 'public' channel. According to Ali Hasanov from the Presidential Administration, *Channel 1* of *AzTV* will focus more on promoting Azerbaijani culture and traditions while efforts will be made to keep *Channel 2* open to different viewpoints prevalent in society.

For ITV to truly become independent, the Government should ensure new elections of the Director General, and provide for substantial support to this new television station. Channel 1 should also be transformed into public TV. It is of paramount importance for an impartial coverage of the upcoming election campaign that ITV – former Channel 2 – starts broadcasting as soon as possible.

The print press

Although the television scene of the country can be seen to be leaning towards the government, the print media scene is diverse and the opposition is well represented. This does not make the print press a true balancing force, however, since it is weak financially and reaches a much smaller audience.

According to data from 2004, more than 600 newspapers and 100 magazines were registered in Azerbaijan. However, more than half of them are either suspended or never started publishing. Opposition oriented newspapers have a larger circulation, their daily circulation plunged from a record 35000-45000 copies before the 2003 presidential elections to 10000-12000 copies in 2004-2005. The circulation of governmental newspapers is around 7-8000 copies.

About 15% of all print media belongs to the government and about 35% to political parties. The rest of the press is relatively independent although, because of economic vulnerability and financial dependence, the independence of the absolute majority of them is of a conditional nature.

Generally, all media are affiliated with one or another interest group, be it political or economic. Except for *Monitor* magazine, published by the late Huseynov, most other publications are criticized for a lack of professionalism.

A Press Council, dealing with ethical and professional issues, was established two years ago. The Representative met with its Chairman Aflatun Amashov who said that 190 publications are already members of the Council. But he also stressed that although the Council has been operational for two years, the quality of the print press has not improved.

One of the issues that the Press Council was able to deal with was a local Baku ban on the distribution of independent newspapers in the city's metro. After the Council Chairman intervened with the President, this issue was immediately resolved.

One of the reasons why so many print media are not truly independent sources of information for the public is their lack of sufficient financial means, in combination with a low circulation. Impartiality can only become a business interest if a substantial advertising market develops. To facilitate this, the government should start the privatization of its newspapers, along the lines of broadcast licensing. Print journalists need training and technical support which could be provided by international organizations and donors.

Access to information

Currently, a new draft Law on Access to Information (known as the Law on Obtaining Information) has passed the first reading in Parliament during the April-June session.

The current text has reached a commendable progress in improving the official draft law. It now incorporates most of the recommendations made by the Council of Europe and the Office of the Representative. Some of the key freedom of information principles include:

- a principle of government openness;
- a guarantee for an independent review mechanism of state secrets (a provision for an Information Ombudsman);
- a duty to publish data of public interest;
- a protection for “whistleblowers”, that is, for officials who inform the press on public interest issues.

A second draft is being prepared and a second reading should take place later in 2005. The Representative was invited to take part in these hearings.

The new draft law on information access should be available to the public; the legislative process should be transparent and involve key stakeholders such as the media, NGOs and independent experts; the law should be adopted before the parliamentary elections in November.

Training for Government Press Officers and Journalists

Following a suggestion by Foreign Minister Elmar Mammadyarov, the Office of the Representative developed a workshop on government-media relations. This project was welcomed by all of the officials who the Representative met, and will take place from 18th until the 20th July in Baku.

The participants will be both press and public information officers of state authorities, and journalists. It will provide know-how on the following topics:

- Overview of relevant international practices;
- techniques on how to effectively manage a press office;
- democratic governmental communication strategies;
- professional ways and the legal basis of interaction with journalists;
- professional journalistic principles of interaction with officials;
- overview of the relevant legal provisions on access to information and ‘the public’s right to know’.

Media coverage of the visit

The Representative welcomed the widespread coverage of his visit in both government and non-government media. He was interviewed on several occasions by leading television stations and most of his meetings were covered separately. This was the best media covered visit by the Representative since he took Office in March 2004.

Recommendations

- ***Until the real motives of the perpetrators of the murder of Elmar Huseynov are identified and proven in court, the public can not consider the case as closed, and confidence in the investigation stands in jeopardy.***
- ***Until then, the Government should provide the public with as much information as possible on the investigation, in order to minimize the chilling effect on journalism caused by the murder.***
- ***A practical moratorium on libel and defamation procedures is enforced solely by the authority of President Aliyev. While his initiative is a highly welcome development, the moratorium needs to be based on broad public consensus among the countries politicians, and converted into law. As a next step, criminal form of libel and defamation should be abolished, and civil damages should be capped by a rational ceiling.***
- ***All cases of violence should be thoroughly investigated. Any police officers implicated in harassing or beating journalists should be disciplined. Especially in view of the upcoming parliamentary elections, measures should be taken to ensure the safety and security of reporters, especially those covering public gatherings.***
- ***The adequate legal and institutional framework for licensing for new, independent private broadcasters should be established as soon as possible. The country's National TV and Radio Council should be made more independent, and its functions should be made much clearer. It should be allocated a special budget. A frequency map should be provided as soon as possible. In view of the upcoming parliamentary elections, at least the open frequencies could be issued to new broadcasters tendering for a license.***
- ***For ITV to truly become independent, the Government should ensure new elections of the Director General, and provide for substantial support to this new television station. Channel 1 should also be transformed into public TV. It is of paramount importance for an impartial coverage of the upcoming election campaign that ITV – former Channel 2 – starts broadcasting as soon as possible.***
- ***One of the reasons why so many print media are not truly independent sources of information for the public is their lack of sufficient financial means, in combination with a low circulation. Impartiality can only become a business interest if a substantial advertising market develops. To facilitate this, the government should start the privatization of its newspapers, along the lines of***

broadcast licensing. Print journalists need training and technical support which could be provided by international organizations and donors.

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