

The State of Internet Freedom in Azerbaijan, a legal overview
July, 2021

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Introduction and Methodology

This report has been prepared in the framework of the Azerbaijan Internet Watch (AIW) project as a final report in the series of explainer reports on the landscape of critical national legislation adopted, and/or subject to amendments and affecting internet freedom in Azerbaijan.

The previous reports include:

1. [The Pegasus Project and Azerbaijan – what does domestic legislation tell us about privacy of users in Azerbaijan](#)
2. [Legal analysis of a COVID tracing app released last year in Azerbaijan, June 8, 2021](#)
3. [Azerbaijan's desire to regulate online hate speech: what problems should Azerbaijan fix first? April 7, 2021](#)
4. [Restrictive new bills sweet freedoms under the carpet, January 11, 2021](#)

The following report identifies gaps within the legislation, policy, and practice that fail to comply with international legal standards in the field of internet freedoms.

As such, the aim of the report is to:

- identify and report key developments concerning internet freedoms covering the period between 2020-2021;
- analyze and review legislation, policies, and practices in line with international standards;
- provide recommendations to strengthen and develop legislation, policies, and practices already in place;

This report was prepared based on desktop research and media monitoring.

Executive Summary

Azerbaijan's track record on freedom of expression and freedom of the media has been on a steady decline according to a number of key reports by international media freedom watchdogs. This has been the case especially since 2014.

The most recent rankings by the Reporters Without Borders' [Press Freedom Index in 2020](#), place Azerbaijan at the bottom of the index, where the country ranks 169 out of 180 countries monitored. Freedom House's annual [Freedom on the Net report](#) ranked Azerbaijan in 2020 as "Not Free."

From a legal perspective, despite routine calls on the government of Azerbaijan to ensure the domestic legislation and its application comply with international standards, particularly in line with the ECtHR case-law requirements on freedom of expression, media, and internet rights, the legislative authority, continues to adopt restrictive new bills that further deteriorate fundamental rights and freedoms.

During the reporting period, the parliament in Azerbaijan adopted several amendments to existing national legislation, imposing further restrictions and increasing state control over the internet. In the meantime, relevant authorities failed to carry out effective and prompt investigations and prosecution into the cases of blackmailing and online sexual harassment against activists and politicians. Further, the government prepared a draft law on the media, with proposals to license Internet televisions and radios, and a new media registry with strict requirements for journalists, media owners, and media platforms.

The report also identifies the government's failure to present, sufficient mitigation policies to remove the infrastructural barriers related to internet access when switching to online education during country-wide restrictions imposed in March of last year as a result of COVID19. These barriers were more profound in

remote areas of the country where access to the internet is poor due to inadequate infrastructure and among economically vulnerable populations.

Finally, this report concludes that domestic legislation in Azerbaijan does not provide effective safeguards for the protection of the rights and freedoms of people online. On the contrary, it gives law enforcement a wide range of powers while failing to provide an independent review mechanism neither by the courts nor by other independent institutions over the exercise of those unlimited powers.

In response to these challenges, the report offers a number of recommendations for the government to improve its domestic legislation in line with international standards with the view of better protection of individuals' rights and freedoms online.

Connecting to the internet

Key Developments between January 1, 2020 – June 31, 2021

The Cabinet of Ministers adopted [a decision No.22 on January 29, 2020](#), approving the "Rules of the organization of operation of the information system on activity against foreign technical intelligence," and "Level of access of information resources of state bodies within the information system on activity against foreign technical intelligence." However, the specifics of these rules and what they entail were not disclosed;

Azerbaijan tightened control over online content, specifically the definition of "prohibited information". On March 17, 2020, the parliament amended [the Law of the Republic of Azerbaijan On Information, Informatization and Protection of Information \(30-VIQD\)](#). According to the amendment, "prohibited information" includes false information endangering human life and health; causing significant property damage; mass violation of public safety; disruption of life support services; and of financial, transportation, communication, industrial, energy, and social infrastructure facilities; or leading to other socially dangerous consequences."

During the reporting period, the number of attacks and direct targeting against activists, politicians, and their family members with intimate photos, videos, and personal messages that were leaked online, increased significantly;[\[1\]](#)

On June 29, 2020, the Parliament adopted amendments to the Law on Telecommunications and appointed the Ministry of Transport, Communications and High Technologies as an administrator of domain name registration in Azerbaijan;[\[2\]](#)

On September 27, 2020, authorities in Azerbaijan imposed restrictions on access to the internet by limiting the speed of the internet, blocking access to social media platforms and messenger services such as WhatsApp, Telegram, and others during the second Karabakh war;[\[3\]](#)

On January 13, 2021, the government established Azerbaijan State Agency for Media Development, according to the Presidential decree "On deepening media reforms in the Republic of Azerbaijan" [signed on January 12, 2020]. The agency was given broad powers to control the online media landscape;[\[4\]](#)

The Government announced a new draft law on media with provisions to license Internet TV channels;

Azerbaijan parliament members announced plans to draft a new law on Hate Speech.

Organization and licensing of internet services

The main legal documents addressing the telecoms and internet in Azerbaijan are the *Law on Telecommunications* dated June 14, 2005[\[5\]](#) and the *Law on Information, Informatization and Protection of Information* dated April 3, 1998.[\[6\]](#)

The regulation of the internet in Azerbaijan is controlled by the Ministry of Transport, Communications and High Technologies, (MTCHT). The MTCHT is a government agency, in charge of regulating communications and the development of information technologies. It also controls the internet telecommunications infrastructure.

Despite the Law on Telecommunication obligating the state, to ensure healthy competition and antimonopoly activity in the field of telecommunications^[7], the import and distribution of the internet in the country is mainly distributed through state companies or private companies under strict government control.^[8] According to the Law on Telecommunication (Article 6) regulation of telecommunication activity in Azerbaijan is carried out by the state through broad powers, notably, through the licensing and certification of telecommunication activity, the application of tariffs for the use of telecommunication services, and radiofrequency, and etc.

Licenses for communication services (*fixed-line telephony, radio, and wireless telephony, IP-telephony, domestic telecommunications, international telecommunications, data transfer, high-speed postal service*) are issued by the Ministry of Economy. Licenses for the activities such as biometric technologies and services, formation of personal data backups, and creation of information systems with the purpose of provision of such services, including cellular (mobile) telecommunication services (with the specification of technological standard) are issued by MTCHT.

The activities of internet service providers (ISPs) and operators are required to register with the MTCHT. According to the “Rules of registration of operators and providers of Internet telecommunication services” approved by the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan [No. 427] and dated October 12, 2017, operators and providers of internet telecommunication services must register for a license by applying through the MTCHT, within 15 (fifteen) days of the start of the service.^[9] The Rule further states that in accordance with the Presidential Decree No. 507 dated June 19, 2001 “On the division of powers of search operations’ entities while carrying out search operations,” ISPs are required to have a copy of the guarantee, on the installation of special equipment that provides access to information, for search operations.^[10] The Rule also requires that the operators and providers submit, approved copy (copies) of the agreement (contracts) concluded with the first subscriber (subscribers), to the registration authority namely the MTCHT.^[11]

The State Security Service and the Ministry of Internal Affairs are authorized for the organization of search operations within the communication networks in accordance with the Rule approved by the Presidential Decree № 638 dated October 2, 2015 “On approval of the Rules on information security during search operation activities on communication networks”.^[12] This respective rule was never published. According to the Constitutional Law “On normative legal acts” laws and presidential decrees signed by the President must be officially published within 72 hours after the signing.^[13] The Constitutional Law also allows that certain provisions of normative legal acts reflecting state secrets are not published.^[14]

The MTCHT has a right to reject the registration request filed by the operators and providers in the absence of technical and organizational capacity for conducting search operations with special equipment that provides access to information of users on the telecommunication networks. However, the domestic legislation does not specify neither the review procedures nor concrete requirements for what is described as “technical organizational capacities.” Refusal to register ISPs may be appealed administratively and (or) in court. The operator and the provider must re-apply within 15 (fifteen) days, having eliminated the circumstances that led to the refusal of prior registration.^[15]

On June 29, 2020, the Parliament adopted two amendments to the Law on Telecommunications and appointed the MTCHT as an administrator for domain name registration in Azerbaijan.^[16] According to Article 1.0.20, the national administrator of domain names is an authorized person who administers domain names in a high-level domain zone with “az” country code. According to Article 7.10-1, the registration of domain names in the high-level domain zone with the country code "az" and the amount of payment for their

maintenance will be determined by the national administrator of the domain name in coordination with the body (institution) determined by the relevant executive authority.^[17] The two amendments fail to mention the rules on how and on what grounds the MTCHT will determine the registration and maintenance fees.

On June 17, 2021, the National Television and Radio Council (NTRC) announced the provisions in the draft law "On Media" concerning television and radio broadcasting.^[18] According to the draft law a number of restrictions on freedom of expression and information, as well as regulation of media activities is envisioned. For the purpose of this report, only those restrictions that concern and impact freedom on the internet are considered here.

The Council of Europe's Committee of Ministers recommendation CM/Rec(2007)16 to its member States to *promote the public service value of the Internet*^[19] indicates the importance of diversification of competitive market structures in internet resources and ICTs. According to the Recommendations, member states should develop, in co-operation with the private sector and civil society, strategies that promote sustainable, economic growth via competitive market structures in order to stimulate investment, particularly from local capital, into critical Internet resources and ICTs, with particular reference to: developing strategies which promote affordable access to ICT infrastructure, including the Internet, promoting technical interoperability, open standards and cultural diversity in ICT policy covering telecommunications, broadcasting and the Internet.

Azerbaijan has so far, failed to meet these recommendations.

According to the NTRC, the draft law on media, which will be submitted to the Parliament for consideration once it's ready for review, proposes licensing of Internet TV channels.^[20] Specifically, there are two requirements for Internet television channels:

1. The channel must have its own website and broadcast from that website;
2. The minimum broadcasting hours during the day are to be determined by the new law on Media;

In a follow-up statement, and amid growing criticism over the proposal, NTRC said, the licensing won't be mandatory. Internet TV and radio channels will still be able to operate in case they refuse to obtain a license as a broadcast platform or in case, they do not meet the requirements for a broadcast platform. However, these platforms won't be recognized as media and will be excluded from the media registry.^[21]

Many journalists voiced concern that if approved, the new law, would not treat or recognize unlicensed online media activities as media, which would likely result in further restrictions on their professional activities. This was the case during lockdown measures that were introduced in June of last year. At the time, the Cabinet of Ministers decision issued on June 4, 2020, ordered an immediate stop to all activities, including services and transportation, effective midnight June 6, and lasting until 06:00 AM, June 8. Television and radio channels as well as cable television registered as mass media were excluded from these restrictions.^[22]

In addition to licensing, the draft law seeks to establish a media registry. Only those journalists who would meet specific criteria set by the law would be able to register. These requirements include higher education, at least three years of field experience, or similar time spent in an academic environment working in a relevant field, an employment contract, and a clean criminal record. The media employing the journalist must also be registered in the registry.

All of these requirements can seriously limit the work of independent journalists, especially those working with online news platforms or freelancers. Journalists working specifically with online news, are often freelance and work on short-term service contracts, rather than holding permanent employment contracts. In some cases, their work experience does not meet the three-year work experience requirement as described in the draft law.

As in the case of some of the rules introduced above, although the draft law was ready on April 10, 2021, the authorities never disclosed the document for public discussions. Instead, they held closed-door meetings

with the government and government-controlled media on some of the provisions outlined in the draft law.^[23] On July 5, 2021, at least 40 independent journalists signed a public petition requesting that the draft law "On Media" be made public for journalists to discuss it.^[24] No further developments have taken place in that regard at the time of writing this report.

In the context of its *Recommendation CM/Rec(2018)1 to member States on media pluralism and transparency of media ownership*, the Council of Europe's Committee of Ministers refers to the term "online media" and stresses its importance for media pluralism. It further notes that states have a positive obligation to foster a favorable environment for freedom of expression, offline and online, in which everyone can exercise their right to freedom of expression and participate in public debate effectively, irrespective of whether their views are received favorably by the State or others.^[25] Moreover, in 2012, the UN Human Rights Council adopted a key resolution on the promotion, protection, and enjoyment of human rights on the Internet, "calling upon all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries."^[26]

So far, the relevant government institutions have failed to offer such assurances in Azerbaijan. The extent of government control and monopoly, as well as poor internet infrastructure, are reflected in numerous international reports. The 2021 Inclusive Internet Index, ranked Azerbaijan 84th globally in the "readiness category,"^[27] and the country's overall performance scores have deteriorated year on year.^[28] According to June Speedtest Global Index, (results are updated mid-month for the previous month), Azerbaijan ranked 122nd out of 181 countries in the category of fixed internet speed. The country's score improved in the category of mobile internet speed, scoring 66th place out of 137 countries ranked in this category.^[29]

According to the Freedom House 2020 "Freedom On The Net" report, poor ICT infrastructure and state monopoly over the ICT industry, were among key obstacles at improving access and quality to the internet across Azerbaijan. As a result, Azerbaijan was ranked "not free" in the most recent country report.^[30]

Despite institutional as well as infrastructure challenges, the number of internet users in Azerbaijan has grown rapidly over the past 10 years. The most recent indicators show internet penetration at 81 percent.^[31]

Accountability and Transparency

In Azerbaijan, the telecom regulatory framework is regulated and operated by the MTCHT. In addition to full government control, the existing legal framework also explains the insufficiency of the system.

Under the Telecommunication law,^[32] "disputes between operators shall be resolved by the relevant authority. The decision of the dispute shall be made publicly available, and in case, a party does not agree with the decision, the decision may be appealed in court". However, the analysis of the website of the MTCHT demonstrates that the agency does not publish any settlement consultations.

According to the Asian Development Bank, the government could consider privatizing the state-owned enterprises in the telecommunication area, which would add greater transparency and likely generate additional investment and innovation.^[33] The EU4Digital gap analysis also recommends Azerbaijan review the legislation to enable the NRA to set forth procedures for consultation mechanisms.

Moreover, the websites of the major providers of Internet service providers (Baktelecom and Aztelecom) do not contain any policy documents, values, or obligations related to their transparency and accountability. The fact that these companies, provide access to the relevant government authorities collecting personal data of users, set up control mechanisms on their infrastructure, allowing for blanket surveillance, control, and monitoring, gives reasonable ground to believe there is no human rights centered approach in governance and delivering of internet services in Azerbaijan.

The UN Guiding Principles on Business and Human Rights refer to the responsibility of States to "take additional steps" to protect against human rights abuses by businesses that receive substantial support and

services from state agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, "by requiring human rights due diligence".[\[34\]](#)

The Guiding Principles on Business and Human Rights also recognize the responsibility of business enterprises to respect human rights, independent of State obligations or the implementation of those obligations (see A/HRC/17/31, annex; and A/HRC/32/38, paragraphs 9- 10). They provide a minimum baseline for corporate human rights accountability, urging companies to adopt public statements of commitment to respect the human rights endorsed by senior or executive-level management; conduct due diligence processes that meaningfully "identify, prevent, mitigate and account for" actual and potential human rights impacts throughout the company's operations; and provide for or cooperate in the remediation of adverse human rights impacts (see A/HRC/17/31, annex, principles 16-24).[\[35\]](#)

These internationally recognized standard-setting instruments are usually not legally binding but elaborated from different binding human rights treaties and standards. Such documents set out a number of recommendations, standards, and commitments on the regulation of Internet infrastructure, as well as the regulatory role of states in accessing the Internet.

However, none are implemented in the context of Azerbaijan.

Obstacles to the internet: martial law, internet disruptions, and blocking

In Azerbaijan, the president may declare martial law throughout the territory of the Republic of Azerbaijan, or within its separate regions, and shall, within 24 hours, submit the appropriate decree to the Parliament for approval based on Article 111 of the Constitution of Azerbaijan.[\[36\]](#) Article 112 of the Constitution further allows the President to declare a state of emergency and within 24 hours, submit the appropriate decree to the Parliament for approval.[\[37\]](#)

International law standards, including Azerbaijan's Constitutional law[\[38\]](#) allow the state to derogate certain human rights in emergency situations or under martial law. According to Article 71 (III) of the Constitution, rights and freedoms may be partially and temporarily derogated in times of war, martial law, and state of emergency, as well as mobilization, subject to the international obligations of the Republic of Azerbaijan.[\[39\]](#)

On September 29, 2020, in accordance with Article 15 of the European Convention, Azerbaijan notified (Note Verbale) the Secretary-General of the Council of Europe (Treaty Office) about the derogation on some obligations[\[40\]](#) due to the declaration of martial law on September 28, 2020.[\[41\]](#)

On December 16, 2020, the government notified the Secretary-General of the Council of Europe that the martial law was lifted throughout the country effective midnight on December 12, 2020, and therefore situation which necessitated a derogation from certain obligations under the Convention, ceased.[\[42\]](#)

On September 27, the MTCHT announced restrictions on the provision of the Internet across the country.[\[43\]](#) A short official statement that did not refer to any decision or regulation noted that the restrictions were aimed at preventing "large-scale provocations by Armenia". The restrictions were later applied to a number of social networks and various messenger platforms too. Based on OONI Measurement results it was possible to confirm that among blocked social media platforms and communication apps during the imposed restrictions, were, WhatsApp, Facebook, Telegram's web application, Twitter, and Skype.[\[44\]](#)

Azerbaijan's Martial Law[\[45\]](#) allows conducting military censorship of correspondence, television, and radio broadcast in order to prevent illegal dissemination of information constituting a state secret; coordination of news reports with military authorities, other state bodies, and their officials ahead of publishing; and control over conversations, the information provided on the internet information resources, including social networks. However, the law does not mention specific rules and forms of military censorship. As a result, the government agencies, enjoy a wide degree of authority and discretion.

While the state may enjoy extraordinary powers during martial law (wartime) under international treaties, these powers are not unlimited. Article 15 § 1 of the European Convention on Human Rights requires that the measures taken in response to a war or public emergency must not go beyond the extent strictly required by the exigencies of the situation and the measures must not be inconsistent with the State's other obligations under international law.

The ECtHR, which is empowered to rule on whether the States have gone beyond the 'extent strictly required by the exigencies of the crisis, does so based on a number of benchmarks that include, whether ordinary laws would have been sufficient to meet the danger caused by the public emergency;[\[46\]](#) whether the need for the derogation was kept under review;[\[47\]](#) whether the measures were subject to safeguards,[\[48\]](#) and whether judicial control of the measures was practicable.[\[49\]](#)

During the period of martial law, access to the Internet remained blocked to the public, in the absence of any administrative decisions or justifications, the guarantees associated with the decision, and clearly stated reasons for such restrictions in place.

Content Regulation Internet Regulatory Authority

International reports[\[50\]](#) suggest that Azerbaijan so far failed to establish a National Regulatory Authority (NRA) in line with the international standards. The Strategic Road Map on the development of ICT in Azerbaijan approved by the presidential order on December 6, 2016[\[51\]](#), required the establishment of an independent regulatory body by the end of 2020. For this purpose, a "Three-year transition Plan" was adopted where all aspects of the process were defined.

According to the recent Gap assessment of Azerbaijan regulatory system in the field of electronic communications (findings and recommendations regarding governance, powers, and obligations of the national regulatory authority) prepared by the EU4Digital,[\[52\]](#), there is no authority meeting the requirements of National Regulatory Authority in Azerbaijan as of today. The assessment presents a set of recommendations to establish an independent NRA for electronic communications (see page 9 of the Gap Assessment).

Independent National Regulatory Authority is crucial in ensuring proportionality of government measures such as blocking and takedown of the alleged illegal content on the internet and in providing effective safeguards against abusive and overbroad manner application of restrictions.

Blocking, Filtering, and take-down of illegal internet content

On March 17, 2020, the Parliament adopted an amendment to the law on "Information, Informatization, and Protection of Information" and to the Code of Administrative Offences introducing new administrative offenses for spreading false information causing threat to, or harming human life and health, causing significant property damage and increased administrative liability for violating anti-epidemic, sanitary-hygienic and quarantine regime.[\[53\]](#)

This newly introduced administrative liability was also stipulated in the Law "On Information, Informatization and Information Protection" expanding its application to false information threatening to harm human life and health; causing significant property damage; mass violation of public safety; disruption of life support, financial, transportation, communication, industrial, energy and social infrastructure facilities or leading to other socially dangerous consequences.[\[54\]](#)

The authorities justified the amendments as a measure to prevent the spread of manipulative and false information on social media as part of the COVID19 response. The conditions for the application of the new rules were not specified thus increasing the chances of abuse of the law, as well as aggravating the responsibility of social media users for the dissemination of information.[\[55\]](#)

Sufficient clarity within the legislation is a requirement for quality law standards, established by the ECHR case law. According to this case law, the law must be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual to foresee the consequences which a given action may entail, and indicate with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise [see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI; and *Ahmet Yıldırım*, cited above, §§ 57 and 59]. In the list of prohibited information envisaged in the Law on Information, Informatisation, and Protection of Information, the definition of what entails prohibited content is vaguely described and is open to excessive interpretations. With such laws in place, the state authorities “enjoy” a broad discretionary power to categorize any information as prohibited (Law № 460-IQ).[56]

International standards require that nationwide general blocking or filtering measures be taken by the State authorities only in cases where filtering concerns specific and clearly identifiable content, based on a decision on its illegality by a competent national authority which can be reviewed by an independent and impartial tribunal or regulatory body in accordance with the requirements of Article 6 of the ECHR.[57] During the pandemic, and at the time of writing of this report, no such mechanisms were in place.

“Online policing”

Azerbaijan signed the Budapest Convention – the Council of Europe Convention against Cybercrime - in 2008 and has ratified it, in 2010.[58] The Budapest Convention is a treaty on crimes committed on the internet and on computer networks. In Azerbaijan, regulation of intelligence services and online policing online, including investigation and prosecution of offenses committed online, are regulated by the Criminal Code, Criminal Procedure Code, Law on Search and Operation, Law on Police, and Law on Prosecutors office, including other normative legal acts of the Republic of Azerbaijan. However, there is no dedicated strategy or other specific policy documents on cybercrime currently available or being developed in Azerbaijan.[59]

In the absence of such policies, the law enforcement agencies, especially the police, which do not have significant capacity to investigate and prosecute crimes committed online, often interferes with the freedom of expression of the social network users.

In recent years, the police increasingly play the role of an arbitrator in resolving public conflicts and disputes between internet users. By complaining to the police, individuals can force others (whom they are in conflict with) to delete their status and comments from social network accounts. In return, police promptly identify those who complained about/against or people who criticize the government, and especially the law enforcement agencies on social networks, forcing them to apologize to the public on camera. Police then share the apology videos with the media.[60]

In July 2020, Baku police arrested four people for their criticism on social media of a police PR stunt. Police forced detained social media users to apologize on camera for criticizing the police.[61]

Local civil society activists suggest that during the quarantine period, a large number of people who were held administratively or who were criminally liable for organizing and/or participating in wedding or funeral ceremonies were brought to the police stations, where their forced confessions of repentance were filmed and later broadcasted on national television channels. According to credible reports received by the Election Monitoring and Democracy Studies Center, an Azerbaijani NGO, most people did not give consent to such video recordings. As such, the broadcast of the videos took place against Article 51 of the Code of the Administrative Offenses, which prohibits the dissemination of materials (audio, video, photo) in the mass media without the consent of the person against whom the administrative proceedings are conducted.[62]

Such practice was also used against LGBTQI+ people at least on one occasion. In July 2020, police shared the testimonies of two persons, who were accused of allegedly promoting drug use via their TikTok accounts. The video of their forced confession was shown on state media (Azertag), to discredit LGBTQI+ people and to create a negative public image.[\[63\]](#)

In July 2020, Seymur Ahmadov, a veteran politician and member of an opposition Popular Front Party told Human Rights Watch that, a plain-clothed man yelled and threatened Ahmadov during his detention, that unless he apologized in front of the camera, he would be subjected to physical violence and beaten to death.[\[64\]](#)

In addition to forced confessions televised on government and pro-government media, there is also ongoing harassment of political activists, and especially members of the feminist movement online. According to Azerbaijan Internet Watch, scores of women were targeted in March of this year on telegram channels.[\[65\]](#) Other forms of attacks include sextortion and hacking of personal social media accounts and emails.

Specific issues

Privacy & data protection: weak safeguards

The data protection in Azerbaijan is primarily regulated by the Law on Personal Data adopted on May 11, 2010. In addition, Azerbaijan ratified the 1981 Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data.

On September 7, 2017, President signed an order, "On Amendments to the Decree of the President of the Republic of Azerbaijan No. 708." The said decree was "On Measures to Improve Activities in the Field of Information Security" signed on September 26, 2012. According to the amendments, the MTCHT and the Special Security Services were tasked to submit a proposal to the President within two months of signing the order on amendments, about setting up a mechanism that would exclude the anonymity of the Internet users.[\[66\]](#)

It should be noted that in its case-law the European Court of Human Rights has recognized that anonymity is an important feature of the Internet. In the *Delfi AS (Delfi AS v. Estonia - 64569/09, Judgment 10.10.2013)* case the Court explained that it was mindful of the interest of Internet users in not disclosing their identity:[\[67\]](#)

"147. Anonymity has long been a means of avoiding reprisals or unwanted attention. As such, it is capable of promoting the free flow of ideas and information in an important manner, including, notably, on the Internet. At the same time, the Court does not lose sight of the ease, scope, and speed of the dissemination of information on the Internet, and the persistence of the information once disclosed, which may considerably aggravate the effects of unlawful speech on the Internet compared to traditional media. It also refers in this connection to a recent judgment of the Court of Justice of the European Union in the case of Google Spain and Google [Case C- 131/12], in which that court, albeit in a different context, dealing with the problem of the availability on the Internet of information seriously interfering with a person's private life over an extended period of time, and found that the individual's fundamental rights, as a rule, overrode the economic interests of the search engine operator and the interests of other Internet users."

Furthermore, the Council of Europe Committee of Ministers Declaration on Freedom of Communication on the Internet (Adopted by the Committee of Ministers on May 28, 2003 at the 840th meeting of the Ministers' Deputies), contains ten principles. According to the seventh principle, "In order to ensure protection against online surveillance and to enhance the free expression of information and ideas, member states should respect the will of users of the Internet not to disclose their identity. This does not prevent member states from taking measures and co-operating in order to trace those responsible for criminal acts, in accordance with national law, the Convention for the Protection of Human Rights and Fundamental Freedoms, and other international agreements in the fields of justice and the police."[\[68\]](#)

But in the case of Azerbaijan, and following the decree on amendments, no such measures were taken into account. Moreover, at the time of writing of this report, there is no information on whether this mechanism was finalized.

Access to information and education

On March 24, 2020, as COVID infections kept growing, a 'special quarantine regime' was introduced by the Cabinet of Ministers to address the pandemic in the country. The regime was extended multiple times throughout the quarantine regime, most recently until September 2021.[\[69\]](#)

The quarantine regime was introduced in accordance with the Law on Sanitary and Epidemiological Safety, which allows the Government to take special measures, in areas of employment, education, movement, and transportation, in the event of a threat of emergence or spread of infectious, parasitic, and mass non-communicable diseases.[\[70\]](#)

After the introduction of the special quarantine regime in Azerbaijan, schools and universities were required to adjust to the new conditions and thus, switched to online education. To deliver daily educational programs for schools, the Ministry of Education relied on its website, two public television channels, YouTube, Facebook, Zoom, and other platforms. Public universities mostly used the Zoom application.[\[71\]](#) Additionally, due to military operations during the 44-day war with Armenia, classes were suspended in a total of 468 schools situated on the frontline according to the Ministry of Education.[\[72\]](#)

The practical implementation of this switch had serious technical challenges. Teaching staff, especially in rural areas, had no prior training of the technology that was required for online learning, nor much experience teaching online. In Azerbaijan, 37% of teachers are over the age of 60, who lack even the basic skills, such as using computers.[\[73\]](#) The situation was further exacerbated by the lack of Internet coverage in all rural areas. As a result, both teachers and students were forced to rely on mobile internet bundles at an additional cost, creating further financial and other difficulties for both teachers and the families of students. Upon government request, Azercell, one of the three main mobile operators offered discount rates for teachers, however, this offer did not extend to students. As a result, economically disadvantaged families suffered the most.[\[74\]](#)

When it was clear, that the switch to distance learning was inevitable, the Ministry of Education was completely unprepared. It kept switching between platforms, starting from WhatsApp, then moving to Zoom, then eventually to Microsoft Teams. It also failed to understand that all these programs were not designed for distance learning but for conducting webinars, meetings, etc."[\[75\]](#)

Beyond finding and using suitable platforms for online learning, making sure that the teaching staff and students, had reliable internet connections, the Ministry of Education failed to take into account, access to devices with a stable Internet connection. According to official data, only 57.8% of households have access to a computer in Azerbaijan. The indicators are lower in remote areas such as the regions of Aran, 55.5%; Lankaran, 41%; Sheki-Zagatala, 41,8%; and Mountainous Shirvan, 38,1%.[\[76\]](#)

Conclusions & Recommendations

The analysis of the domestic legal framework shared in this report demonstrates that the current legal framework provides law enforcement authorities with unlimited powers to operate in online spaces. The analysis also explains, how this framework empowers the state to exercise full and unchecked control over telecommunication infrastructure.

In such an environment, internet and mobile operators as well as the ISPs have no power or independence to challenge the unlimited powers of the state. Further, our analysis indicates that the legal national framework is designed in such a way, that it fully disregards or undervalues the rights of individuals online

while granting authorities ambiguous powers to control everything online in the absence of an independent review of the regulatory authorities' decisions and actions.

The most striking example of such unlimited powers is an obligation placed on the ISPs to allow law enforcement authorities to set up special technical devices on the ISP's infrastructure, in order to monitor users online and collect information about them. This is done in the absence of explicit legal provisions which normally would require a court order to carry out such activity, as well as in the absence of independent oversight by a regulatory body, that Azerbaijan failed to establish since 2016. As a result, the lack of an independent regulatory body in the field of telecommunications, as well as the lack of an independent judiciary that is capable of providing effective protection and independent judicial review against the government's interferences, leaves citizens without any remedies to pursue.

Finally, this report also illustrates the weakness of the legislation on emergency powers, which at the moment fails to indicate the exact limits of government bodies during a state of emergency or war. Such loopholes allow the state authorities to exercise their exclusive powers in a way that can exceed the needs created as a result of such circumstances.

Based on the overview presented above, the following set of recommendations can help improve the overall environment of internet freedom in Azerbaijan:

- Amend the legislation, notably *the law On Information, Informatization, and Protection of Information*, including *the Code of Administrative Offences and Criminal Code* to remove restrictions on content, such as false information, insult, and slander. Consult with the independent civil society groups to amend the legislation on content regulation in order to strengthen the national legislation and make it in line with international standards. Provide self-regulation opportunities for providers and private companies to regulate inapplicable content in online spaces;
- Consider wider consultation and public discussions when reviewing new legislation and policy to ensure the voices of all key stakeholders are heard;
- Avoid adopting the draft law on media, that currently requires licensing of the Internet TVs and radios. Instead, ensure the provisions of journalistic activity online is not subject to specific authorization;
- Establish an independent National Regulatory Authority in line with international standards including, civil society organizations and other relevant stakeholders;
- Provide effective and prompt investigation and prosecution of online harassment, and blackmailing against activists, politicians, and/or their family members;
- Amend *the Law on Telecommunications, the law on Information, Informatization and Protection of Information* and *Law on Private Information*, including other normative legal acts to indicate what specific measures and in what circumstances the government is undertaking to exclude the anonymity of the internet users, including installing special software and hardware systems for the provision of blanket surveillance in online spaces.
- Amend the legislation to provide effective safeguards against abuse of power of law enforcement authorities, notably, amend article 10 of *the Law of The Republic Of Azerbaijan On Operational-Search Activity* to ensure that a respective court decree is required for conducting online tracking, interception, and seizure of private information from the telecommunication channels about individuals;
- Ensure that the Martial Law and the Law on Emergency Situations contain explicit provisions, notably safeguards, against the abusive application of emergency powers online. In doing so, amend the respective laws to include clear procedures of imposing any limitation over the internet and provide that such decisions are subject to effective safeguards;

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[2] The law on amendments to the Law of the Republic of Azerbaijan "On Telecommunications", 29 June 2020, available (in Azerbaijani) at: <http://e-qanun.az/framework/45676>

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[5] The law on Telecommunication, 14 June 2005, available (in Azerbaijani) at: <http://e-qanun.az/framework/10663>

[6] The law "About information, informatization and information protection" dated 3 April 1998, available (in Azerbaijani) at: <http://www.e-qanun.az/framework/3525>

[7] Article 11.1 of the Telecommunication law. "Operators, providers, other legal and physical persons operating in the field of telecommunication, as well device producers and suppliers are equal subjects in the creation and development of telecommunication services."

[8] Article 3.1.8, article 11.2, and article 11.2.1 of the Law on Telecommunication

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[26] The promotion, protection, and enjoyment of human rights on the Internet: resolution / adopted by the Human Rights Council, <https://digitallibrary.un.org/record/731540?ln=en>

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[35] Report by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, para., 45.

<https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2017/06/Kaye-Report-March-2017-AHRC3522.pdf>

[36] In the event of actual occupation of part of the territory of the Republic of Azerbaijan, a declaration of war against it by a foreign country or country, a real danger of an armed attack against the Republic of Azerbaijan, a blockade of its territory, or in the event of a real threat of such a blockade.

[37] In the event of natural disasters or epidemic, epizootic, severe ecological and other disasters; the commission of acts directed at violating the territorial integrity of the Republic of Azerbaijan, insurrections or coups d'état; mass disorders accompanied by violence; other conflicts threatening the lives and security of citizens, or the normal activities of state bodies.

[38] Under Article 2 of the Constitutional Law on regulating of implementation of human rights and liberties in the Republic of Azerbaijan rights provided for by Article 27 (except the cases of death as a result of war conducted in accordance with the law), part I of Article 28, part III of Article

[39] Article 63, Article 64 and part VIII of Article 71 of the Constitution of the Republic of Azerbaijan are non-derogable rights and no reservations are applicable to them, at: <http://e-qanun.az/framework/1881>

[40] Pursuant to Article 15 paragraph 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Ministry informs that during the martial law the Government of the Republic of Azerbaijan exercises the right of derogation from its obligations under Articles 5, 6, 8, 10 and 11 of the Convention, Article 1 and 2 of the Protocol to the Convention, and Article 2 of the Protocol No.4 to the Convention, and kindly requests the Secretary-General to disseminate the above- mentioned information among other States Parties to the Convention.

It is hereby specified that the measures taken by the Government are proportionate and targeted. Pursuant to Article 15 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the measures are required by the exigencies of the situation and consistent with the State's other obligations under international law.

[41] <https://rm.coe.int/09000016809fbcf4>

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[43] Ministry of Transportation, Communication, and High Technologies statement, <https://mincom.gov.az/az/view/news/990/ermenistanin-toretdiy-genishmiqyasli-texribatin-qarshisini-almaq-uchun-olke-uzre-internetin-verilmesi-mehdukladirildi>

[44] Azerbaijan Internet Watch, Country-wide internet disruptions reported in Azerbaijan, September 27, 2020, <https://www.az-netwatch.org/news/country-wide-internet-disruptions-reported-in-azerbaijan/>

[45] The Law on Martial Law, <http://e-qanun.az/framework/35170>

[46] *Lawless v. Ireland* (no. 3), 1961, § 36; *Ireland v. the United Kingdom*, 1978, § 212

[47] *ibid.*, § 54

[48] *ibid.*, §§ 216-219; *Lawless v. Ireland* (no. 3), 1961, § 37; *Brannigan and McBride v. the United Kingdom*, 1993, §§ 61-65; *Aksoy v. Turkey*, 1996, §§ 79-84

[49] *ibid.*, § 78; *Brannigan and McBride v. the United Kingdom*, 1993, § 59

[50] Regrettably, in 2017 progress towards the establishment of an independent NRA in Azerbaijan and Belarus was stalled, but this target (for 2020) is part of the Declaration of Eastern Partnership Ministerial Meeting on the Digital Economy (Tallinn, Estonia - 5/10/2017) and EU4Digital: Telecom (EaPeReg) Action Plan 2017-2020 (Pillar 1 - Legislative approximation and fostering NRA independence). See page 7, EaPeReg Regulatory Report 2017 of the EU and EaP electronic communications regulatory platform, available (in English) at: <http://www.eapereg.org/index.php/documents/public-reports>; Freedom House, FREEDOM ON THE NET 2020 Azerbaijan, A5 0-4 pts. Available (in English) at: <https://freedomhouse.org/country/azerbaijan/freedom-net/2020> ; The European Union's EU4Digital Initiative, Gap assessment of Azerbaijan regulatory system in the field of electronic communications, December 2020, page 9, <https://eufordigital.eu/wp-content/uploads/2021/04/Gap-assessment-of-Azerbaijan-regulatory-system-in-the-field-of-electronic-communications.pdf>

[51] The presidential decree on approval of strategic roadmaps for the national economy and key sectors of the economy, December 6, 2016, <http://e-qanun.az/framework/34254>

[52] EU4Digital: supporting the digital economy and society in the Eastern Partnership; Gap assessment of Azerbaijan regulatory system in the field of electronic communications; Findings and recommendations regarding governance, powers and obligations of the national regulatory authority, <https://eufordigital.eu/wp-content/uploads/2021/04/Gap-assessment-of-Azerbaijan-regulatory-system-in-the-field-of-electronic-communications.pdf>

[53] Article 211 of the Code of Administrative Offences <http://e-qanun.az/framework/44785>

[54] The Law on amendments to the Law of the Republic of Azerbaijan "On information, informatization, and protection of information", <http://e-qanun.az/framework/44788>

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[59] Council of Europe, the status of the ratification of the Budapest Convention concerning to Azerbaijan, https://www.coe.int/en/web/octopus/country-wiki-ap/-/asset_publisher/CmDb7M4RGb4Z/content/azerbaijan?_101_INSTANCE_CmDb7M4RGb4Z_viewMode=view/

[60] On June 3, 2020, Baku residents Tatyana Ulankina, Ramin Bakhishov, Allahverdi Imanguliyev, Shirzad Shirzadov, and Taleh Bakhshiyev were detained in the Baku Metro for allegedly resisting police. Police asked that the detained individuals comply with the lawful demands relating to the rules of the special quarantine regime. A video was shot and broadcast on the website of the Ministry of Internal Affairs in which each of the detainees apologized and regretted their actions to the police department. Afterward, a criminal case was launched under Articles 139-1 (violation of anti-epidemic, sanitary-hygienic or quarantine regimes when there is a real threat of the spreading of the disease or the actual spreading of the disease) and 221 (hooliganism) of the Criminal Code, and the investigation was launched. The CCTV footage from the subway

that appeared on social media showed there was a minor dispute between one person and two police officers over the wearing of a protective mask, which the person in the video claimed he had and others joined to support him, <https://www.youtube.com/watch?v=EBC-I9EuiCQ&t=136s>

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