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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**

**ON PROTECTION FROM DEFAMATION**

**OF THE REPUBLIC OF AZERBAIJAN**

# THE DRAFT LAW ON PROTECTION FROM DEFAMATION

## *I chapter* GENERAL PROVISIONS

### **Article 1. The Purpose of the Law**

The purpose of this Law is to establish the grounds, principles, rules and conditions governing interference with the right to freedom of expression and to strike a fair balance between those rights and freedoms so as to safeguard the legitimate public interests stipulated in Articles 3.5 and 3.6 of the Constitutional Law on Regulation of Enforcement of Human Rights and Freedoms in the Republic of Azerbaijan.

### **Article 2. Main Definitions**

2.1. The terms used in this Law shall have the following meanings:

2.1.1. **Defamatory statements** – statements that have been publicly disseminated which lower the reputation of a specific identifiable person or legal entity in the view of an ordinary member of society as well as insulting statements deliberately and indecently violating ethical norms commonly recognized in society and having no political, cultural, educational, literary, enlightenment and other value;

2.1.2. **Dissemination** – public dissemination of a statement in any form, whether orally, in writing, electronically or through any other means to one or more third parties (i.e. persons other than the person making the statement and the person to whom the statement refers);

2.1.3. **Opinion** – a value judgment, comment or expression of an idea reflecting a subjective attitude towards a person or object, the veracity or falsity of which is not possible to prove because of the inherently subjective nature of the statement, taking into account the style of expression used (rhetoric, exaggeration, satire or humour), and any statement which cannot reasonably be determined to be based in fact;

2.1.4. **Statement of public interest** – a statement concerning issues of legitimate public concern, which shall include any statement relating to any branch of power, local self-government bodies, politics, public health and security, implementation of laws and administration of justice, consumption and social interests, environment, economics, exercise of power, art and culture, as well as public and political figures, state officials, and information on state and municipality resources, property and administration;

2.1.5. **Public figure** – any person who is the subject of legitimate public interest, including top state officials, persons elected or appointed to official positions in all branches of state power and municipalities, including those elected or appointed to positions in public bodies and those employed in those bodies as civil servants or on other grounds, persons whose decision or opinion have a

substantial influence over public life; persons attracting public attention due to their specific actions or important events of public concern;

2.1.6. **Moral damage caused by defamation** – physical or mental suffering as a result the unfair loss of reputation in society, the exposure to hatred, ridicule, contempt or ostracism

### **Article 3. General Rules Governing Restrictions on Freedom of Expression**

3.1. Restrictions on freedom of expression are only legitimate if they conform to all of the following conditions:

3.1.1. The restriction has, as its purpose and effect, the protection of one or more of the legitimate aims listed in Articles 3.5 and 3.6 of the Constitutional Law on Regulation of Enforcement of Human Rights and Freedoms in the Republic of Azerbaijan, namely national security, territorial integrity, public safety, prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, prevention of the disclosure of information received in confidence, or maintenance of the authority and impartiality of the judiciary;

3.1.2. The restriction is set out in law in a sufficiently clear, precise and comprehensive manner so that it is possible to know in advance exactly what is prohibited, and it does not contain vague phrases or provisions that allocate discretion to officials in the interpretation of the restriction;

3.1.3. The restriction aims to protect values which are vital for democracy and is applied as a last resort in a democratic society;

3.1.4. The restriction represents the least intrusive available measure inasmuch as there is no other reasonable and effective means to protect the legitimate aim which is less restrictive of freedom of expression;

3.1.5. The restriction is not discriminatory in either its intent or its effect; and

3.1.6. The restriction is not overbroad, so that it does not restrict expression beyond the harmful expression which must be limited to protect the legitimate aim.

3.1.7. The restriction is proportionate in the sense that the benefit in terms of protecting the legitimate aim is greater than the harm done to freedom of expression, including in relation to the sanctions which may be imposed.

## *II chapter*

### **THE JUDICIAL PROTECTION AGAINST DEFAMATION**

#### **Article 4. The Right to Bring an Action**

4.1. Natural and legal persons about whom a defamatory statement has been disseminated may bring an action to the court with the aim of protecting and/or restoring their reputation.

4.2. The person can bring legal action personally or through his or her representative. The legal action cannot be brought on behalf of the group of persons.

4.3. If the statements made about dead people causes damage to the rights and interests of the dead person's first and second degree relatives, these parties have standing to bring a lawsuit in court.

4.4. A person can bring an action within six (6) months after the date when he or she knew or should have known about the dissemination of the statement, provided that this is not later than one year after the dissemination of the statement.

4.5. The date of dissemination for a statement, which is disseminated continuously (on the Internet), shall be the first day that statement was disseminated (uploaded) in that place and in that form.

4.6. State bodies and municipalities and other bodies and persons exercising the state power and discharging administrative functions in accordance with legislation shall not have the right to bring an action in defamation. Such bodies which have a profit making function may bring an action in defamation to recover direct property loss (real damage) caused by dissemination of a defamatory statement.

#### **Article 5. Respondents for Defamation Claims**

5.1. The following persons can be held liable, in accordance with the provisions of this Law, for the dissemination of defamatory statements:

5.1.1. statements made in mass media – persons involved in preparation, submission and dissemination of material as authors (journalists), editors (editor-in chief), media outlets;

5.1.2. statements made in public speeches – the person who made the speech;

5.1.3. statements made in a work (material) which is the subject of mass public dissemination – authors, editors, other persons involved in writing and disseminating the material, and printers;

5.1.4. statements made by State bodies, municipalities, and other bodies and persons exercising the state power and discharging administrative functions in accordance with legislation – those bodies and the persons involved in the preparation and publication of the statements;

5.1.5. statements made in official documents – the body adopting the document and the persons preparing or signing that document;

5.1.6. statements made on the Internet – persons who participated in the preparation and uploading of the statement (authors and editors), but not those participating simply in the provision of technical access to the Internet, transmission of information across the Internet or hosting of material, unless they disseminate the statements as their own or have been ordered by a court to take it down; and

5.1.7. Other instances – persons who disseminated the statements.

#### **Article 6. Non-judicial Means of Resolution of Disputes**

6.1. In defamation cases the court shall, where it deems necessary or where requested by the parties, take measures to reconcile the parties.

6.2. Parties to a defamation case can agree on a non-judicial settlement of the dispute during the period allocated by the court for a friendly settlement or at any time up until the completion of judicial proceedings.

#### **Article 7. Presumptions in Cases on Protection from Defamation**

7.1. Any doubt as to the application of the interference with the right to freedom of expression raised during examination of the issue of restrictions on the freedom of expression shall be interpreted in favour of refusal from such an interference.

7.2. Any doubt as to whether a person is a public figure or a private person shall be construed in favour of recognition of the person as a public figure, unless the specific provision of the law applied in the case stipulates the contrary.

7.3. Any doubt as to whether a statement relates to a matter of legitimate public interest or a matter of simply curiosity shall be interpreted in favour of recognition of the statement as a matter of legitimate public interest, unless the specific provision of the law applied in the case mandates otherwise.

7.4. Any doubt as to whether a statement is a statement of a fact or an opinion shall be interpreted in favour of recognition of the statement as an opinion.

7.5. The defendant may not be required to disclose the identity of source of information, unless ordered by a court.

### *III chapter*

#### **THE ISSUES OF PROOF AND COMPLETE OR CONDITIONAL EXEMPTION FROM LIABILITY IN CASES ON PROTECTION FROM DEFAMATION**

##### **Article 8. Proof in Cases on Protection from Defamation**

8.1. A plaintiff bringing a legal action in defamation shall be required to prove:

8.1.1. that the statement relates to the plaintiff and is defamatory as defined in Article 3.1.1 of this Law;

8.1.2. that, in relation to statements of fact on matters of public interest, the statements are false; and

8.1.3. that, in relation to disseminated opinion, the statement is an extreme one which no reasonable person could make, which has no justification given the circumstances and which is devoid of any factual basis.

8.2. Where the plaintiff is a public figure, he or she shall prove, in addition to what is stipulated in Article 8.1 of this Law, that the respondent published the statement with advance knowledge of its falsity, or with reckless disregard for the truth.

#### **Article 9. Defences of Truth and Consent**

9.1. Proof of the veracity of a statement of fact shall not cause liability for defamation.

9.2. No liability shall ensue in defamation for statements published with the plaintiff's consent.

#### **Article 10. Privileged Statements**

10.1. The following statements shall be absolutely protected against liability for defamation:

10.1.1. Statements made in the course of proceedings at legislative bodies, the municipalities and their committees, or by parliament members or members of municipalities or by others entitled to appear before them within their competence;

10.1.2. Statements provided in response to official inquiries by competent authorities, unless the statement is completely unconnected to the inquiry;

10.1.3. Statements ordered to be published relating to any of the above, including documents published by legislative bodies or courts;

10.1.4. Fair and accurate reports on any of the above or of other material the official of which status justifies its publication, such as an official report of a public inquiry, a foreign court or legislature or an international organisation.

10.2. Statements made in the performance of a legal, moral or social duty or interest attract liability in defamation if they are disseminated with malice, ill-will or spite.

10.3. Dissemination of the following statements also does not attract liability for defamation:

10.3.1. Fair and accurate republication of statements published in other media outlets and on the internet that have not been refuted;

10.3.2. republication of the statements that have been published by state and municipal bodies, public associations and their selected and public officials, and have not been refuted;

10.3.3. dissemination of the statements that mass media is not able to edit or is not obliged to edit due to technical or legal reasons.

#### **Article 11. The Reasonableness Defence**

11.1. In assessing whether or not it was reasonable to make a statement, courts shall take into account all relevant factors, including, where applicable, the following:

11.1.1. the measures taken by the respondent to verify the statement;

11.1.2. whether or not the respondent was acting in good faith;

11.1.3. the importance of the statement in terms of the magnitude of the public interest issue it related to, and the importance of publishing the statement in a timely manner;

11.1.4. the context in which the statement was made, including any provocation from the plaintiff;

11.1.5. in relation to repetition of the statements of others, reliability of those statements

#### *IV chapter*

### **REMEDIES FOR DEFAMATION**

#### **Article 12. Types of Remedies**

12.1. The primary remedies for defamatory statements shall be a publication of the correction of a statement, a right of refutation and reply and damage awards.

12.2. The court is entitled to require a respondent to publish a correction, refutation and/or the court judgement.

12.3. Where a correction does not suffice to redress the harm done to the plaintiff, the court may also require a respondent to publish a reply provided by the plaintiff.

12.4. The manner of publication of a correction or reply, as provided for in Articles 12.2 and 12.3 shall, where the parties agree, be done in accordance with that agreement and, otherwise, it shall be done in accordance with the procedure prescribed by law or by the court.

#### **Article 13. Damage Awards**

The respondent shall compensate the plaintiff for any pecuniary and non-pecuniary damage caused by a defamatory statement if the latter proves that he or she sustained that damage.

#### **Article 14. Entry into force of Law**

This Law enters into force on the date of its publication.