

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1208 meeting (23-25 September 2014) (DH)

Item reference: Communication from NGOs (Institute for Reporters' Freedom and Safety, Media Rights Institute) (28/05/2014) in the cases of Mahmudov and Agazade and Fatullayev against Azerbaijan (Applications No. 35877/04 and 40984/07)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1208 réunion (23-25 septembre 2014) (DH)

Référence du point : Communication d'ONG (Institute for Reporters' Freedom and Safety, Media Rights Institute) (28/05/2014) dans les affaires Mahmudov et Agazade et Fatullayev contre Azerbaïdjan (Requêtes n° 35877/04 et 40984/07)
(anglais uniquement)

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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DGI

28 MAI 2014

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

28 May 2014

Re: *Mahmudov and Agazade v. Azerbaijan* (No. 35877/04) and *Fatullayev v. Azerbaijan* (No. 40984/07) cases

CM human rights meeting on 3-5 June 2014

Further to our previous submission of 25 February 2014¹, we, the Baku-based Media Rights Institute (MRI) and the Institute for Reporters' Freedom and Safety (IRFS), in collaboration with the International Media Support (IMS), pursuant to Rule 9(2) of the Rules of the Committee of Ministers (CoM), would like to provide you with further information regarding the implementation of the Mahmudov group of cases by the Government of the Republic of Azerbaijan. We would like to particularly comment on the latest action plan submitted by the government on 26 February 2014² that will be discussed at the upcoming CoM human rights meeting on 3-4 June 2014.

In the respective action plan, the Government of Azerbaijan reiterated its commitment to cooperate with the Venice Commission, which we highly welcome. Referring to the CoM's own call to Azerbaijan to "to take all necessary measures with a view to aligning the relevant legislation pertaining to defamation and its implementation with the Convention requirements as interpreted by the Court's case law"³, **we urge the CoM to first and foremost request Azerbaijan to provide a detailed time table for the legislative work to revise the defamation laws, with the full involvement and support of the Venice Commission.**

¹ [Communication from NGOs](#) of 25 February 2014

² [Communication from the Government](#) of Azerbaijan of 26 February 2014

³ [Interim Resolution](#) CM/ResDH(2013)199

The two decisions of the Plenum of the Supreme Court regarding the reform on defamation

In the same action plan, the Government of Azerbaijan informed the CoM about the two decisions of the Plenum of the Supreme Court of Azerbaijan of 21 February 2014 regarding the application of the criminal defamation provisions as general measures taken towards the implementation of the ECtHR judgments. In one of the two decisions, the Supreme Court provided its interpretation to guide the lower courts through the application of freedom of expression provisions in compliance with the case law of the European Court of Human Rights (ECtHR). The second decision provides for draft amendments to the provisions of the Criminal Code on libel and insult (Articles 147 and 148 of the Criminal Code) with the intention to bring libel laws in accordance to the ECtHR standards.

The Plenum, while relying on the position of the ECtHR highlighted that the **preference should be given to the imposition of sanctions not related to imprisonment**, considered appropriate the provision of only sentence of fine in Article 147.1 and 148 of Criminal Code. Article 147.2 however retains the imprisonment as a sanction.

We welcome the Supreme Court's rhetoric to abolish prison sentence for defamation. However, we find the proposed reform only partial, as (retained) provisions of the Article 147.2 of the Criminal Code that envisage an aggravated offence of insult, inter alia, provides for up to three years imprisonment for libel committed **"through accusation of a person in having committed a serious or especially serious crime"**.

Such Article 147.2 (defamation by accusing a person of having committed a grave crime) has already been used against critical journalists in the past, including the *Fatullayev* case, the ECtHR judgment on which is hereby being discussed.

We have repeatedly called upon the Azerbaijani government to amend the outdated defamation laws. There is no justification for retaining criminal defamation in Azerbaijan. Civil laws provide adequate protection and remedies in defamation cases. Moreover, the criminalization of defamation has a chilling effect on the media resulting from the possibility of imposing prison sentences in cases of defamation, especially with May 2013 amendments including penalties for content online that has already been condemned by the CoM in its decision of 6 June 2013.

As the draft law is to be considered by the Parliament in the upcoming summer session, we call upon the Committee of Ministers to urge Azerbaijan to abolish criminal defamation in its entirety. If criminal defamation is retained, imprisonment as a sentence should be eliminated in all cases.

Application of civil defamation laws

We reiterate the position of the Venice Commission to ensure that strong and effective remedies - while proportionate - can be provided through civil law. We however express our concern that with the de facto moratorium to impose prison sentences for defamation, the application of civil defamation laws imposing excessive and disproportional fines to critical media has increased in the last years.

Here is some statistics on civil defamation cases to illustrate the expressed concern⁴:

Year	Total # of cases	# of cases rules in favor	Total amount claimed/approved by courts (AZN)*	Examples of cases
2010	40	35	875 000 / 55 000	MP Novruz Aslan v. Agency "Tribuna" (20 000 AZN) Head of Presidential Administration Ramiz Mehdiyev v. newspaper "Xural" (10 000 AZN)
2011	32	21	2 700 000 / 86 500	Director of Xirdalan Brewery v. newspaper "Xural" (25 000 AZN) Chairman of the State Council for Support of Mass Media V.Safarov v. Xural newspaper (5 000 AZN)
2012	35	31	5 000 000 / 200 000	Anar Mammadov v. newspapers Azadliq and Yeni musavat (8 000 AZN) Deputy Novruz Aslan v. newspaper Azadliq (12 000 AZN)
2013	43	31	4 900 000 / 140 000	Gilan Gabala Preservation factory v newspaper Yeni Musavat (50 000 AZN); Chief of Baku Metro v. neswspaper Azadliq (30 000 AZN)

*1 AZN = approx. 1 EUR

The CoM should call upon Azerbaijan to ensure that the provisions on civil defamation ensure the principles of proportionality and prevents unduly severe rules and sanctions for libel, including the establishment of maximum amount of compensation for damage caused by defamation.

Detention and imprisonment of journalists and bloggers on charges not directly linked to their professional activities: updated list

We have previously informed the Committee of Ministers about the cases of detained and imprisoned journalists and bloggers under charges not directly linked to their professional activities, which are highly believed to be a retaliation for their critical work. Judicial harrasment is increasingly used against journalists, human rights defenders and online activists in Azerbaijan.

As of 28 May 2014, 8 journalists and 7 bloggers and online activists are behind bars under charges such as hooliganism, bribery, tax evasion, weapons possession and creating public disorder:

Journalists

- **Avaz Zeynalli**, Editor-in-Chief of Khural Newspaper (charges of bribery, contempt of court and tax evasion) - *sentenced to 9 years imprisonment*

⁴ Data is published in annual/biannual reports of Media Rights Institute

- **Hilal Mammadov**, Editor-in-Chief of Tolishy-Sado Newspaper (charges of drug possession, high treason and incitement of hatred) – *sentenced to 5 years imprisonment*
- **Nijat Aliyev**, Editor-in-Chief of www.azadxeber.com news website (charges of drug possession, distribution of religious literature without authorisation, appeal to violent capture of authority and incitement of hostility) – *sentenced to 10 years imprisonment*
- **Araz Guliyev**, Director of Xeber44.com news website (charges of possession of firearms, public disorder, incitement of animosity, resistance to a public official and insulting the national flag) – *sentenced to 8 years imprisonment*
- **Tofiq Yagublu**, columnist of Yeni Musavat newspaper (charges of incitement of public disorder) – *sentenced to 5 years imprisonment*
- **Serdar Alibeyli**, Editor in Chief of newspaper Note Bene (hooliganism using a weapon) – *sentenced to 4 years imprisonment*
- **Parviz Hashimli**, journalist of Bizim Yol (Our Way) newspaper (charges of possession of firearms) – *sentenced to 8 years of imprisonment*
- **Rauf Mirkadirov**, Ankara correspondent of the Baku-based Russian-language Zerkalo (Mirror) daily (charges of treason and spying for Armenia) – *in detention*

Bloggers and online activists

- **Ilkin Rustamzade**, blogger and online activist (hooliganism charges, organisation of public disorder) – *sentenced to 8 years imprisonment*
- **Rashad Ramazanov**, blogger (drug possession charges) – *sentenced to 9 years imprisonment*
- **Abdul Abilov**, online activist (drug possession charges) – *sentenced to 5,5 years imprisonment*
- **Omar Mammadov**, blogger (drug possession charges) – *in detention*
- **Bakhtiyar Quliyev** and **Mammad Azizov**, online activists (charges of drug possession, illegal possession, carrying, transportation of firearms, explosives and facilities, and organisation of public disorder) – *sentenced to 7 and 7,5 years respectively in prison*
- **Elsevar Mursalli**, **Facebook activist** (illegal drug trade charges)—*sentenced to 5 years imprisonment*

We call upon the Committee of Ministers to urge the Government of Azerbaijan to immediately review all on-going criminal prosecutions against journalists and bloggers with full respect to fair trial standards, particularly the well reasoned decision for pre-trial detention⁵, and cease the practice of launching selective criminal prosecutions of government critics.

Independence of Judiciary

The Judicial – Legal Council has been established with the aim of preventing external interference with judicial independence. Moreover, a Judges Selection Committee has been created and the rules on selection of candidates for judge positions have been adopted.

The structure and management of the two bodies, however, raises many concerns in terms of their independence from the executive power. The Minister of Justice is the Chairman of the Judicial – Legal Council. 4 out of 15 members of the Council, made up of representatives of judges, legislative and executive power, are appointed by the President, the Parliament, the Ministry of Justice and the Prosecutor's Office.⁶ This selection procedure contradicts the Law

⁵ On 22 May 2014, ECtHR found the pre-trial detention of Ilgar Mammedov, a political analyst and a chairman of the opposition group REAL, in violation to the Convention (Articles 5,6 and 18), *Ilgar Mammadov v Azerbaijan*, Appl. no. 15172/13

⁶Article 6 of the Law on Judicial Legal Council

on Courts and Judges, which defines the Council as the independent and self-governing body of judicial power. Other members are appointed by the Supreme Court, the Collegium of Advocates, and Association of Judges. No information is available on how the whole selection process is being conducted, including the nomination and appointment of candidates. Civil society has on several occasions attempted to access that information, but without result.

The new rules on selection of judges raise many concerns about the transparency and neutrality of the whole selection mechanism. The Judges Selection Committee is established by the Judicial-Legal Council, and chaired by the Minister of Justice. The judges of the Constitutional Court, Supreme Court and courts of appeal are appointed by Parliament upon the submission of the President (Art. 95 and 109 of the Constitution). All other judges of other courts are appointed by the President (Art 109 of the Constitution). The chairmen of the Supreme Court, Nakhchivan Supreme Court, appeal courts, courts of Grave Crimes and Nakhchivan Grave Crimes Court are appointed by the President. The chairmen of other courts are appointed by President upon the suggestion of the Judicial Legal Council (Article 94 of the Law on Courts and Judges).

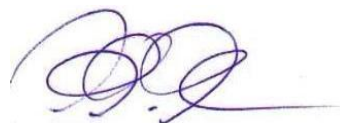
Given Azerbaijan's strong presidential system with wide powers vested in the Presidency, where the President appoints and chairs the Cabinet of Ministers and appoints all executive authorities at the central and regional levels and the New Azerbaijan Party, chaired by the incumbent President, holds the majority of seats in the Parliament, we strongly believe that the judicial independence from the executive power is not effectively ensured by the above mentioned institutions.

We once again remind that, unfair administration of justice, including well-documented cases of arbitrary arrest and detention, politically motivated imprisonment, lack of due process, executive influence over the judiciary, and lengthy pretrial detention for individuals perceived as a threat by government officials, while crimes against such individuals or their family members went unpunished, remain the key areas of concern in Azerbaijan.

Respectfully,



Emin HUSEYNOV
Chairman and CEO
Institute for Reporters' Freedom and Safety



Rashid HAJILI
Chairman
Media Rights Institute