

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1172 meeting (4-6 June 2013) (DH)

Item reference: Communication from the authorities (29/05/2013)

Communication from Azerbaijan concerning the cases of Mahmudov and Agazade and Fatullayev against Azerbaijan (Applications No. 35877/04 and 40984/08).

Information made available under Rule 8.2.a 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 : 1172 réunion (4-6 juin 2013) (DH)

Référence du point : Communication des autorités

Communication de l'Azerbaïdjan relative aux affaires Mahmudov et Agazade et Fatullayev contre Azerbaïdjan (requêtes n° 35877/04 et 40984/08) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 8.2.a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



**İNSAN HÜQUQLARI ÜZRƏ AVROPA MƏHKƏMƏSİ YANINDA
AZƏRBAYCAN RESPUBLİKASININ SƏLAHİYYƏTLİ NÜMAYƏNDƏSİ**

AGENT OF THE REPUBLIC OF AZERBAIJAN BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS
AGENT DE LA REPUBLIQUE D'AZERBAÏDJAN AUPRES DE LA COUR EUROPEENNE DES DROITS DE L'HOMME

Prezident Sarayı, Bakı Az-1066, İstiqlaliyyət küçəsi, 19
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№ 13/2-980

29 May 2013

Mme Geneviève MAYER
Head of Department for the
Execution of Judgements of the
European Court of
Human Rights
Secretariat General
Council of Europe

Mahmudov and Agazade v. Azerbaijan, Application no. 35877/04, 18 December 2008

Fatullayev v. Azerbaijan, Application no. 40984/07, 22 April 2010

Dear Mme Mayer,

Further to my previous letters concerning the execution of the Court's above judgments I should like to provide the Committee of Ministers with further information about the general measures implemented in this context.

On 9-12 April 2013 the delegation of the Council of Europe, including Ms Herdis THORGEIRSDOTTIR and Mr Richard CLAYTON, members of the Venice Commission, Mr Gavin MILLAR, Expert, Council of Europe Media Department, Ms Artemiza-Tatiana CHISCA, Head of the Democratic Institutions and Fundamental Rights Division, Secretariat of the Venice Commission, and Ms Irene KITSOU-MILONAS, Head of Section, Department for the Execution of the Court's Judgments paid a visit to Baku in order to discuss, with the relevant actors, the Draft Law on Defamation (see attached programme of the visit).

Agreement, reached during the visit and confirmed in its aftermath, was to continue the work on the Draft Law to improve its text in line with the standards set out in the case-law of the European Court of Human Rights. It has also been agreed that the next visit of the delegation would take place during the summer 2013, after the Azerbaijani authorities submit the improved text of the Draft Law.

On 19 May 2013 the Venice Commission submitted its comments and proposals to the text. In this context, the Government of Azerbaijan examines the comments and the possible ways of implementation of the experts' proposals. We expect that the Government's draft text will be submitted to the Council of Europe by the end of June, so the Venice Commission is able to examine and discuss them together with the authorities before its plenary meeting in fall 2013.

On 22 May 2013, Azerbaijani Lawyers Confederation, USAID, the Council of State Support to NGOS and ABA CEELI jointly organized the Round Table on "Reforms on the Field of Human Rights: Perspectives of the Legislation on Defamation". Representatives of the Parliament, Presidential Administration, media community and lawyers have used this forum to hold public discussions of the Draft Law on Defamation submitted to the Venice Commission.

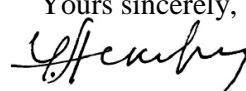
I should also inform you that on 14 May 2013, the Parliament of the Republic of Azerbaijan (*Milli Məclis*) adopted the amendments to the Criminal Code of Azerbaijan. In particular, Articles 147 (Libel) and 148 (Insult) of the Criminal Code have been amended to include responsibility for actions committed "through a publicly displayed Internet information resource" (see attached text of the Law).

It appears that the idea behind these amendments was provide private individuals with legal protection against libel and insult in an Internet resources, other than Internet media outlets. Latest statistical data indicate that more than half of the Azerbaijani population uses Internet, and the Government have adopted a number of measures aimed at regularisation of social relations in the cyber space. These measures include, for example, establishment of e-Government, provision of e-services to individuals, and introduction of the criminal responsibility for cybercrime, and show that the State is obliged to ensure legal protection of the individuals under its jurisdiction. Having regard to the fact that criminal responsibility for defamation is being envisaged in the legislation of almost all the Council of Europe Member-States, this measure does not appear to be extraordinary.

At the same time, as you have been earlier informed, during the last three years no journalist or public figure was brought to criminal responsibility for libel or insult. The practice of the Azerbaijani courts has been changed significantly after the adoption, by the Court, of its judgment in *Fatullayev* case.

Therefore, it is our understanding that the latest amendments to the Criminal Code do not affect in any way our on-going cooperation with the Venice Commission on Draft Law on Defamation and/or execution of the *Mahmudov* group of cases.

The Government will continue to keep you informed of further steps taken in this direction.

Yours sincerely,

Çingiz Əsgərov

Visit of the Venice Commission Delegation to Baku

(9-12 April 2013)

Tuesday, 9 April 2013

Arrival to Baku

Wednesday, 10 April 2013

- 10.00 – Mr Aydin SAFIKHANLI, Head of the Office of the Commissioner for Human Rights
- 11.30 – Presidential Administration: Mr Arastun MEHDIYEV, Deputy Director, Social and Political Department; Mr Chingiz ASGAROV, Government Agent before the European Court of Human Rights; and Ms Jeyran AMIRASLANOVA, Senior Adviser, Social and Political Department
- 13.30 – Mr Teymur MALIK-ASLANOV, COE Office
- 14.00 – Meetings in COE Office

Media

14:00 -15:15

- 1. Association of Journalists (New generation) Mr Arif Aliyev
- 2. Zerkalo newspaper-Mr Elchin Shikhli
- 3. Echo newspaper-Mr Rauf Talishinskiy
- 4. Bizim yol newspaper-Mr Bahaddin Haziyeu
- 5. Turan agency-Mr Mehman Aliyev

15:30 – 16:45

- 6. Azadlig newspaper-Mr Rahim Hajiyeu
- 7. Azerbaijani media Centre -Ms Gulnara Akhundova
- 8. Musavat newspaper-Mr Rauf Arifoglu
- 9. APA agency-Ms Vusala Mahir gizi
- 10. League of Democratic Journalists Mr Yadigar Mammadli

Representatives of the civil society

17:00 – 18:15

- 1. Media Rights Institute, Rashid Hajili /Azerbaijan/, director
- 2. Azerbaijan Human Rights House /Azerbaijan/, Shahla Ismailova
- 3. Azerbaijan Lawyers Association /Azerbaijan/, Annagi Hajibeyli, president
- 4. Legal Education Society (Intigam Aliyev)
- 5. Institute for Reporters' Freedom and Safety (Emin Huseynov)

- 19.30 – Dinner hosted by the Government Agent before the ECourHR

Thursday, 11 April 2013

- 10.00 – Press Council
- 11.30 – Messrs Azer Cafarov and Vilayat Zahirov, Deputies Minister of Justice
- 13. 30 – Lunch with Ms Monica MARTINEZ, Deputy Head OSCE Office
- 15.00 – Milli Mejlis (Parliament): Mr Ali HUSEYNLI, Chairman of the Permanent Commission on legal policy and state system establishment; Mrs Rabiyyat ASLANOVA, Chairman of the Human Rights Committee; and members of the Azerbaijani Delegation to PACE
- 16.30 – Presidents of the Chambers of the Supreme Court
- 19.30 – Dinner hosted by Mr Ramiz RZAYEV, President of the Supreme Court

Friday, 12 April 2013

Departure from Baku

Unofficial translation

Law of the Republic of Azerbaijan On Amendments to the Criminal Code of the Republic of Azerbaijan

Milli Meclis of the Republic of Azerbaijan, having regard to Article 94 § I (17) of the Constitution of the Republic of Azerbaijan, decides as follows:

To make the following amendments to the Criminal Code of the Republic of Azerbaijan:

1. In Article 147.1 to replace the words “or through a mass medium” with the words “, through a mass medium or through a publicly displayed Internet information resource”.

2. In Article 148 to replace the words “or through a mass medium” with the words “, through a mass medium or through a publicly displayed Internet information resource”.

Baku 14 May 2013

Due to the above amendments the text of the Articles 147 and 148 of the Criminal Code will be read as follows:

“Article 147. Libel

147.1. Libel, that is, dissemination, in a public statement, publicly displayed piece of work ~~or through a mass medium~~, **through a mass medium or through a publicly displayed Internet information resource**, of knowingly false information discrediting the honour and dignity of a person or damaging his or her reputation

shall be punishable by a fine in the amount of up to five hundred manats, or by community service for a term of up to two hundred and forty hours, or by corrective labour for a term of up to one year, or by imprisonment for a term of up to six month.

147.2. Libel by accusing [a person] of having committed a serious or especially serious crime

shall be punishable by corrective labour for a term of up to two years, or by imprisonment for a term of up to three years.

Article 148. Insult

Insult, that is deliberate humiliation of the honour and dignity of a person, expressed in an obscene manner in a public statement, publicly displayed piece of work ~~or through a mass medium~~, **through a mass medium or through a publicly displayed Internet information resource**

shall be punishable by a fine in the amount of three hundred to one thousand manats, or by community service for a term of up to two hundred and forty hours, or by corrective labour for a term of up to one year, or by imprisonment for a term of up to six months.”