



To the Ministers' Deputies  
Committee of Ministers  
Council of Europe  
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France

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Via facsimile: +33 (0)3 90 21 55 54

Via e-mail: [DGHL.Execution@coe.int](mailto:DGHL.Execution@coe.int)

**Re: NGO submission 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**

Dear Ministers' Deputies,

We, the undersigning member organisations of the International Partnership Group for Azerbaijan, are writing with regards to the case of *Fatullayev v. Azerbaijan* (Application no. 40984/07) in light of the Committee of Ministers' upcoming examination of the case during its 8-10 March human rights meeting. We are grateful to the Committee for its consideration of Mr Fatullayev's case during the last human rights meeting and the resulting decision issued on 6 December 2010.

We recall paragraph five of the Committee's decision, in which the Deputies called on the Azerbaijani authorities "to explore all possible means of ending the applicant's detention including, if necessary by alternative, non-custodial measures". We are deeply concerned that despite this decision, the Azerbaijani authorities have not taken any steps towards ending Mr Fatullayev's detention. Indeed, nearly four years after his initial arrest, Mr Fatullayev remains wrongfully imprisoned on yet another politically motivated charge connected with exercising his right to freedom of expression.

We share a number of serious concerns regarding the Azerbaijani government's execution of the Court's judgment in this case, as outlined below, which we urge the Committee to address during its upcoming examination of the case.

***Wilful misinterpretation of the Court's judgment***

In examining the plenum decision of the Azerbaijani Supreme Court of 11 November 2010, it becomes apparent that the Azerbaijani Court has wilfully misinterpreted the European Court's judgment regarding the charge against Mr Fatullayev of tax evasion. Mr Fatullayev was convicted on 30 October 2007 on charges of tax evasion, supporting terrorism, and inciting hatred. In its judgment, the European Court clearly stated that this conviction violated Mr Fatullayev's right to freedom of expression. As that conviction included the charge of tax evasion, the European Court did not find reason to separately examine the tax evasion charge, per its statement in paragraph 130 of the judgment. By holding that the 30 October 2007 conviction violated Mr Fatullayev's rights, the European Court has implicitly ruled on the tax evasion matter as well. In its plenum decision of 11 November 2010, the Azerbaijani Supreme Court used the fact that the European Court did not rule explicitly on the charge of tax evasion to resurrect Mr Fatullayev's previous conviction of defamation from 26 September 2006, revoking his conditional sentence for that conviction and replacing it with an actual term of imprisonment, in addition to retroactively extending the length of his sentence for tax evasion.

We furthermore recall that the European Court has never upheld an actual sentence of imprisonment in a defamation case. It has become an often-repeated dictum that “the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression...only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence” (*Mahmudov and Agazade v. Azerbaijan*, judgment of 18 December 2008, paragraph 50). The Azerbaijani Supreme Court is well aware of this; the Mahmudov judgment has been translated into Azerbaijani, included in a court circular and included in training curricula for judges, according to the representative of Azerbaijan. Therefore, for the Supreme Court to ‘activate’ a suspended sentence for defamation and impose a term of actual imprisonment is in open defiance of settled European Court jurisprudence.

We submit that the wilful misinterpretation of the European Court’s judgment in the case together with the Supreme Court’s defiance of settled European Court jurisprudence demonstrates that the authorities have refused to abide by a final judgment of the European Court. We therefore request that the Committee refer the matter back to the Court in accordance with Article 46(4) of the European Convention.

#### ***Failure to account for time served in prison***

The Azerbaijani Supreme Court has also failed to account for the total length of the time Mr Fatullayev has served in prison. Mr Fatullayev has been imprisoned since his 20 April 2007 conviction of defamation. In its plenum decision of 11 November 2010, however, the Azerbaijani Court stated that Mr Fatullayev’s prison term started on 3 July 2007. That leaves the period Mr Fatullayev served in prison from 20 April to 3 July 2007 unaccounted for. Further, after replacing his previously conditional sentence for defamation with a prison sentence and retroactively extending his prison sentence for tax evasion, in its plenum decision the Azerbaijani Court set the total length of Mr Fatullayev’s prison sentence at two years and three months. If calculating this sentence starting on 3 July 2007 as determined by the Azerbaijani Court, Mr Fatullayev’s time in prison should have ended on 3 October 2009. As Mr Fatullayev was not convicted of the separate charge of drug possession until 6 July 2010 that leaves the period Mr Fatullayev served in prison from 3 October 2009 to 6 July 2010 also unaccounted for.

The Azerbaijani Supreme Court’s failure to account for the total time Mr Fatullayev has served in prison again demonstrates bad faith in executing the European Court’s judgment in this case.

#### ***Failure to pay just satisfaction***

Based on the European Court’s decision, the Azerbaijani Government is obligated to pay just satisfaction (EUR 25,000 plus taxes in damages and EUR 2,822 plus taxes for costs and expenses) to Mr Fatullayev within three months of the date on which the judgment becomes final, that is by 4 January 2011. Despite the indication of the Azerbaijani Government in its communication to the Committee dated 26 November 2010 that just satisfaction would be paid to Mr Fatullayev within weeks, this has not been the case so far. Thus, the Azerbaijani Government is now in breach of its obligations under Article 46(1) of the European Convention. Given that the Azerbaijani Government registered payment in six other cases on 23 February, it is unclear why payment has not yet been made to Mr Fatullayev.

This demonstrates bad faith by the Azerbaijani Government to comply with even the most basic technical aspect of the Court’s judgment in this case.

#### ***Fabrication of the drugs possession charge***

Finally, the latest charge against Mr Fatullayev of drug possession has been widely condemned by the international community as being politically motivated and based on fabricated evidence. As the then-OSCE Representative on Freedom of the Media Miklos Haraszti has stated, the charge of drugs possession was “a provocation aimed at pre-empting the European Court of Human Rights’ expected verdict, and smearing Fatullayev’s reputation in a country where the media hardly dare to question official news” and he found the charge “highly improbable”. Council of Europe Commissioner for Human Rights Thomas Hammarberg has similarly stated that the case “lacks credibility” and that he viewed the charge of drugs possession “as an attempt to silence his reporting”.

Indeed, the charge of drugs possession was filed at a time when the Court's decision was expected to be imminent and in Mr Fatullayev's favour. Mr Fatullayev has no history of drug use or drug possession, and was imprisoned in a high-security facility when the heroin was allegedly found in his clothing. There was ample opportunity for the heroin to be planted in Mr Fatullayev's clothing, and the officials who found the heroin seem to have known exactly where to look, failing to search beyond the pocket where it was located. Further, Mr Fatullayev did not receive a fair trial, as there were numerous irregularities and due process violations during the investigation and trial on this charge. This demonstrates bad faith by the Azerbaijani Government to comply with its obligations under the European Convention.

Two further points render immediate action by the Committee particularly urgent in this case. Firstly, the nature of the remedy ordered by the Court in this case is truly exceptional; the Court has ordered the release of individuals only in three previous cases. Secondly, Azerbaijan has a slow record of response to Court judgments, as evidenced by the 32 cases currently pending execution, some of which have been pending for years. In recalling that Azerbaijan has failed to take any steps towards implementing the Committee's decision of 6 December 2010, it becomes evident that further intervention by the Committee will be necessary in achieving execution of the Court's judgment in Mr Fatullayev's case.

**In light of these concerns, we call on the Committee to consider Mr Fatullayev's case as a matter of urgent priority, and to take every appropriate action to address Azerbaijan's failure to execute this judgment, including issuing an interim resolution, referring the matter back to the Court, as an outcome of next week's human rights meeting.**

Thank you for your attention to the concerns we have raised. We will continue to monitor the Committee's actions in this case, and stand ready to provide any further information which may be of assistance to the Committee. Please direct any queries or responses to Rebecca Vincent at +44 (0)20 7324 2500 or [rebecca@article19.org](mailto:rebecca@article19.org).

Sincerely yours,

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