

# EHRAC

## Bulletin



## Media freedom: update on *Fatullayev v Azerbaijan*

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In 2007 Eynulla Fatullayev, the editor-in-chief of *Gundelik Azerbaijan* and *Realny Azerbaijan* newspapers, was convicted of inciting terrorism and criminal defamation and sentenced to eight and a half years in jail. On 22 April 2010 the ECtHR ordered his immediate release, and for financial compensation of 25,000 EUR to be paid by the Azerbaijani government.<sup>1</sup> In December 2009, while the ECtHR was considering the application, the prison authorities allegedly discovered heroin in Mr Fatullayev's possessions and proceedings were started against him for possession of drugs. On 6 July 2010 Mr Fatullayev was sentenced to two and a half years' imprisonment, with his sentence starting in full from the date of conviction. His appeal against that decision was rejected.

In its 2010 judgment the ECtHR ordered the Azerbaijani authorities to release Mr Fatullayev. The Government's request for referral to the Grand Chamber was refused on 4 October 2010 and the order became final. Following the Azerbaijani Supreme Court's consideration of the case, in November 2010 Mr Fatullayev's representatives wrote to the Committee of Ministers (CoM) to request that the case be referred back to the ECtHR under Art. 46(4) (binding force and execution of judgments).<sup>2</sup>

Even though the ECtHR judgment clearly ordered the State (in its operative provisions) to "secure the applicant's immediate release", the Azerbaijani government refused to abide by the order. Instead, a criminal case was started against Mr Fatullayev for possession of drugs.

This step was denounced by the international community as a strategy to make sure that he would not be released. In his report of June 2010,<sup>3</sup> the Commissioner for Human Rights of the Council of Europe Thomas Hammarberg stated that: "The Commissioner agrees that the new case against Mr Fatullayev lacks credibility. He shares the concerns of many who regard his imprisonment and the new charges against him as an attempt to silence his reporting." In June 2010, the Parliamentary Assembly of the Council of Europe adopted a resolution<sup>4</sup> on Azerbaijan stating that: "As regards the situation of the media and journalists, the Assembly condemns the arrests, intimidation, harassment, and physical threats of journalists, as borne out by the judgment of the Court in the case *Fatullayev v Azerbaijan*."

The Supreme Court of Azerbaijan reviewed the ECtHR judgment on 11 November 2010. While it quashed the defamation charges against Mr Fatullayev, it also retrospectively extended his prison sentence for tax evasion. The ECtHR judgment had not expressly ruled on the tax evasion issue, considering it unnecessary because it had already found a violation of Art. 10 (freedom of expression). This enabled the Supreme Court to employ an extremely literal reading of the judgment, not only upholding the conviction for tax evasion but extending his sentence from the initial four months to two years and two months, equivalent to the time he had already served. By taking the above steps, the Azerbaijani authorities had assembled a set of arguments under international and domestic law for refusing to release Mr Fatullayev.

The CoM debated the Azerbaijani government's execution of the ECtHR judgment and, on 6 December 2010, issued a decision noting its concern and calling on the Azerbaijani government to "explore all possible means of ending the applicant's detention".<sup>5</sup> A delegation of members of the International Partnership Group for Azerbaijan undertook a joint advocacy mission to Strasbourg to raise their concerns regarding the Azerbaijani authorities' systematic failure to comply with the judgment. The participating organisations included Article 19, the Human Rights House Foundation, Reporters without Borders and the World Association of Newspapers and News Publishers.

On 26 May 2011 the Azerbaijani president Ilham Aliyev signed a decree of pardon which released Eynulla Fatullayev, among many others. Following his release, John Dalhuisen, Amnesty International's Deputy Director for Europe and Central Asia, said: "Eynulla Fatullayev's pardon and release are cause for celebration, but we still urge the Azerbaijani authorities to quash his convictions".<sup>6</sup>

1 *Fatullayev v Azerbaijan* (No. 40984/07) 22.4.10.

2 See Letter to the Ministers' Deputies from a group of NGOs, 29.11.10. Available at: <http://www.article19.org/data/files/pdfs/letters/joint-letter-to-council-of-europe-on-case-of-eynulla-fatullayev.pdf>.

3 Available at: <http://wcd.coe.int/wcd/ViewDoc.jsp?id=1642017>.

4 Resolution 1750 (2010).

5 CM/Del/Dec(2010)1100.

6 Available at: <http://www.amnesty.org/en/news-and-updates/jailed-azerbaijani-journalist-pardoned-2011-05-26>.

