

Press release issued by the Registrar

Chamber Judgment
Not Final¹

[Fatullayev v. Azerbaijan](#) (Application n° 40984/07)

**COURT ASKS AZERBAIJAN TO RELEASE WRONGFULLY SENTENCED JOURNALIST
FROM PRISON**

Unanimously:

***Two violations of Article 10 (freedom of expression and information),
Violation of Article 6 §§ 1 and 2 (right to a fair trial including the presumption of innocence)
of the European Convention on Human Rights***

Principal facts

The applicant, Eynulla Emin oglu Fatullayev, was born in 1976 and lives in Baku. He was the founder and chief editor of the newspapers *Gündəlik Azərbaycan*, published in the Azerbaijani language, and *Realny Azerbaijan*, published in the Russian language. The newspapers were widely known for often publishing articles harshly criticising the Government and various public officials. He is currently serving a prison sentence.

In 2007 two sets of criminal proceedings were brought against the applicant in connection with two articles published by him in *Realny Azerbaijan*.

The first set of criminal proceedings related to an article, published in April 2005, and to separate Internet postings appearing more than a year later on a forum of a website called AzeriTriColor. The applicant had signed under the article, which he had written after his visit earlier that year to the area of Nagorno-Karabakh and other territories controlled by the Armenian military forces, but denied authorship of the Internet postings. The statements made in the article and the postings differed from the commonly accepted version of the events at the town of Khojaly during the war in Nagorno-Karabakh, according to which hundreds of Azerbaijani civilians had been killed by the Armenian armed forces with the reported assistance of the Russian army. Four Khojaly survivors and two former soldiers involved in the Khojaly battle brought a criminal complaint against Mr Fatullayev for defamation and for falsely accusing Azerbaijani soldiers of having committed an especially

¹Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

grave crime. The courts upheld the claims against the applicant, convicted him of defamation and sentenced him to two years and six months' imprisonment. Mr Fatullayev was arrested in the courtroom and taken to a detention centre on the same day, 20 April 2007.

In addition, in civil proceedings brought against the applicant before the above mentioned first set of criminal proceedings, he was ordered to publish a retraction of his statements, an apology to the refugees from Khojaly and the newspaper's readers, and to pay approximately 8,500 euros personally, and another 8,500 euros on behalf of his newspaper, in respect of non-pecuniary damage.

The second set of criminal proceedings related to an article entitled "The Aliyevs Go to War" published in March 2007. In it the applicant expressed the view that, in order for President Ilham Aliyev to remain in power in Azerbaijan, the Azerbaijani Government had sought the support of the United States (US) in exchange for Azerbaijan's support for the US "aggression" against Iran. He speculated about a possible US-Iranian war in which Azerbaijan could also become involved, and provided a long and detailed list of strategic facilities in Azerbaijan that would be attacked by Iran if such a scenario developed. He concluded that the Azerbaijani Government should have maintained neutrality in its relations with both the US and Iran, and that it hadn't realised all the dangerous consequences of the geopolitical game it was playing, like for example the possible deaths of Azeris in both Azerbaijan and Iran. The criminal proceedings against the applicant in connection with this article were brought by the Ministry of National Security in May 2007. Before the applicant was formally charged with the offence of threat of terrorism, however, the Prosecutor General made a statement to the press, noting that Mr Fatullayev's article constituted a threat of terrorism. The applicant was found guilty as charged and convicted of threat of terrorism in October 2007. The total sentence imposed on him was eight years and six months' imprisonment.

In his defence speech at the trial and in his appeals to the higher courts, the applicant complained that his presumption of innocence was breached as a result of the Prosecutor General's statement to the press; his complaints were summarily rejected.

Complaints, procedure and composition of the Court

Relying in particular on Articles 6 and 10, Mr Fatullayev complained of being criminally convicted for several of his published statements and of not having had a fair trial in that connection.

The application was lodged with the European Court of Human Rights on 10 September 2007

Judgment was given by a Chamber of seven, composed as follows:

Christos **Rozakis** (Greece), **President**,
Nina **Vajić** (Croatia),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), **judges**,
Latif **Huseynov** (Azerbaijan), **ad hoc judge**,

and also Søren **Nielsen**, **Section Registrar**

Decision of the Court

Freedom of expression and information (Article 10)

1) First criminal conviction

The Court acknowledged the very sensitive nature of the issues discussed in the applicant's article and that the consequences of the events in Khojaly were a source of deep national grief. Thus, it was understandable that the statements made by the applicant may have been considered shocking or disturbing by the public. However, the Court recalled that freedom of information applied not only to information or ideas that were favourably received, but also to those that offended, shocked or disturbed.

In addition, it was an integral part of freedom of expression to seek historical truth. Various matters related to the Khojaly events still appeared to be open to ongoing debate among historians, and as such should have been a matter of general interest in modern Azerbaijani society. It was essential in a democratic society that a debate on the causes of acts of particular gravity which might amount to war crimes or crimes against humanity should have been able to take place freely. Further, the press had a vital role of a "public watchdog" in a democratic society. Although it ought not to overstep certain bounds, in particular in respect of the reputation and rights of others, the duty of the press was to impart information and ideas on political issues and on other matters of general interest.

The Court considered that the article had been written in a generally descriptive style with the aim of informing Azerbaijani readers of the realities of day-to-day life in the area in question. The public had been entitled to receive information about what was happening in the territories over which their country had lost control in the aftermath of the war. The applicant had attempted to convey, in a seemingly unbiased manner, various ideas and views of both sides of the conflict. As regards the particular statements, those had not been the applicant's own views as he had merely conveyed other persons' opinions. The article had not contained any statements directly accusing the Azerbaijani military or specific individuals of committing the massacre and deliberately killing their own civilians.

As regards the Internet postings, the Court accepted that the applicant's authorship of those statements had been proved beyond reasonable doubt. It further accepted that, by making those statements without relying on any relevant factual basis, the applicant might have failed to comply with the journalistic duty to provide accurate and reliable information. Nevertheless, taking note of the fact that he had been convicted of defamation, the Court found that those postings had not undermined the dignity of the Khojaly victims and survivors in general and, more specifically, the four private prosecutors who were Khojaly refugees. It therefore held that the domestic courts had not given "relevant and sufficient" reasons for the applicant's conviction of defamation.

In addition, the Court held that the imposition of a prison sentence for a press offence would 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. As this had not been the case, there had been no justification for the imposition of a prison sentence on Mr Fatullayev.

There had accordingly been a violation of Article 10 of the Convention in respect of the applicant's first criminal conviction.

2) Second criminal conviction

The article “The Aliyevs Go to War” had focused on Azerbaijan’s specific role in the dynamics of international politics relating to US-Iranian relations. As such, the publication had been part of a political debate on a matter of general and public concern. The applicant had criticised the Azerbaijani Government’s foreign and domestic political moves. At the same time, a number of other media sources had also suggested during that period that, in the event of a war, Azerbaijan was likely to be involved and speculated about possible specific Azerbaijani targets for Iranian attacks. The fact that the applicant had published a list of specific possible targets, in itself, had neither increased nor decreased the chances of a hypothetical Iranian attack. The applicant, as a journalist and a private individual, had not been in a position to influence or exercise any degree of control over any of the hypothetical events discussed in the article. Neither had Mr Fatullayev voiced any approval of any such possible attacks, or argued in favour of them. It had been his task, as a journalist, to impart information and ideas on the relevant political issues and express opinions about possible future consequences of specific decisions taken by the Government. Thus, the domestic courts’ finding that the applicant had threatened the State with terrorist acts had been arbitrary.

The Court considered that Mr Fatullayev’s second criminal conviction and the severity of the penalty imposed on him had constituted a grossly disproportionate restriction of his freedom of expression. Further, the circumstances of the case had not justified the imposition of a prison sentence on him. There had accordingly been a violation of Article 10 in respect of Mr Fatullayev’s second criminal conviction.

Fair trial (Article 6 § 1)

1) Case not heard by an impartial tribunal

The Court noted that Judge I. Ismayilov, who had heard the criminal case, had been the same judge who had previously examined the civil action against the applicant. Both sets of proceedings, the civil and the criminal one, had concerned exactly the same allegedly defamatory statements made by Mr Fatullayev. The judge had been called upon to assess essentially the same or similar evidentiary material. Having decided the civil case, the judge had already reached the conclusion that the applicant’s statements had constituted false information tarnishing the dignity of Khojaly survivors. As Mr Fatullayev had been subsequently prosecuted under criminal law on defamation, doubts could have been raised as to the appearance of impartiality of the judge who had already pronounced his opinion concerning the same allegedly defamatory statements made by the applicant. Accordingly, the Court considered that the applicant’s fear of the judge’s lack of impartiality could be considered as objectively justified.

There had accordingly been a violation of Article 6 § 1.

2) Case not heard by an independent tribunal established by law

Mr Fatullaev had complained in particular that he had not been tried by a “tribunal established by law” because the judge who had tried him had been appointed on 2 September 2000 for a five-year term which had expired on 3 September 2005, which had been prior to his trial. The Court noted in this regard that the Azerbaijani Law on Courts and Judges had been amended to extend the terms of office of all judges appointed before 1 January 2005. Thus the term of office of judge Ismayilov had not expired until 28 July 2007 which had been well after the examination of the applicant’s case had been completed. Accordingly, the applicant had been tried by a tribunal established by law, and his complaint in this regard was inadmissible as manifestly ill-founded.

Presumption of innocence (Article 6 § 2)

1) Admissibility

The Court noted that the applicant had raised the issue of the presumption of innocence before the courts called upon to determine the criminal charges against him. Thus, he should not be required to further attempt to obtain redress by lodging a separate defamation claim under criminal law or bringing a civil action for damages, contrary to what the Government had submitted.

2) Merits

It had been the Court's consistent approach to find that the presumption of innocence was violated if a statement by a public official concerning a person charged with a criminal offence reflected an opinion that he was guilty before he had been proved guilty according to law. The fact that the applicant had been a well-known journalist had required the Prosecutor General to keep the public informed of the alleged offence and the ensuing criminal proceedings. However, the Prosecutor General's statement had unequivocally declared that the applicant's article indeed contained a threat of terrorism. Those specific remarks, made without any qualification or reservation, had amounted to a declaration that the applicant had committed the criminal offence of threat of terrorism and had thus prejudged the assessment of the facts by the courts. That in turn had encouraged the public to believe the applicant guilty before he had been proved guilty according to law.

There had accordingly been a violation of Article 6 § 2.

The Court dismissed the other complaints made by the applicant.

Execution of the judgment by the Azerbaijani authorities (Article 46)

The Court noted that the applicant was currently serving the sentence for the press offences in respect of which it had found Azerbaijan in violation of the Convention. Having considered unacceptable that the applicant still remained imprisoned and the urgent need to put an end to the violations of Article 10, the Court held, by six votes to one, that Azerbaijan had to release the applicant immediately.

Under Article 41 (just satisfaction) of the Convention, the Court held that Azerbaijan is to pay Mr Fatullayev 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,822 in respect of costs and expenses.

The judgment is available only in English. The press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.