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Court cases against media in Azerbaijan

Dear Chairman,

Ladies and gentlemen,

In the first part of 2007 alone there have been carried out more than 60 court cases (more than tenth in comparison with historical measures of 2005) on protection of honour, dignity and reputation against mass media and journalists. Leading critical newspapers of the country – “Gundelik Azerbaijan”, “Realniy Azerbaijan”, “Azadlig”, “Yeni Musavat”, “Nota bene” had been the main targets of plaintiffs. Domestic courts sentenced to imprisonment 5 journalists-critics, and 1 journalist was sentenced to correctional labour according the articles 147 (detraction) and 148 (abuse) of the Criminal Code restricting the right of expression. Writer-journalist Rafig Tagi and the chief editor of the “Sanat” newspaper were brought in a verdict of guilty in religious segregation. The Courts have held judjents compulsiing the media to pay a high fine. In those judgements the amount of fine is above 700.000 AZN (approximaely 900.000 \$).

Meanwhile 7 journalists are arrested. Four of them (Eynulla Fatullayev, Faramaz Allahverdiyev, Rovshan Kabirli and Yashar Agazadeh) have been convicted under the articles 147 (detraction) and 148 (abuse) of the Criminal Code of the Azerbaijan Republic and they can be deprived of liberty for 2-2.5 years by the way of special accusation. Mainly the applicants were high-ranking officials. Two journalists of newspaper “Sanat” (“Art”) have been convicted for unleashing dissention among religions in the article “Europe and us” where they published critical expressions against Islam. Chief Editor of this newspaper was sentenced to 4 years and author (R.Tagi) of the article was sentenced to 3 years of deprivation of liberty. Sakit Zahidov had been convicted for 3 years for illegally storing the drugs possession to him was not proved in the court. E.Fatullayev was accused on getting enormous income by cheating on tax payments. If this accusation is held, the journalist will be sentenced to 2000-5000 USD of fine, or correctional labor, or restriction of liberty for 2 years, or deprivation of liberty for 6 months.

About ten well-known journalists have got suspended sentences under the articles 147 and 148 of the Criminal Code of the Azerbaijan Republic and daily take the risk of being imprisoned.

On February 2007 Chief Editor (Novruzali Mammadov) and the secretary (Elman Guliyev) of the only newspaper in talishi language "Tolishi Sedo" were arrested on accusation in espionage for benefit of Iran. Meantime they are kept in the investigation custody of the Ministry of National Safety.

For the reason of inadequate court claims only in may 2007 seven of senior independent newspapers of Azerbaijan had to stop edition: "Realniy Azerbaijan", "Gundelik Azerbaijan" and "Baku Xhabar" (the last one began re-edition in September). In the period of January 2006-February 2007 in general there have been held approximately 15 court examinations against mass media. The total amount of court fines sentenced to newspapers is more than half a million dollars.

7 more legal cases have been carried out on detraction in August. In these legal cases the critical newspapers were sentenced to unreasonable fines. 5 journalists faced criminal accusation. A complaint on detraction was raised against the "24 saat" newspaper and only this case ended with agreement.

One of the state college's (Lenkoran State Pedagogic College) director demands the arrest of 3 chief editors and 1 journalist for publication of the article "Immorality in a College).

This article was first published in "Markaz" newspaper edition on 31 June 2007 according to the information of "Woman Crisis Centre". Later there were published materials in "Azadlig" and "Olaylar" newspapers referring to the facts of the first article.

The private accuser demands the Chief Editor of "Markaz" newspaper Shirzad Mammadali, the journalist that prepared the article, the Chief Editor of "Azadlig" newspaper Ganimat Zahid, the Chief Editor of "Olaylar" newspaper Yunis Oguz (for spreading defaming information) and the leader of the "Woman Crisis Centre" Matanat Azizova (the first to spread the information referred in the articles) to be convicted to criminal responsibility under the articles 147 and 148 of the Criminal Code.

A.M.A.Y. company known as a possessor of a large trade centre in Baku filed a complaint against "Khural" newspaper in Narimanov district court for publishing the announcement material "Backstage moments of A.M.A.Y." claiming to publish rebutting article in the next edition of the newspaper and one million AZN (approximaely 1.200.000 \$). as a penalty for moral damage.

It is a very negative tendency when the court is ruled by a crowd as it was in the case of the Chief Editor of "Realniy Azerbaijan" newspaper, the case of the journalists of

“Sanat” newspaper and practically the decision is held by them. Its results can be very sorrowful both for court system and society. This is return to the past – 37’s years.

The Government will meet big difficulties in the future, when the cases are examined in the European Court of Human Rights to answer the questions of the lawyers and community that had not got any response while the domestic hearings. Particularly, they were more than enough in the case of the Chief Editor of the “Realniy Azerbaijan” that was sentenced to deprivation of liberty for 2.5 years: Who and in what way authorized Tatyana Chaladze that filed a complaint against the journalist and the newspaper in the name of the internally displaced persons? On which grounds the newspaper (“Gundelik Azerbaijan”) was sentenced to a fine for the article (“Diary of Karabakh”) whereas at that time the newspaper was not published? How far can the expert statement on the article in Russian language be impartial, if the expert does not speak Russian? How far can the accusations be unprejudiced, if the prosecutor builds them upon damnations of “refugees”? Can the court be considered impartial if the parties, their barristers and witnesses are threatened, abused and beaten in presence of the judge, representatives of law enforcement bodies and community? I could long this list, but do not want to take your time.

Court has become a punitive instrument of the government in Azerbaijan. By means of this, the society is kept in awe, the freedom of speech and difference of opinions are restricted.

We are seriously anxious that the amount of complaints on diffamation against journalists is increasing in Azerbaijan day by day, the court government does not demonstrate efforts, responsibility and professionalism to solve these cases, furthermore, the courts can not apply the elementary provisions of the domestic legislation of Azerbaijan properly.

There have been carried out more than 60 court cases by the persons that can be considered social figures in any case, political and administrative officials of the government against the media on diffamation in 2007. The subject of these legal cases were publications on activity of politicians and top officials, work of big corporations, government issues management, corruption facts in the field of business and community that has a great public interest and importance. But courts did not take into consideration the public importance of these publications that were the subject of litigations and their connection with public and political debates during the proceedings and in most cases courts held judgements interfering the right of expression. The necessity of those decisions had not been substantiated in the judgements and there had not been paid any attention to the irreplaceable role of the right of expression in society.

Only in a few part of the cases on diffamation the courts refered to the provisions of Azerbaijan Constitution on right of expression and precedents of the European Court on article 10 of the European Convention for Protection of Human Rights and Fundamental Freedoms. Even in those cases the courts grounded on argumnets restricting the rigt of expression instead to protect it.

Today our courts do not want to answer these questions. But tomorrow, when the Government will receive them from the Strasbourg Court, they will be obligated to response them. None of the respectful courts (including the European Court) will consider "indignation" and "resentment" of "refugees" as reasonable substantiation for such gross interference of Government to freedom of expression.

According to the applications of high-ranking officials the courts without any grounds sentence mass media and journalists to unreasonable fines in compare with standards of well being of most people and journalists that have law salary, just as journalists are illegally refused in their applications against state bodies and state officials that deprive them from right of access to information, protection from illegal interference to their activity and ill-treatment. Only in 2007 approximately 50 applications have been filed by mass media and journalists against state bodies and high-ranking officials on these and other grounds. All of these applications were not accepted into court examination on the grounds of different pretexts and excuses or the journalists were simply refused.

By the way, journalists and mass media are in the group of population whose deprivation of right of access to justice (fair trial) acquired popularity. In most cases mass media and journalists do not have access to a barrister, as they do not obtain enough financial recourse to retain a lawyer: like in everywhere, in our country this is an expensive enjoyment and not everyone can afford it. In addition to it, according to the legislative changes that Azerbaijan Government has recently adopted, cassation and additional cassation applications must be prepared and signed only by member of the Collegium of Advocates and one can participate in hearings of his/her application in the Supreme Court only in presence of a member of the Collegium. This provision contradicts the international principles and Article 6 of the European Convention on Human Rights that gives right to everyone to protect his/her rights in the courts by himself/herself or by a lawyer, practically deprives most of journalists the right of access to court. Taking into account the fact that the Collegium of Advocates is under the control of Government, basically these cases are loaded to non-members of the Collegium, this provision is against them. Moreover, the provisions of the law considering free legal assistance to poor people that can not afford to retain a lawyer do not work.

By the way, we have missed many chances where we could and should send complaints to Strasbourg: when the journalists were arrested, beaten and murdered, when newspapers were closed out and sentenced to astronomic, unreasonable fines. If we would not neglect this effective instrument timely, and sent more cases on offence of right of expression to Strasbourg, then meantime civil society and international organizations would talk to the Government disregarding this right in absolutely different tone, in the language of facts.

Recent court cases against the mass media and journalists that obtained public character do not meet even the minimum standards of fair trial. Many people consider the court decisions against media representatives as ordered, both in civil and criminal cases. The journalists that are deprived of minimum guarantees for fair trial can unambiguously be considered political prisoners.

The time is changed and now practically on each court case having social importance there are prepared appropriate applications and sent to the European Court

The Government that refuses to ensure its citizens and mass media right of expression and fair trial will face serious problems after a time. Taking into account the fact that plenty of applications on above mentioned rights where the subject is mass facts of gross offences have been sent to the European Court, we can be sure that the Government will have serious difficulties...

RECOMMENDATIONS

There are some necessary measures that can be useful for improve of the situation:

- Tough monitoring of the situation in the field of right of expression, monitoring of court cases against Mass Media and journalists must have regular character as well, the reports on the results of monitoring must be a subject of broad discussions with drawing in representatives of civil society, state bodies and international organizations;
- Demand for investigation of all cases of physical attack on journalists and the punishment of persons found guilty;
- Demand for the decriminalization of defamation and exclusion of articles for insult and slander from the Criminal Code of Azerbaijan;
- Preparing special reports on court hearings concerning Mass Media with recommendations worked out together with institutes of civil society;

- Support of the programs directed to study of the European Convention on Human Rights and precedents of the European Court on Human Rights by judges, barristers, representatives of law enforcement bodies and other organizations and preparation and send of strategic cases to the international courts.