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Azerbaijan: First criminal conviction for online defamation

On 14 August 2013, the Astara Regional Court found Mikayil Talibov guilty of slander under article 147.1 of the Criminal Code of Azerbaijan, sentencing him to one year of “corrective labour” under which 20 per cent of his monthly income would be deducted into the state budget for a period of one year. The charges were brought in connection with Mikayil Talibov’s comments on a Facebook page he had created on 26 March 2013 which uses, in its title, the name of the bank he had worked for and calling it “Unjustbank”. The judgement also called for Mikayil Talibov to post a withdrawal of his earlier allegations on Facebook and imposed travel restrictions on him until the completion of his “corrective labour” term.

Mikayil Talibov’s criminal conviction for an alleged defamation online is the first such case in Azerbaijan, which follows the recently introduced changes to the defamation laws. On 14 May 2013, the Azerbaijani parliament, the Milli Majlis, passed amendments which expanded criminal defamation legislation to include slander and insults made on the internet. The amendments were signed into law by President Ilham Aliyev on 3 June.

This not only contravenes the government’s earlier commitment to decriminalize defamation by 2012, which was stated in the National Action Plan on Human Rights,¹ but signifies a further erosion of the right to freedom of expression in Azerbaijan in the run up to the presidential elections to be held on 9 October 2013.

Defamation should be treated as a matter for civil litigation by the injured party. The UN Human Rights Committee has encouraged states to consider decriminalizing defamation and underlined that, in any case, the criminal law should only be used in the most serious of cases. It has underlined that defamation laws must be crafted with care to ensure that they comply with states’ international human rights obligations and do not in practice stifle freedom of expression; a public interest in the subject matter of the criticism should be recognised as a defence, and states should take care to avoid excessively punitive penalties.

Background

Plans to decriminalize defamation by 2012 were expressed in the National Action Plan on Human Rights issued by decree of the President of Azerbaijan on 27 December 2011. In 2012, the Presidential Administration of Azerbaijan sought the advice of the Council of Europe’s Venice Commission on the draft legislation concerning protection from defamation. However, the final version signed into law was criticised by human rights activists in Azerbaijan for being considerably different to that submitted to the Venice Commission and to the version developed in cooperation with civil society organisations and the OSCE Office in Baku.²

¹ National Action Plan for Improving the Effective Protection of the Human Rights and Freedoms in the Republic of Azerbaijan, 27 December 2011, at: <http://www.e-ganun.az/print.php?internal=view&target=1&docid=22821&doctype=0#> (accessed 21 August 2013)

² IRFS, *Azerbaijani Government blocks media reform by watering down the draft defamation bill*, 24 May 2013, at: <https://www.irfs.org/news-feed/azerbaijani-government-blocks-media-reform-by-watering-down-the-draft-defamation-bill/> (accessed 21 August 2013)

This is the first criminal conviction for an alleged defamation made online. However, Amnesty International has previously raised concern on several occasions about the Azerbaijani authorities targeting individuals for their activities on the internet and on Facebook in particular. The organization has raised concern in the cases of the former prisoner of conscience Jabbar Savalan and other activists who have faced criminal prosecution for organising protests via online social media and posting articles critical of the authorities.³ There are currently 14 individuals in Azerbaijan recognised by Amnesty International as prisoners of conscience. Among them is Dashgin Melikov, who has been convicted under fabricated charges and sentenced to two and a half years in prison.⁴ While in custody, in addition to being forced to sign a self-incriminating statement Dashgin was also forced to delete a Facebook page he had created that was critical of the Azerbaijani authorities.

³ Amnesty International, *Azerbaijan: The spring that never blossomed: Freedoms suppressed in Azerbaijan* (Index: EUR55/011/2011), <http://www.amnesty.org/en/library/info/EUR55/011/2011/en>. See also Amnesty International, *Azerbaijan: Human rights abuses placed under the e-spotlight* (Index: EUR 55/018/2012), at: <http://amnesty.org/en/library/info/EUR55/018/2012/en> (accessed 20 August 2013).

⁴ Amnesty International, *Azerbaijan starts Presidential election campaign with at least 14 Prisoners of Conscience* (Index: EUR 55/006/2013), at: <http://amnesty.org/en/library/info/EUR55/006/2013/en> (accessed 20 August 2013)