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Azerbaijan urged to comply with decision of European Court on case of imprisoned journalist and to drop new charges against him

Joint Statement by Amnesty International, ARTICLE 19 and International PEN

Amnesty International, ARTICLE 19, and International PEN call on the Azerbaijani government to comply with the ruling of the European Court of Human Rights and immediately release imprisoned Azerbaijani journalist Eynulla Fatullayev.

The organizations also urge Azerbaijan to drop the new charges brought against him in December 2009, as we believe them to have been fabricated in an effort to silence his investigative journalism, which has been critical of the government.

On Friday, despite international pressure, Garadag District Court in Azerbaijan continued with the trial of Eynulla Fatullayev on the new charges. Eynulla Fatullayev was charged with possessing 0.22 grams of heroin in his prison cell on 30 December 2009. Claiming to have acted on an anonymous tip-off, prison officers searched Eynulla Fatullayev's clothes and say they discovered heroin in his shirt sleeve and shoes. A blood sample was taken from him for drugs testing on the same day. Eynulla Fatullayev emphatically denies the allegations of drug possession.

On 2 February, the conclusions of the blood test were made available by the authorities, but not the detailed analysis. According to the authorities, small traces of metabolites indicating heroin use were found during the test, but not enough to show that Eynulla Fatullayev required rehabilitation. The authorities refused to allow an independent blood test to be carried out, despite repeated requests by Eynulla Fatullayev and his lawyers.

Eynulla Fatullayev, who has no reported history of drug use, strongly refuted the new allegations again at Friday's hearing. He maintains that the drugs were planted on him. During cross-examination by the defence, the officer who claims to have discovered the drugs stated that he had searched only the sleeve of his shirt and shoes where the drugs were found, and not the rest of Eynulla Fatullayev's clothes or prison cell. In addition there were inconsistencies in the testimony of the two officers interviewed. One said that the anonymous tip-off had been from one source, the other said that the tip-off had come from two sources. Both officers failed to log the tip-off and to formally open a case to investigate it before searching Eynulla Fatullayev, in violation of Azerbaijani law.

In a statement at Friday's hearing a witness for the prosecution, a prisoner detained with Eynulla Fatullayev, said that Eynulla Fatullayev had found the drugs in a garbage unit and put them in his shoes.

This contradicts the earlier statement of one of the prison officers, who alleged that the heroin had been thrown into the prison over the prison walls, despite the fact that the prison is heavily guarded and described by the defence lawyers as "impenetrable".

Miklos Haraszti, former OSCE Representative on Freedom of the Media, stated that he “visited Eynulla Fatullayev twice in his high security-prison and find[s] allegations of heroin smuggling or possession highly improbable.”

The trial continues regardless of last month’s judgment of the European Court of Human Rights, which found that his trial in April 2007 was unfair. After writing a series of articles critical of the government, he was convicted by Azerbaijani courts of libel, terrorism, incitement of ethnic hatred and tax evasion, and sentenced to a total of eight and a half years in prison. The European Court of Human Rights concluded that as he had been charged, convicted and imprisoned for exercising his right to freedom of expression he should be immediately released.

The European Court of Human Rights’ judgment details a series of actions against Eynulla Fatullayev for his outspoken criticism of the Azerbaijani government. We believe that the new charges for alleged drug possession have been fabricated as part of this campaign. If convicted on the drug charges the authorities can keep Eynulla Fatullayev in prison for a further three years.

Commenting on the judgment to the press, an Azerbaijani Supreme Court judge, Ali Seyfaliyev, expressed his belief that the European Court of Human Right's demand for Eynulla Fatullayev's release was contrary to the European Convention on Human Rights, the Court's practice and Azerbaijani law. However, Amnesty International, ARTICLE 19 and International PEN consider that Judge Seyfaliyev's statement about the judgment is not consistent with the developing practice of the Court to indicate what remedies a state is required to take to redress the violations of the Convention found by the Court.

As a party to the European Convention on Human Rights, Azerbaijan has undertaken to abide by the final judgments of the European Court of Human Rights in this and every other case in which they are a party. This is what Article 46 of the Convention requires.

Azerbaijan has three months to contest the European Court of Human Rights’ ruling by requesting that it be referred to the Court’s Grand Chamber, or it becomes final. Azerbaijan’s response to the final ruling of the Court will reflect the level of its commitment to respecting the European Convention on Human Rights. If the law or practice in Azerbaijan must be changed in order to do so, then such measures must be taken. This is what respect for the human rights of Eynulla Fatullayev and respect for the European Convention on Human Rights require.

Amnesty International

ARTICLE 19

International PEN

Background:

Eynulla Fatullayev was convicted of defamation shortly after alleging that Azerbaijani officials were involved in the murder of independent newspaper editor Elmar Huseynov. The charge related to two articles that disputed the official account of the 1992 mass killings of Azerbaijani civilians in the town of Khojaly, during the conflict between Azerbaijan and Armenia in the Nagorno-Karabakh region.

He was subsequently convicted on terrorism charges for publishing an article discussing the possible consequences for Azerbaijan of a US-Iranian war, which the Azerbaijani authorities regarded as a threat of terrorism. The article criticized foreign policy decisions made by the

Azerbaijani government.

After the European Court began reviewing Eynulla Fatullayev's case in September 2009, he was accused of heroin possession. Amnesty International believes this new charge was fabricated as part of an attempt to keep him in prison in the event of the Court ruling that he was wrongfully imprisoned on the original charges.

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