



Department for the Execution of Judgments of the ECHR
Directorate General of Human Rights and Legal Affairs
Council of Europe
F-67075 Strasbourg CEDEX
France

27 October 2010

Via facsimile: +33(0)3 90 21 55 54

Via e-mail: DGHL.Execution@coe.int

RE: NGO submission under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

Dear Committee Chair,

ARTICLE 19, Committee to Protect Journalists, Freedom House, Human Rights House Foundation, Index on Censorship, Institute for War and Peace Reporting, International Federation of Journalists, International PEN, Media Diversity Institute, Media Legal Defence Initiative, Norwegian Helsinki Committee, Reporters Without Borders, and World Association of Newspapers and News Publishers are writing with regards to the case of *Fatullayev v. Azerbaijan* (Application no. 40984/07). We are deeply concerned by the Azerbaijani Government's refusal to comply with the European Court of Human Rights judgment in this case, and request the urgent attention of the Committee of Ministers to this situation.

Mr Fatullayev has been in prison since April 2007 on charges related to his journalistic activities. On 22 April 2010, the European Court of Human Rights ruled that his imprisonment constituted a violation of his freedom of expression and right to a fair trial. The Court ordered the Azerbaijani Government to immediately release him and to pay him €27,822 for damages and legal expenses. On 4 October 2010, the Grand Chamber rejected the Azerbaijani Government's petition to hear the case, making the 22 April ruling effective immediately.

In December 2009, when the European Court's judgment in Mr Fatullayev's case was expected imminently, Azerbaijani authorities charged him with drug possession whilst he was in a high-security jail cell. Many international human rights organisations consider this charge to have been politically motivated and based on fabricated evidence. Then-OSCE Representative on Freedom of Media, Miklos Haraszti, called the charge "highly improbable" and "aimed at pre-empting the European Court of Human Rights' expected verdict". Following the European Court's 22 April decision ordering Mr Fatullayev's release, on 6 July 2010, he was convicted for drug possession and sentenced to an additional two and a half years of imprisonment.

As the Azerbaijani Government has not released Mr Fatullayev and has not paid him for damages and legal expenses, Azerbaijan is in violation of Article 46(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. We are deeply concerned by this failure of a Council of Europe Member State to comply with a Court judgment, and urge the Committee to take immediate action in this case.

We believe that several factors render consideration by the Committee of Mr Fatullayev's case urgent. Firstly, the nature of the remedy ordered by the Court in this case is exceptional, as the Court does not often order the release of individuals. Secondly, Azerbaijan has a record of slow response to Court judgments, such as in the case of *Abbasov v. Azerbaijan* (Application no. 24271/05). Finally, Mr Fatullayev is currently on hunger strike, undertaking significant risks to his health, and has vowed to continue until he has been freed.

We therefore urge you to add Mr Fatullayev's case to the list of items for consideration at the next Committee meeting on 30 November and 1-3 December 2010. Further, pursuant to Article 46(4) of the Convention, we request the Committee to refer to the Court the question whether Azerbaijan has failed to fulfil its obligation under Article 46(1).

Thank you for your attention to the points we have raised, in response to which we hope you will take prompt action. We stand ready to provide any further information which may be of assistance to the Committee in its consideration of Azerbaijan's compliance with the Court's judgment in Mr Fatullayev's case. Please direct any queries or responses to Rebecca Vincent at +44 (0)20 7324 2500 or rebecca@article19.org.

Sincerely yours,

Agnès Callamard, Executive Director, ARTICLE 19
Joel Simon, Executive Director, Committee to Protect Journalists
Paula Schriefer, Director of Advocacy, Freedom House
Ane Tusvik Bonde, Regional Manager for Eastern Europe and the Caucasus, Human Rights House Foundation
Rohan Jayasekera, Associate Editor and Deputy Chief Executive, Index on Censorship
Tony Borden, Executive Director, Institute for War and Peace Reporting
Aidan White, General Secretary, International Federation of Journalists
Sara Whyatt, Interim Executive Director, International PEN
Milica Pesic, Executive Director, Media Diversity Institute
Gugulethu Moyo, Executive Director, Media Legal Defence Initiative
Bjørn Engesland, Secretary General, Norwegian Helsinki Committee
Jean-François Julliard, Secretary General, Reporters Without Borders
Virginie Jouan, Executive Director, Press Freedom and Media Development, World Association of Newspapers and News Publishers (WAN-IFRA)

CC: Lukas Heim and Anne Weber
Office of the Commissioner for Human Rights
F-67075 Strasbourg CEDEX
France

Via facsimile: +33(0)3 90 21 50 53

Via e-mail: lukas.heim@coe.int and anne.weber@coe.int