

SUPREME COURT JUDGE SAYS THAT THERE WAS A PROCEDURE VIOLATION IN THE NEW SENTENCE ISSUED AGAINST EYNULLA FATULLAYEV

According to the Media forum website, Supreme Court Judge Muzeffer Agazade commented on the new verdict issued against imprisoned Editor-in-Chief of *Gundelik Azerbaijan* and *Realniy Azerbaijan* newspapers, Eynulla Fatullayev.

Muzeffer Agazade told the Media forum website that if Eynulla Fatullayev had been absolved of the convictions he was imprisoned previously, then the prison term he served prior to the ruling should be compensated with the new prison term.

“The term the journalist served in prison so far should have been taken into consideration when the new sentence was calculated. Law and logic requires this, said Agazade.

Muzeffer Agazade believes that the Garadag District Court's new sentence should be combined with the initial punishment either partially or completely if the court did not consider the European Court of Human Rights 22 April ruling to be correct.

“It seems the judge does not have a decision on hand whether to unite the sentences or not, he added. Because the decision of the European Court of Human Rights has been neither executed nor denied. I cannot say how the judge issued this decision, or why he calculated the sentence from the day the verdict was issued. How can the judge calculate the punishment term from the day the verdict was issued? There is something unclear here. I need to read the entire decision to understand it. A pre-trial detention should be adopted for Eynulla Fatullayev when the new case was opened against him. There are some arguments regarding this. Some judges are against the pre-trial detention in similar cases because the person is in prison anyway. I cannot say why the pre-trial detention was not chosen for Eynulla Fatullayev. However, this and the failure to combine the prison terms when the verdict was announced is a procedural violation.

Muzeffer Agazade says that the decision of the European Court of Human Rights has not been submitted to the Supreme Court.

Therefore I cannot say when the Supreme Court will consider the case, Agazade continued. The European Court of Human Rights does not have the right to eliminate the verdict. The court can issue a decision to reconsider the case. However, Azerbaijan is in the jurisdiction of the European Court of Human Rights, so it should execute this decision. This is the first time I witnessed the European Court of Human Rights issue a decision on immediate release. I cannot say how Eynulla Fatullayev will be released. We should refer to Criminal-Procedural Code on how to release him. However, the legislation of Azerbaijan does not have procedure for this. A change should be made in the legislation for this.

On 29 December 2009, 0.223 grams of heroin was found on Fatullayev in Prison #12. A criminal case was opened against Fatullayev in the Garadag District Investigative Department. On 6 July 2010, Fatullayev was found guilty under article 234.1 (Illegal purchase or storage without a purpose of selling of narcotics or psychotropic substances in an amount exceeding the necessary limit for personal consumption) of the Criminal Code and was sentenced to two years and six months in prison, and the execution of the verdict began on this date. Fatullayev and his lawyer believe that this incident was a set-up in order for the court to not comply with the decision of the European Court of Human Rights (ECHR) regarding the journalist's release.

On 22 April 2010, the European Court of Human Rights issued a decision regarding the case of imprisoned Editor-in-Chief of *Gundelik Azerbaijan* and *Realniy Azerbaijan* newspapers Eynulla Fatullayev. The [decision](#) states that the journalist should be released immediately, and the Azerbaijani government should pay 27,822 EUR to Fatullayev in compensation. The Azerbaijani government stated that they did not agree with the decision and filed an appeal with the Grand Chamber of the ECHR.

On 20 April 2007, Eynulla Fatullayev was arrested in the court hall under the decision adopted by the Yasamal District Court on the lawsuit of Refugee/IDP Rights Defense Committee Chairperson Tatyana Chaladze. After his arrest, a criminal case was opened against Fatullayev in the National Security Ministry Chief Investigative Office regarding an article published in *Realniy Azerbaijan* newspaper, which according to the Ministry of Foreign Affairs caused foreign citizens and representatives of international organizations safety concerns. He was convicted under articles 214.1 (threatening terror), 283.2.2 (incitement of ethnic/national, social or religious hatred abusing authority) of the Criminal Code and was sentenced to a pre-trial detention. Fatullayev was then convicted under 213.2.2 (tax evasion).

Eynulla Fatullayev was sentenced to 8.5 years of imprisonment on 30 October 2007 under the decision of the Grave Crimes Court and was fined 242 thousand 522 AZN.

Beginning their publications in 2005, *Realniy Azerbaijan* ran as a weekly newspaper, whereas *Gundelik Azerbaijan* was published as a daily newspaper. Eynulla Fatullayev established both newspapers and served as the editor-in-chief of both publications. The newspapers ceased their activity after the arrest of Fatullayev in 2007.