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## **SOME QUESTIONS TO MR. RAMIZ RZAYEV, SUPREME COURT CHAIRMAN**

### **The dialogue must be on the march**

On March 02 Chairman of the Supreme Court (SC) Ramiz Rzayev held a 2009 annual press-conference. In his address the Chairman made SUCH assertions, which can't help but invite questions.

The need-be continuation of the dialogue between the civil society and judges has also impelled me to make these questions public through the mass media. The dialogue began with a publication of an article *“Rude response of judges to a new smear campaign of antinational “human rights defender” Leyla Yunus”* in *“Azerbaijan”* newspaper dated Dec 10, 2009. Then came analogous publications posted on the website of the Judicial-Legal Council flavored with comments of judges on the IPD's presentation of the list of judges (Nov 26, 2009) who had unlawfully sentenced journalists and bloggers, as well as decided on illegal seizure of property.

My *“Mild Response of the Institute of Peace and Democracy to “Rude Response of Judges”* was posted on the website of Turan News Agency ([www.contact.az](http://www.contact.az)), and published in newspapers *“Novoye Vremya”* and *“Azadlig”* dated Jan 28, 2010.

On Jan 29, 2010 IPD arranged a regular round table on problems of the judiciary, especially Azerbaijan's execution of European Court judgments (for more information visit websites of Turan, RATI, newspapers *“Zerkalo”*, *“Novoye Vremya”*, *“Azadlig”*, *“Bizim Yol”* dated 30.01.2010). Although being invited the judges-authors of the *“rude response”* did not venture to take part in the open dialogue with the civil society.

SC Chairman's conference touched many (not all) problems of the judiciary. It is impossible and inadmissible to disregard this address of Mr. Rzayev.

Well then, SC Chairman stated (quoted from publications on the website of APA, in newspapers *“Zerkalo”*, №39, Mar 03, 2010, *“Novoye Vremya”*, №262, Mar 03, 2010), *“A primary objective for the time being is independence of courts in administration of justice. It is the matter that concerns international seminars held worldwide.... Independence of judges is in their power ... ..judges themselves must be inwardly independent and must not refrain from independent decision-making. This is an extremely important issue, as a rule-of-law state is out of the question without an independent judicial power. Therefore, the main task is to develop independence of our judiciary”*.

Mr. Rzayev, *“if only you were right”!!*

I am convinced that **Araz Huseynov**, Judge with Sabail District Court, acted in an “absolutely independent” manner on Nov 11, 2009 sentencing Adnan Hajizade and Emmin Abdullayev to 2 and 2.5 years in prison for an uncommitted crime. Just as did **Gail Mammedov**, Judge with Court of Appeals, who left this sentence standing on Mar 10. By the way, this “detached decision” of the Court of Appeals was passed after our appeal to Independence voiced on Mar 03 ...

When sentencing Eynulla Fatullayev, Ganimat Zahidov and others, Court of Appeals Judges **Isa Ismaylov**, **Hamid Hamidov**, **Hajibala Sadigov**, Supreme Court Judges **Mehdi Asadov**, **Abid Abdinbeyov**, **Muzaffar Agazade**, **Sudaba Mammedova**, **Shain Yusifov** clearly proved the lack of an independent judiciary in Azerbaijan, the absence of the very notion *justice*.

A citizen of Azerbaijan is not in a position to judicially protect either his life and freedom, or his property. It is remarkable that international seminars explain in layman’s language impossibility of building a law-based society without an independent judiciary...

This inference is hard to draw without international seminars. However, as practices of all court instances show, even after seminars it proves impossible to be an independent judge in Azerbaijan ...

This can be easily substantiated with your assertion, “Frequently do we encounter false articles accusing us of serious offenses. We have enough statutory grounds for putting an end to this. If a judge is accused of a grave crime, turn to us and we will bring these people to trial. Somebody may remain discontented and criticize, but he who voices the accusation of a grave crime is responsible for his words”.

*Now, that is a direct threat and I can even guess against whom.* I do not think that it is also a proposition of an international seminar.

How do you think – are accusations towards judges by national and international human rights organizations of unlawful and unfounded specific adjudications on cases of Adnan Hajizade, Emmin Abdullayev, Eynulla Fatullayev, Ganimat Zahidov, Sakit Zahidov, Ruslan Bashirli (the list may stretch on) violating concrete provisions of the European Convention on Human Rights criticism or “accusation of a grave crime”??

You state, “If a judge is accused of a grave crime, turn to us ...”

When in reply to unfounded sentences trial lawyers lodge cassation appeals to the Supreme Court, does the latter, as you say, “bring these people (judges with deliberately unlawful sentences – L.Y.) to trial or at least overturn unfounded verdicts?

No, it doesn’t! One may find above the names of Supreme Court judges who justified sentences on forged charges.

Crackdowns of freedom of speech and thought are being brought about through courts. Journalists, newspaper editors, bloggers, civil sector activists are being brought to trial on fabricated charges.

Blameless citizens of Azerbaijan are not just being sentenced to long terms. They die in prison living not to see a judgment of the European Court. In summary, the deaths of Faina Kungurova (2007) and Novruzali Mammedov (2009) explicitly evidence “felonies” perpetrated by the judiciary. It is intolerable to hush up these crimes and shield criminals in judges’ robes!!

AR Criminal Code has Article 295 which prescribes punishment for judges who passed knowingly unfounded sentences. No judge, however, has been condemned so far under the article!

Mr. Chairman of the Supreme Court, in your address on March 02 you were also right saying, “Unfortunately, judges opt for an arrest as a restraint. The restraint in the form of a bail is not administered in Azerbaijan; restraints in the form of not leaving or house arrest are not chosen... An arrest is the cruelest measure of punishment and it must be applied only in extraordinary circumstances... Courts must give proofs for decisions to arrest”.

On Feb 16 Yasamal District Court chaired by **Tahir Ismaylov** decided to institute prosecution under Articles 221.3 (hooliganism) and 315.2 (resistance to authority) of the Criminal Code of AR and to choose a two-month detention as a measure of restraint for five citizens of Azerbaijan – Elmar Ramiz oglu Samedov (1959-born), Elchin Rafiq oglu Abbasov (1986-born), Bilal Heydar oglu Ahmedov (1984-born), Seymur Shaban oglu Huseynov (1985-born) and Agali Eldar oglu Yahyayev (1983-born).

The said citizens were detained on Feb 13, 2010 as the police dispersed a peaceful group of people (60-70) marching from a mosque to the Alley of Martyrs. Judge **Tahir Ismaylov** did not give proofs for his decision to put under arrest...

As to the young bloggers sentenced on Jul 10 to a 2-month-detention by **Rauf Ahmedov**, Judge with Sabail District Court, they had excellent references and diplomas (!). **Judge Rauf Ahmedov held a closed hearing to choose a measure of restraint on the charge of hooliganism!!!** Judge Rauf Ahmedov was the first to clearly demonstrate a contract-style character of this high profile trial.

On Jul 20, 2009 Judges with Baku Court of Appeals **Mirpasha Huseynov** and **Jamal Ramazanov** left the decision as of Jul 10, 2009 standing.

On Jul 23, 2009 Famil Nasibov, Judge with Sabail District Court, decided to dismiss the appeal of trial lawyers of Adnan Hajizade and Emmin Abdullayev on violation of Article 3 (torture and inhuman treatment) and Article 6(3), Sub-clauses “b” and “c” (adequate time and facilities for the preparation of one’s defense; defense through a trial lawyer chosen by the accused) of the European Convention on Human Rights and Fundamental Freedoms.

On Aug 23, 2009 **Gail Mammedov**, Chair of Baku Court of Appeals, decided to leave the decision as of Jul 23, 2009 standing.

On Aug 10, 2009 **Nuraddin Bagirov**, Judge with Sabail District Court, did not satisfy the appeal of trial lawyers of Adnan Hajizade and Emmin Abdullayev on violation of a presumption of innocence by state bodies prescribed by Article 6(2) of the European Convention.

On Sep 10, 2009 **Jamal Ramazanov**, Chair of Baku Court of Appeals, left the decision as of Aug 10, 2009 standing.

You will have an excellent opportunity to demonstrate INDEPENDENCE: in nearest future a cassation appeal on the case of the bloggers will be submitted to the Supreme Court of Azerbaijan.

Mr. Chairman of the Supreme Court, in your speech you also stated that Azerbaijan completely abode and satisfied judgments of the European Court of Human Rights, "It is impossible not to abide by the decisions of the European Court. An indemnity set by the European court is due by the Ministry of Finances".

To my knowledge, the execution of a European Court judgment is not restricted by the payment of the indemnity. I want to bring to your notice only a portion of over 20 European Court judgments failed to be abided and satisfied by Azerbaijan.

1. A judgment by the European Court of Human Rights (ECHR) (in acknowledgement of violation of Articles 3 and 13 of the Convention) dated Jan 11, 2007 on the appeal by S. Mammedov (Jalaloglu) vs. Azerbaijan Republic (the case presented by trial lawyer Fuad Agayev).
2. A judgment by ECHR (in acknowledgement of violation of Article 34 of the Convention) dated Nov 29, 2007 on the appeal by Aliakran Hummatov vs. Azerbaijan Republic (the case presented by trial lawyer M. Ferschtman (Netherlands)).
3. A judgment by ECHR (in acknowledgement of violation of Article 3 of the Convention) dated Jul 10, 2008 on the appeal by Vagif Hajibeyli vs. Azerbaijan Republic (the case presented by trial lawyer Nigar Huseynova).
4. A judgment by ECHR (in acknowledgement of violation of Article 34 of the Convention) dated Dec 18, 2008 on the appeal by 10 citizens (Intigam Aliyev, Rasgid Hajily, Annagi Hajibeyli and others) vs. Azerbaijan Republic (the case presented by trial lawyer Intigam Aliyev).
5. A judgment by ECHR (in acknowledgement of violation of Article 34 of the Convention) dated Dec 18, 2008 on the appeal by Rovshan Mahmudov and Yashar Agazade vs. Azerbaijan Republic (the case presented by trial lawyers I. Aliyev and E. Ibragimov).

6. A judgment by ECHR (in acknowledgement of violation of Article 3 of the Convention) dated Apr 02, 2009 on the appeal by Mahira Muradova vs. Azerbaijan Republic (her interests were presented by trial lawyer Isakhan Ashurov).

I am certain that this letter will push you to get the voiced threat done.

However, I am of opinion that the Dialogue will come more efficient. For its purpose, I address you these questions and remain hopefully for the Dialogue.

IPD plans to launch new discussions over the situation in the judicial system in weeks to come. We will send our invitations without fail.

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