

SANEF welcomes removal of jail threat against Executive Editor 24 July 2009

The SA National Editors' Forum welcomes the removal of the threat of a jail sentence being imposed on Gasant Abarder, the Executive Editor of the Cape Argus, because of his refusal to give evidence in the hearing of a civil defamation claim in the Cape Town Magistrate's Court.

Abarder, who was then a reporter on the Daily Voice, was served with a subpoena to give evidence about a report he wrote for that paper. He refused, stating at the first hearing of the case in November 2005 that he had taken the witness stand "only to notify the magistrate that I refuse to answer any of the questions posed by County Fair's counsel. I told the magistrate that I found it intolerable to testify in a case of this nature and that my credibility and independence as a journalist was at stake".

That refusal placed him at risk of being found guilty of contempt of court and the possibility of a prison sentence. He lost an appeal in 2006 and was served with a fresh subpoena which required him to give evidence when the case resumed on Thursday, July 23. As he intended to refuse again he faced the possibility of a prison sentence being imposed for contempt of court.

However, the parties in the defamation case settled the matter out of court and thus the obligation in the subpoena to give evidence fell away, removing the threat of a jail sentence.

Abarder said that though he had faced a very real possibility of a jail sentence it would not sway "my resolve to stick to my principals on this matter. The case and the subpoena have been cause for great distress for me and my family. But it is in the interest of press freedom, credibility and independence that this subpoena be challenged".

In refusing, Abarder was acting in accordance with the stance of Sanef that a requirement for a journalist to give evidence should only be exercised when the journalist was a witness of last resort. In this case there were about 100 other people who could have been called as witnesses.

Sanef believes that journalists should be treated in accordance with the principles outlined in the Record of Understanding reached between the Ministers of Justice and Safety and Security and the Director of Public Prosecutions and Sanef in 1999 "that the press and the media in a democratic society have a right and a duty, in the public interest, to collect and disseminate newsworthy information and in order to exercise this right and duty it is necessary, under appropriate circumstances, that their sources and information should be protected".

Sanef endorses Abarder's contention that a journalist's independence and credibility is jeopardized if he or she were seen by the public to be willing informants of the police or other official structures such as the courts.