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Diritto di critica dell'avvocato nei confronti del giudice e responsabilità disciplinare professionale
(CEDU, Sez. V, sent. 25.6.2020, ric. nn. 81024/12 e 28198/15)

La Corte si pronuncia sul caso di un cittadino azero, il sig. Khalid Zakir oglu Bagirov, il quale lamentava la violazione dei propri diritti alla libertà di espressione e al rispetto della vita privata perché l'Ordine degli avvocati azero lo aveva sospeso dall'esercizio della professione per un periodo di un anno e successivamente lo aveva radiato dall'albo a causa delle sue dichiarazioni sulla brutalità della polizia e sul funzionamento del sistema giudiziario nel paese.
In particolare, per quanto riguarda la sanzione disciplinare della sospensione, la Corte osserva che la normativa interna sulla responsabilità disciplinare degli avvocati elenca i casi in cui un avvocato è soggetto a responsabilità disciplinare (violazione delle disposizioni della Legge e di altri atti legislativi, dello Statuto sulle regole di condotta degli avvocati e le norme deontologiche dell'avvocato) ed evidenzia che, nel caso di specie, il ricorrente era stato sottoposto a responsabilità disciplinare sulla base di una presunta violazione dell'obbligo di riservatezza, senza tuttavia specificare quale disposizione del diritto interno si assumesse violata. La Corte osserva che il ricorrente era stato sanzionato per aver ribadito la posizione pubblicamente espressa della madre di una presunta vittima a seguito di scontri con la polizia e rileva che non risulta dalla disciplina normativa interna che l'uso delle informazioni disponibili di pubblico dominio rientri nella riservatezza dell'avvocato. Al contrario, la formulazione delle suddette disposizioni indica chiaramente che le informazioni rientranti nel segreto professionale dell'avvocato devono essere state ottenute da un avvocato nell'ambito della sua attività professionale. La Corte ribadisce che non è suo compito sostituire la propria interpretazione a quella delle autorità nazionali, e in particolare dei tribunali, poiché spetta principalmente a questi ultimi interpretare e applicare il diritto interno (si veda Seyidzade c. Azerbaijan , n. 37700 / 05 , § 35, 3 dicembre 2009; Islam-Ittihad Association e altri c. Azerbaijan , n. 5548/05 , § 49, 13 novembre 2014; e Karácsony e altri c. Ungheria [GC], nn. 42461/13 e 44357 / 13 , § 123, 17 maggio 2016) . Tuttavia, nel caso di specie i tribunali nazionali, pur ritenendo che il ricorrente avesse violato l'obbligo di riservatezza, hanno ignorato il fatto che la formulazione letterale della legge chiaramente indica che le informazioni coperte da tale obbligo devono essere ottenuto da un avvocato nella promozione della sua attività professionale, mentre il ricorrente si era limitato a ribadire ciò che era di dominio pubblico. La Corte, pertanto, dichiara che v'è stata una violazione degli artt. 8 e 10 della Convenzione per quanto riguarda la sanzione della sospensione dalla professione per il periodo di un anno.
Per quanto riguarda la sanzione della radiazione dall'albo a seguito di alcune dichiarazioni rese in aula dal ricorrente in qualità di difensore costituito e aventi ad oggetto aspre critiche nei confronti non soltanto del sistema giudiziario in Azerbaijan, ma anche del giudice chiamato a decidere nel procedimento penale in corso, la Corte evidenzia che le parti hanno certamente il diritto di commentare l'amministrazione della giustizia al fine di difendere i propri diritti, ma anche la critica non deve oltrepassare certi limiti e che, in ogni caso, la sanzione inflitta da parte dei giudici nazionali sia proporzionata e trovi un equilibrio tra la necessità di proteggere l'autorità del potere giudiziario e la necessità di tutelare il diritto alla libertà di espressione del ricorrente.

La Corte, pertanto, ritiene che nel caso di specie i tribunali nazionali non sono riusciti a prendere in considerazione una serie di elementi che avrebbero dovuto essere presi in considerazione come il fatto che il ricorrente avesse reso tali dichiarazioni in un'aula di tribunale nel corso del procedimento penale in qualità di avvocato del suo cliente e che, al momento in cui le osservazioni erano state formulate dinanzi alla Corte d'appello, essa si era già pronunciata nel caso Ilgar Mammadov c. Azerbaigian (n. 15172/13 , 22 maggio 2014) , constatando che vi era stata violazione degli articoli 5 e 18 della Convenzione e che la limitazione di libertà del sig. Ilgar Mammadov era stata imposta per scopi diversi da quelli prescritti dalla Convenzione. La Corte, d'altronde, ha successivamente ritenuto che vi fossero state una serie di gravi carenze nel procedimento penale contro Ilgar Mammadov (cfr. Ilgar Mammadov c. Azerbaijan (n. 2), n. 919/15 , 16 novembre 2017).
La Corte rileva, pertanto, che la radiazione dall'albo è una sanzione severa e sproporzionata, riconoscendo anche sotto questo profilo una violazione degli artt. 8 e 10 della Convenzione.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BAGIROV v. AZERBAIJAN

(*Applications nos. 81024/12 and 28198/15*)

JUDGMENT

STRASBOURG

25 June 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bagirov v. Azerbaijan,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Angelika Nußberger, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having deliberated in private on 2 June 2020,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 81024/12 and 28198/15) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Khalid Zakir oglu Bagirov (*Xalid Zakir oğlu Bağırov* – "the applicant"), on 14 November 2012 and 15 October 2015 respectively.
2. The applicant was represented by Mr I. Aliyev, a lawyer based in Azerbaijan, and Ms R. Remezaite, Ms K. Levine and Mr P. Leach, lawyers practising in London, in application no. 81024/12. The applicant was represented by Ms R. Remezaite, Ms K. Levine and Ms J. Evans, lawyers practising in London, in application no. 28198/15. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.
3. The applicant alleged, in particular, that his rights to freedom of expression and to respect for private life had been breached because the Azerbaijani Bar Association (*Azərbaycan Respublikası Vəkillər Kollegiyası* – hereinafter "the ABA") had first suspended him from the practice of law for a period of one year and had subsequently disbarred him on account of statements he had made about police brutality and the functioning of the judicial system in the country. He also complained in respect of application no. 28198/15 that his Convention rights had been restricted for purposes other than those prescribed in the Convention.
4. On 6 July 2015 and 24 June 2016 respectively the Government were given notice of the complaints concerning the alleged violation of the applicant's rights to respect for private life (Article 8 of the Convention) and to freedom of expression (Article 10 of the Convention) in respect of both applications, and the complaint under Article 18 of the Convention in conjunction with Articles 8 and 10 of the Convention in respect of application no. 28198/15; the remainder of the applications was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court. It was also decided to grant application no. 28198/15 priority treatment under Rule 41 of the Rules of Court. In addition, third-party comments were received from the Council of Europe Commissioner for Human Rights, who exercised his right to intervene in the proceedings and submitted written comments in respect of application no. 28198/15 (Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court). Third-party observations were also received from the International Commission of Jurists, following the granting of leave to intervene as a third party in the written procedure in respect of both applications (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Baku.
6. The applicant was a lawyer (*vəkil*) and a member of the ABA at the time of the events described below. He was affiliated to Law Office No. 6 in Baku. The applicant specialised in protection of human rights and has represented applicants in more than 100 cases before the Court.

The applicant's suspension from the practice of law (application no. 81024/12)

1. The applicant's comments on a suspicious death in police custody

7. An individual (E.A.) who was arrested during the night of 12-13 January 2011 was found dead the following day in police custody.
8. E.A.'s death received wide media coverage; a photograph of his body with traces of ill-treatment was published in the media.
9. On 25 January 2011 E.A.'s mother (R.R.) held a press conference, at which she stated that her son had been murdered by the police. She also complained that the law-enforcement authorities had failed to conduct an investigation into the death of her son in police custody.

10. On 28 February 2011 the applicant attended a meeting dedicated to problems encountered by lawyers. When he expressed his opinion about the problems of the legal profession in Azerbaijan, he made the following statement:
"Recently, when E.A. was murdered in police custody, Elchin [another lawyer] and I wanted to organise a protest wearing our robes entitled "We cannot defend the dead" (*Biz ölüləri müdafiə edə bilmərik*). Unfortunately, we could not find any other lawyers to join us for this protest ... This is also our topic. In fact, [they] should keep alive those arrested so that we can defend them. Although the latter need a lawyer as soon as they are arrested, they are provided with a stick."
11. On 1 March 2011 an article entitled "those arrested do not need a lawyer, but a stick" *(Tutulanlara vəkil yox, zopa lazımdır*) was published in the *Bizim Yol* newspaper. The article addressed the applicant's comments on E.A.'s murder in police custody and his wish to organise a protest against police brutality.
12. On 7 March 2011 R.R. instructed the applicant to defend her rights in the proceedings relating to E.A.'s death: a contract was signed between them. On the same date mandate (*order*) no. 013912 confirming that R.R. was represented by the applicant was issued.
13. It appears from the documents in the case file that by a letter dated 7 November 2013 the Nizami District Prosecutor informed the applicant that a criminal investigation was being conducted under Article 315.2 (Resistance to or violence against a public official which poses a danger to his life and health) of the Criminal Code in connection with E.A.'s actions during his arrest on 13 January 2011, and that the investigation had been suspended under Article 53.1.1 (the person to be charged is unknown) of the Code of Criminal Procedure on 1 August 2011. There is no information in the case file about any investigation carried out in connection with E.A.'s death in police custody.
2. The criminal complaint lodged against the applicant
14. On 18 March 2011 the head of the Baku City Chief Police Department (R.A.) lodged a criminal complaint with the Yasamal District Court against the applicant for defamation.
15. On 15 April 2011 the Yasamal District Court refused to institute criminal proceedings for defamation, finding that the applicant had not made any defamatory comment about R.A., and that the latter could not be considered as a victim.
3. Disciplinary proceedings instituted against the applicant
16. On 27 April 2011 R.A. sent a letter to the ABA asking for disciplinary proceedings to be instituted against the applicant. He alleged that the applicant had made defamatory statements accusing the police of E.A.'s murder, the practice of torture and ill-treatment, and other unlawful activities in the absence of any evidence.
17. On 16 June 2011 the ABA Disciplinary Commission issued an opinion, deciding to refer the complaint against the applicant to the Presidium of the ABA (*Azərbaycan Respublikası Vəkillər Kollegiyası Rəyasət Heyəti* – hereinafter "the Presidium"). According to the text of the opinion, the applicant stated before the disciplinary commission that he had only been expressing the position of E.A.'s family, who believed that E.A. had been killed by the police. He also referred to the Yasamal District Court's decision of 15 April 2011, stating that R.A. could not in any event lodge any complaint against him, because he had not made any comment about R.A.
18. On 24 August 2011 the Presidium held a meeting at which it examined the complaint and then decided to suspend the applicant from the practice of law for a period of one year. It held that the applicant had failed to comply with the provisions of the Law on Advocates and Advocacy Activity ("the Law") because he had disclosed confidential information constituting lawyer confidentiality (*vəkil sirri*). The relevant part of the decision reads as follows:
"In fact, in accordance with Article 17.1 of the Law on Advocates and Advocacy Activity, all information obtained by a lawyer in the exercise of his professional activity falls under the head of lawyer confidentiality. Pursuant to paragraph 4 of the same article, a lawyer should not disclose

information he obtains from a person *vis-à-vis* whom he is in a position of trust. However, lawyer Khalid Bagirov, instead of submitting to the relevant competent authorities in accordance with the procedure established by law the information which procedurally required a special investigation, at a meeting of the working group of lawyers held on 28 February 2011, stated without referring to any official evidence or reliable source that those arrested by the law-enforcement authorities had died as a result of terrible torture, that the accused had not been provided with a lawyer in police custody, that the suspected and accused had been beaten with truncheons, and that E.A., who had been detained as a suspect in police station no. 25 of the Nizami District Police Office, had also died as a result of a beating. He [the applicant] proposed to organise protests entitled "those arrested do not need a lawyer, but a stick" and used expressions like "in that case the violence can be prevented to some extent" causing damage to the reputation and dignity of police officers. The collaborator of the *Bizim Yol* newspaper H.Z. spread in the media statements discrediting the police authorities, by using these expressions in his article published on page 5 of the newspaper dated 1 March 2011 under the title "those arrested do not need a lawyer, but a stick" with a subtitle "lawyer Khalid Bagirov proposes to hold protests with this slogan". It follows that he [the applicant] breached the requirements of Articles 14, 16 §§ 1 and 2, and 17 §§ 1 and 4 of the Law on Advocates and Advocacy Activity".

19. On an unspecified date the applicant lodged a complaint with the Nasimi District Court against the Presidium's decision of 24 August 2011. He alleged that the decision in question had amounted to an unlawful interference with his right to freedom of expression as guaranteed by Article 10 of the Convention. He further pointed out that he had not disclosed any confidential information relating to lawyer confidentiality, as the allegation about E.A.'s murder by the police had already been made at a press conference by R.R. on 25 January 2011, before the conclusion of a contract between him and R.R. on 7 March 2011. In any event, R.R. had never complained of a breach of lawyer confidentiality by him.

20. On 3 November 2011 the Nasimi District Court dismissed the applicant's claim, finding that the Presidium's decision of 24 August 2011 was lawful and justified. The first-instance court's judgment made no mention of the applicant's particular complaint concerning the violation of his right to freedom of expression. The relevant part of the judgment reads as follows:

"It was established at the court hearing that claimant Khalid Bagirov, in his role as a lawyer, at a meeting of the working group of lawyers held on 28 February 2011, stated, without referring to any official evidence or reliable source, that people arrested by the law-enforcement authorities had died as a result of terrible torture, that those accused had not been provided with legal representation while in police custody, that suspected and accused people had been beaten with truncheons, and that E.A., who had been detained as a suspect in police station no. 25 of the Nizami District Police Office, had also died as a result of beating. He [the applicant] proposed to organise protests entitled "those arrested do not need a lawyer, but a stick" and used expressions like "in that case the violence can be prevented to some extent" causing damage to the reputation and dignity of police officers. The collaborator of the *Bizim Yol* newspaper H.Z. spread in the media statements discrediting the police authorities, by using these expressions in his article published on page 5 of the newspaper dated 1 March 2011 under the title "those arrested do not need a lawyer, but a stick" with a subtitle "lawyer Khalid Bagirov proposes to hold protests with this slogan". At the same time, although claimant Khalid Bagirov admitted that he had made such a statement and he had obtained the information in question from R.R. [E.A.'s mother], the court considers that despite the fact that claimant Khalid Bagirov, as a lawyer, should protect the confidentiality of information obtained in connection with the exercise of his professional activity, he failed to do so or did not submit the information to the relevant competent authority to investigate it."

21. On 19 November 2011 the applicant appealed against that judgment, reiterating his previous complaints and arguing that his suspension from the practice of law had amounted to a violation of his rights protected under Articles 8 and 10 of the Convention.
22. On 11 January 2012 the Baku Court of Appeal dismissed the appeal. The appellate court held that the Presidium's decision of 24 August 2011 was lawful and justified. As regards the applicant's arguments that R.R. had already made a similar statement to the media previously and that the applicant had only repeated her statement when he was not yet her lawyer, the court found that although the applicant, as a lawyer, should protect the confidentiality of information obtained in connection with the exercise of his professional activity, he failed to do so or did not submit the information to the relevant competent authority to investigate it. The appellate court's judgment made no mention of the applicant's specific complaint concerning the violation of his right to freedom of expression.
23. On 11 May 2012 the Supreme Court upheld the appellate court's judgment. On 11 June 2012 the applicant was provided with a copy of the Supreme Court's decision.

The applicant's disbarment (application no. 28198/15)

1. The applicant's comments at a court hearing

24. In August and September 2014 the applicant was one of the two lawyers who represented Mr Ilgar Mammadov in criminal proceedings before the Shaki Court of Appeal. The domestic proceedings concerning Mr Ilgar Mammadov's criminal conviction have already been the subject of the Court's judgment in the case of *Ilgar Mammadov v. Azerbaijan (no. 2)* (no. 919/15, 16 November 2017).
25. On 25 September 2014 M.H., a judge of the Shaki Court of Appeal, sent a letter to the ABA asking for the institution of disciplinary proceedings against the applicant because of remarks that he had made at the court hearings held in September 2014 before the Shaki Court of Appeal during the criminal proceedings against Mr Ilgar Mammadov. In particular, M.H. noted that at one of the court hearings held in September 2014 the applicant had made the following remarks about the judicial system and a judge of the first-instance court (R.H.) who had participated in the examination of the case of Mr Ilgar Mammadov: "Like State, like court ... If there were justice in Azerbaijan, Judge R.H. would not deliver unfair and partial judgments, nor would an individual like him be a judge" ("*Belə dövlətdə belə də məhkəmə olacaq ... Azərbaycanda ədalət olsaydı, hakim R.H. ədalətsiz və qərəzli hökm çıxarmazdı, nə də onun kimisi hakim işləməzdi*").

2. Disciplinary proceedings instituted against the applicant

26. On 19 November 2014 the Disciplinary Commission of the ABA issued an opinion, deciding to refer the complaint against the applicant to the Presidium. It appears from the documents in the case file that the applicant submitted a written explanation within the framework of the disciplinary proceedings. He stated that he did not remember using the expression "like State, like court". However, he considered that, as the remark in question was voiced as a continuation of the expression "every court is the court of its State", it was the assessment made by the defence about the judicial system. As regards the remaining expressions used about Judge R.H., he had been expressing his opinion about the activity of the judge, who had examined the case at the first-instance court, emphasising the latter's differing approach to the defence and the prosecution, failure to apply equal standards, and the unfair and biased judgment delivered by the judge.
27. On 10 December 2014 the Presidium held that the applicant had breached the rules of conduct for lawyers on account of the comment that he had made at the court hearing before the Shaki Court of Appeal. The Presidium decided to refer the applicant's case to a court with a view to his disbarment, relying on Article 22 (VIII) of the Law. It also decided to suspend the applicant's activity as a lawyer pending a decision by the court. The relevant part of the decision reads as follows:

"As regards the statement "like State, like court ... If there were justice in Azerbaijan, Judge R.H. would not deliver unfair and partial judgments, nor would an individual like him be a judge" made by lawyer Khalid Bagirov at a court hearing, the Presidium considers that lawyer Khalid Bagirov, by using these expressions at a court hearing, manifested a disrespectful attitude as a whole towards the state and our statehood, and the reputation of the judge, as well as the legislative and executive authorities electing and appointing that judge, which should be considered as a grave breach of the lawyer ethics (*vəkil etikası*) and an act conducted by him disrespecting the reputation of the legal profession.

In accordance with Article 6.1 of the Statute on the rules of conduct for lawyers, a lawyer, while exercising his professional activity, should avoid engaging in conduct that can damage the prestige of the legal profession.

In accordance with Article 4.2 of the same Statute, a lawyer in the performance of his professional activity should be an example of conscientiousness for everybody.

As set out in the requirements of the Statute, a lawyer must perform his or her duties in such a way as to be an example for everybody.

However, lawyer Khalid Bagirov, stating at a public court hearing "like State, like court", cast a shadow not only over the Azerbaijani judiciary, but most importantly over the State and our statehood, which are holy for every Azerbaijani citizen. The suspicious approach to our State and statehood of Khalid Bagirov as a lawyer, being contrary to civil conscientiousness (*vətəndaş vicdanlılığı*), constitutes a bad example for others. Moreover, by the expression "if there were justice in Azerbaijan, Judge R.H. would not deliver unfair and partial judgments, nor would an individual like him be a judge", lawyer Khalid Bagirov tarnished in general the reputation of the Azerbaijani judiciary (*Azərbaycan Ədalət Mühakiməsi*)."

28. On 18 December 2014 the Presidium lodged a request with the Nizami District Court asking for the applicant's disbarment.

29. On 10 July 2015 the Nizami District Court delivered its judgment on the merits and ordered the applicant's disbarment. The court held that the applicant had failed to comply with the rules of conduct for lawyers, as he had made disrespectful statements about the judge, the judicial system and, in particular, the State organs and the statehood of the country at the court hearings before the Shaki Court of Appeal. As regards the legal ground for the applicant's disbarment, the court held that the failure of the domestic law to specify the grounds for disbarment did not constitute a basis for dispensing lawyers from being subjected to the disciplinary measure provided for by Article 22 of the Law. The court further found that the interference with the applicant's right under Article 10 of the Convention was justified. The part of the judgment relating to Article 10 of the Convention reads as follows:

"The court also notes, in connection with the interference with the right protected under Article 10 of the European Convention on Human Rights, which constitutes the basis of the defended party's objection to the claim that the first paragraph of this Article provides that everyone has the right to freedom of expression.

The second paragraph of Article 10 of the said Convention provides for the grounds for restrictions on, and interference with, those freedoms. The exercise of those freedoms may be subject to certain formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The court notes that, as with any right, the right to freedom of expression is not absolute, and an interference with it is possible. As such an interference is provided for by Article 22 (VIII) of the Law

on Advocates and Advocacy Activity of the Republic of Azerbaijan, there was no violation of Article 10 of the said Convention in respect of the defended party.

The court considers it especially necessary to underline that, although the right to freedom of expression for everyone is enshrined in the domestic and international law, it is totally inadmissible to misuse that right with a view to casting a shadow over our State and statehood, which are holy for every Azerbaijani citizen, and to tarnish the reputation of the judiciary; such a misuse is prevented by the legislation of our State."

30. On an unspecified date the applicant appealed against the judgment, claiming that his disbarment had constituted an unjustified interference with his rights protected under Articles 8 and 10 of the Convention. Relying on Article 18 of the Convention, he also claimed that he had been disbarred because of his active involvement in the protection of human rights in the country.

31. On 11 September 2015 the Baku Court of Appeal dismissed the appeal and upheld the Nizami District Court's judgment of 10 July 2015.

32. On 26 October 2015 the applicant lodged a cassation appeal, reiterating his previous complaints.

33. On 12 January 2016 the Supreme Court upheld the Baku Court of Appeal's judgment of 11 September 2015.

Public reaction to the applicant's disbarment

34. The applicant's disbarment attracted significant public and media interest both inside the country and internationally. A number of domestic and international NGOs condemned the applicant's disbarment.

35. On 10 December 2014 the President of the Parliamentary Assembly of the Council of Europe stated about the Presidium's decision dated 10 December 2014 that "against this background of increasing intimidation of human rights defenders in Azerbaijan, such clear pressure on independent lawyers defending civil society activists is unacceptable".

36. On 22 September 2016, following his visit to Azerbaijan, Michel Forst, the UN Special Rapporteur on the situation of human rights defenders, referred in his end of mission statement to the applicant's disbarment case, noting that he had been unjustifiably disbarred. As regards the situation of the human rights lawyers, the UN Special Rapporteur stated that "disbarments of human rights lawyers, together with criminal prosecutions, searches and freezing of their assets are part of the broader harassment facing human rights defenders in the country". He also stated that "for those lawyers who are members of the bar association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities".

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

37. Article 47 § I of the Constitution provides:

"Everyone enjoys the freedom of thought and speech."

B. Law on Advocates and Advocacy Activity of 28 December 1999 ("the Law")

38. The relevant part of the Law, as in force at the material time, provided as follows:

Article 14 Lawyer's oath

"I. A person admitted as a member of the Bar Association takes the following oath at a meeting of the Presidium of the Bar Association before the State flag of the Republic of Azerbaijan:

"I solemnly swear that, by complying with the Constitution and laws of the Republic of Azerbaijan, being independent, I will honestly and conscientiously perform the duties of a lawyer, be fair and principled, courageously and firmly defend human rights and freedoms, and preserve professional confidentiality."

...

Article 16 Lawyer's duties

I. While performing his or her professional activity a lawyer is obliged:

to execute the requirements of the law, use all the means provided for by the legislation to protect the interests of the defended or represented person;
to preserve lawyer confidentiality, comply with the lawyer's oath, and act in accordance with lawyer ethics ;
...
Article 17 Lawyer confidentiality (*vəkil sirri*)
"I. The information obtained by a lawyer, and advice and information given by a lawyer in furtherance of his or her professional activity, fall under the head of lawyer confidentiality.
II. Dissemination by a lawyer of information falling under pre-trial investigation confidentiality that the lawyer has become aware of in the course of his professional activity is only allowed with the permission of the prosecutor or the investigator.
III. Lawyers who disseminate information which falls under pre-trial investigation confidentiality are responsible under the legislation of the Republic of Azerbaijan.
IV. A lawyer cannot be called as a witness and questioned about matters he became aware of in connection with the provision of legal assistance to a person who has sought it. A lawyer is not to give explanations about such matters and disseminate information imparted to him by the client.
...
Article 21 Disciplinary commission of lawyers
I. The disciplinary commission of lawyers is created within the Presidium of the Bar Association for the purposes of the examination of complaints and applications relating to disciplinary violations committed by lawyers while exercising their professional duties and for the resolution of matters relating to their disciplinary responsibility.
...
Article 22 Disciplinary responsibility of lawyers
I. A lawyer is subjected to disciplinary responsibility in the event of disclosure of a breach of the provisions of this Law and other legislative acts, the Statute on the rules of conduct for lawyers (*vəkillərin davranış qaydaları haqqında Əsasnamə*), and the norms of lawyer ethics (*vəkil etikası normaları*) in the exercise of his or her professional duty.
...
VI. The Presidium of the Bar Association may apply in respect of a lawyer the following disciplinary sanctions on the basis of an opinion of the disciplinary commission:
admonition;
reprimand;
suspension from practising for a period from three months to one year;
...
VIII. If there are grounds serving as a basis for exclusion (*xaric edilməyə səbəb ola biləcək əsaslar*) of a lawyer from the Bar Association, on the basis of an opinion of the disciplinary commission, the Presidium of the Bar Association can apply to a court for resolution of the matter and suspend the lawyer's activity until the entry into force of the court decision on the issue."
III. RELEVANT INTERNATIONAL DOCUMENTS
39. Recommendation R (2000) 21 of the Council of Europe's Committee of Ministers to member States on the freedom of exercise of the profession of lawyer (adopted on 25 October 2000) states as follows:
"The Committee of Ministers ...
... Underlining the fundamental role that lawyers and professional associations of lawyers also play in ensuring the protection of human rights and fundamental freedoms;
Desiring to promote the freedom of exercise of the profession of lawyer in order to strengthen the Rule of Law, in which lawyers take part, in particular in the role of defending individual freedoms;

Conscious of the need for a fair system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction, influence, inducement, pressure, threats or interference, direct or indirect, from any quarter or for any reason;
... Recommends the governments of member States to take or reinforce, as the case may be, all measures they consider necessary with a view to the implementation of the principles contained in this Recommendation.
...
Principle I - General Principles on the freedom of exercise of the profession of lawyer
1. All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.
2. Decisions concerning the authorisation to practice as a lawyer or to accede to this profession should be taken by an independent body. Such decisions, whether or not they are taken by an independent body, should be subject to a review by an independent and impartial judicial authority.
3. Lawyers should enjoy freedom of belief, expression, movement, association and assembly, and, in particular, should have the right to take part in public discussions on matters concerning the law and the administration of justice and suggest legislative reforms.
4. Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards.
...
Principle III – Role and duty of lawyers
1. Bar associations or other lawyers' professional associations should draw up professional standards and codes of conduct and should ensure that, in defending the legitimate rights and interests of their clients, lawyers have a duty to act independently, diligently and fairly.
2. Professional secrecy should be respected by lawyers in accordance with internal laws, regulations and professional standards. Any violation of this secrecy, without the consent of the client, should be subject to appropriate sanctions. ..."
40. The Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from 27 August to 7 September 1990) state, in particular:
"Qualification and training
...
10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.
...
Duties and responsibilities
...
16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.

...
Freedom of expression and association
23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession. ..."
41. The relevant parts of the annual report (A/71/348) to the UN General Assembly (2016, 71st session of the General Assembly) of the Special Rapporteur of the Human Rights Council on the independence of judges and lawyers, Mónica Pinto, state:
"E. Ethics, accountability and disciplinary measures
...
96. Disbarment, which consists in taking away a lawyer's licence to practice law, possibly for life, constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards. In many countries, lawyers often face the threat of disbarment. Such threats may be aimed at undermining the independence of a lawyer, at intimidating a lawyer to prevent the discharge of professional duties or at carrying out an act of reprisal for activities a lawyer may have carried out in the legitimate exercise of his or her professional responsibilities. The Special Rapporteur wishes to stress that disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer. ..."
THE LAW
I. JOINDER OF THE APPLICATIONS
42. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.
II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION
43. The applicant complained under Article 10 of the Convention that his right to freedom of expression had been infringed in that he had been suspended from the practice of law for a period of one year and had subsequently been disbarred on account of statements he had made about police brutality and the functioning of the judicial system in the country. Article 10 of the Convention reads as follows:
"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."
Admissibility
44. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.
Merits

1. As regards the applicant's suspension from the practice of law

(a) The parties' submissions

(i) The applicant

45. The applicant maintained that his suspension from the practice of law for a period of one year had amounted to an infringement of his right to freedom of expression. In particular, he submitted that the interference with his right to freedom of expression had not been prescribed by law and had not pursued any legitimate aim. The applicant noted that he had not disclosed any information covered by lawyer confidentiality. The allegation concerning E.A.'s death in police custody as a result of torture had been made by R.R. on 25 January 2011 at a press conference, and he had merely referred to that statement. In any event, as he had signed a contract with R.R. only on 7 March 2011, on 28 February 2011 he could not have been in possession of any confidential information received from his client. The applicant further pointed out that the Law did not comply with the requirements of the quality of law because although it provided a range of sanctions in respect of disciplinary responsibility of lawyers it did not specify in which circumstances these sanctions should be applied.

46. Relying on the Court's case-law, the applicant further submitted that his suspension from the practice of law could not in any event be considered as necessary in a democratic society and proportionate. He noted that the overall issue of police violence had been and remained a very important issue of public interest in Azerbaijan. His intention had not been to damage the authority of the police, but to bring these matters into the public domain on the basis of the case of E.A.'s violent death in police custody and to propose new methods to address such impunity. That is why the applicant had proposed a legitimate and non-violent method of dissent, a protest action by lawyers wearing robes. He also pointed out that there was a general state of impunity in the country as regards police brutality, emphasising that nobody had been brought to justice in connection with E.A.'s death in police custody. In that connection, the applicant also referred to various statements from high-ranking officials noting that police officers would not be punished in Azerbaijan.

(ii) The Government

47. The Government agreed that the applicant's suspension from the legal profession had constituted an interference with his right to freedom of expression. That interference had been prescribed by Article 22 of the Law and pursued the legitimate aims of preventing the disclosure of information received in confidence or maintaining the authority and impartiality of the judiciary.

48. As regards its necessity in a democratic society, the Government submitted that a distinction must be drawn between a lawyer's statement in the context of judicial proceedings and a statement made outside the context of such proceedings. The applicant had exaggerated his grievances by asserting that his client's son had been murdered by the police as a result of torture. The statement had been made not only at a meeting of lawyers, but also to the press. The applicant had made this statement before using the ordinary available remedies, while the criminal proceedings were still pending. According to the Government, this could be regarded as an attempt to exert pressure on the investigating authorities and, more generally, to impair the independence of the judiciary.

49. The Government further submitted that the fact that the applicant had publicly criticised the administration of justice in Azerbaijan and then exercised a legal remedy with regard to the complaint was scarcely compatible with the contribution it was legitimate to expect lawyers to make to maintaining public confidence in the judicial authorities. This was reinforced by the seriousness and general nature of the criticisms made by the applicant and the tone in which he chose to make them. For example, he considered holding a demonstration to be a tactic of last resort because, in his view, laws and human rights had been flagrantly disregarded. Lastly, having regard to the penalty imposed on the applicant, the Government considered that the authorities had not gone beyond their margin of appreciation in punishing the applicant.

(iii) The third party

50. The International Commission of Jurists pointed out the special role of lawyers in the administration of justice, submitting that close scrutiny of any restrictions on their rights by States should be undertaken with a view to ensuring respect not only for the rights of lawyers, but also for their capacity to effectively carry out their professional functions. The third party noted that in some States legal proceedings for protection of human rights may be unavailable or ineffective and, in such circumstances, for lawyers to be effective in protecting the rights of their clients they may need to engage in activity, which may include statements or other forms of expression, that takes place outside of the strict confines of judicial proceedings. Such activity may be seen as necessary or useful for a variety of reasons, for example to draw the attention of the public to a case, or to assist in research and fact-finding in respect of that case. As such activities are part and parcel of a lawyer's professional functions, strict scrutiny of restrictions on freedom of expression of lawyers outside of court is also necessary. Moreover, as a consequence of the nature of their profession, lawyers have a wider societal role and responsibility in drawing attention to concerns relating to the justice system.
51. The third party further submitted that comments by a lawyer about the State's responsibility for the ill-treatment or death of a person in custody should be presumed to constitute a protected form of expression, unless those comments can be shown to have been made in bad faith. Furthermore, where such matters are addressed, any restrictions on lawyers' freedom of expression on the grounds of confidentiality of proceedings should be subjected to particularly strict scrutiny for necessity and proportionality, taking into account the importance of the public interest in receiving information on these issues. Where information or allegations are already in the public domain, a lawyer should not be penalised on the grounds of confidentiality or secrecy of proceedings for expressing his views on these matters. Moreover, it is clear that where the client supports the disclosure of the information in the public domain, the lawyer should not be prohibited from disclosing it by principles of lawyer-client confidentiality. Indeed, a lawyer might be failing in his duty to zealously defend the interests of a client where he declined to speak publicly, contrary to the request of the client, about violations of the client's human rights.

(b) The Court's assessment

(i) Whether there was interference

52. The Court notes that it is not in dispute between the parties that the applicant's suspension from the practice of law for a period of one year constituted an interference with the exercise of his right to freedom of expression, as guaranteed by Article 10 of the Convention. That is also the Court's opinion.

(ii) Whether the interference was justified

53. Such an interference will constitute a breach of Article 10 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2, and was "necessary in a democratic society" for the achievement of those aims (see *Hajibeyli and Aliyev v. Azerbaijan*, nos. 6477/08 and 10414/08, § 54, 19 April 2018). Moreover, in exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks in question and the context in which the applicant made them, bearing in mind the special status of lawyers in the administration of justice as intermediaries between the public and the courts (see *Nikula v. Finland*, no. 31611/96, §§ 44-45, ECHR 2002-II).
54. The expression "prescribed by law" in the second paragraph of Article 10 requires not only that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects. In this regard the Court reiterates that a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he or she must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

Those consequences need not be foreseeable with absolute certainty. Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30, and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], nos. 17224/11, §§ 68 and 70, 27 June 2017).

55. Turning to the circumstances of the present case, the Court notes that, while the Government referred to Article 22 of the Law as a legal basis for the applicant's suspension from the practice of law, the applicant argued that the interference in question was not prescribed by law, relying on two arguments: first, he had not breached any provision of the Law because he had not disclosed any information covered by lawyer confidentiality and, second, the Law did not comply with the requirements of the quality of law because, although it provided a range of disciplinary sanctions for lawyers, it did not specify in which circumstances these sanctions should be applied.

56. The Court observes that Article 22 (I) of the Law governs disciplinary responsibility of lawyers, listing the cases (breach of the provisions of the Law and other legislative acts, the Statute on the rules of conduct for lawyers, and the norms of lawyer ethics) in which a lawyer is subjected to disciplinary responsibility (see paragraph 38 above). Article 22 (VI) of the Law empowered the Presidium to apply a disciplinary sanction under the same section of the Law to a lawyer on the basis of an opinion of the disciplinary commission; this sanction could include suspension from the practice of law. As can be seen from the wording of the above-mentioned provisions of the Law, the first condition for the imposition of any disciplinary sanction on a lawyer is the existence of one of the above-mentioned cases in which a lawyer may be subjected to disciplinary responsibility.

57. It appears from the Presidium's decision of 24 August 2011 that in the present case the applicant was subjected to disciplinary responsibility on the ground of a breach of the provisions of the Law, namely a breach of lawyer confidentiality (*vəkil sirri*). The Presidium's decision also referred to the applicant's proposal to organise protests against police brutality for the purpose of preventing violence (see paragraph 18 above).

58. The Court at the outset deems it necessary to note that, although the Presidium referred in its decision of 24 August 2011 to the applicant's proposal to organise protests against police brutality for the purpose of preventing violence, it failed to specify which provision of the domestic law had been breached as a result of this action by the applicant in order to subject him to disciplinary responsibility. The Government also failed to make any submission in that regard. The Court does not see any provision of domestic law preventing a lawyer from calling for peaceful protests against police brutality for the purpose of preventing violence.

59. As regards a breach of lawyer confidentiality, the Court observes that in the present case the applicant was not subjected to disciplinary responsibility for breaching the secrecy of the judicial investigation by commenting on or disclosing any document relating to the investigation (compare, among many other cases, *Mor v. France*, no. 28198/09, 15 December 2011, and *Bédat v. Switzerland* [GC], no. 56925/08, 29 March 2016), but for reiterating the publicly expressed position of the mother of an alleged victim as regards the circumstances of her son's death, in the absence of any complaint from the alleged victim's mother about the applicant's action. In that connection, the Court notes that pursuant to Article 17 (I) of the Law information obtained by a lawyer, as well as advice and information given by a lawyer in furtherance of his or her professional activity, fall under the head of lawyer confidentiality. It does not appear from the wording of Article 17 (I) that the use of information available in the public domain falls under lawyer confidentiality. On the contrary, the wording of the above-mentioned provisions clearly indicates that information falling under lawyer confidentiality must have been obtained by a lawyer in the furtherance of his or her professional activity. In the present case, it is clear from the documents in the case file, and is not disputed by the

parties, that the allegation of E.A.'s death in police custody as a result of torture was made public by R.R. on 25 January 2011, and that the applicant only repeated that allegation on 28 February 2011. In any event, the applicant could not have obtained the information in question in connection with carrying out his professional activity, because he was instructed to represent R.R. in the proceedings relating to E.A.'s death only later, on 7 March 2011.

60. The Court reiterates that it is not its task to substitute its own interpretation for that of the national authorities, and notably the courts, as it is primarily for the latter to interpret and apply domestic law (see *Seyidzade v. Azerbaijan*, no. 37700/05, § 35, 3 December 2009; *Islam-Ittihad Association and Others v. Azerbaijan*, no. 5548/05, § 49, 13 November 2014; and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 123, 17 May 2016). However, in the present case the domestic courts, while confirming the Presidium's decision that the applicant had breached lawyer confidentiality, failed to address properly the applicant's argument that he had not disclosed any information which could be covered by it. In particular, their decisions disregarded the fact that the wording of Article 17 (I) of the Law clearly indicated that information falling under lawyer confidentiality must be obtained by a lawyer in the furtherance of his professional activity and that the applicant was not E.A.'s mother's lawyer on 28 February 2011 when he made the impugned statement.

61. In these circumstances the Court cannot but conclude that the interference in question was not "prescribed by law" within the meaning of Article 10 § 2 of the Convention, and does not consider it necessary to examine for the purposes of the present case the second argument of the applicant, namely that the Law did not comply with the requirements of the quality of law.

62. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 10 § 2 (in respect of a "legitimate aim" and the "necessity of the interference") have been complied with.

63. There has accordingly been a violation of Article 10 of the Convention as regards the applicant's suspension from the practice of law for a period of one year.

2. As regards the applicant's disbarment

(a) The parties' submissions

(i) The applicant

64. The applicant maintained that his disbarment had amounted to an infringement of his right to freedom of expression. He submitted that the interference with his right to freedom of expression had not been prescribed by law, because Article 22 (VIII) of the Law did not meet the requirement of the quality of law. In particular, Article 22 (VIII) of the Law did not provide for any definition of the notion of "grounds serving as a basis" for exclusion of a lawyer, and this notion constituted a vague formulation lacking sufficient clarity and precision. He further argued that this interference had not pursued any legitimate aim.

65. As regards the justification of the interference, the applicant pointed out the importance of lawyers' freedom of expression, referring to the Court's case-law. He also submitted that the impugned statement had been made in the courtroom and had constituted a value judgment with sufficient factual basis. He further noted that the statement had been made on a matter of public interest and in the course of the criminal proceedings against Mr Ilgar Mammadov, which were politically motivated. Lastly, the applicant submitted that the nature and the severity of the penalty imposed on him, as well as the general context of repression of lawyers in Azerbaijan, should be taken into consideration when assessing the proportionality of the interference with his freedom of expression.

(ii) The Government

66. The Government agreed that the applicant's disbarment had constituted an interference with his right to freedom of expression. That interference had been prescribed by Article 22 of the Law, and had pursued the legitimate aim of preventing disorder or crime.
67. As regards its necessity in a democratic society, the Government largely reiterated their submissions made in respect of the applicant's suspension from the practice of law (see paragraphs 48 and 49 above). They further submitted that the applicant had insulted the witnesses and the judge at the court hearing by using unacceptable and offensive language and had breached the rules of conduct for lawyers. They also noted that the domestic authorities had not gone beyond their margin of appreciation in punishing the applicant, because this was not the first time that the applicant had breached the rules of conduct for lawyers.
(iii) The third parties
68. Third-party comments submitted by the Council of Europe Commissioner for Human Rights concerned the situation of human rights defenders in Azerbaijan. In particular, the Commissioner drew attention to the impediments to the work of defence lawyers in Azerbaijan, submitting that disbarment or threat of disbarment may in particular be used as a tool for punishing lawyers who take on sensitive cases or for preventing them from doing so. The disbarment in these cases constituted retaliation for activities a lawyer may have carried out in the legitimate exercise of his or her professional responsibilities.
69. A detailed description of the third-party comments submitted by the International Commission of Jurists in respect of application no. 28198/15 can be found in the Court's judgment in *Hajibeyli and Aliyev* (cited above, § 48).
(b) The Court's assessment
(i) Whether there was interference
70. The Court notes that it is undisputed by the parties that the applicant's disbarment amounted to an interference with the exercise of his right to freedom of expression, as guaranteed by Article 10 of the Convention. The Court shares this view.
(ii) Whether the interference was justified
71. Such an interference will constitute a breach of Article 10 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2, and was "necessary in a democratic society" for the achievement of those aims (see *Hajibeyli and Aliyev*, cited above, § 54).
(α) Prescribed by law
72. The Court refers to the summaries of its case-law set out in paragraph 54 above, which are equally pertinent to the examination of the present complaint.
73. The Court observes that Article 22 (VIII) of the Law provided that if there were grounds serving as a basis for exclusion of a lawyer from the ABA, the Presidium can, on the basis of an opinion of the disciplinary commission, apply to a court for resolution of the matter and suspend the lawyer's activity until the entry into force of the court decision on the issue (see paragraph 38 above). The Court, therefore, accepts that the sanction imposed on the applicant had a basis in domestic law and that the law was accessible.
74. As regards the applicant's argument that Article 22 (VIII) of the Law did not meet the requirement of the quality of law because the notion of "grounds serving as a basis" lacked sufficient clarity and precision, although there may be serious questions in this connection, the Court does not consider that it is necessary in the present case to examine the corresponding provisions of the Law as, in its view, the applicant's complaint falls to be examined from the point of view of the proportionality of the interference (see *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, § 86, 28 August 2018). The Court will therefore leave open the question whether the interference with the applicant's right to freedom of expression may be regarded as "prescribed by law", within the meaning of Article 10 § 2 of the Convention.

(β) Legitimate aim

75. The Court observes that the parties disagree on the legitimate aim pursued by the interference (see paragraphs 64 and 66 above). In view of the content of the impugned statement, the Court considers that the interference in question aimed at protecting a judge of the first instance court against the applicant's statement and consequently pursued the legitimate aim of "maintaining the authority of the judiciary" within the meaning of Article 10 § 2 of the Convention (see, among many other authorities, *Igor Kabanov v. Russia*, no. 8921/05, § 51, 3 February 2011; *Žugić v. Croatia*, no. 3699/08, § 42, 31 May 2011; *Kincses v. Hungary*, no.66232/10, § 27, 27 January 2015; *Rodriguez Ravelo v. Spain*, no. 48074/10, § 37, 12 January 2016; and *Radobuljac v. Croatia*, no. 51000/11, § 53, 28 June 2016).

(γ) Necessary in a democratic society

76. The Court refers to the general principles established in its case-law set out in *Morice v. France* ([GC], no. 29369/10, §§ 124-39, ECHR 2015), which are equally pertinent to the present case.

77. Turning to the circumstances of the present case, the Court notes at the outset that it cannot accept the Government's submissions that the applicant had insulted the witnesses at a court hearing, as the domestic courts did not rely on that ground for the applicant's disbarment in their relevant decisions. The Court observes that by a judgment of 10 July 2015 the Nizami District Court ordered the applicant's disbarment, finding that the impugned statement had cast "a shadow over State and statehood" and "tarnished the reputation of the judiciary". That judgment was upheld by the Baku Court of Appeal and the Supreme Court respectively on 11 September 2015 and 12 January 2016.

78. As regards the regulation of the legal profession, the Court considers it necessary to reiterate that the proper functioning of the courts would not be possible without relations based on consideration and mutual respect between the various protagonists in the justice system, at the forefront of which are judges and lawyers (see *Bono v. France*, no. 29024/11, § 51, 15 December 2015, and *Ottan v. France*, no. 41841/12, § 72, 19 April 2018). The specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. That special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with regard to their conduct. Whilst they are subject to restrictions on their professional conduct, which must be discreet, honest and dignified, they also enjoy exclusive rights and privileges that may vary from one jurisdiction to another – among them, usually, a certain latitude regarding arguments used in court (see *Morice*, cited above, §§ 132-33). In addition, professional associations of lawyers play a fundamental role in ensuring the protection of human rights and must therefore be able to act independently, and respect towards professional colleagues and self-regulation of the legal profession are paramount (see *Jankauskas v. Lithuania (no. 2)*, no. 50446/09, § 78, 27 June 2017, and *Namazov v. Azerbaijan*, no. 74354/13, § 46, 30 January 2020). While parties are certainly entitled to comment on the administration of justice in order to protect their rights, their criticism must not overstep certain bounds (see *Saday v. Turkey*, no. 32458/96, § 34, 30 March 2006). In particular, a clear distinction must be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate sanction would not, in principle, constitute a violation of Article 10 of the Convention (see *Kincses*, cited above, § 33).

79. The Court observes that in the present case the impugned statement was not only a general criticism of the functioning of the judicial system in Azerbaijan, but also directly targeted a judge of the first-instance court who had already sat as a judge in the examination of Mr Ilgar Mammadov's case. The Court accepts that the remarks, accusing a judge of lack of capacity to be a judge, represented a lack of respect for the judge and were capable of being offensive (compare, for example, *Žugić*, cited above, § 47, in which the applicant implied that the judge dealing with his case

was ignorant and incompetent; *Kincses*, cited above, §§ 39-40, in which a lawyer called into question the professional competence of a judge dealing with his case; *Rodriguez Ravelo*, cited above, § 46, in which a lawyer attributed blameworthy conduct to a judge, such as wilfully deciding to distort reality, unhesitatingly lying or, further, issuing an untruthful report containing false and malicious information; and, *Mikhaylova v. Ukraine*, no. 10644/08, § 89, 6 March 2018, in which the applicant's speech developed into a personal attack on a judge, imputing to the judge highly improper conduct contrary to judicial duties). Nevertheless, it must be ascertained whether the sanction imposed on the applicant by the domestic courts struck a fair balance between the need to protect the authority of the judiciary and the need to protect the applicant's right to freedom of expression (see *Igor Kabanov*, cited above, § 54; *Bono*, cited above, § 51; and *Čeferin v. Slovenia*, no. 40975/08, § 47, 16 January 2018).

80. In so doing the Court considers that the domestic courts failed to consider a number of elements which should have been taken into account in the assessment of the applicant's remarks. In particular, they did not give any consideration to the fact that the applicant had made the statement in a courtroom in the course of the criminal proceedings in his capacity as the lawyer of his client. These remarks were confined to the courtroom, as opposed to criticism of the judiciary voiced outside the courtroom by other means, for instance in the media (see *Nikula*, cited above, § 52, and *Čeferin*, cited above, § 54). It is an important consideration that in the courtroom the principle of fairness militates in favour of a free and even forceful exchange of arguments between parties; the impugned remarks were not repeated outside the courtroom (see *Morice*, cited above, § 137, and *Mikhaylova*, cited above, § 93).

81. Moreover, whilst his comments about the judge of the first-instance court were possibly offensive, they mainly expressed the applicant's objections to the decisions made by the domestic courts in the criminal proceedings against Mr Ilgar Mammadov. In that connection, the Court cannot overlook the fact that at the time when the remarks were made before the Shaki Court of Appeal it had already ruled in the case of *Ilgar Mammadov v. Azerbaijan* (no. 15172/13, 22 May 2014), finding that there had been a breach of Articles 5 and 18 of the Convention and that the restriction of Mr Ilgar Mammadov's liberty had been imposed for purposes other than those prescribed by the Convention. The Court also subsequently found that there had been a number of serious shortcomings in the criminal proceedings against Mr Ilgar Mammadov (see *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, 16 November 2017).

82. The Court also deems it necessary to draw attention to the Nizami District Court's finding that "it is totally inadmissible to misuse that right [freedom of expression] with a view to casting a shadow over our State and statehood" (see paragraph 29 above). The Court considers that this reason given by the above-mentioned court in support of the applicant's disbarment is irrelevant for the purposes of Article 10 of the Convention and could not be considered as a reason for restricting the freedom of expression in a democratic society demanding pluralism, tolerance and broadmindedness.

83. The Court further notes that, in assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see *Mor*, cited above, § 61, and *Morice*, cited above, § 175) and it has already found that the disbarment cannot but be regarded as a harsh sanction, capable of having a chilling effect on the performance by lawyers of their duties as defence counsel (see *Igor Kabanov*, cited above, §§ 55 and 57). In that connection, the Court cannot accept the Government's reliance on the existence of the previous disciplinary proceedings against the applicant for justifying the imposition of the sanction of disbarment on him, as the applicant's suspension from the practice of law for a period of one year was not prescribed by law and the Court has already found a breach of his right to freedom of expression on that account (see paragraphs 52-63 above).

84. In the light of the foregoing, the Court considers that the reasons given by the domestic courts in support of the applicant's disbarment were not relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued.
85. There has accordingly been a violation of Article 10 of the Convention as regards the applicant's disbarment.
III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION
86. The applicant complained under Article 8 of the Convention that his suspension from the practice of law for a period of one year and his subsequent disbarment had amounted to a breach of his right to respect for private life. Article 8 of the Convention reads as follows:
"1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

87. The Court observes at the outset that the Government did not raise any objection as regards the applicability of Article 8 to the present case. In that connection, it reiterates that the notion of "private life" within the meaning of Article 8 of the Convention is a broad term not susceptible to exhaustive definition. It can embrace multiple aspects of the person's physical and social identity. Article 8 protects in addition a right to personal development and the right to form and develop relationships with other human beings and the outside world, including relationships of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 95-96, §§ 100-09, §§ 115-17, 25 September 2018). In the present case it is undisputed that the applicant's suspension from the practice of law for one year and his subsequent disbarment for professional misconduct prevented him from exercising his profession, and therefore affected a wide range of his professional and other relationships and encroached upon his professional and social reputation. The applicant's suspension and disbarment also caused him a considerable loss of earnings (see paragraph 116 below) and must have had serious negative effects on his private life. The Court thus considers that the impugned measures had very serious consequences for the applicant and affected his private life to a very significant degree (compare and contrast *Denisov*, cited above, §§ 123 and 125, and *Namazov*, cited above, § 34). Article 8 therefore applies.
88. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

89. The applicant maintained that his suspension from the practice of law for a period of one year and his disbarment had amounted to interferences with his right to respect for his private life. Relying mainly on his submissions in respect of Article 10 of the Convention, the applicant submitted that the above-mentioned interferences had not been justified because they had not been in accordance with the law and could not be considered as necessary in a democratic society and proportionate.
90. The Government agreed that the applicant's suspension and disbarment had constituted interferences with his right to respect for his private life. They relied on their submissions made in respect of Article 10 of the Convention, noting that the applicant's complaints under Article 8 of the Convention were closely linked to his complaints under Article 10 of the Convention.

2. The Court's assessment

(a) As regards the applicant's suspension from the practice of law

91. The Court notes that it is undisputed by the parties that the applicant's suspension from the practice of law for a period of one year amounted to an interference with his right to respect for his private life, as guaranteed by Article 8 of the Convention. The Court shares this view.

92. Such an interference will infringe Article 8 unless it satisfies the requirements of Article 8 § 2, that is to say, if it is in accordance with the law, pursues one of the aims set out in that paragraph and is necessary in a democratic society.

93. The Court notes that it has already concluded that the interference with the applicant's right to freedom of expression as a result of his suspension from the practice of law was not "prescribed by law" within the meaning of Article 10 § 2 of the Convention (see paragraph 61 above). Having regard to this conclusion, the Court considers that, similarly, the interference with the applicant's right to respect for his private life as a result of his suspension from the practice of law cannot be considered to be in accordance with the law within the meaning of paragraph 2 of Article 8. There has accordingly been a violation of Article 8 of the Convention on account of the applicant's suspension from the practice of law for a period of one year.

(b) As regards the applicant's disbarment

94. The Court notes that it is undisputed by the parties that the applicant's disbarment amounted to an interference with his right to respect for his private life, as guaranteed by Article 8 of the Convention. The Court shares this view.

95. Such an interference will infringe Article 8 unless it satisfies the requirements of Article 8 § 2, that is to say, if it is in accordance with the law, pursues one of the aims set out in that paragraph and is necessary in a democratic society.

96. The Court refers to its findings in paragraph 74 above and will therefore similarly leave open the question whether the interference in question may be regarded as in accordance with the law, within the meaning of Article 8 § 2 of the Convention.

97. The Court accepts that the interference had pursued the legitimate aim of "the prevention of disorder" within the meaning of Article 8 § 2 of the Convention, since it concerns the regulation of the legal profession which participates in the good administration of justice (see *Bigaeva v. Greece*, no. 26713/05, § 31, 28 May 2009, and *Namazov*, cited above, § 44).

98. Such an interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 124, ECHR 2014 (extracts)).

99. The Court has already highlighted above, paragraph 78 above, the specific status and role of lawyers, their central position in the administration of justice and the fundamental role they may play in the protection of fundamental rights.

100. Turning to the circumstances of the present case, the Court notes that its findings in the context of the examination of the applicant's complaint under Article 10 of the Convention, arising from the same facts, that the reasons given by the domestic courts in support of the applicant's disbarment were not relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued (see paragraphs 82-84 above) are equally relevant for the purposes of the examination of his complaints under Article 8 of the Convention.

101. In particular, in the court proceedings relating to the applicant's disbarment the domestic courts failed to sufficiently assess the proportionality of the interference, keeping in mind that the disbarment sanction constituted the harshest disciplinary sanction in the legal profession, having irreversible consequences on the professional life of a lawyer. The Court considers it necessary to draw attention to Recommendation R (2000) 21 of the Council of Europe's Committee of Ministers

to member States on the freedom of exercise of the profession of lawyer, which clearly states that the principle of proportionality should be respected in determining sanctions for disciplinary offences committed by lawyers (see paragraph 39 above). The Special Rapporteur of the Human Rights Council on the independence of judges and lawyers also stated in the annual report (A/71/348) to the UN General Assembly that disbarment "constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards" and "should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer" (see paragraph 41 above). The domestic courts did not explain why the applicant's statement in the courtroom was such a serious misconduct that it justified the harshest disciplinary sanction.

102. In view of the above considerations, the Court concludes that the reasons given by the domestic courts in support of the applicant's disbarment were not relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued.

103. In this respect, the Court observes that in a series of cases it has noted a pattern of arbitrary arrest, detention or other measures taken in respect of government critics, civil society activists and human rights defenders (see, *inter alia*, *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 223, 20 September 2018, and *Natig Jafarov v. Azerbaijan*, no. 64581/16, § 64, 7 November 2019). Against this background, the Court underlines that, notwithstanding the duties, in particular, with respect to their conduct, with which all lawyers must comply, the alleged need in a democratic society for a sanction of disbarment of a lawyer in circumstances such as this would need to be supported by particularly weighty reasons.

104. There has accordingly been a violation of Article 8 of the Convention on account of the applicant's disbarment.

IV. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLES 8 AND 10 OF THE CONVENTION

105. On the basis of the same facts and relying on Article 18 of the Convention in conjunction with Articles 8 and 10 of the Convention, the applicant complained in respect of application no. 28198/15 that his Convention rights had been restricted for purposes other than those prescribed in the Convention. Article 18 provides:

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

106. Having regard to the conclusions reached above under Articles 10 and 8 of the Convention (see paragraphs 85 and 104 above) and given the elements available in the case file and the arguments relied on by both parties, the Court is not in a position to examine the admissibility and merits of this complaint separately in the particular circumstances of the present case.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

107. Article 46 of the Convention, in so far as relevant, reads as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

108. The applicant argued in respect of application no. 28198/15 that the most appropriate form of individual redress would be the restoration of his membership of the ABA.

109. The Government did not make any submissions in that respect.

110. The Court reiterates that, by virtue of Article 46 of the Convention, the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, with execution being supervised by the Committee of Ministers of the Council of Europe. In the present

case, given the variety of means available to achieve *restitutio in integrum* and the nature of the issues involved, the Committee of Ministers is better placed than the Court to assess the specific measures to be taken. It should thus be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State and with due regard to the applicant's evolving situation, the adoption of measures aimed, among others, at restoring his professional activities. Those measures should be feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violation found by the Court, and they should put the applicant, as far as possible, in the position in which he had been before his disbarment (see *Aliyev*, cited above, § 228).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

112. The applicant claimed 4,000 Azerbaijani manats (AZN) for his loss of earnings during one year when he was suspended from the practice of law from 24 August 2011 to 23 August 2012. He also claimed pecuniary damage for his loss of earnings following his disbarment in December 2014, without indicating the exact amount of the claim. In support of his claims, the applicant submitted a document signed by the head of and account of Law Office No. 6 confirming that the applicant received, as an annual salary, respectively, AZN 3,954.24 in 2013 and AZN 3,945.60 in 2014.

113. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage on account of his suspension from the practice of law. He further claimed EUR 25,000 in respect of non-pecuniary damage on account of his disbarment.

114. The Government asked the Court to reject the applicant's claims in respect of pecuniary damage, submitting it was not the practice to pay salaries in law offices in Azerbaijan. According to the practice of remuneration of lawyers' activities in law offices, a lawyer receives approximately 60% of the amount paid by his clients to the law offices. Therefore, the amounts received by the applicant in 2013 and 2014 are the amounts paid by his clients to the law office less taxes and duties. The Government further submitted that the applicant cannot claim any amount under this head, as it cannot be estimated how much clients he could have or how much money he could earn.

115. As regards the amounts claimed by the applicant in respect of non-pecuniary damage, the Government submitted that they were unsubstantiated and excessive. The Government considered that, in any event, a finding of a violation would constitute sufficient just satisfaction.

116. As to the part of the claim concerning the loss of earnings, the Court notes that there is a causal link between the damage claimed and the violations found; the applicant submitted a document in support of his claim. It further observes that the applicant, like lawyers who were not members of the ABA, was allowed under the domestic law as in force until 1 January 2018 to appear in the civil and administrative proceedings before the first-instance and appeal courts. In accordance with the new amendments to the domestic law which entered into force on 1 January 2018, the representation before the domestic courts falls with the exclusive competence of the members of the ABA. The applicant has also represented applicants in cases before the Court. In these circumstances, it would be speculative to calculate the exact amount of the pecuniary damage. Therefore, without assessing the exact amount of the benefits which the applicant would have received if the violations of the Convention had not occurred, the Court considers that the applicant has incurred pecuniary loss which should be evaluated on the basis of the document submitted by the applicant, taking into account that the rate of AZN changed on several occasions during the period in question. It further considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making an

assessment on an equitable basis and in the light of all the information in its possession, the Court considers it reasonable to award the applicant an aggregate sum of EUR 18,000, all heads of damage combined, plus any tax that may be chargeable on that amount (see, *mutatis mutandis, Kayasu v. Turkey*, nos. 64119/00 and 76292/01, § 128, 13 November 2008, and *Baka v. Hungary* [GC], no. 20261/12, § 191, 23 June 2016).

B. Costs and expenses

117. The applicant claimed 2,400 pounds sterling (GBP) for legal services incurred in the proceedings before the Court, as well as GBP 589.57 and GBP 90 for translation and clerical expenses in respect of application no. 81024/12. In support of that claim, he submitted two time sheets from his representatives and two invoices for translation expenses.

118. The applicant also claimed GBP 3,337.62 for legal services incurred in the proceedings before the Court and for translation and clerical expenses in respect of application no. 28198/15. In support of that claim, he submitted four time sheets from his representatives and two invoices and one contract for translation expenses.

119. The Government considered that the amounts claimed by the applicant were unsubstantiated and excessive. In that connection, the Government asked the Court to apply a strict approach in respect of the applicant's claims. They pointed out that the applicant had failed to submit any contract with his representatives and to justify the claimed costs and expenses.

120. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court also points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017). In the present case the applicant failed to produce any contract with his representatives or any other documents showing that he had paid or was under a legal obligation to pay the fees charged by his representatives (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017). As regards the part of the claim for translation of various documents, the Court does not consider that the translation of those documents was necessary for its proceedings (see *Allahverdiyev v. Azerbaijan*, no. 49192/08, § 71, 6 March 2014, and *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 70, 12 November 2015). Therefore, the Court dismisses the claim for costs and expenses.

C. Default interest

121. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible, with the exception of the complaint under Article 18 of the Convention taken in conjunction with Articles 8 and 10 of the Convention in respect of application no. 28198/15 ;
3. *Holds* that there has been a violation of Article 10 of the Convention on account of the applicant's suspension from the practice of law for a period of one year;
4. *Holds* that there has been a violation of Article 10 of the Convention on account of the applicant's disbarment;
5. *Holds* that there has been a violation of Article 8 of the Convention on account of the applicant's suspension from the practice of law for a period of one year;
6. *Holds* that there has been a violation of Article 8 of the Convention on account of the applicant's disbarment;

7. *Holds* that there is no need to examine separately the admissibility and merits of the complaint under Article 18 of the Convention taken in conjunction with Articles 8 and 10 of the Convention in respect of application no. 28198/15;
8. *Holds*,
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 18,000 (eighteen thousand euros) in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Victor Soloveytchik Síofra O'Leary
Deputy Registrar President