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La Corte EDU e test di proporzionalità su sanzioni irrogate per pubblicazioni diffamatorie (CEDU, sez. V, sent. 30 giugno 2022, ric. n. 20755/08)

La Corte EDU ha deciso il ricorso presentato da un giornale e dal suo caporedattore, i quali avevano lamentato l'ingiustificata e non necessaria ingerenza nel loro diritto alla libertà di espressione per la condanna loro inflitta dalle autorità nazionali in seguito alla pubblicazione di articoli presuntivamente diffamatori. Più in particolare, i ricorrenti avevano denunciato che i tribunali nazionali non avessero addotto motivazioni sufficienti e pertinenti rispetto all'interferenza nel loro diritto e che la somma richiesta a titolo di risarcimento danno fosse sproporzionata. Veniva altresì sottolineato come gli articoli pubblicati avessero ad oggetto questioni di interesse pubblico e riconducibili nell'ambito della libertà di informazione. La Corte EDU ha ritenuto di dover scrutinare la questione solamente sotto il profilo della "necessità in una società democratica" dell'interferenza e se questa rispondesse ad una esigenza sociale urgente. All'esito della sua valutazione il giudice di Strasburgo ha ritenuto che le dichiarazioni ritenute diffamatorie costituissero in gran parte dichiarazioni di fatto tali da non potersi qualificare come giudizi di valore volti a pregiudicare la reputazione del destinatario. E che la sanzione inflitta fosse manifestamente sproporzionata con la conseguenza di interferire in maniera eccessiva e grave nella libertà di espressione. La Corte ha ritenuto infatti che mancasse ogni e qualunque motivazione sufficiente in merito all'esistenza di un bisogno sociale urgente e che le sanzioni irrogate ai ricorrenti non avessero rispettato un ragionevole rapporto di proporzionalità rispetto allo scopo legittimo perseguito con conseguente violazione dell'art. 10 CEDU.

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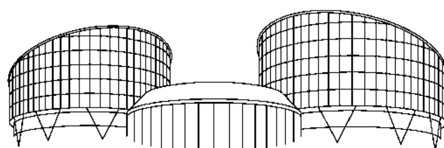

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF XXX v. AZERBAIJAN

(Application no. 20755/08)

JUDGMENT
STRASBOURG
30 June 2022

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 XXX v. Azerbaijan,

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

Síofra O'Leary, *President,*
Lətif Hüseynov,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar,
Kateřina Šimáčková, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 20755/08) 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 a newspaper published in Azerbaijan, XXX, and by an Azerbaijani national, Mr XXX, ("the applicants") on 26 March 2008;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaint under Article 10 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 7 June 2022,

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

INTRODUCTION

1. The application, lodged by a newspaper and its chief editor, concerns an allegedly unjustified and disproportionate interference with their right to freedom of expression under Article 10 of the Convention due to sanctions following publication in the newspaper of material found by the domestic courts to be defamatory of a public official.

THE FACTS

2. XXX ("the applicant newspaper") is a newspaper in circulation in Azerbaijan since 1989. The second applicant, Mr XXX, who was born in XXX and lives in XXX, was a journalist and chief editor of the applicant newspaper. The applicants were represented by Mr R. Hajili and Mr E. Sadiqov, lawyers based in Strasbourg and Baku respectively.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. The applicant newspaper was a media platform of the Popular Front Party which, at the time of the events of the present case, was in opposition. The newspaper was harshly critical of the government.

6. According to the applicants, both the applicant newspaper and the second applicant had faced "numerous pressures" both before and after the events of the present case. They had also had numerous defamation claims brought against them and had been ordered to pay various amounts of compensation in respect of non-pecuniary damage to various claimants (see paragraph 24 below).

7. It also appears that, at around the time of the events of the present case, the applicant newspaper was in a difficult financial situation. In particular, according to a judgment of 17 May 2005 of Economic Court no. 1 delivered in connection with a claim lodged by the tax authorities, as of August 2004 the applicant newspaper had accrued a tax debt in the amount of 4,823,600 old Azerbaijani manats (AZM) (around 800 euros (EUR) at the relevant time). The applicant newspaper was ordered to sell some of its assets at open auction in order to ensure payment of its tax debt. According to a judgment of 17 January 2006 of Economic Court no. 1, as of January 2005 the applicant newspaper had a tax debt of AZM 1,836,000 (approximately EUR 287 at the relevant time). The tax authorities had identified and assessed the newspaper's assets (which had been valued at AZM 6,900,000 (approximately EUR 1,080)) and the court ordered those assets to be sold at open auction.

8. After the events of the present case, in November 2007 the second applicant was arrested and charged with the criminal offence of hooliganism. Following a trial, in March 2008 he was convicted and sentenced to four years' imprisonment. By a presidential pardon of 17 March 2010, he was released from serving the remainder of his sentence (for more details, see *Zayidov v. Azerbaijan*, no. 11948/08, §§ 7-34, 20 February 2014, and *Zayidov v. Azerbaijan (no. 2)*, no. 5386/10, §§ 5 et seq., 24 March 2022). Some months after his release, the second applicant moved to France, where he was granted political asylum.

II. THE ARTICLES IN ISSUE

9. In its editions of 9 and 10-11 September 2006, the applicant newspaper published two articles about T.A., a former aid to the President, and his relatives. The articles concerned the alleged "instantaneously acquired fortunes" of T.A. and his various relatives, which had allegedly been acquired during his tenure as aid to the President. The articles listed various assets, names of their alleged owners, and the nature of their relationship with T.A.

10. The first article, published on 9 September 2006, was titled "The Corruption Machine of the President's Aid", with subtitles "What scale of corruption was the former President's former aid – [T.A.] – involved in?" and "Blue whales and the appetites of '[B.A.]'s grandchildren'".

11. After a prologue consisting of information about the blue whale being the largest animal on the planet and a brief introduction about T.A., the article began by mentioning the alleged business of M.A., a high-ranking police officer and relative of T.A., and questioning the legality of him owning such a business under the Law on the police. In particular, the article stated, *inter alia*, the following:

"The restaurant and motel 'Neapol' ... is a joint business of [T.A.] and the father of his son-in-law [*quda*], [M.A.]."

12. Under the subheading "Involuntary fans of 'A.B.[1]'s grandchildren'", the article stated, *inter alia*, the following:

"There is a football club named 'ABN-Barda' that belongs to [T.A.] who is an elder of the Barda clan. ABN means '[A.B.]'s grandchildren' [[A.B.]*ın nəvələri*] ... [The club] launched annual membership cards and those cards are on 'compulsory' sale. It is not difficult for [A.B.]'s grandchildren to organise such a compulsory sale, because the head of the Barda District Executive Authority is also one of [A.B.]'s grandchildren: [I.A.], a cousin of [T.A.] .. Pursuant to [I.A.]'s unofficial order, membership cards in the amount of 200,000 [new Azerbaijani manats (AZN)] have been compulsorily sold in each of the 131 municipalities in the district."

13. The article further implied that T.A. and his relatives had some property interests in a factory located in Barda.

14. Under the next subheading, the article stated, *inter alia*, the following:

"A greenhouse with an area of 5 ha in Divanli village, which used to belong to the former 'Moscow' collective farm, was illegally appropriated. A three-metre-high stone wall was built around this greenhouse and, curiously, half-metre-high barbed wire was fixed over it, like in fascist concentration camps. (What are they doing here?) [A.B.]'s grandchildren chopped up and sold steel rebars and pipes with a total length of 20,000 metres, which had remained in that greenhouse since Soviet times ... Their father [H.A.] privatised a plot of land of 70 ha ... [previously] in the name of [R.], former deputy head of the 'Moscow' collective farm, also known by the alias 'Armenian'. T.A. took that plot of land out of [R.]'s formal control and built a large flour mill. The daily capacity of this mill is 20 tons. ... [T]he mill was built by Chechen [construction workers]. ... [W]hat kind of additional strings could connect T.A. with Chechens? ... [Another] 300 ha of 'raw' land [*xam torpaq*] belongs to T.A."

15. The second article, titled "Blue whales, or the appetites of '[A.B.]'s grandchildren'", published in the edition of 10-11 September 2006 as a continuation of the first article, described a long list of various properties, including plots of land, numerous cattle and poultry farms, petrol stations, automobiles, marketplaces, a jewellery shop, and so on, which allegedly belonged to T.A.'s various relatives, including, in particular, his son-in-law, his uncles and his wife's uncle. All of those persons were named and some of them were stated to hold or have held government positions in the Barda district. At the end of the article the following was stated:

"This is the approximate list of the property and wealth that was obtained through one civil servant in one district. We are curious whether all the other inhabitants of the Barda district combined have so much wealth?"

III. CIVIL DEFAMATION PROCEEDINGS INITIATED BY T.A. AGAINST THE APPLICANTS

16. On an unspecified date, T.A. lodged a civil defamation claim against both applicants with the Sabail District Court, arguing that the articles contained false factual information accusing him of what amounted to criminal offences of embezzlement, abuse of power and corruption, which was damaging to his honour, dignity and professional reputation. He maintained that he had worked for the government for years and that he had never engaged in any business or commercial activities. Moreover, the articles insulted the dignity and honour of his grandfather, who had passed away several decades before and whose last name was given incorrectly in the articles (his correct initials were B.H., and not B.A.), as well as his various relatives. He requested that the defendants be ordered to publish a retraction and to pay compensation in respect of non-pecuniary

damage in a total amount of AZN 180,000 (approximately EUR 162,000 at the relevant time) to be paid by both defendants and shared between him and a charity.

17. The applicants, who were represented at the court hearing by a lawyer, denied that the information published in the articles was false but refused to elaborate on any sources of that information.

18. On 7 November 2006 the Sabail District Court upheld the claim in part and ordered the applicant newspaper to publish a retraction and an apology. It also ordered the applicant newspaper to pay AZN 40,000 (approximately EUR 36,000) and the second applicant to pay AZN 25,000 (approximately EUR 22,500) in respect of non-pecuniary damage to T.A.

19. The court referred to the content of the articles, and in particular to their titles and subtitles and the statements cited in paragraphs 11-12 and 14-15 above. It noted that the defendants had been unable to provide any proof of the veracity of those statements or any meaningful or reliable arguments refuting T.A.'s claim that the statements were defamatory. In such circumstances, the court found that the articles in question contained information damaging to T.A.'s honour, dignity and professional reputation and causing him moral damage.

20. The applicants appealed, arguing that the first-instance court's judgment had breached their right to freedom of expression as guaranteed by the domestic law and the Convention. They maintained that it had been incorrect for the court to require them to provide proof for "value judgments" contained in the article. They also argued that the articles concerned matters of public interest, in particular various general widespread allegations of corruption by government officials. However, given that there was a practice by corrupt officials of hiding information about their properties by formally registering them in other people's name or about their commercial activities by conducting them through other people, it was "difficult" to prove to whom particular property belonged. As to the "Neapol" restaurant (see paragraph 11 above) in particular, the applicants noted that it was a "very big restaurant" that could only be owned by, or be under the "protection" of, a high-ranking government official. Therefore, the statement that it belonged to M.A. had been based on the above-mentioned public perceptions about corruption in the country and on "rumours" that it actually belonged to him and that he was under the "protection" of T.A. However, the applicants did not specify any sources of such "rumours". Similarly, the applicants argued that other statements, such as those in paragraph 14 above, had also been based on the common perception among the general public that there had been illegal privatisations of State property and that those who had benefitted from those privatisations were either relatives of or otherwise had connections to high-ranking government officials.

21. The applicants also complained that the interference with their freedom of expression had not complied with the requirement of proportionality, arguing that the damages awarded by the first-instance court were exorbitant. As to the applicant newspaper, they noted, without specifying exact figures, that it was a newspaper with low print-runs and low profits and therefore was not in a position to pay such a large sum in damages. As to the second applicant, they noted that his monthly salary as a chief editor was AZN 160 and that the sum of AZN 25,000 amounted to many times more than his yearly income. Moreover, they argued that the total awarded sum of AZN 65,000 amounted to approximately ten years' worth of T.A.'s own income as a government official at the relevant time. The applicants complained that the first-instance court had not examined at

all the issue of the proportionality of the awarded sums in relation to the defendants' financial situation and to any actual damage that might have been caused to the claimant.

22. By a judgment of 30 March 2007, the Baku Court of Appeal dismissed the applicants' subsequent appeal, essentially reiterating the first-instance court's reasoning. It did not expressly address the applicants' arguments concerning the allegedly disproportionately high sums awarded for damages.

23. The applicants lodged a cassation appeal, reiterating their previous complaints and arguments. They noted, in addition, that the purpose of the article had been to demonstrate that various relatives of T.A., some of whom held government positions in the Barda district, which was a fact that was undisputed by T.A. himself, were under T.A.'s "protection". In such circumstances, the "approximate" list of properties allegedly owned by those relatives should not have been assessed as factual statements to be proven, but rather served to demonstrate that the mere fact that many of T.A.'s relatives held high-ranking posts was a result of undue privileges that they enjoyed owing to a family relationship with him.

24. The applicants also submitted additional information about the applicant newspaper's financial situation. In particular, they noted that in June 2006 the applicant newspaper had been evicted from its offices (for reasons which were not disclosed in the cassation appeal, but presumably for failure to meet its financial obligations) and its financial situation had significantly worsened. Since it had an outstanding tax debt which it was unable to pay, all of its assets had been valued for the purposes of a forced sale and it was estimated that the value of its assets was only AZN 1,380 (equivalent to AZM 6,900,000; see paragraph 7 above) by the time of lodging the cassation appeal. The reason was that the newspaper had had twelve defamation claims lodged against it within a relatively brief (but unspecified) period of time and, as a result, had been ordered to pay a cumulative amount of up to AZN 300,000 in damages to various claimants. As a result of the rapidly worsening financial situation, the newspaper's print-run had been reduced from 10,000 copies to 3,000 copies, further reducing its revenues. The applicants reiterated their arguments, made in their previous appeal, that in view of their financial situation the sums awarded for damages in the present case were exorbitant and that the lower courts had failed to duly assess the proportionality of such measures in the circumstances of the case.

25. By a final decision of 14 November 2014, the Supreme Court upheld the lower courts' judgments, essentially reiterating their reasoning. It did not expressly address the applicants' arguments concerning the proportionality of the interference.

RELEVANT LEGAL FRAMEWORK

26. Article 23 of the Civil Code of 2000 provided as follows:

Article 23

Protection of honour, dignity and business reputation

"23.1. An individual is entitled to obtain, by way of a court order, a retraction of information harming his or her honour, dignity or business reputation, disclosing secrets relating to his or her private or family life or breaching his or her personal or family inviolability, provided that the person who disseminated such information fails to prove that the information was true. The same rule shall also apply in cases of incomplete publication of factual information if, as a result, the honour, dignity or business reputation of an individual is harmed ...

23.2. If information harming the honour, dignity or business reputation of an individual or invading the secrecy of his or her private or family life is disseminated in the mass media, the information shall be retracted in the same mass media source ...
23.3. If the mass media publish information breaching an individual's rights and interests protected by law, that individual has the right to publish his or her reply in the same mass media source.
23.4. In addition to the right to seek a retraction of the information harming his or her honour, dignity or business reputation, the individual has the right to claim compensation for damage caused by the dissemination of such information ..."
27. According to Articles 431-1.1, 431-1.2.2 and 431.2 of the Code of Civil Procedure ("the CCP"), finding of a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights is a ground for reopening of the proceedings. Pursuant to Article 431.2, under this procedure, the Plenum of the Supreme Court examines the case exclusively on the points of law. After the examination of the case, the Plenum of the Supreme Court may decide, *inter alia*, to quash the lower courts' rulings and remit the case to the relevant lower court, or to vary the decision of the court of cassation or court of additional cassation, or to quash the decisions of the lower courts and to terminate the proceedings (Article 431-4.3 of the CCrP).
28. According to the information available on the website of the State Statistics Committee of the Republic of Azerbaijan, the minimum monthly salary was fixed at AZN 30 in 2006, at AZN 40 from 1 January to 1 February 2007, and at AZN 50 from 1 February to 31 December 2007. As from 1 September 2019 the minimum salary has been AZN 250. The average nominal monthly salary was AZN 123.60 in 2005 and AZN 331.50 in 2010 (no information is available on the Committee's website in respect of the intermediary years of 2006 to 2009).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

29. The applicants complained that there had been an unjustified and disproportionate interference with their right to freedom of expression due to sanctions following publication in the applicant newspaper of material found by the domestic courts to be defamatory of a public official. Article 10 of the Convention provides 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."

A. Admissibility

30. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

31. The applicants submitted that the domestic courts had failed to adduce relevant and sufficient reasons for the interference with their right to freedom of expression and that the amounts awarded to the claimant for damages had not been proportionate to any legitimate aim pursued by the interference. In particular, they argued that the courts had not taken into account the fact that the articles had discussed matters of public interest, namely corruption of government officials and widespread allegations of irregularities in the privatisation of State property. In this connection, the applicants referred to reports of various international non-governmental organisations which ranked Azerbaijan high on the corruption index, and argued that the public had a right to receive information about specific instances of corrupt practices. The applicants also argued that the domestic courts had failed to take into account the fact that T.A., as a high-ranking government official, had been a public figure, which called for a higher degree of tolerance of criticism. Moreover, the domestic courts had failed to make any distinction between factual statements and value judgments contained in the articles in question, and had unduly placed the applicants under the burden of proving the veracity of all of the information contained in the articles. In particular, the applicants noted that some of the expressions held against them, such as "blue whales" and "fascist concentration camps", amounted to value judgments not susceptible to proof.

32. Lastly, the applicants argued that the amounts of compensation that they had been ordered to pay did not bear a reasonable relationship of proportionality to the moral injury suffered by the claimant or to the very modest financial situation of both applicants. In particular, they noted that the applicant newspaper had already had very few resources and ordering it to pay such a high amount of compensation had caused it "permanent troubles" in paying rent and covering its printing expenses. As to the second applicant, he noted that, according to the information provided by the Minister of Finance to the public in January 2008, in 2007 the average monthly salary in Azerbaijan had been AZN 214. He further noted that although, as chief editor of the newspaper, his monthly income had been higher than the average monthly salary, AZN 25,000 nevertheless amounted to "more than two years of his net income".

33. The Government submitted that the articles in issue had contained accusations of corruption made in relation to a high-ranking civil servant. The information provided in the articles had amounted to statements of fact and to serious unsubstantiated factual allegations, which the applicants had been unable to support with any evidence. By making those unsubstantiated statements, the applicants had failed to act in good faith and in accordance with the ethics of journalism. Lastly, the Government argued that, given the seriousness of the allegations and their damaging effect on the claimant and on representatives of the civil service in general, the amounts of damages awarded had been proportionate to "the applicants' improper behaviour".

2. The Court's assessment

34. It is common ground between the parties that the domestic courts' rulings against the applicants and the sanctions imposed constituted interference by the State with the applicants'

right to freedom of expression. The interference was prescribed by law, in particular Article 23 of the Civil Code. The Court further accepts that the interference pursued the legitimate aim of protecting the reputation or rights of others – in this case T.A. – within the meaning of Article 10 § 2 of the Convention.

35. It remains to be established whether the interference was "necessary in a democratic society". In this regard the following general principles emerge from the Court's case-law (see, among other authorities, *Perinçek v. Switzerland* [GC], no. 27510/08, § 196, ECHR 2015 (extracts), and *Staniszewski v. Poland*, no. 20422/15, § 45, 14 October 2021, with further references):

(a) The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a pressing social need. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 of the Convention.

(b) The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken in accordance with their margin of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole, including the content of the comments held against the applicants and the context in which they made them.

(c) In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were relevant and sufficient and whether the measure taken was proportionate to the legitimate aims pursued. In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10.

(d) The Court has held that the requirement to prove to a reasonable standard that a factual statement was substantially true does not contravene Article 10 of the Convention, and has held against applicants a lack of effort on their part to make out that defence. However, it has also held that if an applicant is clearly involved in a public debate on an important issue he or she should not be required to fulfil a more demanding standard than that of due diligence. In such circumstances, the obligation to prove the factual statements may deprive the applicant of the protection afforded by Article 10.

36. In connection with the latter principle, however, the Court also reiterates that, while there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest, Article 10 of the Convention does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern (see *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, §§ 178-79, 5 April 2022). The protection of the right of journalists to impart information on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism; or in other words, in

accordance with the tenets of responsible journalism (ibid., § 180, with further references). While the role of the press certainly entails a duty to alert the public where it is informed about presumed misappropriation on the part of local elected representatives and public officials, the fact of directly accusing specific individuals by mentioning their names and positions places the press under an obligation to provide a sufficient factual basis for their assertions (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 101-02, ECHR 2004-XI). Special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations (see, among others, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 78, ECHR 1999-III; *McVicar v. the United Kingdom*, no. 46311/99, § 84, ECHR 2002-III; and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 82, 7 February 2012).

37. A distinction must be made between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient "factual basis" for the impugned statement: if there is not, that value judgment may prove excessive. In order to distinguish between a factual allegation and a value judgment, it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Morice v. France* [GC], no. 29369/10, § 126, ECHR 2015, and *Freitas Rangel v. Portugal*, no. 78873/13, § 51, 11 January 2022).

38. The Court also reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. The concept of "private life" is a broad term not susceptible to exhaustive definition, which covers also the physical and psychological integrity of a person. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see, among others, *Axel Springer AG*, cited above, § 83, and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017). The Court further notes that the general principles applicable to cases in which the right to freedom of expression under Article 10 of the Convention has to be balanced against the right to respect for private life under Article 8 of the Convention were set out by the Grand Chamber in, among others, *Von Hannover v. Germany (no. 2)* ([GC], nos. 40660/08 and 60641/08, §§ 104-07, ECHR 2012), and *Axel Springer AG* (cited above, §§ 84-88) and have been summarised in *Perinçek* (cited above, §§ 198-99). In particular, in such cases, the outcome should not vary depending on whether the application was brought under Article 8 by the person who was the subject of the statement or under Article 10 by the person who has made it, because in principle the rights under these Articles deserve equal respect and the margin of appreciation should in theory be the same in both cases (see *Von Hannover*, § 106; *Axel Springer AG*, § 87; and *Perinçek*, § 198, all cited above).

39. Lastly, the Court notes that the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10. The Court must exercise the utmost caution where the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in the discussion of matters of legitimate public concern (see *Cumpănă and Mazăre*, cited above, § 111, with further references). In cases where a fair balance must be struck between the rights guaranteed by Articles 8 and 10 of the Convention, the size of the award of damages is a factor to be taken into consideration in assessing whether the right balance has been struck. Under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered, as well as to the incomes and resources of the applicants (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 49, Series A no. 316-B; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 96, ECHR 2005-II; *Kasabova v. Bulgaria*, no. 22385/03, §§ 69-71, 19 April 2011; *Koprivica v. Montenegro*, no. 41158/09, § 65, 22 November 2011; and *Tešić v. Serbia*, nos. 4678/07 and 50591/12, § 63, 11 February 2014).
40. Turning to the articles in issue in the present case, the Court notes that the subject matter of those articles was related to the general issue of the alleged corrupt practices among government officials and persons connected to them. It accepts the applicants' submission that this issue constituted a matter of public interest. Moreover, in connection with the applicants' submission that T.A. held a relatively high official position, the Court notes that, indeed, the limits of acceptable criticism are wider as regards a public figure, such as a politician, than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself or herself open to close scrutiny of his words and deeds by journalists and the public at large, and he or she must consequently display a greater degree of tolerance (see, among other authorities, *Standard Verlagsgesellschaft mbH v. Austria (no. 3)*, no. 39378/15, § 87, 7 December 2021, with further references).
41. However, the Court notes that the articles, having specifically named T.A., directly accused him of having built or operated a "corruption machine" and having engaged in a certain "scale of corruption". It was both repeatedly stated and insinuated throughout both articles that T.A., by means of corrupt practices, had either helped his relatives obtain various assets or engage in questionable business activities or had obtained such assets for himself by formally registering them in the name of other persons or engaged in questionable business activities himself, again formally through other persons. It was stated, unequivocally and as a matter of fact, that he owned a restaurant and a motel as a joint business and that various assets, such as a football club, a greenhouse, and so on, also belonged to him. Moreover, the articles mentioned many very specifically described properties and assets (including the sizes of plots of land and models of vehicles) which allegedly belonged to various relatives of T.A. and repeatedly insinuated and expressly stated that all those properties had been acquired by means of corrupt practices in which T.A. had been involved.
42. In view of the above, the Court considers that the statements that were found to be defamatory amounted largely to factual statements. Even if, as argued by the applicants, some of the expressions used in the article could qualify as "value judgments", those expressions were essentially descriptive figures of speech used in relation to the factual statements made in the

articles themselves. For example, the expression "blue whales" was used in relation to T.A. and his relatives who, as expressly alleged in the articles themselves, had engaged in large-scale corruption and allegedly owned numerous specifically mentioned assets and properties obtained through corruption. In this context, the phrase "blue whales" was a euphemism for the scale of alleged corruption, in the sense of being "very large". As such, this expression itself was used merely as part of the factual allegation that the assets mentioned had been acquired through corruption. Similarly, while the articles compared the greenhouse with a stone wall with barbed wire on top to a "fascist concentration camp", this descriptive comparison immediately followed the factual statement that the greenhouse had been "illegally appropriated" and was indeed a part of further factual statements about its outside appearance and the manner in which it was allegedly used.

43. Accordingly, even if some phrases could be considered as "value judgments" if assessed on their own and out of context, in the particular context of the articles in issue those phrases were merely figures of speech constituting part of the very specific factual allegations. Those factual allegations amounted to an assertion that T.A. had committed serious criminal offences, including embezzlement and corruption. Therefore, the applicants were required under the Convention to provide a sufficient factual basis for such an assertion.

44. However, the Court cannot but note that the articles made no references to any sources of the factual information given. During the court proceedings, the applicants were unable to present any elements supporting their factual assertions or to demonstrate that they had any reliable sources that constituted a basis for them. It has not been demonstrated, and the applicants never alleged, that any independent research was conducted or that any attempts were made to check any official records, such as, for example, the State register of immovable property, company registration records, vehicle registration records, and so on. While in respect of one particular allegation relating to the alleged joint business of M.A. and T.A. the applicants noted that they had relied on "rumours" concerning this (see paragraph 20 above), it appears that they did not even attempt to take any steps to independently verify the reliability of those "rumours". Neither did the text of the first article contain any proviso that the information given was based on mere rumours; instead, the article stated it unequivocally as an established fact. Moreover, not only were the applicants unable to demonstrate any basis for their factual statements that specific assets or businesses belonged to specific named individuals, but they were also unable to point to any sources or to demonstrate any other factual basis for their assertions that those assets or businesses had been acquired through corrupt or illegal practices. The lack of sufficient research by the applicants is also apparent from the fact that, according to T.A. (and as unrefuted by the applicants during the court proceedings), the articles had identified T.A.'s grandfather with an incorrect surname, even though a considerable part of the first article discussed the alleged assets and activities of that person's grandchildren, referring to them as "[A.B.]'s grandchildren" (see paragraphs 10, 12, 14 and 16 above).

45. It has not been shown that even a minimal amount of fact-checking was done in respect of any information given in the articles. It therefore cannot be said that the applicants complied with the relevant standards of due diligence and acted in good faith in order to provide "reliable and precise" information. Such conduct by the applicants cannot be considered compatible with the

tenets of responsible journalism, especially considering the gravity of the factual assertions made in the articles, which accused a specifically named individual of having committed serious criminal offences. There can be no doubt that those assertions attained the level of seriousness bringing into play T.A.'s rights under Article 8 of the Convention and that they were damaging to his reputation (see paragraph 38 above), and it has not been shown that in the present case there existed any special grounds dispensing the applicants from verifying those factual statements (see paragraph 36 above).

46. Turning to the manner in which the domestic courts, which were called upon to strike a fair balance between the applicants' Article 10 rights and T.A.'s Article 8 rights, assessed the content and consequences of the publication and the veracity of the information provided, the Court notes that, indeed, as implied by the applicants (see paragraph 31 above), the courts' reasoning was quite brief and did not analyse various statements made in the articles separately and in extensive detail (see paragraphs 19, 22 and 25 above). In this connection, the Court also notes that the relevant domestic law as it stood at the material time did not distinguish between statements of fact and value judgments but referred uniformly to "information" and required that the truth of any such "information" be proved by the respondent party. Such an indiscriminate approach to the assessment of speech has been held by the Court to be *per se* incompatible with freedom of opinion, a fundamental element of Article 10 of the Convention (see *Gorelishvili v. Georgia*, no. 12979/04, § 38, 5 June 2007, with further references). However, the Court's task in the present case is not to assess the domestic legislation in isolation, but the manner in which it was applied by the domestic courts to the facts of the particular case. In the particular circumstances of the present case, the Court is satisfied that the courts' reasoning, albeit brief, was "relevant" in that the courts convincingly identified the impugned statements as factual assertions and found that the arguments adduced by the applicants did not demonstrate that they had acted with due diligence in publishing those assertions, which were damaging to T.A.'s reputation. The courts thus provided certain reasons showing that there was a pressing social need to take measures to protect T.A.'s reputation.

47. However, when assessing whether the reasons given by the domestic courts were, as a whole, "sufficient" and whether the courts struck a fair balance between the competing rights, the Court cannot but note that no reasoning was given by the courts to justify the proportionality of the measures taken against the applicants, despite the fact that the issue was repeatedly raised by them.

48. In this respect, the Court notes that, in addition to ordering the publication of a retraction and an apology, the domestic courts ordered the applicant newspaper to pay AZN 40,000 (approximately EUR 36,000) in compensation (see paragraph 18 above). In the appeals to the higher courts, the newspaper argued that this amount was too high given the newspaper's low circulation and low profits and its dire financial situation at that point in time. In support of this argument, it provided some information showing it had been unable to pay off even its relatively small tax debts and that its net assets were worth very little (see paragraphs 21 and 24 above). On his part, the second applicant argued before the domestic courts that AZN 25,000 (approximately EUR 22,500), which he had personally been ordered to pay in compensation, amounted to many times his yearly income at the time (see paragraph 21 above). In this connection, the Court notes

that there is a significant discrepancy between that submission and the second applicant's subsequent submissions before the Court, in which he stated that AZN 25,000 had amounted to more than twice his yearly income at the time (see paragraph 32 above). It follows from this discrepancy that the second applicant misrepresented his actual income either before the domestic courts or the Court, or possibly even both. Neither before the domestic courts nor the Court has he produced any documentary evidence of his actual income at the time. Nevertheless, having regard to the available information about the average monthly wages in the country during the relevant period (see paragraphs 28 and 32 above), the Court notes that, in 2007, the sum of AZN 25,000 amounted to over nine times the average yearly salary and to more than forty times minimum yearly salary. In such circumstances, despite the inconsistent submissions by the second applicant concerning his personal income, the Court accepts that the second applicant nevertheless raised a sufficiently substantiated argument before the domestic courts that the amount of AZN 25,000 that he had been ordered to pay in damages was disproportionately high in relation to the average income in the country and to his personal income. Moreover, in addition to the above-mentioned arguments concerning their financial situations, the applicants also argued that the total amount awarded to T.A., AZN 65,000, was in any event too high in relation to T.A.'s own official income as a government official and, as such, disproportionate in relation to any potential damage caused to his reputation.

49. The Court accepts that, on the whole, the applicants raised relevant arguments showing prima facie that the amounts awarded were disproportionately high in the circumstances of the case. In these circumstances, it was of utmost importance for the domestic courts to examine whether sanctions of this severity could have a chilling effect on the exercise of freedom of expression by the press, which is called upon to participate in discussions of matters of general public interest. However, the domestic courts' judgments remained silent in respect of the arguments raised by the applicants in this respect. No reasons were provided by the domestic courts in order to substantiate their decisions to award those particular amounts and it has not been demonstrated that they carried out any adequate assessment of the proportionality of the imposed sanctions.

50. In view of the above and having regard to the entirety of the case-specific circumstances, the Court considers that, although the domestic courts provided relevant reasons as to the existence of a pressing social need to interfere with the applicants' right to freedom of expression in order to protect T.A.'s reputation from unsubstantiated factual allegations that he had engaged in corrupt practices potentially amounting to criminal offences, no reasons were provided to justify the severity of the sanctions imposed on the applicants, which did not appear to bear a reasonable relationship of proportionality to the legitimate aim pursued. Thus, the domestic courts failed to provide "sufficient" reasons to justify the interference with the applicants' right to freedom of expression. It follows that the interference was not "necessary in a democratic society".

51. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

1. *Pecuniary damage*

53. The applicant newspaper claimed 40,000 Azerbaijani manats (AZN) and the second applicant claimed AZN 25,000 in respect of pecuniary damage, representing the amounts they had been ordered to pay in damages pursuant to the domestic courts' decisions. The applicants admitted that they had not paid those amounts, because they had no assets with which to pay them. However, since the domestic decisions remained in force, they were still liable to pay them.

54. The Government submitted that the applicants had not paid the amounts awarded by the domestic courts and, thus, had not suffered any actual pecuniary damage.

55. The Court reiterates that reparation for pecuniary damage normally involves compensation for loss actually suffered as a result of the violation (*damnum emergens*) (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV, and *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], no. 71243/01, § 35, ECHR 2014). The Court further notes that it is common ground between the parties that, in the present case, the applicants have not paid the amounts they were ordered to pay to T.A. and, accordingly, there has been no pecuniary loss suffered. It therefore rejects their claim in respect of pecuniary damage (compare, for example, *Marinova and Others v. Bulgaria*, nos. 33502/07 and 3 others, § 120-21, 12 July 2016; *Pal v. the United Kingdom*, no. 44261/19, § 69, 30 November 2021; and *Freitas Rangel*, cited above, § 67).

56. In connection with the applicants' argument that the domestic decisions nevertheless remained enforceable, the Court notes that the domestic law provides for a possibility of reopening of the domestic proceedings following a finding by the Court of a violation of the Convention (see paragraph 27 above, and compare *Marinova and Others*, cited above, § 122).

2. *Non-pecuniary damage*

57. The applicants claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government argued that the amount claimed was excessive and that the finding of a violation would constitute sufficient reparation to the applicants.

59. The Court considers that the finding of a violation constitutes, in the circumstances of the present case, sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered and therefore makes no award under this head (compare *Koprivica v. Montenegro* (just satisfaction), no. 41158/09, § 15, 23 June 2015).

B. Costs and expenses

60. The applicants also claimed EUR 3,700 for the costs and expenses, in particular legal fees, incurred before the domestic courts and before the Court. It has been requested that any award in respect of costs and expenses be paid directly to one of the applicants' lawyers, Mr R. Hajili. In support of this claim, they submitted a copy of the contract concluded with two lawyers, Mr Hajili and Mr E. Sadigov, which stipulated that the amount due for legal fees was to be paid within twenty days of the legal services being provided, but in the event of the applicants' inability to pay owing to a lack of sufficient funds, such payment could be delayed until a later date when the applicants had sufficient financial means to pay.

61. The Government submitted that the applicants had not actually paid the legal fees claimed and, pursuant to the terms of the contract, were not even under a binding obligation to pay them; that the claim had not been adequately substantiated owing to the absence of itemised bills and

payment invoices; that the amount claimed was in any event excessive compared to the average fees charged by lawyers in Azerbaijan; and that it did not appear from the documents in the case file that Mr. Sadigov had represented the applicants in the domestic proceedings.
62. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly into the bank account of the applicants' representative, Mr R. Hajili;
   (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.
   Done in English, and notified in writing on 30 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar
Síofra O'Leary President