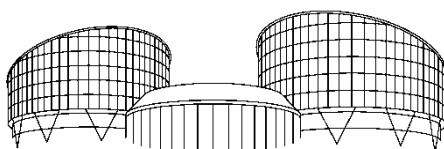


La Corte EDU sulla libertà di espressione del giornalista (CEDU sez. I, sent. 21 novembre 2024, ric. n. 10987/14)

La Corte EDU si è pronunciata su un caso avente ad oggetto la presunta violazione del diritto alla libertà di espressione *ex* articolo 10 della Convenzione, lamentata da due ricorrenti in seguito ad una condanna inflitta loro dal giudice nazionale per reato di diffamazione. Nella specie, il Tribunale distrettuale di Yasamal aveva condannato un giornale ed un giornalista per aver leso, attraverso la pubblicazione di due articoli, l'onore, la dignità e la reputazione professionale di KM.

I ricorrenti avevano sostenuto già innanzi ai giudici nazionali, e poi nel loro ricorso alla Corte di Strasburgo, che gli articoli pubblicati contenevano informazioni su una questione di interesse pubblico. La stessa Corte, nel decidere il caso, osservava come i tribunali nazionali non avessero analizzato se le affermazioni contenute negli articoli fossero affermazioni fattuali o giudizi di valore e ricordava che nei casi in cui la cronaca si basi su interviste o riproduca dichiarazioni altrui, modificate o meno, occorre fare una distinzione a seconda che le dichiarazioni provengano dal giornalista o siano citazioni di altri. Alla luce di tali considerazioni e, tenuto conto che le notizie riferite non fossero giudizi di valore, i Giudici di Strasburgo hanno ritenuto le decisioni dei tribunali nazionali una interferenza non necessaria in una società democratica e, dunque, lesive dell'articolo 10 CEDU.



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

FIRST SECTION

CASE OF OMISSIS AND OMISSIS v. AZERBAIJAN

(Application no. 10987/14)

JUDGMENT
STRASBOURG
21 November 2024

This judgment is final but it may be subject to editorial revision.

In the case of Omissis and Omissis v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Raffaele Sabato, *President*,
Lətif Hüseynov,
Alain Chablais, *judges*,
and Liv Tigerstedt, *Deputy Section Registrar*,
Having regard to:

the application (no. 10987/14) 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”) on 22 January 2014 by a newspaper published in Azerbaijan, *Azadliq*, and by an Azerbaijani national, Mr Ramin Natig oghlu Jabrayilzade (*Ramin Natiq oğlu Cəbrayılzadə*) (“the applicants”), who were represented by Mr R. Hajili, a lawyer based in Strasbourg;

the decision to give notice of the application to the Azerbaijani Government (“the Government”), represented by their Agent, Mr Ç. Əsgərov;

the parties’ observations;

Having deliberated in private on 24 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns civil defamation proceedings against the applicants, a newspaper and a journalist, and the allegedly unjustified interference with their right to freedom of expression under Article 10 of the Convention.

2. *Azadliq* (“the applicant newspaper”) is a newspaper which, according to the applicants, ceased publication of its print edition in 2016. The second applicant, Mr Jabrayilzade, is a journalist who was working for the applicant newspaper.

3. In its editions of 7 and 9 July 2012 the applicant newspaper published two articles, written by the second applicant, about K.M., the founder of a private company which operates a large shopping centre in Baku. Referring to statements by unnamed business owners who rented shops in that centre, the articles alleged that K.M. had raised rental and utility fees at the shopping centre, and that she had demanded a one-off payment of 5,000 Azerbaijani manats (AZN) from business owners, threatening to terminate the rental contracts of those who refused to pay that amount. The second applicant used this information to calculate the approximate amount that K.M. would have obtained from the business owners in the centre, multiplying the total number of shops in the centre by 5,000. He estimated that she had obtained AZN 1,800,000 in this way.

4. On an unspecified date K.M. brought civil defamation proceedings against the applicants, and requested that the court order them to publish a retraction and to pay AZN 50,000 each in compensation for the non-pecuniary damage she had allegedly sustained.

5. By a judgment of 22 October 2012, the Yasamal District Court granted the claim, finding that the respondents had not provided any evidence of the veracity of the allegations made in the articles and that the articles contained statements that were damaging to K.M.’s honour, dignity, and professional reputation. The court ordered the applicant newspaper to publish a retraction and to pay compensation of AZN 30,000 (approximately 29,400 euros (EUR) at the material time); it also ordered the second applicant to pay AZN 2,000 (approximately EUR 1,960 at the material time).

6. The applicants appealed, maintaining that the articles contained information on a matter of public interest and that K.M. had not demonstrated that her professional reputation had been damaged in any way. The applicants also argued that the first-instance court had not provided any reasons for its decision to award those amounts.

7. The applicants' appeals were dismissed by the Baku Court of Appeal and the Supreme Court on 19 February and 22 July 2013 respectively. The higher courts essentially repeated the first-instance court's reasoning.
8. On 29 October 2013 the applicant newspaper was fined AZN 3,000 under Article 313.1 of the Code of Administrative Offences for failure to comply with the first-instance court's judgment.
9. According to the applicant newspaper, on 26 December 2013 AZN 30,500 was withdrawn from its bank account on the order of an enforcement officer. In evidence, it submitted a copy of a bank statement confirming the withdrawal.
10. The applicants complained under Article 10 of the Convention that the domestic courts' judgments had breached their right to freedom of expression.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

11. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.
12. It is not disputed by the parties that the domestic courts' judgments amounted to an "interference" with the applicants' right to freedom of expression under Article 10 of the Convention. The Court observes that in their judgments the domestic courts referred to Article 23 of the Civil Code, which provided for the protection of honour, dignity and professional reputation. The Court therefore holds that the interference was "prescribed by law" and pursued the legitimate aim of protecting K.M.'s professional reputation. It remains to be established whether the interference was "necessary in a democratic society".
13. The general principles concerning the "necessity" of an interference have been summarised in *Azadliq and Zayidov v. Azerbaijan* (no. 20755/08, §§ 35-39, 30 June 2022), *Khural and Zeynalov v. Azerbaijan* (no. 55069/11, §§ 37-49, 6 October 2022) and *Editorial Board of Grivna Newspaper v. Ukraine* (no. 41214/08, §§ 84-88 and 92-98, 16 April 2019).
14. The Court accepts the applicants' submission to the effect that the issue discussed in the impugned articles concerned a matter of public interest and contributed to public debate, in that the articles contained information about alleged business malpractice at one of the country's biggest shopping centres. The Court observes that the articles, which quoted unnamed business owners and specifically mentioned K.M. by name, stated that she had demanded a significant sum of money from these business owners, had threatened to close their shops if they refused to pay that amount, and had raised rents and utility costs in the centre.
15. The Court further observes that the domestic courts did not analyse whether the statements made in the articles were factual statements or value judgments. They merely confined themselves to accepting the claimant's assertion that the articles were damaging to her reputation. The Court considers that the impugned allegations were factual statements and, contrary to the applicants' argument, not value judgments. The Court observes, however, that although these allegations were factual in nature, they did not emanate from the applicants themselves. In this connection, the Court reiterates that in cases where news reporting is based on interviews or reproducing the statements of others, whether edited or not, a distinction needs to be made according to whether the statements emanate from the journalist or are quotations from others (see *Anatoliy Yeremenko v. Ukraine*, no. 22287/08, § 100, 15 September 2022, and *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 36, 27 November 2007). In the present case, the applicants referred to the business owners as a source of the allegations and quoted their "complaints". The total amount allegedly

collected by K.M., an estimated total of AZN 1,800,000 as calculated by the second applicant, was based on those statements. The Court observes, however, that the domestic courts failed to take into account the fact that the applicants were merely reporting what others had said about K.M.

16. The Court further notes that the concept of responsible journalism requires that journalists verify the accuracy and reliability of information provided to the public to a reasonable extent, and that they comply with the law while carrying out their professional activities (see *Anatoliy Yeremenko*, cited above, § 102). In this connection, the Court observes that during the court proceedings, the applicants repeatedly argued that the second applicant and other journalists had tried to contact K.M. in order to verify the truthfulness of the allegations and to hear her version of events, but that these efforts had been unsuccessful, and she had refused to grant any interview to the press about the allegations. The Court also takes note of the evidence produced by the applicants demonstrating that business owners at the shopping centre had protested on various occasions between 2011 and 2013 against increased costs at the centre; the protests held on 31 March and 1 April 2012 and on 19 January 2013 had been widely covered by the media and videos of those protests had been disseminated online.

17. Accordingly, the Court considers that the applicants had made an attempt to seek additional verification of the accuracy and reliability of the impugned allegations and finds that, in their decisions, the domestic courts did not provide relevant and sufficient reasoning demonstrating that the applicants had not acted with due diligence (contrast, *mutatis mutandis*, *Azadliq and Zayidov*, cited above, §§ 44-45, and *Anatoliy Yeremenko*, cited above, §§ 103-04).

18. Moreover, the Court takes note of the applicants' submission that the domestic courts did not provide any reasoning for their decision ordering the applicant newspaper and the second applicant to pay AZN 30,000 and AZN 2,000 respectively to K.M. in compensation. The Court also takes note of the Government's argument that the applicants did not raise the issue of the proportionality of the imposed penalties before the domestic courts. However, there is no need to examine further the issue of the proportionality of the penalties because the considerations in paragraphs 14-17 above are sufficient for the Court to conclude that the domestic courts failed to provide relevant and sufficient reasons to justify the interference with the applicants' rights.

19. In view of the above considerations, the Court finds that the interference complained of was not "necessary in a democratic society". There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant newspaper claimed 30,500 Azerbaijani manats (AZN) in respect of pecuniary damage, representing the amount withdrawn from its bank account, and 100,000 euros (EUR) for its alleged loss of profit (it submitted that the large sums it had been required to pay in court-ordered compensation had led it to stop publishing a paper edition). It made no claim in respect of non-pecuniary damage.

21. The second applicant claimed EUR 5,000 in respect of non-pecuniary damage and made no claim in respect of pecuniary damage.

22. The applicants also claimed EUR 6,025 in respect of the legal fees allegedly incurred before the domestic courts and the Court. They asked the Court to pay the award of legal costs directly to their representative Mr R. Hajili. The claims were submitted on 7 July 2023.

23. The Government requested that the Court reject the claim in respect of pecuniary damage, noting that the applicant newspaper had failed to provide any supporting evidence. As to non-pecuniary damage, the Government argued that the claim was excessive and unsubstantiated. As

regards the legal costs, the Government contested the amount claimed, noting that the applicants had failed to show that it was necessary and reasonable as to quantum.

24. With regard to the applicant newspaper's claim in respect of the AZN 30,500 withdrawn from its bank account, the Court notes that the bank statement confirming the withdrawal indicates that the amount in question was withdrawn on the order of 16 April 2013 of an enforcement officer. The Court observes, however, that the domestic court proceedings in the present case were finalised on 22 July 2013. It would appear that the amount in question was withdrawn in the enforcement of a separate judgment against the applicant newspaper. The Court therefore rejects this claim. Furthermore, the applicant newspaper did not produce any documentary evidence showing that the penalties imposed on it in the present case have been paid.

25. With regard to the claim for EUR 100,000 in compensation for lost profit, the Court notes that the applicant newspaper failed to submit any documentary evidence in support of this part of its claim; it must accordingly be rejected.

26. With regard to non-pecuniary damage, the Court considers that the second applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the second applicant the sum of EUR 2,000 under this head, plus any tax that may be chargeable on this amount.

27. Having regard to the documents in its possession, the Court considers it reasonable to award the applicants jointly EUR 1,500 for costs and expenses in the proceedings before the domestic courts and the Court, plus any tax that may be chargeable to them, to be paid directly to their representative Mr R. Hajili.

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*

(a) that the respondent State is to pay, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros) jointly to the applicants, plus any tax that may be chargeable to them, in respect of costs and expenses, to be paid directly into the bank account of their 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Raffaele Sabato
President