



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

FIFTH SECTION

CASE OF HAJIBEYLI AND ALIYEV v. AZERBAIJAN

(Applications nos. 6477/08 and 10414/08)

JUDGMENT

STRASBOURG

19 April 2018

FINAL

19/07/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hajibeyli and Aliyev v. Azerbaijan,

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

Angelika Nußberger, *President*,

Erik Møse,

Yonko Grozev,

Síofra O’Leary,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 27 March 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 6477/08 and 10414/08) 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 two Azerbaijani nationals, respectively, Mr Annagi Bahadur oğlu Hajibeyli (*Ənnağı Bahadur oğlu Hacıbəyli* – “the first applicant”) and Mr Intigam Kamil oğlu Aliyev (*İntiqam Kamil oğlu Əliyev* – “the second applicant”) (“the applicants”), on 12 January 2008.

2. The applicants were represented by Mr I. Aliyev, the second applicant, who was a lawyer practising in Azerbaijan. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged that their right to freedom of expression had been breached because they had not been admitted to the Azerbaijani Bar Association (*Azərbaycan Respublikası Vəkillər Kollegiyası* – hereinafter “the ABA”) on account of statements they had made about the poor state of the legal profession in the country. They further alleged that the domestic courts had failed to give a reasoned decision in their cases and that the domestic authorities had hindered the exercise of their right of individual petition.

4. On 23 and 24 June 2016, respectively, the complaints concerning (i) the alleged failure of the domestic courts to give a reasoned decision (Article 6 of the Convention), (ii) the alleged violation of the applicants’ freedom of expression (Article 10 of the Convention), and (iii) the alleged hindrance to the exercise of the applicants’ right of individual petition (Article 34 of the Convention) were communicated to the Government, and the remainder of the applications was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court. In addition, third-party observations were

received from the International Commission of Jurists, following the granting of leave to intervene as a third party in the written procedure (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 applicants were born in 1955 and 1962, respectively, and live in Baku and Absheron, respectively.

A. Background information

6. The applicants are well-known civil society activists and lawyers specialising in the field of the protection of human rights. The second applicant has represented applicants in more than one hundred cases before the Court.

7. At the time of the events in question the applicants were practising as lawyers on the basis of a special permit (licence) – issued by the Ministry of Justice (see paragraph 33 below) – to provide paid legal services. They regularly made various statements and published articles in the media, criticising the state of the legal profession in the country.

8. On 28 December 1999 a new Law on Advocates and Advocacy Activity (“the Law”) was adopted within the framework of a reform of the legal profession in the country. Under the Law, activity of legal counsel is to be provided by persons admitted to the ABA, and the defence of suspected and accused persons in criminal proceedings falls under the exclusive domain of the legal profession (see paragraph 34 below). Article I of its transitional provisions, as in force at the material time, also provided that persons who on the date of the entry into force of the transitional provisions of the Law were members of the already existing Bar Association or who had a special permit to provide paid legal services had the right to be founding members of the ABA, without having to pass a qualification examination, subject to their complying with the requirements in respect of candidates for admission to practice as legal counsel (see paragraph 35 below).

9. In November 2004 the constituent assembly of the ABA was held on the basis of the provisions of the Law, with the participation of members of the former Bar Association and lawyers holding a special permit. These participants were registered as founders of the ABA and they became its members. However, some lawyers practising on the basis of a special permit, including the applicants, were not invited to participate in the

constituent assembly and their right to be founders of the ABA was not recognised. The applicants signed a petition alleging that holding the ABA's constituent assembly under these conditions had been illegal and instituted court proceedings in this respect.

10. In the meantime, on 14 June 2005 new amendments to the transitional provisions of the Law were adopted providing for admission to the ABA of all lawyers holding a special permit, including those whose right to be founding members of the ABA had not been recognised, without passing a qualification examination, subject to their complying with the requirements in respect of candidates for admission to practice as legal counsel (see paragraph 36 below).

B. Refusal to admit the applicants to the ABA

1. In respect of the first applicant

11. On an unspecified date in 2005 the first applicant applied for admission to the ABA on the basis of the amendments of 14 June 2005 to the transitional provisions of the Law.

12. On 27 January 2006 the Presidium of the ABA (*Azərbaycan Respublikası Vəkillər Kollegiyası Rəyasət Heyəti* – hereinafter “the Presidium”) held a meeting at which it examined and then dismissed his application. It appears from a document entitled “Extract from the record of meeting no. 2 dated 27 January 2006 of the Presidium” and annex no. 1 to that document – signed by the head of the administration of the ABA, Z.A. – that the President of the ABA (A.T.) declared the meeting open and then the members of the Presidium questioned the first applicant about his stance on the functioning of the ABA, before dismissing his application. The transcript of the meeting, which was one page long, reads as follows:

“After giving the information about Annagi Hajibeyli [the first applicant] to the members of the Presidium, A.T. gives the floor to them for questions.

I.S.: Mr Hajibeyli, you are one of the lawyers who brought an action in court asking for the invalidation of the constituent assembly of the ABA. What could you say about that?

[The first applicant]: I suppose that the members of the Presidium are familiar with my opinion. I still maintain that the constituent assembly of the ABA was held in blatant breach of the requirements of the law. Moreover, numerous persons, who were entitled to be co-founders of the ABA, were unlawfully not allowed to attend the constituent assembly.

A.T.: Mr Hajibeyli, your opinion is clear. Please wait outside. We want to discuss the question.

Member of the Presidium [...]: One minute. I have a question.

[The first applicant]: Please.

Member of the Presidium: It follows that you consider this organ illegal. But why do you want to become a member of it?

[The first applicant]: Irrespective of my stance on the constituent assembly of the ABA, the latter's creation and functioning is a fact. Unfortunately, Azerbaijani law allows for the creation of only one bar association. I want to practise as a legal counsel. That is why I applied for admission to this bar association.

A.T.: Everything is clear. Please wait for the issuance of the decision.

One minute later the decision of the Presidium of the ABA rejecting Annagi Hajibeyli's application for admission to that organ was declared."

2. In respect of the second applicant

13. On an unspecified date in 2005 the second applicant applied for admission to the ABA, relying on the amendments to the Law of 14 June 2005.

14. On 19 November 2005 the Presidium held a meeting at which it examined his application but decided to dismiss it. It appears from the document entitled "Extract from the record of meeting no. 27 dated 19 November 2005 of the Presidium" (as well as annex no. 1 thereto) – signed by the head of the administration of the ABA, Z.A. – that A.T. declared the meeting open and then the members of the Presidium questioned the second applicant about his stance on the functioning of the ABA, before dismissing his application. The relevant parts of the transcript of the meeting, which is three pages long, read as follows:

"After giving the information about Intigam Aliyev [the second applicant] to the members of the Presidium, A.T. gives the floor to them for questions.

I.S.: Mr Aliyev, you brought an action in court against the ABA. Are you going to withdraw your action after your admission to the ABA?

[The second applicant]: I don't know other people's opinion, but personally I have no intention of withdrawing my actions against the ABA and the Ministry of Justice. Unfortunately, these actions remain unexamined by the courts because of pressure brought by the previously-mentioned organs. ...

I.K.: You state in your writing in the media that one of the main reasons for the current catastrophic situation of the courts in Azerbaijan is the [poor state of] legal profession. We would like to know your opinion in this respect.

[The second applicant]: I am still of the same opinion. I consider that one of the main reasons for the current catastrophic situation of the law and human rights in Azerbaijan is the absence of independent judicial power and legal profession in the country. ...

A.A.: I have a great respect for Mr Aliyev as a person and lawyer. However, he published articles insulting the members of the ABA in the media and in *Law Newspaper*.

[The second applicant]: Whom have I insulted?

A.A.: You have insulted the ABA in your writings. You write that advocates are acting as intermediaries (*vasitəçiliklə məşğuldurlar*).

...

A.T.: The fact that you have stated that you will maintain your court actions against the ABA indicates that you don't recognise the lawfulness of the ABA.

[The second applicant]: Firstly, my colleagues and I did not question before the courts the lawfulness of the ABA, but rather sought the invalidation of its constituent assembly, which was held in blatant breach of the requirements of the law. ...

A.T.: You want to become a member of the ABA, but you bring an action against it?

[The second applicant]: What does that mean? Is it forbidden to bring an action against the ABA? In your law, the right of legal counsels to bring an action against the ABA is provided for.

A.T.: You are not yet a legal counsel.

[The second applicant]: I have practised as a legal counsel for fifteen years and the State gave me a permit. In any event, what difference does being a legal counsel make? You are a legal counsel; how can you speak like that? Everybody has the right to bring an action against any organ, including the ABA.

A.T.: I consider that the Presidium should give its opinion by vote.

...

I.K.: It is not allowed to admit Intigam Aliyev to the ABA because of the stance that he has held about the current ABA.

[The second applicant]: I will not be surprised if you refuse my admission to the ABA on account of my critical views about the functioning of the ABA and its directorate, although such a decision will be shameful. ...

A.T.: Please, those who are in favour of the issuance of a decision refusing Intigam Aliyev's admission to the ABA should vote.

By a unanimous decision of the members of the Presidium of the ABA the admission of Intigam Aliyev to the ABA is refused."

C. Remedies used by the applicants

1. In respect of the first applicant

15. On 21 February 2006 the first applicant brought an action in the Nasimi District Court alleging that the Presidium's decision of 27 January 2006 had been unlawful. In particular, he argued that the Presidium had failed to substantiate its decision and had breached the transitional provisions of the Law. He further alleged the violation of his rights, as protected under Articles 10, 11 and 14 of the Convention, as a result of the refusal to admit him to the ABA.

16. Following a series of procedural decisions concerning the admissibility of the action, at the beginning of 2007 the Nasimi District Court commenced examining the case on the merits. It appears from the transcript of the Nasimi District Court's hearing held on 7 February 2007, which was submitted to the Court by the first applicant, that the representative of the ABA at the hearing, I.K., stated, in reply to the first applicant's question concerning the grounds for the Presidium's decision of

27 January 2006, that the first applicant's replies to the questions and his previous statements had justified the decision of the Presidium's members.

17. On 9 February 2007 the Nasimi District Court delivered its judgment on the merits. The court held that the first applicant's complaint should be dismissed because admission to the ABA was a matter which fell within the exclusive competence of the members of the Presidium and there had been no breach of law in the examination of the first applicant's request by the Presidium. The relevant part of the judgment reads as follows:

"It was established in the course of the court investigation that, while he disputed the decision of the Presidium, A. Hajibeyli [the first applicant] did not challenge the legality of that decision, but rather its motives. It follows that the issue argued by A. Hajibeyli in his application falls within the exclusive competence of the members of the Presidium and is related to their personal consideration and will.

Article 1 (III) of the Law on Advocates and Advocacy Activity of the Republic of Azerbaijan provides that the prohibition of any interference with or pressure on the professional activity of legal counsels and their [professional] association by the prosecutor's office, court, other State bodies, public associations, [or] any company, entity, organisation or official constitutes the basis of the legal profession.

Therefore, given that the issue addressed by A. Hajibeyli in his application falls within the exclusive competence of the members of the Presidium and is subject to their consideration and will, any interference with that issue is not allowed by law."

18. On 16 March 2007 the first applicant appealed against that judgment, alleging a violation of his rights, as protected under Articles 6, 10, 11 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention. In particular, he alleged that he had not been admitted to the ABA because of his statements about the functioning of the ABA and the poor state of the legal profession in the country. In support of his claim, the first applicant relied on the "Extract from the record of meeting no. 2 dated 27 January 2006 of the Presidium" (see paragraph 12 above) and the annex to that document. He also referred to the statements made by the representative of the ABA at the court hearings held before the Nasimi District Court, quoting the transcript of the above-mentioned court hearings. The first applicant further argued that the Presidium's decision of 27 January 2006 had been unlawful, as it had been contrary to the transitional provisions of the Law. In that regard, he pointed out that his candidacy for admission to practice as a legal counsel had met all the requirements for candidates for admission, as provided for by Article 8 of the Law.

19. On 6 June 2007 the Court of Appeal dismissed the appeal and upheld the first-instance court's judgment. The appellate court was silent as to the first applicant's particular complaints relating to the breach of his right to freedom of expression. It further appears from the transcript of the Court of Appeal's hearing held on 6 June 2007, which was submitted to the Court by the first applicant, that the representative of the ABA, I.K., again stated at the hearing that the members of the Presidium had considered that the first

applicant should not be admitted to the ABA because of his stance on the functioning of the ABA. His statement reads as follows:

“I.K.: You [the first applicant] have the transcript (*stenogram*). After the examination of your documents, you were questioned by the Presidium, which then unanimously decided that A. Hajibeyli [the first applicant] should not be admitted [to practice as a legal counsel] because of his stance [on the functioning of the ABA]. I consider that the vote should be against [your admittance].”

20. On 14 August 2007 the first applicant lodged a cassation appeal, reiterating his previous complaints. In support of his claims, he again referred to the extract from the record of meeting no. 2 dated 27 January 2006 of the Presidium and the annex thereto, as well as the transcripts of the court hearings held before the Nasimi District Court and the Court of Appeal.

21. On 13 November 2007 the Supreme Court dismissed the cassation appeal and upheld the Court of Appeal’s judgment of 6 June 2007. The Supreme Court’s decision made no mention of the first applicant’s particular complaints.

2. In respect of the second applicant

22. On 2 December 2005 the second applicant brought an action in the Nasimi District Court, alleging that the Presidium’s decision dated 19 November 2005 had been unlawful. In particular, he alleged a violation of his rights, as protected under Articles 6, 10, 11 and 14 of the Convention.

23. Following a series of procedural decisions concerning the admissibility of the action, at the beginning of 2007 the Nasimi District Court commenced its examination of the action on the merits. It appears from the documents in the case file that in the course of the proceedings before the first-instance court the second applicant and the ABA lodged various requests and applications, which were dismissed by the court. The ABA also lodged a counterclaim against the second applicant for defamation.

24. On 11 August 2009 the Nasimi District Court delivered its judgment on the merits, dismissing both the claims of the second applicant and those of the ABA. As to the reasoning of the judgment concerning the second applicant’s action regarding his admission to the ABA, it was similar to that of the Nasimi District Court dated 9 February 2007 (see paragraph 17 above).

25. On 10 September 2009 the second applicant appealed against that judgment, alleging a violation of his rights, as protected under Articles 6, 10, 11, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention. In particular, he pointed out that he had not been admitted to the ABA because of his statements and articles about the poor state of the legal profession in the country. In support of his appeal, the second applicant relied on the document entitled “Extract from the record of

meeting no. 27 dated 19 November 2005 of the Presidium” (see paragraph 14 above) and the annex thereto. He further argued that the Presidium’s decision of 19 November 2005 had been contrary to the transitional provisions of the Law.

26. On 2 November 2009 the Baku Court of Appeal dismissed the appeal, finding that the judgment of the first-instance court had been lawful. The appellate court was silent as to the second applicant’s particular complaints concerning the violation of his right to freedom of expression.

27. On an unspecified date the second applicant lodged a cassation appeal, reiterating his previous complaints.

28. On 18 June 2010 the Supreme Court upheld the Baku Court of Appeal’s judgment of 2 November 2009.

D. The Court proceedings and seizure of the applicants’ case files

29. On 8 August 2014 criminal proceedings were instituted against the second applicant, Mr I. Aliyev, under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the Criminal Code, which are the subject of a separate application brought by him before the Court (application no. 68762/14). At that time the second applicant was representing not only the applicants in the present case, but also a number of applicants in other cases before the Court.

30. On 8 and 9 August 2014 the investigating authorities seized a large number of documents from the second applicant’s office, including all the case files relating to the proceedings pending before the Court, which were in his possession and which concerned over 100 applications in total. The files relating to the present two applications were also seized in their entirety. The facts relating to the seizure and the relevant proceedings are described in more detail in a judgment relating to an application lodged by the first applicant (see *Annagi Hajibeyli v. Azerbaijan*, no. 2204/11, §§ 21-28, 22 October 2015).

31. On 25 October 2014 the investigating authorities returned a number of the case files concerning the applications lodged before the Court, including the files relating to the present applications, to the second applicant’s lawyer.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

32. Article 47 § I of the Constitution provides:

“Everyone enjoys the freedom of thought and speech.”

B. The relevant domestic legislation concerning advocacy activity

33. By a presidential decree dated 4 October 1997, paid legal services were included in the list of activities that can only be carried out on the basis of a special permit. On 1 May 1998 the Cabinet of Ministers approved “Rules for the Granting of a Special Permit (Licence) to Provide Paid Legal Services”, Article 1 of which provided that a person holding a university degree in law could provide, on the basis of a special permit granted by the Ministry of Justice, various legal services, including legal consultation; the drafting of lawsuits, complaints and other legal documents; representation before the civil, economic and administrative courts; and representation of victims or civil parties in criminal proceedings. In order to qualify for a special permit to act as a representative in criminal proceedings the person concerned had to have had at least two years of legal practice. By a presidential decree dated 2 September 2002, paid legal services were removed from the list of activities carried out on the basis of a special permit.

34. On 28 December 1999 the Law on Advocates and Advocacy Activity was adopted (see paragraph 8 above). Article 4 (I) of the Law provides that activity of legal counsel (*vəkillik fəaliyyəti*) is undertaken by persons admitted to the Bar Association in accordance with an established procedure. In accordance with Article 4 (II), the defence of suspected and accused persons in criminal proceedings is the exclusive domain of legal counsels.

35. Article I of the Law’s transitional provisions, as in force at the material time, provided that persons who, on the date of the entry into force of the transitional provisions of the present law, were members of the existing Bar Association or had a special permit to carry out paid legal services had the right to be founders of the new Bar Association without having to pass a qualification examination, subject to their complying with the requirements in respect of candidates for admission to practice as legal counsel.

36. In accordance with Article VI of the Law’s transitional provisions, which were introduced by the amendments of 14 June 2005, all lawyers who held a special permit but whose right to be founder members of the ABA was not recognised were admitted by the Presidium to the ABA without having to pass a qualification examination (*ixtisas imtahanı*), subject to their complying with the requirements in respect of candidates for admission to practice as legal counsel.

37. In accordance with Article 8 (I), subject to the requirements provided in part II of this Article, a person holding a university degree in law and having at least three years of legal practice or at least three years work experience in the legal sphere in academic or pedagogical educational institutions, who has successfully passed a qualification examination (consisting of a written test and an oral interview), and has completed the

compulsory training programme may become a legal counsel (*vəkil*). Pursuant to Article 8 (II), persons who have dual nationality, have obligations in respect of other countries, have been declared incompetent in accordance with the law or whose legal capacity has been restricted, are suffering from mental disability, whose conviction for the intentional commission of less serious, serious or particularly serious crimes has not been discharged, or who have been subjected to compulsory medical measures under a valid court decision, cannot become an advocate.

38. Under Article 11, the Presidium of the ABA deals with matters related to admission to the ABA. The Presidium's meetings are held in the presence of two-thirds of its members and decisions are taken by a simple majority vote.

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.

...

Principle II – Legal education, training and entry into the legal profession

1. Legal education, entry into and continued exercise of the legal profession should not be denied in particular by reason of sex or sexual preference, race, colour, religion, political or other opinion, ethnic or social origin, membership of a national minority, property, birth or physical disability. ...”

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.

...

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. ...”

THE LAW

I. JOINDER OF THE APPLICATIONS

41. 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

42. The applicants complained under Articles 10 and 11 of the Convention that their right to freedom of expression and to freedom of association had been infringed in that they had not been admitted to the ABA because of the views that they had expressed about the state of the legal profession in the country. Having regard to the circumstances of the case, the Court considers that the applicants' complaint does not raise a separate issue under Article 11 of the Convention and falls to be examined solely under Article 10 of the Convention, which 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.”

A. Admissibility

43. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

44. The applicants complained that the Presidium had refused to admit them to the ABA as a result of their statements concerning the functioning of the ABA and concerning the poor state of the legal profession in the country. In support of their claim, the applicants relied on the extracts from the records of meetings no. 27 dated 19 November 2005 and no. 2 dated 27 January 2006 of the Presidium and the annexes to those documents, as well as the statements made by the representative of the ABA at the court hearings in the domestic proceedings.

45. The applicants further submitted that the refusal to admit them to the ABA had been contrary to the transitional provisions of the Law because

they had met all the requirements in respect of candidates for admission to practice as legal counsel, as provided by Article 8 (I) and (II) of the Law.

(b) The Government

46. The Government submitted that there was no evidence demonstrating that the decisions refusing the applicants' admission to the ABA had been related to the exercise of their right to freedom of expression. In that connection, they disputed the authenticity of the extracts from the records of the meetings of the Presidium of 19 November 2005 and 27 January 2006 and the annexes thereto, noting that these documents constituted nothing more than the applicants' invention. The Government also noted that the applicants had never submitted the originals or copies of those documents to the domestic courts and the Court, and invited the Court to dismiss the applicants' complaints for lack of evidence.

47. The Government further submitted that, under the transitional provisions of the Law, lawyers holding a special permit were only exempted from having to pass a qualification examination, but they still had to meet the requirements in respect of candidates for admission to practice as legal counsel. They also pointed out that the matter of the admission of lawyers holding a special permit should have been considered by the Presidium, in compliance with Article 11 of the Law.

(c) The third party

48. The submissions of the International Commission of Jurists were based on a summary of the Court's case-law concerning the protection of lawyers under Articles 6, 8 and 10 of the Convention and the results of its recent fact-finding mission to Azerbaijan in order to assess the compliance of the governance of the legal profession in Azerbaijan with international law and standards. In that regard, the third party expressed in particular its concern about the independence of the ABA, noting that the system of governance of the legal profession in Azerbaijan did not ensure that its procedures of admission and disbarment were presided over by an independent and impartial body.

2. The Court's assessment

(a) Whether there was interference

49. The Court notes that even though neither of the parties took a specific stand on the issue of whether there had been an interference within the meaning of Article 10 of the Convention, the Court considers it necessary to first ascertain whether the measure complained of amounted to an interference with the applicants' exercise of the right to freedom of expression. In order to answer that question the scope of the measure must be determined by putting it within the context of the facts of the case and of

the relevant legislation (see *Baka v. Hungary* [GC], no. 20261/12, § 143, ECHR 2016).

50. The Court observes that in the present case the applicants, as lawyers holding a special permit, applied for admission to the ABA, relying on Article VI of the transitional provisions of the Law, which provided for their admission to the ABA by the Presidium of the ABA without having to pass a qualification examination, subject to their complying with the requirements in respect of candidates for admission to practice as legal counsel. In that regard, while the applicants argued before the Court that their admission to the ABA had been refused because of the views which they had expressed on the state of the legal profession in the country, the Government pointed out that the applicants had failed to submit any evidence in support of that argument, disputing moreover the authenticity of the documents submitted by the applicants. However, the Government did not make any submission as regards the reason for the refusal to admit the applicants to the ABA.

51. Based on the material before it, the Court cannot accept the Government's submissions disputing the authenticity of the extracts submitted to it from the records of the Presidium's meetings of 19 November 2005 and 27 January 2006 and the annexes thereto. It is clear from the documents in the case file that the applicants expressly referred to those documents in support of their claims in the proceedings before the domestic courts, which never contested their authenticity (see paragraphs 18, 20, 25 and 27 above). Moreover, while the Government disputed the authenticity of the documents submitted by the applicants, they failed to submit to the Court the versions of the records of the Presidium's meetings of 19 November 2005 and 27 January 2006 that they consider to be authentic. The Court also cannot accept the Government's submission that a copy of these documents was not submitted to the Court. On the contrary, copies of those documents were available in the applicants' case files submitted to the Court and communicated to the Government.

52. The Court further observes that it is clear from the above-mentioned documents that at the meetings at which the members of the Presidium examined the applicants' applications for admission to the ABA, they questioned the applicants only about their stance regarding the functioning of the ABA and the state of the legal profession in the country, without making a single comment on the requirements in respect of candidates for admission to practice as legal counsel or the applicants' legal or professional ability (see paragraphs 12 and 14 above). This was further corroborated by the statements made at the hearings in the domestic proceedings by the representative of the ABA, who clearly stated that the first applicant had not been admitted to the ABA because of his stance on the functioning of the ABA (see paragraphs 16 and 19 above). The Court also cannot overlook the fact that the domestic courts themselves confirmed that the applicants were challenging before them the motives behind the

Presidium's decisions dismissing their admission to the ABA (see paragraphs 17 and 24 above).

53. Consequently, the Court considers that the Presidium's refusal to admit the applicants to the ABA was prompted by the views and criticisms that the applicants had publicly expressed in their professional capacity as lawyers holding a special permit. That refusal thus constituted an interference with the exercise of their right to freedom of expression, as guaranteed by Article 10 of the Convention. It therefore remains to be examined whether the interference was justified under Article 10 § 2.

(b) Whether the interference was justified

54. 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.

55. 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).

56. Turning to the circumstances of the present case, the Court observes that, while the applicants argued that the interference in question had no legal basis in domestic law, the Government referred to Article 11 of the Law as a legal basis for the refusal to admit the applicants to the ABA. In particular, they submitted that the matter of admission to the ABA of the lawyers holding a special permit should be considered by the Presidium and that lawyers holding a special permit were only exempted from passing a qualification examination for admission to the ABA, but that they should meet the requirements in respect of candidates for admission to practice as legal counsel.

57. In that connection, the Court observes that Article VI of the transitional provisions of the Law clearly provided that the lawyers holding a special permit were to be admitted to the ABA by the Presidium without passing a qualification examination, subject to their complying with the requirements in respect of candidates for admission to practice as legal counsel. Article 11 of the Law empowered the Presidium to deal with matters related to admission to the ABA (see paragraph 38 above). As can be seen from the wording of the above-mentioned provisions of the Law, the only condition for admission to the ABA of lawyers holding a special permit (such as the applicants) is that the Presidium should have examined – while dealing with their admission – their compliance with the requirements in respect of candidates for admission to practice as legal counsel, as stipulated in Article 8 (I) and (II) of the Law.

58. However, the Court has already found that in the present case when the Presidium examined the applicants' applications for admission to the ABA, its members questioned the applicants only about their stance on the functioning of the ABA and the state of the legal profession in the country, without making a single comment on the requirements in respect of candidates for admission to practice as legal counsel (see paragraph 52 above). No reasons were specified by the Presidium for its decisions refusing the applicants' admission to the ABA. On each occasion it simply announced the dismissal of the applicants' applications for admission to the ABA, without stating whether or not they had failed to comply with any requirement in respect of candidates for admission to practice as legal counsel.

59. The Government did not contest that the applicants had complied with the requirements in respect of candidates for admission to practice as legal counsel, as listed under Article 8 (I) and (II) of the Law. In that regard, the Government failed to provide any reason for the Presidium's refusal to admit the applicants to the ABA, limiting themselves to submitting that the matter of admission to the ABA of lawyers holding a special permit should be considered by the Presidium. The domestic courts also failed to provide any reason for the refusal to admit the applicants to the ABA, finding that it was a matter falling within the exclusive competence of the Presidium.

60. In that connection, the Court reiterates that the freedom of expression of lawyers is related to the independence of the legal profession, which is crucial for the effective functioning of the fair administration of justice (see *Morice v. France* [GC], no. 29369/10, § 135, ECHR 2015, and *Radobuljac v. Croatia*, no. 51000/11, § 61, 28 June 2016). 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 that respect towards professional colleagues and self-regulation of the legal profession are paramount. Bar Associations perform a self-regulation function and to do so effectively they may require full information about persons wishing to enter the legal profession (see *Jankauskas v. Lithuania*

(no. 2), no. 50446/09, § 78, 27 June 2017). The Court cannot, however, accept the Government's and the domestic courts' argument, which would deprive lawyers of any effective protection in respect of the Presidium's possible interference with their freedom of expression by refusing to grant them access to the legal profession on grounds not envisaged by the relevant domestic legislation. The Court considers it necessary to draw the Government's 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 stated that lawyers should enjoy freedom of expression and that decisions concerning access to the profession should be subject to review by an independent and impartial judicial authority (see paragraph 39 above).

61. The foregoing considerations are sufficient to enable the Court to conclude that the interference in question was not "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

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.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

64. The applicants complained that the domestic proceedings had been unfair because the courts had failed to give a reasoned decision in their case, in breach of Article 6 § 1 of the Convention, which in so far as relevant provides:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... by a tribunal ..."

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and therefore declares it admissible. However, in view of its findings under Article 10 of the Convention (see paragraphs 49-63 above), the Court does not consider it necessary to examine the complaint separately under Article 6 of the Convention (see *Mor v. France*, no. 28198/09, § 67, 15 December 2011).

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

66. By a fax of 9 September 2014 the second applicant, Mr Aliyev, who was also the applicants' representative before the Court, introduced a new complaint on behalf of the applicants, arguing that the seizure from his office of the entire case files relating to the applicants' pending cases before the Court had amounted to a hindrance to the exercise of the applicants'

right of individual petition under Article 34 of the Convention, the relevant part of which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

A. The parties’ submissions

67. The submissions made by the applicants and the Government were identical to those made by the parties in respect of the same complaint raised in the case of *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 57-60, 22 October 2015).

B. The Court’s assessment

68. In the case of *Annagi Hajibeyli*, having examined an identical complaint based on the same facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention (*ibid.*, §§ 64-79). The Court considers that the analysis and the finding that it made in the *Annagi Hajibeyli* judgment also apply to the present case and it sees no reason to deviate from the finding that depriving the applicants and their lawyer of access to the case file constituted in itself an undue interference and a serious hindrance to the effective exercise of the applicants’ right of individual application. While it is true that the files were returned approximately two and a half months later, it nevertheless remains the case that those files related to the alleged interference, by means of a restriction of their freedom of expression, of the applicants’ possibility to exercise their profession as lawyers.

69. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicants each claimed 100,000 euros (EUR) in respect of pecuniary damage, arguing that they had lost earnings over a period of twelve years as a result of the refusal to admit them to the ABA. In that connection, the second applicant submitted that the claim was based on a calculation of the average monthly income of a legal counsel in Azerbaijan that he had submitted to the courts in the domestic proceedings.

72. The Government asked the Court to reject the claims, submitting that they constituted no more than speculation.

73. Pursuant to Rule 60 § 1 of the Rules of Court, an applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event the Court finding a violation of his or her Convention rights must make a specific claim to that effect. Rule 60 § 2 provides that applicants must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the president of the Chamber directs otherwise. The Court's Practice Direction on just satisfaction warns applicants that compliance with the formal and substantive requirements deriving from the Convention and the Rules of Court is a condition for the award of just satisfaction. In the present case, the applicants point to the causal link which, in their view, exists between their loss of earnings over a long period and the refusal to admit them to the ABA. However, the Court observes that, leaving aside the crucial question of the existence or not of a causal link, the applicants did not submit the necessary documentary evidence to the Court in support of their claim relating to loss of earnings and the quantum claimed. While the Court recognises that it may, in the circumstances of a case like this, be difficult to calculate loss of earnings precisely, a general reference to the average monthly income of legal counsel in Azerbaijan, without any indication of the amount of income previously earned by the applicants or of the income nevertheless earned by them during the relevant period of time, is clearly not a sufficient basis for the Court to assess pecuniary damage.

74. For the above reasons, the Court rejects the applicants' claim in respect of pecuniary damage.

2. Non-pecuniary damage

75. The applicants each claimed EUR 30,000 in respect of non-pecuniary damage.

76. The Government submitted that the amounts claimed by the applicants were unsubstantiated and excessive. They considered that, in any event, a finding of a violation would constitute sufficient just satisfaction.

77. The Court considers that the applicants have undoubtedly suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 7,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

78. The first applicant claimed EUR 6,500 for legal services incurred in the proceedings before the domestic courts and the Court and EUR 600 for translation expenses. He submitted the relevant contracts concluded with his representative and a translator in support of his claims.

79. The Government considered that the amounts claimed by the first applicant were unsubstantiated and excessive. The Government asked the Court to apply a strict approach in respect of the first applicant's claims. They further asked it to take into consideration the fact that the first applicant was represented before the Court by the second applicant, who had made identical submissions before the Court. Moreover, the second applicant had not been entitled to represent the first applicant in the domestic proceedings before the Supreme Court. They further submitted that the contracts had been backdated to December 2006 and that the amounts had been intentionally exaggerated.

80. 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 notes that in the present case the first applicant was represented by the second applicant, who made identical submissions before the Court. Having regard to this fact, as well as to the documents in its possession and the above criteria, the Court considers it reasonable to award to the first applicant the sum of EUR 2,500 covering costs under all heads.

C. Default interest

81. 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;

3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;
5. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
6. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 7,000 (seven thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five hundred euros) to the first applicant, plus any tax that may be chargeable to him, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President