



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

FIFTH SECTION

CASE OF TAGIYEVA v. AZERBAIJAN

(Application no. 72611/14)

JUDGMENT

Art 2 (substantive and procedural) • Absence of real and immediate risk to life of applicant's husband, a well-known writer and columnist, fatally stabbed by unknown person • Issuing of religious fatwa several years beforehand not sufficient to trigger positive obligations in particular case circumstances • No evidence of threats or any kind of intimidation • Ineffective investigation into death given applicant's inability to access case file, despite being granted victim status

STRASBOURG

7 July 2022

FINAL

07/10/2022

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

In the case of Tagiyeva v. Azerbaijan,

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

Síofra O’Leary, *President*,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia,

Ivana Jelić,

Arnfinn Bårdsen,

Mattias Guyomar, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 72611/14) 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”) by an Azerbaijani national, Ms Maila Bulud gizi Tagiyeva (*Mailə Bulud qızı Tağıyeva* – “the applicant”), on 1 November 2014;

the decision to give notice to the Azerbaijani Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 14 June 2022,

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

INTRODUCTION

1. The application concerns the death of the applicant’s husband, Mr Rafiq Tagiyev, following his stabbing by an unknown perpetrator. Relying on Articles 2, 10 and 13 of the Convention, the applicant complained that the State had failed to protect her husband’s right to life, that the criminal investigation into his murder had not been effective, and that he had been targeted on account of his publications.

THE FACTS

2. The applicant was born in 1964 and lives in Baku. The applicant was represented by Mr R. Hajili, a lawyer based in France, and by Ms R. Remezaite, Mr P. Leach, Ms J. Gavron, Ms J. Evans and Ms K. Levine, lawyers based in the United Kingdom.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND INFORMATION

5. Rafig Tagiyev, a physician by profession, was a well-known writer and columnist. He collaborated with various newspapers and journals writing under the pen name Rafig Tagi. He wrote articles, essays and columns relating to various social issues, including the place of religion in society and its dissemination as a political ideology. In this respect, he was very critical of the influence of Iran in Azerbaijan and in the world.

6. On 1 November 2006 an article entitled “Europe and us” (“Avropa və biz”) and signed by him was published in the *Sanat Gazeti* newspaper. It was one of various articles written in a series of “East-West studies” by the author, who expressed critical views about Islam.

7. Following the publication of the article, Rafig Tagiyev was publicly criticised by various Azerbaijani and Iranian religious figures and groups. In particular, in November 2006 one of the prominent religious figures of Iran, Ayatollah Muhammad Fazel Lankarani, issued a religious fatwa calling for the applicant’s death. The publication of the article also triggered protests in Iran in front of the Azerbaijani embassy and consulate.

8. The applicant indicated in her original application lodged with the Court that in November 2006 Rafig Tagiyev and his family had been placed under police protection for security reasons and they had been obliged to change their place of residence.

9. On 11 November 2006 criminal proceedings were instituted against Rafig Tagiyev and the editor-in-chief of the *Sanat Gazeti* newspaper for publication of the above-mentioned article.

10. On 4 May 2007 the Sabayil District Court found Rafig Tagiyev guilty under Article 283.1 (incitement to ethnic, racial, social or religious hatred and hostility, committed publicly or by use of the mass media) of the Criminal Code and sentenced him to three years’ imprisonment. The domestic proceedings concerning the conviction of Rafig Tagiyev have already been the subject of the Court’s judgment in *Tagiyev and Huseynov v. Azerbaijan* (no. 13274/08, 5 December 2019).

11. On 28 December 2007 Rafig Tagiyev was dispensed by a presidential pardon decree from serving the remainder of his sentence and was released from prison.

12. The applicant indicated in her original application lodged with the Court that the security arrangements which had been established for protection of Rafig Tagiyev prior to his imprisonment had been terminated on the date of his imprisonment and they had not been re-established upon his release from prison.

II. RAFIG TAGIYEV'S DEATH AND THE CRIMINAL INVESTIGATION INTO IT

13. The applicant's husband continued to collaborate with various newspapers and journals after his release from prison.

14. On 10 November 2011 he published on a website an article entitled "Iran and the inevitability of globalisation" ("İran və qloballaşma qaçılmazlığı"), in which he criticised the religious and totalitarian nature of the Iranian State and its policy vis-à-vis the world.

15. At around 10 p.m. on 19 November 2011, when Rafig Tagiyev was on his way home, he was stabbed by an unknown person who immediately left the scene of the crime. Rafig Tagiyev managed to get to his flat and his family called an ambulance to take him to hospital. Upon his arrival there, he was operated on and then transferred to the intensive care unit of the hospital.

16. On 20 November 2011 criminal proceedings were instituted under Article 126.1 (deliberate infliction of serious injury) of the Criminal Code by the Khatai District Police Office in connection with Rafig Tagiyev's stabbing. On the same day the investigator questioned the applicant and her son as witnesses.

17. On 21 November 2011 Rafig Tagiyev left the intensive care unit of the hospital and was transferred to a general ward. On the same day, the investigator in charge of the criminal case at the Khatai District Police Office was able to question him as a victim in connection with his stabbing. It appears from the record of questioning that Rafig Tagiyev described the circumstances of his stabbing, stating that he did not know the perpetrator of the crime. He stated that he had not been able to see the face of the perpetrator, who was taller than him. He also stated that he had no conflict with anyone and could not indicate anyone as a suspect, but that his stabbing might have been related to the articles which he had recently published about Iran and the religion.

18. On 21 November 2011 the criminal case was reclassified as attempted murder under Articles 29 and 120.1 of the Criminal Code and its investigation was handed over to the Serious Crimes Department of the Prosecutor General's Office.

19. On 22 November 2011 the investigator in charge of the case at the Serious Crimes Department of the Prosecutor General's Office questioned Rafig Tagiyev as a victim. He again described the circumstances of his stabbing and gave some information about his aggressor's physical features. He also spoke about his articles, in particular the recently published article entitled "Iran and the inevitability of globalisation". In reply to the investigator's question whether he had received threats in any form after the publication of that article, he stated that he had not.

20. On 22 November 2011 a record relating to the inspection of the scene of the crime was drawn up. It appears from the record that no material

evidence, trace of blood or other items relevant to the investigation were found at the crime scene.

21. On 23 November 2011 Rafig Tagiyev's state of health suddenly deteriorated and he died in hospital.

22. Following his death, on 23 November 2011 the criminal case was reclassified as murder under Article 120.1 of the Criminal Code.

23. On 23 November 2011 a post-mortem forensic examination was carried out. Forensic report no. 146 of the same day showed that the death had resulted from numerous stab wounds in the chest and internal organs, as well as passive cirrhotic peritonitis, small intestine atony, general intoxication of the body developed after the medical operation and acute heart and lung failure which had resulted from aggravation of chronic ischaemic heart disease in the context of pulmonary oedema and pleural adhesions.

24. On 24 and 25 November 2011 the investigator ordered a forensic trace examination of the victim's briefcase and the clothes that he had been wearing on 19 November 2011. Report no. 19569 dated 30 November 2011 and report no. 363 dated 21 December 2011 identified damage to the briefcase and clothes and blood traces on the clothes, but did not find hair-type objects on his clothes. Report no. 19591 dated 14 December 2011 revealed the existence of external microscopic fibres on the coat and trousers of the victim.

25. On 29 November 2011 the investigator in charge of the case questioned a person who had added a number of critical comments underneath the last articles which Rafig Tagiyev had published on the Internet.

26. It appears from two expert reports dated 23 and 27 December 2011 that the video-recordings from the security cameras covering the area where the stabbing occurred were examined by experts.

27. It appears from the documents in the case file that in November and December 2011 and in January 2012 the investigator questioned a number of persons, including the applicant, and Rafig Tagiyev's son and brothers, colleagues, friends and neighbours, as well as police officers and doctors who had been in contact with him after his stabbing. It appears from the records of questioning that the family members of Rafig Tagiyev were unanimous in stating that they had not been aware of any threat against the deceased, who had never spoken about the matter. It further appears from the record of questioning dated 16 December 2011 that on that date the investigator questioned the applicant as a victim in connection with her husband's murder. She stated that she had very close relations with her husband, who had never spoken about any threat or risk to his life. On the contrary, following his release from prison, he had told her that he had been respected in the prison by other inmates. She also stated that they had never received any threatening telephone calls and that it had only been after her husband's stabbing that she had learned about his article about Iran published on 10 November 2011.

28. In the meantime, on 14 December 2011 the applicant lodged a request with the prosecuting authorities asking for recognition of her victim status. She also asked the prosecuting authorities to provide her with the relevant documents concerning the ongoing criminal investigation, to examine video-recordings from the security cameras situated in the area where the crime had been committed, and to identify mobile telephones used in that area and examine the list of calls made to and from those mobile telephones.

29. On 5 January 2012 the applicant again wrote to the prosecuting authorities, reiterating her previous requests. Moreover, she asked them to question the agents of the Ministry of National Security and the Ministry of Internal Affairs, who had been responsible for Rafig Tagiyev's protection, and to obtain copies of the decisions taken by those authorities in relation to his protection.

30. By a decision of 14 January 2012, the investigator in charge of the case dismissed the applicant's requests. In particular, he held that the applicant had already been granted victim status and had been questioned. As regards the remaining requests, the investigator held that the relevant investigative actions had been taken and that the applicant would have access to the case file following completion of the investigation.

31. In the meantime, on 13 January 2012 the applicant lodged a complaint with the Nasimi District Court, complaining of the unlawfulness of the prosecuting authorities' actions under Article 449 (procedure for the review of the lawfulness of procedural actions or decisions by the prosecuting authorities) of the Code of Criminal Procedure ("the CCrP"). In particular, she asked the court to declare unlawful the prosecuting authorities' failure to reply to her requests and carry out an effective investigation, and the law-enforcement authorities' failure to protect the right to life of her husband.

32. On 17 January 2012 the Nasimi District Court and on 6 February 2012 the Baku Court of Appeal refused to accept the claim for examination, holding that the applicant's complaints could not be examined pursuant to Article 449 of the CCrP.

33. On 15 February 2012 the applicant sent a telegram to various domestic authorities, including the President of the Republic, complaining of the progress of the investigation. According to the applicant, following that telegram, on 27 February 2012 the Prosecutor General of the Republic of Azerbaijan met her and her lawyer.

34. It appears from the documents in the case file that in March and April 2012 the investigator questioned the medical staff of the hospital where Rafig Tagiyev had been treated following his stabbing and the relatives who had visited him in hospital.

35. On 26 September 2012 the applicant again sent a telegram to various domestic authorities, including the President of the Republic, complaining of the prosecuting authorities' failure to conduct an effective investigation.

36. On 3 October and 22 November 2012 the investigator questioned two members of the Azerbaijan Islamic Party, who denied any involvement in Rafig Tagiyev's stabbing.

37. On 26 December 2012 the applicant again lodged a request with the prosecuting authorities, asking for information about the progress of the criminal investigation and reiterating her previous requests.

38. By a decision of 10 January 2013, the investigator dismissed the request, holding that the applicant could only have access to the case file and the relevant documents upon completion of the preliminary investigation.

39. On 1 April 2013 the applicant lodged a complaint with the Nasimi District Court, complaining of the *de facto* termination of the criminal investigation on account of the prosecuting authorities' failure to carry out an effective investigation within a reasonable period of time.

40. On 12 April 2013 the Nasimi District Court dismissed the complaint, finding that the investigation was still ongoing and had been extended until 20 May 2013.

41. On 13 May 2013 the Baku Court of Appeal refused to accept the applicant's complaint, holding that that kind of complaint, which did not concern any decision of the prosecuting authorities but rather their alleged failure to conduct investigative actions, could not be challenged before the courts.

42. On 8 November 2013 the investigator in charge of the case decided to suspend the criminal investigation, owing to the inability to identify the perpetrators of the crime. The investigator held that the investigation had explored various theories about the possible motives behind the killing of Rafig Tagiyev, which included his publications about religion, his professional activity as a physician, any personal enmity against him or his family, his possible links with other inmates as a former inmate, and robbery. In that connection, numerous persons had been questioned as witnesses, a photofit picture of the person who had stabbed Rafig Tagiyev had been compiled on the basis of the deceased's descriptions, video-recordings from the security cameras situated in the relevant area had been taken and examined, telephone calls and SMS messages from mobile telephones in the area had been taken from the relevant operators, and various forensic examinations had been conducted. During the examination of the video-recordings, no video footage indicating that the victim had been pursued, attacked or approached by anyone had been found.

43. By a letter of 8 November 2013, the investigator informed the applicant of his decision of the same day suspending the investigation.

44. On 27 January 2014 the applicant lodged a request with the prosecuting authorities, asking for a copy of the decision of 8 November 2013. Moreover, she asked them to provide her with copies of the relevant documents of the criminal case.

45. By a letter dated 7 February 2014, the prosecuting authorities informed the applicant that she could not have access to the case file because the investigation had not been completed or discontinued, but only suspended. It was also stated in the letter that the applicant could familiarise herself with the decision of 8 November 2013 at the Serious Crimes Department of the Prosecutor General's Office.

46. On 14 April 2014 the applicant lodged a complaint against the investigator's decision of 8 November 2013. Relying on Articles 2 and 10 of the Convention, she complained that the criminal investigation had been ineffective and that the State had been responsible for the death of her husband, who had been murdered because of his publications. In that connection, she pointed out that the investigating authorities had failed to identify the perpetrators of the crime, to secure all the evidence concerning her husband's death and to provide her with a copy of forensic reports and other relevant documents. As regards the State's responsibility, she argued that, although there had been a real danger to her husband's life because of his publications, the State had failed to protect him. In particular, she submitted that he had been placed under police protection in November 2006, but that this had no longer been the case following his release from prison. She also pointed out that the publication of the article entitled "Iran and the inevitability of globalisation" on 10 November 2011 had once again made him a target for religious people, yet the State had failed to take all available measures to protect his right to life.

47. On 24 April 2014 the Nasimi District Court dismissed the applicant's complaints, finding that the decision of 8 November 2013 was lawful. In particular, the court held that the prosecuting authorities had taken all possible investigative actions to identify the perpetrators of the crime right up until the suspension of the investigation. It also held that the failure to identify the perpetrators of the crime constituted one of the grounds for suspension of the investigation and that there were no circumstances preventing the suspension of the investigation.

48. On 25 April 2014 the applicant appealed against that decision, reiterating her previous complaints.

49. On 2 May 2014 the Baku Court of Appeal upheld the first-instance court's decision, finding that the prosecuting authorities had taken all the relevant investigative actions.

50. At the time of the most recent communication with the parties – that was on 24 January 2018 when the last observation was filed in this case by the Government – the criminal proceedings were still suspended.

RELEVANT LEGAL FRAMEWORK

51. The relevant provisions of the domestic law and the relevant international documents are described in detail in the Court's judgment in *Huseynova v. Azerbaijan* (no. 10653/10, §§ 61-62 and 72, 13 April 2017).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

52. The applicant complained that the State had failed to protect the right to life of her husband and that the domestic authorities had failed to conduct an effective investigation into his murder. Article 2 of the Convention provides in so far as relevant:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life ...”

A. Admissibility

53. The Court observes that the applicability of Article 2 in the circumstances of the present case has not been disputed by the parties. However, this being a matter that goes to the Court's jurisdiction, the Court must establish it on its own motion (see *Jaunty v. Belgium*, no. 82284/17, § 58, 31 March 2020).

54. In that connection, the Court notes that, although the applicant's husband died in hospital few days after his stabbing, it is undisputed that he sustained life-threatening injuries as a result of his stabbing and the medical evidence clearly identified the stab wounds as one of the causes of his death (see paragraph 23 above). It therefore follows that Article 2 is applicable in the present case.

55. The Court notes that this 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. As to the positive obligation of the State to protect the right to life

(a) The parties' submissions

56. The applicant argued that the State had failed to protect her husband's right to life because it had known or ought to have known about a risk to his life. In that connection, she referred to the religious fatwa, issued in Iran, calling for her husband's death and protests by various religious groups and figures following the publication of the article “Europe and us” in November

2006. As regards the factual circumstances of the case, the applicant submitted in her observations on the admissibility and merits of the case that her husband had never been provided with any police protection in November 2006.

57. The Government contested the applicant's submissions. They submitted that the applicant's husband had never applied to the domestic authorities or informed them of any danger or threat to his life. In that connection, they referred to the applicant's own statements to the investigating authorities in that her husband had never discussed with her about any danger or threat to his life. Moreover, no such information had been available to the domestic authorities since the release of the applicant's husband from prison in 2007.

(b) The Court's assessment

58. The Court refers to the general principles established in its case-law and set out in *Osman v. the United Kingdom*, 28 October 1998, §§ 115-16, *Reports of Judgments and Decisions* 1998-VIII, and *Kurt v. Austria* ([GC], no. 62903/15, §§ 157-60, 15 June 2021), which are equally pertinent to the present case.

59. Turning to the circumstances of the present case, the Court notes that the question to be established in the instant case is whether the domestic authorities knew or ought to have known at the relevant time of the existence of a real and immediate risk to the life of the applicant's husband from the criminal acts of a third party and, if so, whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

60. The Court observes at the outset that there are clear discrepancies between the applicant's submissions made in her application lodged with the Court (see paragraphs 8 and 12 above) and her subsequent observations before the Court (see paragraph 56 above) as regards the placement of her husband under police protection for security reasons in November 2006. The applicant's submissions about the absence of such protection in November 2006 were also in contradiction with those she made before the domestic authorities (see paragraph 46 above). However, the Court does not find it necessary to resolve those discrepancies, as it considers that they do not affect the main issues raised in the present case.

61. In particular, the Court notes that although the applicant argued that the State had failed to protect her husband's right to life, she did not dispute the Government's submissions that her husband had never applied to the domestic authorities or informed them of any danger or threat to his life before his stabbing (compare *Huseynova v. Azerbaijan*, no. 10653/10, § 100, 13 April 2017, and contrast *Gongadze v. Ukraine*, no. 34056/02, § 167, ECHR 2005-XI). It further appears from the statements made in the criminal investigation by the applicant's husband, and the applicant herself, that he did

not receive any threat in relation to the publication of the article entitled “Iran and the inevitability of globalisation” and he did not mention or discuss with the applicant any danger or threat to his life caused by that publication (see paragraphs 19 and 27 above). The victim’s son and brothers also made similar statements to the investigating authorities (see paragraph 27 above).

62. The Court further observes that there is no material in the case file indicating that at the relevant time the law-enforcement authorities had been aware of any danger to the life of the applicant’s husband or had held any information which might give rise to such a possibility (compare *Dink v. Turkey*, nos. 2668/07 and 4 others, §§ 66-70, 14 September 2010, and *Huseynova*, cited above, § 101).

63. As regards the applicant’s reference to the religious fatwa and protests by various religious groups and figures (see paragraph 56 above), the Court does not exclude that in some circumstances a fatwa issued by a religious figure, holding a considerable religious and political influence on a community, may trigger the State’s duty to act by taking preventive operational measures. However, the Court is not convinced that in the particular circumstances of the present case the authorities knew or ought to have known at the relevant time, namely in the days preceding 19 November 2011, of the existence of a real and immediate risk to the life of the applicant’s husband from the criminal acts of a third party solely on the basis of information that in November 2006 a religious fatwa about the applicant’s husband was issued in Iran and various religious groups and figures protested against the publication of the article “Europe and us”.

64. The Court deems it necessary to reiterate that bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation under Article 2 of the Convention must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (see, among many other authorities, *Mastromatteo v. Italy* [GC], no. 37703/97, § 68, ECHR 2002-VIII; *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 111, 31 January 2019; and *Kurt*, cited above, § 158).

65. In that connection, the Court refers to its above findings that the applicant’s husband had never applied to the domestic authorities or informed them of any danger or threat to his life before his stabbing (see paragraph 61 above). The Court also does not lose sight of the fact that the applicant’s husband had not received any verbal threat or had not been subjected to any kind of intimidation, let alone physical violence, in connection with his publications following his release from prison in December 2007. The Court furthermore cannot overlook the statements of the applicant’s husband before his death in which he did not refer to the above-mentioned religious fatwa or

protests, but to his recent article about Iran published in November 2011, while indicating that he had not received any threat following its publication (see paragraphs 17-19 above).

66. For those reasons, the Court considers that it has no basis on which to conclude that the domestic authorities knew or ought to have known at the relevant time, namely in the days preceding 19 November 2011, of the existence of a real and immediate risk to the life of the applicant's husband. Therefore, the Court does not need to assess whether the domestic authorities had taken measures which could reasonably have been expected of them.

67. Accordingly, there has been no violation of the substantive limb of Article 2 of the Convention.

2. Alleged failure to carry out an effective investigation

(a) The parties' submissions

68. The applicant maintained that the criminal investigation had been ineffective and that the domestic authorities had failed to take all the measures available to them in order to bring the perpetrators of the murder to justice. She submitted in particular that the Government had failed to substantiate their submissions that all the relevant measures had been taken during the investigation. She also pointed out that she had been denied access to the case materials concerning the investigation, which had deprived her of the opportunity to assess the adequacy and integrity of the measures taken by the domestic authorities.

69. The Government submitted that the investigation had been effective and had complied with the procedural guarantees provided for by Article 2 of the Convention. The domestic authorities had taken all the necessary investigative actions and had informed the applicant and the public of the course of the investigation.

(b) The Court's assessment

70. The Court refers to the general principles established in its case-law and set out in *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 169-82 and 225, 14 April 2015), which are equally pertinent to the present case.

71. Turning to the circumstances of the present case, the Court observes that although on 20 November 2011 criminal proceedings were instituted immediately after the stabbing of the applicant's husband, by a decision of 8 November 2013 the prosecuting authorities suspended the criminal proceedings owing to the inability to identify the perpetrators of the crime and that decision was upheld by the domestic courts. It remains to be assessed whether the criminal proceedings were effective, as required by Article 2.

72. In that connection, as it repeatedly stated, the Court reiterates that the procedural obligation under Article 2 of the Convention is not an obligation

of result, but of means (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 223, ECHR 2004-III; *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014; and *Mustafa Tunç and Fecire Tunç*, cited above, § 173). In the present case, the Court observes that a number of relevant and timely investigative actions were carried out (see paragraphs 16-27 above) and it appears from the case file that the investigating authorities explored various possible motives behind the killing of the applicant's husband, including the possibility that it could have been linked to his publications (see paragraphs 25, 36 and 42 above) (contrast *Huseynova*, cited above, § 115, and *Mazepa and Others v. Russia*, no. 15086/07, §§ 77-78, 17 July 2018). In these circumstances, the Court perceives no such shortcomings as might call into question the overall adequacy of the investigation conducted by the domestic authorities.

73. However, the Court observes that even though the applicant was granted victim status in the investigation, the investigating authorities repeatedly denied her access to the case file during the investigation. In that connection, the Court cannot accept the investigating authorities' reliance on the domestic law for justifying that situation and finds it unacceptable that under the relevant domestic law, the applicant had no access whatsoever to the relevant case materials during the investigation. The Court observes that this issue has already been noted in previous cases against Azerbaijan (see *Huseynova*, cited above, § 113, and *Shuriyya Zeynalov v. Azerbaijan*, no. 69460/12, § 86, 10 September 2020). As a result of this state of domestic law, when the applicant repeatedly asked to be provided with the relevant documents concerning the ongoing criminal investigation, her requests were ignored or dismissed. That situation deprived the applicant of the opportunity to safeguard her legitimate interests and prevented sufficient scrutiny of the investigation by the public (see *Slimani v. France*, no. 57671/00, §§ 44-48, ECHR 2004-IX; *Beker v. Turkey*, no. 27866/03, § 49, 24 March 2009; and *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 250, 26 April 2011). The Court emphasises in this connection the importance of involving the families of the deceased or their legal representatives in the investigation and of providing them with information, as well as enabling them to present other evidence (see *Adalı v. Turkey*, no. 38187/97, § 232, 31 March 2005).

74. The foregoing considerations are sufficient to enable the Court to conclude that the investigation conducted into the death of the applicant's husband was ineffective as it lacked an important guarantee, that of the involvement of the deceased person's family (see, for example, *Fountas v. Greece*, no. 50283/13, § 96, 3 October 2019). There has accordingly been a violation of Article 2 of the Convention under its procedural limb as regards the extent of the involvement of the applicant in the investigation.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

75. The applicant complained that there had been a violation of the right to freedom of expression since her husband had been killed because of his publications. Article 10 of the Convention provides:

“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.”

76. The Government contested that argument.

77. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

78. The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest which the public is, moreover, entitled to receive (see, for example, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 131, ECHR 2012). The Court also reiterates that the key importance of freedom of expression as one of the preconditions for a functioning democracy is such that the genuine, effective exercise of this freedom is not dependent merely on the State’s duty not to interfere, but may call for positive measures of protection, even in the sphere of relations between individuals (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 59, ECHR 2011, with further references). In particular, the positive obligations under Article 10 of the Convention require States to create, while establishing an effective system of protection of authors or journalists, a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or are even irritating or shocking to them (see *Dink*, cited above, § 137, and *Khadija Ismayilova v. Azerbaijan*, nos. 65286/13 and 57270/14, § 158, 10 January 2019).

79. Turning to the circumstances of the present case, the Court observes that the present application should be distinguished from cases in which it found a violation of Articles 2 or 3 of the Convention under their substantive limb because the State had failed to protect the right to life of a journalist (compare *Dink*, cited above, § 137) or a journalist was subjected to the use of

force by a State agent (compare *Najaflı v. Azerbaijan*, no. 2594/07, § 67, 2 October 2012). In the present case, although the Court has found a violation of Article 2 of the Convention under its procedural limb, it has not been established that the State was involved in any way in the death or that the State failed to protect the right to life of the applicant's husband in accordance with its positive obligations (see, *mutatis mutandis*, *Uzeyir Jafarov v. Azerbaijan*, no. 54204/08, § 69, 29 January 2015, and *Huseynova*, cited above, § 121).

80. The Court considers that the present case should also be distinguished from that of *Özgür Gündem*, where the domestic authorities – which were aware of a series of violent actions against a newspaper and people associated with it – did not take any action to protect the newspaper and its journalists (see *Özgür Gündem v. Turkey*, no. 23144/93, § 44, ECHR 2000-III). In the instant case, by contrast, at the time of the events in question, neither the applicant's husband nor the newspapers and journals with which he collaborated had been subjected to threats or acts of violence. Moreover, as the Court has already found, it does not appear from the documents in the case file that the applicant's husband lodged any application or request for protection with the domestic authorities before his stabbing (see paragraph 61 above).

81. In those circumstances, the Court observes that the only issue remaining under Article 10 of the Convention is that of establishing whether or not the right to freedom of expression was violated on account of the domestic authorities' failure to conduct an effective investigation into the death of the applicant's husband. However, the Court notes that the applicant's allegations in this respect arise out of the same facts as those already examined under Article 2 and that it has already found a violation of that provision under its procedural limb as regards the extent of the involvement of the applicant in the investigation into the death of her husband (see paragraph 74 above).

82. Having regard to those findings, the Court considers that it is not necessary to examine the complaint under Article 10 of the Convention separately (see *Adalı*, § 260; *Uzeyir Jafarov*, §§ 71-72; and *Huseynova*, § 124, all cited above).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

83. Relying on Article 13 of the Convention, the applicant complained that she had not had at her disposal effective domestic remedies in respect of her complaints.

84. Having regard to the facts of the case, the parties' submissions, and the conclusions reached above under Articles 2 and 10 of the Convention (see paragraphs 74 and 82 above), the Court considers that there is no need to give a separate ruling on the admissibility and merits of that complaint in the

present case (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Azer Ahmadov v. Azerbaijan*, no. 3409/10, § 79, 22 July 2021).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 21,600 Azerbaijani manats (AZN) in respect of pecuniary damage for the loss of income caused by the death of her husband. She also claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

87. The Government submitted that the amounts claimed by the applicant were unsubstantiated and excessive.

88. The Court does not discern any causal link between the violation found and the pecuniary damage claimed by the applicant; it therefore rejects this claim. However, the Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 12,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

89. The applicant claimed AZN 7,500 for legal services incurred before the domestic courts and the Court for her representation by Mr R. Hajili and Mr E. Sadigov. She submitted a contract entered into with Mr R. Hajili and Mr E. Sadigov in support of her claim.

90. The applicant also claimed 4,275 pounds sterling (GBP) for legal services incurred in the proceedings before the Court for her representation by Ms R. Remezaite and Mr P. Leach; GBP 90 for administrative disbursements; GBP 237.52 for administrative expenses; GBP 2,409.72 and EUR 644.95 for translation expenses; and 1,750 United States dollars for the preparation of an expert report. In support of that claim, she submitted time sheets from her representatives and invoices for translation expenses.

91. The Government submitted that the amounts claimed by the applicant were unsubstantiated and excessive. They pointed out that the applicant had failed to submit any contract concerning her representation by

Ms R. Remezaite and Mr P. Leach and to justify the claimed costs and expenses.

92. The Court observes that the applicant failed to produce any contract concerning her representation by Ms R. Remezaite and Mr P. Leach or any other relevant documents showing that she had paid or was under a legal obligation to pay the fees charged by her representatives (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017; *Nasirov and Others v. Azerbaijan*, no. 58717/10, § 89, 20 February 2020; and *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, § 120, 25 June 2020). The applicant also failed to submit the relevant supporting documents for her claim relating to administrative disbursements and expenses. As regards the part of the claim for the translation of various documents and the preparation of the expert report, the Court does not consider that the translations and the preparation of the expert report were necessary for the proceedings before it (see *Allahverdiyev v. Azerbaijan*, no. 49192/08, § 71, 6 March 2014; *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 70, 12 November 2015; and *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 125, 14 October 2021). Therefore, the Court dismisses that part of the claim for costs and expenses.

93. As regards the applicant's representation by Mr R. Hajili and Mr E. Sadigov, regard being had to the documents in its possession and the amount of work carried out by the applicant's representatives, the Court considers it reasonable to award the sum of EUR 2,000 to the applicant, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 2 and 10 of the Convention admissible;
2. *Holds* that there has been no violation of Article 2 of the Convention under its substantive limb;
3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb as regards the extent of the involvement of the applicant in the investigation;
4. *Holds* that there is no need to examine the complaint under Article 10 of the Convention;
5. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;

6. *Holds*

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President