



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

FIFTH SECTION

CASE OF *KHURAL* AND ZEYNALOV v. AZERBAIJAN

(Application no. 55069/11)

JUDGMENT

Art 10 • Freedom of expression • Civil liability and sanctioning of newspaper for publishing defamatory statements about well-known high-ranking government official • Domestic courts' failure to carry out balancing exercise on competing Art 8 and 10 rights in conformity with criteria laid down in the Court's case-law • Newspaper's failure to act in good faith in order to provide accurate and reliable information • Penalty not shown to be disproportionate • Interference justified in particular circumstances, due regard being had to the need to avoid any impairment of media's "watchdog" role

STRASBOURG

6 October 2022

FINAL

06/01/2023

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

In the case of *Khural* and Zeynalov v. Azerbaijan,

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

Síofra O’Leary, *President*,

Mārtiņš Mits,

Lətif Hüseynov,

Ivana Jelić,

Mattias Guyomar,

Kateřina Šimáčková,

Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 55069/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a newspaper operating in Azerbaijan, *Khural* (*Xural*) (“the first applicant”), and an Azerbaijani national, Avaz Tapdig oglu Zeynalov (*Əvəz Tapdıq oğlu Zeynallı*), (“the second applicant”), on 17 August 2011;

the decision to give notice to the Azerbaijani Government (“the Government”) of the application, which raised a complaint concerning Article 10 of the Convention;

the parties’ observations;

Having deliberated in private on 30 August 2022,

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

INTRODUCTION

1. The case concerns the civil liability of the first applicant for having published defamatory statements about a well-known high-ranking government official. It raises issues mainly under Article 10 of the Convention.

THE FACTS

2. The first applicant, *Khural*, is a newspaper published in Baku. It has legal personality under Azerbaijani law. The second applicant, a founder and the editor-in-chief of *Khural*, was born in 1970 and lives in Baku. The applicants were represented by Mr E. Sadigov and Mr R. Hajili, lawyers based in Baku and Strasbourg respectively.

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

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

I. CIVIL DEFAMATION PROCEEDINGS AGAINST THE FIRST APPLICANT

5. On 23 May 2010 an article concerning a well-known high-ranking government official, the head of the Presidential Administration, Mr Ramiz Mehdiyev (“R.M.”), and his alleged relationships with a prominent Azerbaijani poet, Bakhtiyar Vahabzade (“B.V.”), and the ex-head of the executive authority in Sheki, Ashraf Mammadov (“A.M.”), was published in *Khural*.

6. The title of the article was “Ramiz Mehdiyev’s plan to finish Bakhtiyar Vahabzade!!! Why did the head of the Presidential Administration have to punish the Sheki community and the head of its executive [authority]?” (relevant extracts from the article appear in paragraph 8 below).

7. Mr Elchin Ugurtaj was mentioned as the author of the article. From the material submitted to the Court it is not clear whether the name in question was that of a real person or a pen name.

8. In June 2010 R.M. lodged a civil action against the first applicant with the Narimanov District Court, arguing that the above-mentioned article contained false statements damaging his honour, dignity, and professional reputation. R.M. asked the court to order the first applicant to issue an apology and refutation, and to pay 10,000 Azerbaijani manats (“AZN”) for non-pecuniary damage, to be transferred to an orphanage. R.M. argued in particular that the title of the impugned article and certain extracts from it were defamatory. The extracts concerned read as follows:

“(i) “In fact, the incident [described in an article called “Mafia and the press” published in *Gundam Khabar*] happened not in one of the districts of Baku but in Sheki. The one who was gravely insulted was not some ordinary man, but Bakhtiyar Vahabzade, [a famous Azerbaijani] poet ... Yes, ... [the ex-head of executive authority in Sheki, Ashraf Mammadov,] was given an order by Ramiz Mehdiyev not to allow Bakhtiyar Vahabzade being elected. And that was a part of a very serious plan. In that manner Mehdiyev wanted to gain revenge on Bakhtiyar Vahabzade, who hated him for many years.”

(ii) “Ashraf Mammadov’s black days began [after he had refused to obey Ramiz Mehdiyev’s order]! ... No one would forget the well-known events that had happened in Sheki during the 2000 parliamentary elections. Yes indeed, all of that was a scheme and both the Sheki community and Ashraf Mammadov ... had to be punished. Because Ramiz Mehdiyev failed to implement his big plan – the PLAN TO CRUSH Bakhtiyar Vahabzade in Sheki. That is why revenge had to be taken.”

(iii) “[It is rumoured that] the late president [Heydar Aliyev] did not allow the [Central Election Commission] to annul Bakhtiyar Vahabzade’s deputy mandate and thus proved to Mehdiyev who had the last word. As it is also rumoured that ... Mehdiyev had taken on such initiative.”

(iv) “... Bakhtiyar Vahabzade ... became an enemy of Ramiz Mehdiyev [and the latter] played the key role in the machine importing harmful ideas to Azerbaijan; [and] it is now clear that the only reason why [Bakhtiyar Vahabzade] was targeted was that he was a Turkic nationalist. ... Mehdiyev, ... not only insulted ... [Bakhtiyar Vahabzade],

but also plotted “conspiracy theories” against him. But none of that succeeded! So now, Mehdiyev is taking revenge [on Bakhtiyar Vahabzade] by not perpetuating his name [after the latter’s death].”

9. According to information submitted by the Government, the events cited in one of the above-mentioned statements (see paragraph 8 (ii) above) refer to a riot which had broken out against A.M. in Sheki in 2000.

10. On 2 July 2010 the Narimanov District Court allowed R.M.’s civil action, finding the title of the article and the extracts from it defamatory.

11. The first-instance court noted in particular that the title and the extracts from the article suggested that R.M. hated B.V., and that R.M. had therefore tried, without success, to prevent his being elected as a Member of Parliament in 2000; had organised the events of 2000 in Sheki in order to punish A.M. for disobeying; had tried to have B.V.’s mandate as an MP called off; and had prevented memorialising B.V. after the latter’s death. Furthermore, the court noted that those allegations were statements affecting R.M.’s reputation and lacking any factual basis, that the first applicant had failed to submit any evidence proving those allegations against R.M. and that the article in question constituted an abuse of the right to freedom of expression.

12. The first-instance court ordered the first applicant to issue an apology and refutation. The first applicant was also ordered to pay AZN 10,000 (which at the material time was equivalent to approximately 10,000 euros (EUR)) in respect of non-pecuniary damage, to be transferred to an orphanage as requested by the plaintiff.

13. The first applicant appealed, arguing that by publishing the article in question it had performed its role of public “watchdog”, reporting on topics of high public interest; that R.M., who was a well-known high-ranking government official, should have displayed a greater degree of tolerance of criticism against him; that the statements made in the article constituted value judgments and therefore were not susceptible of proof; and that the article merely reproduced and commented on information which had been published earlier in *Gundam Khabar* (*Gündəm Xəbər*) newspaper in May 2010, in an article entitled “Mafia and the press” (*Mafiya və mətbuat*).

14. The relevant part of the above-mentioned article published in *Gundam Khabar* had stated the following:

“Once, an ex-head [of the executive authority] of one of the biggest districts in Baku ... told what had happened to him. He said that there had been a ... writer who had lived in [that] district for many years and had run as a candidate for the parliamentary elections. ... Sometime before the elections, Ramiz Mehdiyev called and ordered me ... to ensure that another person [indicated by him] was elected. ... I was forced to [obey Ramiz Mehdiyev’s order].”

15. On 1 September 2010 the Baku Court of Appeal upheld the judgment of the first-instance court, reiterating the same grounds to which the first-instance court had referred (see paragraph 11 above).

16. The first applicant lodged a cassation appeal, reiterating its earlier complaints.

17. On 18 February 2011 the Supreme Court dismissed the appeal as unfounded and upheld the lower courts' judgments, reiterating the same grounds to which the lower courts had referred.

II. FURTHER DEVELOPMENTS

18. According to the Government, the applicants did not publish an apology or refutation, or pay the non-pecuniary damages as ordered by the domestic courts.

19. According to the applicants, on 19 October 2011 property belonging to the first applicant (such as computers, printers, heating devices and telephones) was seized under a decision (*qərardad*) given by the Narimanov District Court on the same day, to ensure the payment of the award for non-pecuniary damage in question, *inter alia*.

20. According to the applicants, after the above-mentioned seizure of its belongings *Khural* ceased publication.

21. However, it appears that its Internet version (www.xural.com) has remained active. It is not clear whether the newspaper resumed publication in paper version at a later stage.

22. According to an article published on the Internet version of *Khural* on 2 December 2011, publishing houses had refused to publish *Khural* and therefore the first applicant's staff decided to publish a new newspaper called ASI (*ASİ*). It is not clear whether the plan to publish a new newspaper ever came to fruition.

RELEVANT LEGAL FRAMEWORK

23. The relevant parts of Article 23 of the Civil Code of 2000 ("the Civil Code") provided as follows:

Article 23. Protection of honour, dignity and business reputation

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

23.2. If information harming the honour, dignity or business reputation of an individual or invading the secrecy of his or her private or family life is disseminated in the mass media, the information shall be retracted in the same mass media source ...

23.3. If the mass media publish information breaching an individual's rights and interests protected by law, that individual has the right to publish his or her reply in the same mass media source.

23.4. In addition to the right to seek a retraction of the information harming his or her honour, dignity or business reputation, the individual has the right to claim compensation for damage caused by the dissemination of such information ...”

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicants complained under Article 10 of the Convention that the civil defamation proceedings against the first applicant and the ensuing penalty had been in breach of their right to freedom of expression. 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.”

A. Admissibility

1. The first applicant

25. The Court notes that in so far as the first applicant is concerned, 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.

2. The second applicant

26. The Government argued that the second applicant could not claim to be a victim of the alleged breach of Article 10 because he had not been a party to the domestic civil defamation proceedings and because the decisions of the domestic courts had concerned only the rights and duties of the first applicant. Furthermore, neither of the two applicants provided any information about the ownership of the first applicant, such as, for example, a document showing that the second applicant had a share (if any) in the first applicant. The Government argued therefore that the application was incompatible *ratione personae* in the part concerning the second applicant.

27. The second applicant argued that he held victim status because he was a founder and the editor-in-chief of *Khural*.

28. The Court notes that the word “victim”, in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation (see *SARL du Parc d’Activités de Blotzheim v. France*, no. 72377/01, § 20, 11 July 2006). Hence, Article 34 concerns not just the direct victim or victims of the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (see, *mutatis mutandis*, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)).

29. As regards the second applicant in the present case, the Court observes that he was not a party to the domestic civil defamation proceedings, and his participation in those proceedings was limited to being a representative of the first applicant. The only respondent party in those proceedings was the first applicant. The domestic courts’ decisions did not impose any obligations on the second applicant. The Court notes in that regard that the first applicant possessed a legal personality as a registered media entity and consequently had its own rights and responsibilities, distinct from those of its founder and editor-in-chief, the second applicant (compare *Obukhova v. Russia* (dec.), no. 34736/03, 1 December 2005, and *Kumok v. Ukraine* (dec.), no. 39146/02, 6 May 2008). Furthermore, the second applicant did not argue that he was the author of the impugned article and, consequently, it cannot be said that the domestic proceedings affected him as a journalist (contrast *Godlevskiy v. Russia*, no. 14888/03, §§ 34-36, 23 October 2008).

30. In view of the foregoing considerations, the Court finds that the second applicant cannot claim to be a victim of the alleged violation of Article 10. This part of the application is thus incompatible *ratione personae* with the provisions of the Convention and the protocols thereto within the meaning of Article 35 § 3 (a) and must be rejected according to Article 35 § 4.

B. Merits

1. The parties’ submissions

31. The first applicant submitted that there had been an unjustified and disproportionate interference with its right to freedom of expression. It argued in particular that in publishing the article in question it had been fulfilling its role of public “watchdog”, reporting on issues of high public interest. In addition, R.M., whom those statements concerned, had been a well-known high-ranking government official, and in a democratic society, therefore he should have displayed a greater degree of tolerance of criticism. Furthermore, the impugned statements set out in the article in question had constituted value judgments and had therefore not been susceptible of proof. The article

in question had merely reproduced and commented on information which had been disseminated earlier in an article published in *Gundam Khabar* newspaper. Finally, the first applicant emphasised that the penalty imposed on it for non-pecuniary damage had been unduly harsh and excessive, and had caused its closure.

32. The Government submitted that the interference with the first applicant's right to freedom of expression had been "prescribed by law", in particular under Article 23 of the Civil Code. It pursued a legitimate aim as it had been intended to protect R.M.'s reputation and rights. The Government emphasised that the domestic courts had carried out an analysis of two conflicting interests, in conformity with the principles enshrined in Article 10 of the Convention and had provided relevant and sufficient reasons for their decisions. The interference had therefore been proportionate and necessary in a democratic society. In the domestic proceedings the first applicant had not presented any evidence proving the veracity of the impugned statements. As to the alleged harshness and excessiveness of the penalty imposed, the Government submitted that the first applicant had never raised that complaint before the domestic courts.

2. The Court's assessment

(a) Whether there was an interference

33. The Court considers that the judicial decisions given in the present case constituted an interference with the first applicant's right to freedom of expression.

34. The interference will not be justified under the terms of Article 10 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims set out in paragraph 2 of that Article and is "necessary in a democratic society" for the achievement of that aim or those aims.

(b) Whether the interference was lawful and pursued a legitimate aim

35. The Court considers that the interference in the present case was "prescribed by law", as required by Article 10 of the Convention – namely by Article 23 of the Civil Code (see paragraph 23 above).

36. The Court further accepts that the interference pursued the legitimate aim of protecting the reputation or rights of others within the meaning of Article 10 § 2 of the Convention, namely the good name of R.M.

(c) Whether the interference was "necessary in a democratic society"

(i) Applicable general principles

37. As provided for in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly. The adjective "necessary",

within the meaning of Article 10 § 2, implies the existence of a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10. The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts (see, among many other authorities, *Stoll v. Switzerland* [GC], no. 69698/01, § 101, ECHR 2007-V, and *Morice v. France* [GC], no. 29369/10, § 124, ECHR 2015).

38. The Court emphasises the essential function the press fulfils in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Thus, the national authorities’ margin of appreciation is circumscribed by the interest of democratic society in enabling the press to exercise its vital role of public “watchdog”. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of public “watchdog” (see, among many other authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III).

(α) Principles relevant to protection of reputation

39. The Court also reiterates that reputation is protected by Article 8 of the Convention as part of the right to respect for private life (see, among many other authorities, *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 104-07, ECHR 2012, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts)). In order to fulfil its positive obligation to safeguard one person’s rights under Article 8, the State may have to restrict to some extent the rights secured under Article 10 for another person. When examining the necessity of that

restriction in a democratic society in the interests of the “protection of the reputation or rights of others”, the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression as protected by Article 10 and, on the other, the right to respect for private life as enshrined in Article 8 (see, among many other authorities, *Bédat v. Switzerland* [GC], no. 56925/08, § 74, 29 March 2016). In order for Article 8 to come into play, however, an attack on a person’s reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see, among many others, *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012, and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017).

40. In its case-law, the Court has identified a number of relevant criteria whereby the right to freedom of expression is balanced against the right to respect for private life, including whether the impugned statements contributed to a debate of public interest; the degree of notoriety of the person affected and the subject of the publication; the context within which the impugned statements were made; the content, form and consequences of the publication; the prior conduct of the person concerned; the way in which the information was obtained and its veracity; and the nature and severity of the penalty imposed (see, among many other authorities, *ibid.*, §§ 89-95, and *Von Hannover*, cited above, §§ 108-13).

41. A distinction has to be made between private individuals and individuals acting in a public context. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures in respect of whom limits of critical comment are wider, as they are inevitably and knowingly exposed to public scrutiny and must therefore display a greater degree of tolerance (see, among many other authorities, *Milisavljević v. Serbia*, no. 50123/06, § 34, 4 April 2017, and *Prunea v. Romania*, no. 47881/11, § 30, 8 January 2019).

42. No doubt Article 10 enables the reputation of others – that is to say, of all individuals – to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues (see, among many other authorities, *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103).

(β) Principles relevant to the content, form and consequences of the publication

43. The Court draws a distinction between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the

truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself. However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient “factual basis” for the impugned statement (see, among many other authorities, *Morice*, cited above, § 126). As regards value judgments which have been found by the national courts to be of a defamatory character, the Court assesses the national court’s findings on the question whether the language used in the statement was of an excessive or dispassionate nature, whether any intention of defaming or stigmatising the opponent was disclosed, and whether the statement had a sufficient factual basis (see *Do Carmo de Portugal e Castro Câmara v. Portugal*, no. 53139/11, § 31, 4 October 2016).

44. The Court also reiterates that there is little scope under Article 10 of the Convention for restrictions on political speech or on debate concerning questions of public interest (see, among many other authorities, *Sürek and Özdemir v. Turkey* [GC], nos. 23927/94 and 24277/94, § 60, 8 July 1999, and *Wingrove v the United Kingdom*, 25 November 1996, § 58, *Reports of Judgments and Decisions* 1996-V).

(γ) Principles relevant to the method of obtaining the information and its veracity

45. As regards the method of obtaining the information and its veracity, the Court reiterates that Article 10 of the Convention does not guarantee wholly unrestricted freedom of expression, even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of that provision, freedom of expression carries with it “duties and responsibilities”, which also apply to the media even with respect to matters of serious public concern. By reason of these “duties and responsibilities”, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of public interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI).

46. The existence of procedural safeguards for the benefit of a defendant in defamation proceedings is among the factors to be taken into account in assessing the proportionality of an interference under Article 10. In particular, it is important for the defendant to be afforded a realistic chance to prove that there was a sufficient factual basis for his allegations (see, among many other authorities, *Morice*, cited above, § 155).

47. A distinction also needs to be made according to whether the statements emanate from the journalist or are a quotation of others, since punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should

not be envisaged unless there are particularly strong reasons for doing so. (see, among many other authorities, *Pedersen and Baadsgaard*, cited above, § 77).

48. In *Timpul Info-Magazin and Anghel v. Moldova*, a case in which the domestic courts had based their findings solely on the passage in the impugned article containing accusations of bribery, the Court noted that the contested passage had been taken out of context. Although the accusations were serious ones, the article read in its entirety clearly warned the reader that the rumour in question was unreliable. The Court reiterated in this judgment that the media's reporting on "stories" or "rumours" – emanating from other persons – or "public opinion" is also to be protected where they are not completely without foundation (see *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 36, 27 November 2007).

(δ) Principles relevant to the nature and severity of the penalty imposed

49. The Court reiterates that the nature and severity of the penalty imposed are also factors to be taken into consideration when assessing the proportionality of the interference with the freedom of expression guaranteed by Article 10 (see, among many other authorities, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 111, ECHR 2004-XI). The penalties imposed must not be such as to dissuade the press or others who engage in public debate from taking part in a discussion of matters of legitimate public concern (see *Lewandowska-Malec v. Poland*, no. 39660/07, § 69, 18 September 2012).

(ii) Application of the above principles to the present case

50. The Court observes that several allegations against R.M. made in the title (see paragraph 6 above) and the body (see paragraph 8 above) of the impugned article formed the basis for the first applicant's civil liability for defamation. The impugned statements (allegations) can be summarised as follows: (a) R.M. displayed animosity against and sought revenge on a prominent Azerbaijani poet, B.V.; (b) R.M. ordered A.M. to interfere in the parliamentary elections in Sheki, in one of the electoral constituencies where B.V. was standing as a candidate, with the aim of preventing the latter from being elected; (c) R.M. had fomented a riot against A.M., which had happened in Sheki in 2000; (d) R.M. had taken the initiative of annulling B.V.'s mandate as an MP; and (e) R.M. was refusing or otherwise impeding the memorialisation of B.V. after the latter's death.

51. In the Court's view those types of allegations of engaging in morally sensitive, illegal or even criminal actions were capable of damaging R.M.'s good name. The impugned statements therefore could be seen as attaining a level of seriousness sufficient to cause prejudice to R.M.'s reputation protected under Article 8 § 1 of the Convention.

52. The Court reiterates that in cases concerning a conflict between the right to reputation and the right to freedom of expression, domestic courts hearing defamation claims are expected to perform a balancing exercise between those two rights, applying the criteria established in the Court's relevant case-law (see, *inter alia*, the case-law summarised in paragraphs 38-49 above) and basing their decisions on relevant and sufficient reasons. Where such a balancing exercise has been undertaken, the Court would require strong reasons to substitute its view for that of the domestic courts (see, among others, *Axel Springer AG*, cited above, § 88; *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 138-39, ECHR 2015; and *Medžlis Islamske Zajednice Brčko and Others*, cited above, §§ 77 and 121).

53. However, even though the domestic courts in the present case identified the relevant impugned statements as affecting R.M.'s reputation and lacking any factual basis, and found that the first applicant had failed to submit any evidence regarding the allegations against R.M., in their examination (see paragraphs 10-11, 15 and 17 above) they made no reference to the relevant criteria developed in the Court's case-law. Instead, they examined the case only in terms of domestic civil law, without taking into account its Convention aspects. They failed to examine, *inter alia*, whether the impugned statements concerned a matter of public interest, take into account the context in which they were made or R.M.'s status as a well-known high-ranking government official. The courts' reasoning in regard of the content and consequences of the article in question and the factual basis of the information provided in it was brief. They failed to analyse various impugned statements separately and in detail, and to establish, *inter alia*, whether some of those statements amounted to "value judgments" and whether the article in question was based on information which had been published earlier in *Gundam Khabar*. It thus follows that, contrary to the Government's argument (see paragraph 32 above), the domestic courts failed to carry out the required balancing exercise between the first applicant's freedom of expression and R.M.'s rights and interests under Article 8 of the Convention.

54. Since the domestic courts did not apply the criteria laid down in the Court's case law for balancing freedom of expression with the right to reputation, the Court finds that it must carry out the required balancing exercise itself (for a similar approach see *Perinçek v. Switzerland* [GC], no. 27510/08, § 279, ECHR 2015 (extracts), and *Yefimov and Youth Human Rights Group v. Russia*, nos. 12385/15 and 51619/15, § 42, 7 December 2021). It will examine the necessity of the interference with the first applicant's freedom of expression on the basis of the criteria generally applicable to the dissemination of statements affecting private life by the media – namely, whether the article in question contributed to a debate of public interest, the degree of notoriety of the person affected, the content

and form of the impugned statements, the way in which the information was obtained and its veracity, and the nature and severity of the penalty imposed.

- (α) Whether the article in question contributed to a debate of public interest and the degree of notoriety of the person affected

55. The impugned statements (see the summary in paragraph 50 above) made in the article in question could undoubtedly contribute to a debate of public interest because they were about such issues as parliamentary elections, with the authorities thus having a narrow margin of appreciation, and the person concerned, R.M., was a well-known high-ranking government official, the head of the Presidential Administration. Given that R.M. was a public figure, the limits on acceptable criticism of him were wider.

- (β) As to the content and form of the impugned statements

56. The Court notes that the majority of the impugned statements (see the summary in paragraph 50 above) set out in the article in question mentioned specific dates, persons, and incidents. The Court considers them assertions of facts (statements of factual nature), contrary to the applicant's assertion that they were all "value judgments".

57. Some other statements, which were strongly charged with the author's subjective feelings and emotions, such as those claiming that R.M. had displayed animosity against B.V., could be regarded as value judgments.

- (γ) As to the way in which the information was obtained and its veracity

58. The Court observes that the first applicant failed to submit to the domestic courts or the Court any evidence demonstrating a factual basis for the impugned statements.

59. The Court takes note of the fact that the first applicant as a media outlet can claim to be vested with a public "watchdog" function, reporting on issues of high public interest. However, the first applicant was bound by the Article 10 "duties and responsibilities" and therefore had to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.

60. The Court does not accept the first applicant's argument that the impugned statements were not susceptible of proof. As has already been noted (see paragraph 56 above), the majority of the impugned statements constituted assertions of fact, and therefore the first applicant had to demonstrate that it had taken care to verify them and ensure that they were true. Furthermore, in respect of those statements which amounted to value judgments, the first applicant had to provide a "sufficient factual basis".

61. During the domestic court proceedings, the first applicant was afforded a realistic chance of demonstrating the efforts it had made, if any, to check the veracity of the impugned allegations constituting assertions of fact

and presenting adequate supporting facts for the value judgments set out in the impugned article. Nevertheless, the first applicant did not even attempt to present any evidence in support of the impugned statements, as it could have, for example, by asking the domestic courts to summon and question A.M. or other individuals. Nor did the first applicant argue that its failure to present evidence had been due to its need to keep its journalistic sources secret.

62. The Court does not accept the first applicant's argument that the article in question merely reproduced and commented on information which had been published earlier in *Gundam Khabar* newspaper – namely in an article called “Mafia and the press”. The impugned statements cannot be regarded as a quotation from the latter article. The article published in *Gundam Khabar* did not concern A.M., B.V., or the parliamentary elections in Sheki and it claimed that R.M. had interfered with the parliamentary elections in Baku (compare extracts in paragraphs 8 (i) and 14 above).

63. Furthermore, the first applicant has never argued, let alone demonstrated, that the above-mentioned or the other impugned allegations stemmed from interviews with specific people, such as, for example, A.M. It appears that all the impugned statements, apart from the allegation that R.M. had taken the initiative of annulling B.V.'s mandate as an MP, emanated from the author of the article in question himself (see extracts in paragraph 8 (i), (ii) and (iv) above) or constituted unsubstantiated rumours which were presented to the reader as reliable information (see extract in paragraph 8 (iii) above).

64. Consequently, it cannot be held that the first applicant was merely reporting what others had said about R.M. and simply omitted to distance itself.

65. In view of the foregoing considerations, the Court concludes that the first applicant failed in its “duties and responsibilities” under Article 10 of the Convention, and failed to show that prior to the publication it had acted in good faith in order to provide accurate and reliable information.

(δ) As to the nature and severity of the penalty imposed

66. The first applicant argued before the Court that the penalty imposed on it – namely the order to pay non-pecuniary damages – had been so severe that it had led to its closure.

67. The Court notes in that regard that the domestic courts found the first applicant liable in civil defamation proceedings and ordered it, *inter alia*, to pay 10,000 Azerbaijani manats (AZN) for non-pecuniary damage (which at the material time was equivalent to approximately 10,000 euros (EUR)).

68. From the material submitted to the Court it is clear that the first applicant never complained of the severity of the award before the domestic courts. Nor, apparently, did the first applicant contest the measures taken to enforce the award (see paragraph 19 above).

69. The first applicant submitted no documents either to the domestic courts or to the Court detailing its financial situation at the material time.

70. In addition, the available information concerning the consequences of the penalty for the first applicant is contradictory. Thus, on the one hand it appears that after the measures taken to enforce the award, *Khural* ceased publication in paper version. According to the first applicant, that was caused by the harsh penalty imposed on it. On the other hand, it appears that its Internet version (www.xural.com) has remained active and continued publishing articles both at the material time and well beyond. In fact, it appears that the website of the newspaper has never ceased operations. Furthermore, according to an article published on its website, the failure to publish a paper version of *Khural* had been due to the refusal of the publishing houses, and the first applicant's staff attempted to publish a newspaper under a different name (see paragraphs 21-22 above).

71. Consequently, the Court cannot conclude that the award made against the first applicant had undermined its economic foundations and led to its closure as it claimed. The Court observes that the sanction obviously had to have negative consequences for the first applicant. Nevertheless, the first applicant in the present case failed to demonstrate that the penalty imposed on it had been disproportionate.

(iii) Conclusion

72. In view of the considerations laid out in paragraph 53 above, the Court is not satisfied that the domestic courts performed the required balancing exercise between the two competing rights in the present case: the right to reputation and the right to freedom of expression. Having therefore had to assess the relevant facts itself (see in particular paragraphs 50-51 and 56-71 above), the Court concludes that the interference with the first applicant's right to freedom of expression cannot be said to have fallen short of the requirements of "necessity in a democratic society" within the meaning of Article 10 of the Convention. The Court would stress that the latter conclusion must be seen in the light of the particular circumstances of the present case, due regard being had to the need to avoid any impairment of the media's "watchdog" role.

73. Accordingly, there was no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention introduced by the first applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 10 of the Convention.

KHURAL AND ZEYNALOV v. AZERBAIJAN JUDGMENT

Done in English, and notified in writing on 6 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O’Leary
President