



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

FIRST SECTION

CASE OF *KHURAL* AND ZEYNALOV v. AZERBAIJAN (No. 2)

(Application no. 383/12)

JUDGMENT

Art 10 • Freedom of expression • Civil liability of newspaper and its editor-in-chief for slanderous defamation of executive director of the State Fund for Support of the Media • Failure to apply standards in conformity with principles embodied in Art 10 or to base decisions on an acceptable assessment of the relevant facts • Fair balance not struck between competing interests at stake • Absence of relevant and sufficient reasons

STRASBOURG

19 January 2023

FINAL

19/04/2023

*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 (no. 2),

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

Marko Bošnjak, *President*,

Péter Paczolay,

Alena Poláčeková,

Lətif Hüseynov,

Ivana Jelić,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 383/12) 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 Zeynalov* – “the second applicant”), on 13 December 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 13 December 2022,

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

INTRODUCTION

1. The case concerns the civil liability of the applicants for slanderous defamation of the executive director of the State Media Support Fund. It raises issues 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 the first applicant, 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.

A. Civil defamation proceedings against the first applicant

5. In July 2010 the Press Council and the State Media Support Fund under the President of Azerbaijan held an event commemorating the 135th anniversary of the national media. On that occasion, various journalists and newspapers received financial awards from the State Media Support Fund in the amount of 20,000 Azerbaijani manats (AZN) each (approximately 20,000 euros (EUR) at the material time). The applicants were not among the laureates (recipients).

6. A few days later, an article entitled “Isn’t Ilham Aliyev the President of *Khural*?!” was published in the 25-31 July 2010 edition of *Khural*, criticising, among other things, the executive director of the State Media Support Fund, Vugar Safarli (V.S.), for the way the above-mentioned financial awards had been managed. The second applicant was the author of the article. The article reported, *inter alia*, that *Khural* had not been included in the list of newspapers which had received an award or been invited to the event and alleged that the awards had been given in a discriminatory manner. The relevant parts read as follows:

“... This year’s [national media] anniversary event meant the death penalty for the independent press. The issue is discrimination. Newspapers, which are not backed by a political entity and which do not have organic connections with foreign or national organisations, are not just [not] supported, [they are] also obstructed (*nəinki dəstəkləyirlər, hətta köstəkləyirlər*). Even though we do great work nationally and worldwide, [being involved] in serious projects, they did not include weekly newspapers in their lists. Those lists aside, they didn’t even invite us to their event. What does all this mean?

It means that those [journalists and media outlets] who do not belong to the press empire maliciously built by Ali Hasanov [the head of the presidential administration’s Social and Political Department] will get neither money nor support. Press people are turned into tomato and cucumber sellers in a bazaar. Picture this, a ‘press butcher’ at Vugar Safarli’s level was positioned as chief of a ‘press shop’; and that butcher has been cutting and selling, selling and cutting [since then]. Now, I don’t know if Vugar Safarli will sue me for calling him a ‘press butcher’, but I know that Rauf Arifoglu, who benefits from the government’s riches at all levels, sued me ... for calling him ‘press rascality’ and ‘press dishonour’ ... Is this their press justice? So, let’s not leave Rauf Arifoglu alone, let’s apply the expressions I said to the former – [namely] ‘press rascality’ and ‘press dishonour’ – to all those who organised this year’s event. Yes, you read it right. Holding such events, committing such discrimination, pinning the independent media against the wall and leaving it no choice is nothing more than ‘press dishonour’ and ‘press immorality’ or even ‘press rascality’.

Look at their justice! They allocate [AZN] 20,000 to their 99 or 99.5% “non-sold” newspapers, give [AZN] 10,000 to their news agencies which operate as servants to [their] commands, and do not include in their lists our newspapers, on which we work day and night, which we manage to sell, each equalling the sales results of their newspapers taken as a whole. You, Ali Hasanov, didn’t you say last year that ‘next year the weekly newspapers will also be included in the list’? You, press butcher Vugar Safarli, didn’t you say the same thing as your master Ali Hasanov said [earlier]? So, what happened? Now that a year has passed, are we the ones who have not rehabilitated

ourselves, or are you the one who has begrudged us [AZN] 20,000, no damn thanks to you?!

...

This [award management] looks a bit like hungry ravens attacking a corpse. Let them tear it [among] themselves. It seems that they are giving the single-time awards to [journalists and media outlets] who are in their 'single use' ... One thing became clear from this [year's] anniversary event, dominated by 'press dishonour', 'press immorality' and 'press rascality': a new press body should be created ...

There is a game quickly gaining popularity in Baku, [a game called] 'Mafia'. The game is about the struggle of ordinary citizens against the mafia. [According to the rules of the game], there are around [four] to [five] citizens against each mafia [member] ... First, [the mafia members] pit active citizens against each other, then they ... eliminate them one by one ... Now our 'butcher Vugar' is acting exactly in accordance with the mafia rules. They are all mafia and manage the press like the mafia ..."

7. The allegations made in the above-mentioned article were further elaborated in a second article entitled "Real disgrace in [the field of the] press!!!" published on the same page of *Khural*. The relevant extracts read as follows:

"... Why is there almost no truly national and independent press among those who received the financial and [other] awards [during this year's national media anniversary event]? Let's first look at the newspapers to which the financial awards [of 20,000 Azerbaijani manats (AZN)] were given. *Ayna-Zerkalo* could be considered independent; *Azad Azərbaycan* is ... not independent; *Azadlıq* is independent; *Azərbaycan* is a media outlet financed by the State budget ...; *Azərbaydjanskiye Izvestiya* is not independent; *Bakinskiy Rabochiy* ... is financed by the Azerbaijan State Oil Company; *Baku Khabar* is independent; *525-ci Qəzet* could not be considered independent; *Bizim Yol* is partially independent; *Echo* is independent; *Express* is not independent and is financed by the 'Nurgün' holding company; *Ədalət* is ... known to be [run by] the Minister of Emergency Situations, Kamaladdin Heydarov; *Həftə İçi* ... is [run by] Kamaladdin Heydarov; *Xalq Cəphəsi* is ... linked to a political party known to be linked to Kamaladdin Heydarov; *Xalq Qəzeti* is ... financed by the State budget; *İki Sahil* ... is financed by ASOC [the Azerbaijan State Oil Company]; *Kaspi* ... belongs to the head of the presidential administration's Social and Political Department, Ali Hasanov; *Kaspiy* ... belongs to ... Ali Hasanov; *Mərkəz* ... belongs to a member of parliament, Gular Ahmadova; *Mövge* ... belongs to the executive director of the State Media Support Fund ... Vugar Safarli; *Novoye Vremya* is independent; *Olaylar* ... is financed by official circles; *Palitra* ... belongs to ... Ali Hasanov; *Paritet* ... belongs to ... Ali Hasanov; *Paralel* is not independent anymore; *Respublika* is financed by the State budget; *Səs* ... is a media outlet of the ruling New Azerbaijan Party [(*Yeni Azərbaycan Partiyası*)]; *Şərq* could not be considered independent; *Şərq Qapısı* ... is a media outlet of the Ali Majlis [Parliament] of the Nakhichevan Autonomous Republic and is financed by the State budget; *Üç Nöqtə* is not independent and is financed by the 'Azərsun' holding company; *Yeni Azərbaycan* ... is a media outlet of the ruling party and is therefore financed by official circles; *Yeni Müsavat* is not independent anymore ...

Except for four or five newspapers, it is doubtful that more than twenty-eight [of the] press outlets [mentioned] would be capable of contributing in any way to the development of the national and independent media in Azerbaijan. Secondly, it is not clear why the newspaper editorial boards which are financed by the State budget were

given the [financial] awards [in question]. Those newspapers receive assistance [anyway] ... from the State budget each year ...”

8. Following the publication, V.S. lodged a civil action against the first applicant with the Narimanov District Court, arguing that the first article contained false and insulting expressions damaging his honour, dignity and reputation. He also argued, in general terms, that other articles published in the same edition of *Khural* also contained such expressions. V.S. asked the court to order the first applicant to issue an apology and retraction of the expressions used, and to pay him AZN 10,000 in non-pecuniary damages.

9. During the court proceedings, the applicants argued that the expressions used in the first article constituted value judgments and were therefore not susceptible of proof, and that they had a sufficient factual basis. Firstly, *Khural* was an independent newspaper and the State Media Support Fund had never supported any of its projects or given it financial assistance. Secondly, the awards in question had been managed in a discriminatory manner because they had been given to less meritorious “non-sold” newspapers and the majority of the laureates had been formally or informally linked with and loyal to the government in general, various government officials or to V.S. in particular.

10. It appears from the case-file material that the applicants asked the court to demand and examine a list of the laureates of the awards in question (a copy of this request was not submitted to the Court).

11. On 12 October 2010 the Narimanov District Court partially allowed V.S.’s civil action, finding that the following expressions in the first article were false and slanderous defamation damaging his honour, dignity, and reputation:

(i) A ‘press butcher’ at Vugar Safarli’s level was positioned as a chief of a ‘press shop’.

(ii) You, press butcher Vugar Safarli.

(iii) Now our ‘butcher Vugar’ is acting exactly in accordance with the mafia rules. They are all mafia and manage the press like mafia.

(iv) Press dishonour, ‘press immorality’ and ‘press rascality’.

12. The Narimanov District Court did not give any assessment of the remaining content of the first article or of the second article.

13. The court ordered the second applicant to issue an apology and retraction of the expressions in question. The first applicant was ordered to pay the plaintiff AZN 500 (approximately EUR 500 at the material time) in respect of non-pecuniary damage. When ordering the damages, the court mentioned that it had taken into account the first applicant’s situation, its real ability to pay the damages and “other significant circumstances of the case”.

14. The applicants appealed, reiterating their earlier arguments and emphasising that by publishing the articles in question, *Khural* had performed its role of public “watchdog”, reporting on topics of high public interest.

15. The applicants also complained that the first-instance court had rejected their request to demand and examine the list of the laureates of the awards in question.

16. The plaintiff V.S. also appealed, arguing that the damages were too low.

17. On 7 February 2011 the Baku Court of Appeal upheld the first-instance court's judgment in substance, reiterating the same reasoning as the first-instance court (see paragraph 11 above). However, the appellate court increased the damages to AZN 5,000 (approximately EUR 5,000 at the material time). When increasing the damages, the appellate court, like the first-instance court, mentioned that it had taken into account the first applicant's situation, its real ability to pay the damages, and "other significant circumstances of the case".

18. The applicants lodged a cassation appeal, reiterating their earlier complaints.

19. On 17 June 2011 the Supreme Court dismissed that appeal as unfounded and upheld the appellate court's judgment, reiterating the same reasoning as the lower courts.

B. Further developments

20. It appears that the applicants did not publish an apology or pay the non-pecuniary damages as ordered by the domestic courts.

21. According to the applicants, on 19 October 2011 assets belonging to the first applicant (such as computers, printers, heating devices and telephones) were seized under a decision (*qərar*) given by the Narimanov District Court the same day, to ensure, among other things, that the non-pecuniary damages were paid.

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

23. However, it appears that the online version of the newspaper (www.xural.com) remained active and is still active to date. It is not clear whether the print version of the newspaper resumed publication at a later stage.

24. According to an article published on the online version of *Khural* on 2 December 2011, printing houses had refused to print *Khural* so the first applicant's staff decided to launch a new newspaper, ASI (*ASI*). It is not clear whether the plan to launch a new newspaper ever came to fruition.

25. Furthermore, the second applicant's failure to issue an apology and *Khural*'s failure to pay the AZN 5,000 in damages served as one of the grounds for the former's criminal conviction as a founder and the editor-in-chief of *Khural* on 12 March 2013 under Article 306.2 of the Criminal Code (non-compliance with a court judgment committed by an

official) (see *Avaz Zeynalov v. Azerbaijan*, nos. 37816/12 and 25260/14, 22 April 2021).

RELEVANT LEGAL FRAMEWORK

26. 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 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

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. The applicants complained that the civil defamation proceedings against them and the ensuing penalties had been in breach of their right to freedom of expression. They relied on Article 10 of the Convention, which 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

28. 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 applicant had provided any information about the ownership of the first applicant, such as, for example, a document showing that the second applicant had shares (if any) in the first applicant. The Government argued therefore that the application was incompatible *ratione personae* with the provisions of the Convention with regard to the second applicant.

29. The second applicant argued that he had victim status because he was a founder and the editor-in-chief of *Khural* and because the decisions of the domestic courts in the civil defamation proceedings in question had obliged him to issue an apology and retraction, and he had been criminally convicted for failure to comply with those decisions.

30. 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).

31. In the present case, the Court observes that the second applicant was not formally a party to the domestic civil defamation proceedings brought against the first applicant, which had a distinct legal personality as a registered media entity. However, the second applicant’s participation in those proceedings was not limited to being a representative of the first applicant because the domestic courts’ decisions explicitly imposed obligations on him to issue an apology and retraction (contrast *Obukhova v. Russia* (dec.), no. 34736/03, 1 December 2005, and *Kumok v. Ukraine* (dec.), no. 39146/02, 6 May 2008). Later, his failure to issue an apology and the first applicant’s failure to pay damages served as one of the grounds for his criminal conviction (see paragraph 25 above). Furthermore, he wrote the expressions in question and, consequently, the domestic proceedings also affected him as a journalist (compare *Godlevskiy v. Russia*, no. 14888/03, §§ 34-36, 23 October 2008).

32. In view of the foregoing considerations, the Court rejects the Government’s objection and finds that the second applicant can claim to be a victim of the alleged violation of Article 10.

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

B. Merits

1. The parties' submissions

34. The applicants submitted that there had been an unjustified and disproportionate interference with their right to freedom of expression. In particular, they argued that in publishing the articles about the management of the State Media Support Fund's financial awards, they had been fulfilling their role of public "watchdog", reporting on issues of high public interest. In addition, V.S., whom the impugned expressions had concerned, had been a public figure and government official, and in a democratic society, therefore he should have displayed a greater degree of tolerance of criticism. Furthermore, the impugned expressions had constituted value judgments supported by a sufficient factual basis.

35. Lastly, the applicants submitted that the penalty imposed on the first applicant for non-pecuniary damage had been unduly harsh and excessive, causing its closure, and that the obligation to issue an apology imposed on the second applicant had been contrary to his right to freedom of thought.

36. The Government submitted that the interference with the applicants' right to freedom of expression had been "prescribed by law", in particular under Article 23 of the Civil Code. It had pursued a legitimate aim as it had been intended to protect V.S.'s reputation and rights. Furthermore, the interference had been "necessary in a democratic society" for the following reasons. In the domestic proceedings, the applicants had not presented any evidence proving their allegations against V.S. They had published a personal attack on V.S. because they had been biased against him and displeased with the fact that their application for the State Media Support Fund's financial award had been rejected. The domestic courts, for their part, had correctly identified the expressions in question as defamatory and provided relevant and sufficient reasons for their decisions. As to the alleged harshness and excessiveness of the penalty imposed, the applicants had never raised that complaint before the domestic courts.

2. The Court's assessment

(a) Whether there was an interference

37. The Court considers that the civil defamation proceedings and the ensuing penalties against the applicants constituted an interference with their exercise of the right to freedom of expression.

38. An interference will not be justified under 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

39. The Court considers that the interference in the present case was “prescribed by law”, as required by Article 10 of the Convention, under Article 23 of the Civil Code (see paragraph 26 above).

40. 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, that is, the personality rights and good name of V.S.

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

(i) Applicable general principles

41. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society. Subject to paragraph 2 of Article 10 of the Convention, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no “democratic society” (see, among many other authorities, *Bédat v. Switzerland*, [GC], no. 56925/08, § 48, 29 March 2016).

42. Although the press must not overstep certain bounds, particularly in respect of the reputation and rights of others, 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 the above-mentioned role (see, among many other authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III).

43. 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 must 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, *Bédat*, cited above, § 48).

(α) Principles relevant to protection of reputation

44. 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, *ibid.*, § 74).

45. 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, *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012, and *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 108-13, ECHR 2012).

46. A distinction must 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).

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

47. 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, which is a fundamental part of the right secured by Article 10. However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient “factual basis” for the impugned statement (see, among many other authorities,

Pedersen and Baadsgaard v. Denmark [GC], no. 49017/99, § 76, ECHR 2004-XI). 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).

48. A clear distinction must be made between criticism and insult and the latter may, in principle, justify sanctions (see, among other authorities, *Skalka v. Poland*, no. 43425/98, § 34, 27 May 2003, and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 67, ECHR 2011). The causing of offence may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example where the sole intent of the offensive statement is to insult a person. However, the use of vulgar phrases is not in itself decisive in the assessment of an offensive expression as it may well merely serve stylistic purposes. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the content of the expression (see *Gül and Others v. Turkey*, no. 4870/02, § 41, 8 June 2010; *Uj v. Hungary*, no. 23954/10, § 20, 19 July 2011; and *Grebneva and Alisimchik v. Russia*, no. 8918/05, § 52, 22 November 2016).

49. Journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation, and it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case (see, among other authorities, *Axel Springer AG*, cited above, § 81; *Thoma v. Luxembourg*, no. 38432/97, §§ 45-46, ECHR 2001-III; and *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V). The role of the domestic courts in defamation proceedings does not consist of indicating to the journalist the style to be adopted and the bare minimum of the terms and qualifications to be used when the latter exercises, within the framework of his or her profession, his right to criticise, even in a caustic manner. The domestic courts are instead called upon to examine whether the context of the case, the interest of the public and the intention of the journalist justified the possible use of a dose of provocation or exaggeration (see *I Avgi Publishing and Press Agency S.A. and Karis v. Greece*, no. 15909/06, § 33, 5 June 2008, and *Matalas v. Greece*, no. 1864/18, § 50, 25 March 2021).

50. 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).

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

51. The Court observes that several expressions used in respect of V.S. formed the basis of the applicants' civil liability for slanderous defamation (see paragraph 11 above). The domestic courts concluded that they conveyed false and insulting information damaging V.S.'s honour, dignity, and reputation.

52. The Court finds that using the expressions in question (namely, calling V.S. a "butcher" in the field of the press, characterising his actions as "press dishonour", "press immorality" and "press rascality", comparing them to those of the "mafia" in the proper sense of this word or to those of the "mafia" in a popular social game) and accusing him of conduct that could be regarded as unprofessional, unethical, dishonest or even criminal under domestic law - were not only capable of tarnishing his reputation, but also of causing him harm in both his professional and social environment. Accordingly, the accusations attained a level of seriousness sufficient to harm his honour, dignity, and reputation.

53. The Court must therefore ascertain whether the domestic authorities struck a fair balance between the two values guaranteed by the Convention – the applicants' freedom of expression, as protected by Article 10, on the one hand, and V.S.'s rights and interests under Article 8 on the other; whether the domestic authorities applied the criteria established in the Court's case-law on freedom of expression; and whether the reasons that led the domestic authorities to take their decisions were sufficient and relevant such as to justify the interference with the right to freedom of expression.

54. The Court notes that the expressions in question were the only statements used by the domestic courts (see paragraphs 11-12 above) from the whole of the impugned articles to infer its author's intention to defame the plaintiff, V.S. They regarded those expressions as allegations of fact and deemed them to be false. The courts did not examine whether the expressions in question could be value judgments and, if so, whether they had a sufficient factual basis. On the contrary, they merely assessed whether the expressions in question had been capable of causing V.S. mental suffering and damage to his personality rights and reputation.

55. In view of the limited scope of the domestic courts' reasoning, the Court is not persuaded by their above-mentioned approach and cannot share their conclusion. Thus, given the entire content of the two articles and the explanations provided by the applicants before the domestic courts, and bearing in mind that journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation, or in other words to make somewhat immoderate statements, the Court considers that the expressions in question amounted to an opinion – albeit voiced provocatively and in a caustic manner, using words which could be considered vulgar – because they represented the second applicant's subjective assessment of the whole allegedly discriminatory, unfair and dishonest management of the State Media Support

Fund's financial awards, as described throughout the entire content of the two articles. As such, in the circumstances of the present case, the disputed expressions amounted to value judgments rather than statements of fact.

56. Moreover, the personal reference to V.S. was not meaningless since he was the executive director of the State Media Support Fund and one of the organisers of the event in question. Therefore, placed in the context of the articles, the disputed expressions aimed to harshly criticise the chief of a State body responsible for managing the money coming from the State budget and aimed at supporting the media in Azerbaijan, rather than an intention to "wantonly denigrate", that is to say to simply insult or gratuitously defame V.S.

57. The question, therefore, is whether the applicants provided a sufficient factual basis for the value judgments in question and for justification of the harsh style adopted in the first article.

58. In this regard, the Court notes that, both in the impugned articles and before the domestic courts, the applicants put forward several allegations of fact in support of the disputed expressions. In particular, they argued that the majority of the laureates were formally or informally affiliated with the government, various government officials and even with V.S. personally (see paragraph 9 above). They also asked the first-instance court to demand and examine a list of the laureates of the awards in question. Furthermore, the second article further elaborated on the above-mentioned allegations by providing the list of laureate newspapers, their background details, relations with the government or alleged relations with the government, various government officials and V.S. personally (see paragraph 7 above). It follows therefore that the applicants were careful to put the disputed expressions into context and explain them – they took reasonable care to articulate clearly why, in their view, the way the financial awards in question had allegedly been managed deserved such a strong reaction from their side (contrast, *Skalka*, cited above, §§ 36-37).

59. The Court also agrees with the applicants' argument that the disputed expressions were made in the context of a debate of high public interest, because the applicants' above-mentioned allegations were about such issues as management of the money coming from the State budget and meant to assist media outlets – a field where a high level of protection of freedom of expression should normally be accorded, with the authorities thus having a narrow margin of appreciation.

60. However, the Court cannot assess the truthfulness of the applicants' above-mentioned allegations, as this was a task entrusted to the relevant domestic authorities. Nevertheless, it considers that the dismissal of the applicants' arguments was not justified by relevant and sufficient reasoning.

61. Thus, the domestic courts' judgments contained no specific reasoning rebutting the applicants' assertions of fact or any assessment as to their veracity (see also paragraph 54 above). They also failed to explain why they

had not requested and examined the list of the laureates of the awards in question, despite the applicants' request and complaints in that regard. Consequently, the applicants were not afforded an effective opportunity to argue their case and prove their allegations. Furthermore, as mentioned earlier, the domestic courts focused only on the caustic nature of the specific expressions used in the first article. To assess the author's intention, the courts did not transpose those expressions into the general context of the case. Consequently, the courts lost sight of the fact that, instead of limiting themselves to examining the style adopted by the author, they had been called upon to examine whether the context of the case, the public interest and the intention of the author justified the use of a dose of provocation.

62. The domestic courts also failed to take into account and provide an analysis on other relevant considerations such as the applicants' role as a newspaper and journalist respectively and the plaintiff's status. With regard to the latter, the Court notes that V.S., the target of the disputed expressions and the executive director of the State Media Support Fund, was a State official with important public functions, and well-known at least to journalists and the mass media. The plaintiff could not therefore be likened to an ordinary private individual but rather to a public figure. Nevertheless, the domestic courts failed to consider the public-figure status and degree of notoriety of V.S. and that, in accordance with the Court's case-law, the limits of acceptable criticism with regard to public figures such as V.S. were wider than in relation to private individuals.

63. Having regard to all the above, the Court considers that the domestic courts failed to strike a fair balance between the applicants' freedom of expression and V.S.'s rights and interests, to apply standards which were in conformity with the principles embodied in Article 10, to rely on an acceptable assessment of the relevant facts and to base their decisions on relevant and sufficient reasons.

64. In view of the above finding, the Court does not consider it necessary to examine other issues raised by the applicants in the present complaint, in particular, whether the requirement to pay damages imposed on the first applicant was excessive (see paragraph 35 above).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicants claimed 32,000 euros (EUR) jointly in respect of pecuniary damage allegedly caused by confiscation of the first applicant's computers and other equipment on 19 October 2011. They also claimed EUR 90,000 jointly in respect of non-pecuniary damage.

67. The Government argued that the applicants' claim in respect of pecuniary damage was unsubstantiated and that they had failed to demonstrate a causal link between the alleged violation and pecuniary damage. The Government also argued that the applicants' claim in respect of non-pecuniary damage was excessive and that the finding of a violation would constitute sufficient reparation.

68. The Court considers that the applicants failed to substantiate their claim in respect of the pecuniary damage alleged; it therefore rejects this claim. However, ruling on an equitable basis, the Court awards the applicants EUR 4,500 jointly in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

69. The applicants also claimed EUR 8,000 for the costs and expenses incurred before the domestic courts and the Court. In support of their claim, they submitted a contract signed by them and their representative, Mr E. Sadigov.

70. The Government submitted that the amount claimed by the applicants was excessive and that the sum of EUR 1,000 would constitute sufficient reimbursement.

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 in respect of the legal services rendered by Mr E. Sadigov, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, 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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of the legal services rendered by Mr E. Sadigov, to be paid directly into the bank account of this representative;
- (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;

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

Done in English, and notified in writing on 19 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President