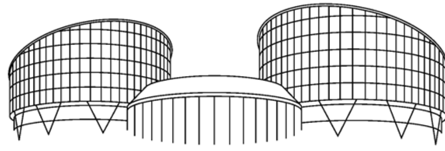

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GULIYEV v. AZERBAIJAN

(Application no. 54588/13)

JUDGMENT

Art 8 • Private life • Unlawful dismissal of assistant prosecutor for conduct in his private life deemed to breach the Ethics Code for employees of the prosecutor's office • Unforeseeable interpretation and application of domestic law failing to protect applicant against arbitrary interference • No factual or relevant legal grounds established justifying dismissal

STRASBOURG

6 July 2023

FINAL

06/10/2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Guliyev v. Azerbaijan,

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

Marko Bošnjak, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Ivana Jelić,
Gilberto Felici, *judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 54588/13) 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, Mr Shamil Nabi oglu Guliyev (*Şamil Nəbi oğlu Quliyev* – “the applicant”), on 19 August 2013;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints concerning Articles 6 and 8 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 13 June 2023,

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

INTRODUCTION

1. The present case concerns the applicant’s dismissal from the prosecution service. He complained, in particular, that his dismissal had been unlawful and in breach of his right to respect for his private life as provided for in Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1974 and lives in Baku. He was represented by Mr M. Mustafayev, a lawyer practising in Baku.

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

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

I. CRIMINAL PROCEEDINGS CONCERNING THE INCIDENT OF 14 JUNE 2009

5. In 2002 the applicant, an assistant prosecutor at the Gazakh prosecutor’s office, met G.G., a surgeon at a local hospital. Some time later they started dating. In 2006 the applicant moved to Baku and began working

as a prosecutor at the Prosecutor General's Office. G.G. also moved to Baku after some time. The two continued their relationship.

6. However, in 2008, the relationship between the applicant and G.G. deteriorated and the applicant decided to break up with G.G.

7. On 14 June 2009 a quarrel involving the applicant, G.G. and one E.A. broke out in front of and continued inside the applicant's flat. As a result of it, all three suffered slight injuries which did not attain the threshold necessary to be classified as "minor".

8. In July 2009 a criminal investigation under Article 132 (battery) of the Criminal Code was launched into the incident of 14 June 2009.

9. When questioned as a witness the applicant stated, *inter alia*, that prior to the incident, G.G. had been pressuring him not to break up with her, by using various threats and pleading with him; that on 14 June 2009 G.G. had hit his head with an ashtray and begun fighting with E.A. because she had told G.G. that he (the applicant) had been engaged to someone else and had been planning on getting married.

10. During her questioning as a witness, G.G. stated, *inter alia*, that the applicant had been abusive and violent towards her prior to the incident; that the quarrel on 14 June 2009 had begun because the applicant had ordered someone over the phone to kill her and she (G.G.) had demanded to know with whom the applicant had been talking; and that both he and E.A. had physically attacked her.

11. By a decision of 29 August 2009 adopted by the investigator (H.A.) in charge of the case, G.G. and E.A. were formally charged under Article 132 (battery) of the Criminal Code for having hit each other. G.G. was also charged under the same Article for having hit the applicant. By the same decision, the investigator refused to open a criminal case against the applicant, on the ground that there had been no elements of an offence in his actions. The investigator held that G.G.'s allegations against the applicant lacked credibility, whereas his allegations against G.G. had been supported by, *inter alia*, witness statements (in particular, statements by one S.Sh.), logs of mobile telephone calls between G.G. and the applicant, and the contents of G.G.'s text messages to him (in which G.G. had repeatedly pressured him not to end their relationship, by employing various threats and pleading with him).

12. By a judgment of 24 December 2009 of the Nasimi District Court, G.G. and E.A. were found guilty as charged (see paragraph 11 above) and sentenced to pay fines.

13. On appeal, the first-instance court's judgment was upheld by the Baku Court of Appeal on 14 July 2010. On further appeal, the Supreme Court in turn upheld the appellate court's judgment by a decision of 28 January 2011.

14. During her trial, G.G. repeated the allegations summarised in paragraph 10 above. The courts examining the case held that G.G.'s allegations lacked credibility whereas the applicant's allegations against G.G.

had been supported by the evidence (the courts mainly referred to the same evidence as listed in paragraph 11 above).

II. DEFAMATION PROCEEDINGS BROUGHT BY THE APPLICANT

15. In August, September and October 2009 and in May 2010, G.G. had a series of articles published in a newspaper called *Gündəlik Bakı* (Daily Baku). The articles were entitled "Employee of the Prosecutor General's Office tries to escape [consequences of] crime", "What is Shamil Guliyev's purpose in surrounding me with fake witnesses?", "Who can guarantee that people like Shamil Guliyev are not going to become tomorrow's Haji Mammadovs?", "Our future is also a mockery", "Rambo-girl and Shamil Guliyev, an officer-in-charge of the Prosecutor General's Office", "Shamil Guliyev definitely has to attend a psychotherapist", "Shamil Guliyev's case is in the Court of Appeal[.] Investigator Haji Afandiyev remained silent in court", and "Shamil Guliyev has been unmasked". They reported G.G.'s account of the incident of 14 June 2009 and accused the applicant of beating and threatening her (the parties did not submit a copy of the articles to the Court).

16. Some time after the publication of the articles, the applicant brought a civil defamation action in the Yasamal District Court against *Gündəlik Bakı*, H.V. (its editor-in-chief), and G.G., who was presented in the action as a special correspondent of the newspaper. The applicant argued that information disseminated in the above-mentioned articles had been false and damaging to his honour and dignity. He asked the court to order a retraction and to make an award in respect of pecuniary and non-pecuniary damage.

17. By a judgment of 25 August 2011, the Yasamal District Court partially granted the applicant's civil action, finding that the information complained of was false and damaging to his honour and dignity. The first-instance court also ordered that a retraction be published in *Gündəlik Bakı* and that in that retraction the editor-in-chief offer an apology to the applicant. The applicant's claims in respect of pecuniary and non-pecuniary damage were dismissed.

18. On appeal, that judgment was upheld by the Baku Court of Appeal on 1 February 2012. On further appeal, the Supreme Court in turn upheld the appellate court's judgment by a decision of 3 July 2012.

III. THE APPLICANT'S DISMISSAL FROM THE PROSECUTION SERVICE

19. While the above-mentioned criminal proceedings (see paragraphs 8 and 11 above) were ongoing, G.G. complained about the applicant to various State authorities, including his employer, the Prosecutor General's Office ("the employer").

20. On 5 August 2009, a Deputy Prosecutor General convened a special meeting of several senior employees to discuss G.G.'s complaints against the applicant, who was also present. During the meeting, the Deputy Prosecutor General adopted a decision demanding that the applicant settle his dispute with G.G., and issued an official warning to the effect that if G.G.'s complaints against him persisted he would face a serious disciplinary measure (according to the minutes of the meeting, the same factual grounds summarised in paragraph 22 (i) below were held against the applicant).

21. On 24 May 2010, the applicant was "dismissed from the prosecution service" (*prokurorluq orqanlarından xaric etmə*) under an order issued on the same day by the Prosecutor General, on the grounds that the applicant had committed actions incompatible with the position of prosecutor, undermined the dignity of the profession and grossly violated the Ethics Code for Employees of the Prosecutor's Office ("the Ethics Code").

22. The order indicated the following factual reasons for the applicant's dismissal:

> "[(i)] For a long time, [the applicant] ... had been in a close relationship and lived with [G.G.] without intending to start a family with her. As a result of [his] failure to take the relevant measures to regularise his private relationship [with G.G.] in accordance with law, the couple had had regular arguments and on 14 June 2009 a quarrel broke out between them which resulted in injuries to the parties, and which subsequently became the subject of an investigation by the criminal prosecution authorities. As a result, [G.G.] lodged numerous complaints [against the applicant] to various State bodies and articles were published about the [incident] in mass media outlets.
>
> [(ii)] Despite the [relevant] recommendations, ... [the applicant] failed to draw [the necessary] conclusions and to take steps to solve the problem stemming from his personal relationship [with G.G.] and thus eliminate the reasons for the complaints [by G.G. against him]."

23. Apart from referring in general terms to the Ethics Code, the order referred to "Article 33 (7), paragraph 7, and Article 34, paragraph 9, of the Law on the Prosecutor's Office and Article 27.1.7 of the Law on Service at the Prosecutor's Office".

IV. PROCEEDINGS BROUGHT BY THE APPLICANT AGAINST THE EMPLOYER

24. On 6 August 2012 the applicant sent a letter to the employer asking to be reinstated in his position as a prosecutor. According to the applicant, he did not receive any reply to that letter.

25. Some time later, the applicant lodged an action against his former employer with Baku Administrative-Economic Court no. 1, seeking his reinstatement as a prosecutor. The applicant maintained that the order of 24 May 2010 dismissing him from the prosecution service had had no lawful grounds. He argued in particular that G.G.'s allegations against him had been false, as had been established by the above-mentioned decision of 29 August

2009 (see paragraph 11 above), by the judgments concerning the incident of 14 June 2009 (see paragraphs 12-14 above) and by the judgments in the defamation proceedings (see paragraphs 17-18 above).

26. On 21 November 2012 Baku Administrative-Economic Court no. 1 dismissed the applicant's action. The court repeated the reasoning (see paragraph 22 above) given in the order of 24 May 2010 and declared that his dismissal had been lawful.

27. The applicant appealed, reiterating his earlier complaints and arguing that none of the factual grounds listed in the order of 24 May 2010 could serve as a lawful ground for his dismissal. In particular, the fact that he had been in a relationship with G.G. without intending to marry her or the fact that she had been publishing defamatory articles about him could not be considered lawful grounds for the dismissal. He also argued that the first-instance court had failed to analyse the lawfulness of the reliance on the factual grounds listed in the order dismissing him and had failed to take into account the decisions and judgments in his favour adopted during the criminal proceedings concerning the incident of 14 June 2009 and during the defamation proceedings. The applicant complained that the judgment of the first-instance court had been in breach of, *inter alia*, his right to respect for his private life.

28. By a judgment of 5 March 2013, the Court of Appeal upheld the first-instance court's judgment, without addressing any of the applicant's specific arguments.

29. The applicant lodged a cassation appeal reiterating his arguments. By a final decision of 6 June 2013, the Supreme Court dismissed the applicant's cassation appeal and upheld the appellate court's judgment, reiterating the same reasoning as the lower courts.

RELEVANT LEGAL FRAMEWORK

30. The relevant part of Article 33 of the Law on the Prosecutor's Office provided at the material time as follows:

Article 33. Responsibilities of employees of the prosecutor's office

"[((7) paragraph 1)] One of the following disciplinary punishments may be imposed on an employee of the prosecutor's office for a violation of service discipline:

...

[(paragraph 7)] dismissal from a position (*vəzifədən azad etmə*) (in this case the employee of the prosecutor's office may be placed on probation (*sərəncam*) for up to three months; if during that period no grounds for the person's dismissal from the prosecution service arise, he or she shall be appointed to [another] position in the prosecution service);

[(paragraph 8)] dismissal from the prosecution service (*prokurorluq orqanlarından xaric etmə*); ..."

31. The relevant part of Article 34 of the Law on the Prosecutor's Office provided at the material time as follows:

Article 34. Grounds for dismissal from the prosecutor's office and for removal from the list of employees of the prosecutor's office

"An employee of the prosecutor's office shall be dismissed from the prosecutor's office on the following grounds:

...

[(paragraph 9)] If it is established that he or she had not met the requirements set out by this Law for candidates [for the position] of prosecutor, investigator or operations officer of the prosecutor's office (*prokurorluğun müstəntiqi və ya əməliyyatçısı*);

[(paragraph 10)] If he or she ... commits an action incompatible with the position of prosecutor, investigator or operations officer of the prosecutor's office."

32. The relevant part of Article 26 of the Law on Service at the Prosecutor's Office provided at the material time as follows:

Article 26. Forms of disciplinary liability

"26.1. One of the following disciplinary punishments may be imposed on an employee of the prosecutor's office for the violation of service discipline and improper execution of his or her obligations (*vəzifələrini layiqincə icra etmədiyinə görə*):

...

26.1.7. dismissal from the prosecution service (*prokurorluq orqanlarından xaric etmə*); ..."

33. Article 27.1 of the Law on Service at the Prosecutor's Office provided at the material time as follows:

Article 27. The procedure for imposing disciplinary liability on an employee of the prosecutor's office

"27.1. The measures of disciplinary liability shall be applied by the Prosecutor General."

34. The Ethics Code for Employees of the Prosecutor's Office, approved by a decision of 8 February 2008 of the Collegium of the Prosecutor General's Office, provides for a number of ethical requirements concerning the behaviour of employees of the prosecutor's office in both their professional and private lives.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicant complained that his dismissal from the prosecution service had been unlawful and in breach of his right to respect for his private life as provided for in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private ... life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

36. The Government argued that the applicant had failed to exhaust the available domestic remedies for this complaint.

37. The applicant contested that argument.

2. The Court's assessment

(a) The Government's objection on admissibility

38. Having regard to the material submitted to it, the Court notes that the applicant raised the present complaint before the domestic courts, as is clear from his submissions before the Court of Appeal and the Supreme Court (see paragraphs 28 and 29 above). Thus, he has exhausted domestic remedies. The Court therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies.

(b) Applicability of Article 8

39. As the question of applicability of Article 8 is an issue of the Court's jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits. No such particular reason exists in the present case and the Court therefore has to examine whether Article 8 of the Convention is applicable, and accordingly whether it has jurisdiction *ratione materiae* to examine the relevant complaint on the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 92-93, 25 September 2018).

40. While no general right to employment or to the renewal of a fixed-term contract, right of access to the civil service or right to choose a particular profession can be derived from Article 8, the notion of "private life" does not exclude, in principle, activities of a professional or business nature (see *Fernández Martínez v. Spain* [GC], no. 56030/07, §§ 109-10, ECHR 2014 (extracts); *Bărbulescu v. Romania* [GC], no. 61496/08, § 71, 5 September 2017; and *Jankauskas v. Lithuania (no. 2)*, no. 50446/09, §§ 56-57, 27 June 2017). Indeed, private life encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature (see *C. v. Belgium*,

7 August 1996, § 25, *Reports of Judgments and Decisions* 1996-III, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 165, ECHR 2013).

41. There are some typical aspects of private life which may be affected in employment-related disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. These aspects include (i) an applicant's "inner circle", (ii) an applicant's opportunity to establish and develop relationships with others, and (iii) an applicant's social and professional reputation. There are two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences the impugned measure has for an applicant's private life (in that event the Court employs the consequence-based approach) (see *Denisov*, cited above, § 115).

42. However, Article 8 cannot be relied on in order to complain about a loss of reputation which is the foreseeable consequence of one's own actions, such as, for example, the commission of a criminal offence (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII). This principle is valid not only for criminal offences but also for other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life" (see *Denisov*, cited above, § 98).

43. In the present case, the Court notes that the reasons for the applicant's dismissal from the prosecution service (*prokurorluq orqanlarından xaric etmə*) were closely related to his relationship, and personal conflict, with his former girlfriend (G.G.) and were therefore clearly linked to his private life. Furthermore, dismissal constituted one of the harshest disciplinary sanctions possible in the applicant's profession, having serious consequences for his professional life, including his future career prospects, and for his professional and personal reputation. Indeed, the dismissal called into question his moral character and stigmatised him in the eyes of society due to the situation of his private life and despite him not having been charged with any crime but rather found to be the victim both in the criminal case against G.G. and in the defamation proceedings. Furthermore, the applicant's dismissal meant not only that he lost his position, but also that he was expelled from his profession and could no longer be employed in any part of the prosecution service. The Court finds, therefore, that Article 8 is applicable in the present case primarily under its reasons-based approach but also due to the consequences that it had for the applicant's private life (compare, *Mile Novaković v. Croatia*, no. 73544/14, §§ 47-49, 17 December 2020, see also *Juszczyszyn v. Poland*, no. 35599/20, §§ 235-37, 6 October 2022).

(c) Conclusion on admissibility

44. 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. The parties' submissions

45. The applicant submitted that the reasons specified in the order of 24 May 2010 could not serve as lawful grounds for his dismissal and that the domestic courts had failed to analyse the question of the lawfulness of his dismissal on those grounds and to take into account the decisions and judgments in his favour adopted during the criminal proceedings concerning the incident of 14 June 2009 and during the defamation proceedings.

46. The Government submitted that the interference with the applicant's right to respect for his private life had been lawful, had pursued a legitimate aim, had been necessary and proportionate to that legitimate aim, in so far as it had concerned the duty of prosecutors to exercise restraint in order to preserve their reputation, independence and authority. The applicant's dismissal had been in accordance with the relevant substantive and procedural norms, in particular the Law on the Prosecutor's Office and the Law on Service at the Prosecutor's Office. The decision to dismiss him had been taken because of the applicant's conduct, which had affected the reputation and integrity of the prosecution service. The applicant had been afforded sufficient safeguards: in particular, before being dismissed he had been officially warned about his improper conduct and the possibility of his dismissal, and the decisions of the domestic courts examining the lawfulness of the dismissal had been reasoned, fair and based on impartial and comprehensively assessed evidence.

2. The Court's assessment

47. In view of the considerations above (see paragraph 43) regarding the applicability of Article 8 of the Convention, the Court considers that the applicant's dismissal from the prosecution service amounted to an interference with his right to respect for his private life.

48. The Court reiterates that the interference will be justified under the terms of Article 8 of the Convention if 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 aims.

49. The Court further reiterates that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention require that the impugned measure must have some basis in domestic law and also be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and is inherent in all its Articles (see, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 249, 22 December 2020, with further references).

50. The expressions "prescribed by law" and "in accordance with the law" also refer to the quality of the law in question, requiring that it should be

accessible to the persons concerned and foreseeable as to its effects (see, among many other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V, and *Milojević and Others v. Serbia*, nos. 43519/07 and 2 others, § 62, 12 January 2016). The notion of "quality of the law" requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interference by public authorities (see, *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 93, 20 January 2020, with further references).

51. In assessing the lawfulness of an interference, and in particular the foreseeability of the domestic law in question, the Court has regard both to the text of the law and to the manner in which it was applied and interpreted by the domestic authorities (see *Jafarov and Others v. Azerbaijan*, no. 27309/14, § 70, 25 July 2019). Practical interpretation and application of the law by the domestic courts must give individuals protection against arbitrary interference (see *Selahattin Demirtaş*, cited above, § 275, and *Hasanov and Majidli v. Azerbaijan*, nos. 9626/14 and 9717/14, § 64, 7 October 2021).

52. In the present case, the applicant was subjected to one of the harshest disciplinary measures possible in his profession on the basis of the provisions of the Law on the Prosecutor's Office and of the Law on Service at the Prosecutor's Office, pursuant to which an employee of the prosecutor's office could be "dismissed from the prosecution service" if he or she breached "service discipline", committed an "action incompatible with the position of prosecutor", or "improperly executed his or her obligations" (the citations made by the domestic authorities (see paragraph 23 above) appear incorrect: instead of referring to paragraph 8 of Article 33 (7) and paragraph 10 of Article 34 of the Law on the Prosecutor's Office, they referred, respectively to paragraphs 7 and 9 of the same Articles and instead of referring to Article 26.1.7 of the Law on Service at the Prosecutor's Office, non-existent "Article 27.1.7" of the same Law was mentioned; see paragraphs 30-32 above). Furthermore, the order of 24 May 2010 dismissing the applicant stated that he had "committed actions incompatible with the position of prosecutor, undermined the dignity of the profession and grossly violated [the Ethics Code]" (see paragraphs 21 above).

53. The Court notes that the above-mentioned provisions of the law were worded in very general and vague terms allowing for a broad interpretation by the domestic authorities. Thus, without entering into a detailed analysis of whether the text of those provisions was foreseeable, the Court will focus on the way the domestic authorities, in particular the domestic courts, interpreted and applied them, paying particular attention to the factual grounds the authorities held against the applicant and the reasoning of the domestic courts' decisions.

54. In this respect, the Court observes that, according to the order of 24 May 2010, the factual grounds held against the applicant by his employer consisted of (i) his failure to solve his "problems" with his former girlfriend, G.G., which it claimed were the result of the fact that the applicant "had been in a close relationship and lived with [G.G.] without intending to start a family with her"; (ii) the opening of a criminal investigation into the incident of 14 June 2009; and (iii) the applicant's inability to prevent G.G. from complaining to various State bodies and publishing articles criticising him in connection with that incident (see paragraph 22 above).

55. The Court notes in that regard that the order of 24 May 2010 did not indicate which norm of the Ethics Code had allegedly been breached by the applicant. The employer also failed to explain what was meant by the reference to the "problems" between the applicant and G.G. or how the applicant's unwillingness to marry or otherwise formalise his relationship with G.G. could be considered unethical conduct or an "action incompatible with the position of prosecutor".

56. The Court also notes that it has not been alleged by the Government, nor has it been established in any domestic proceedings, that in his relationship with G.G. the applicant had committed any actions prohibited by law (such as, for example, domestic violence). Furthermore, both the investigator and the domestic courts dealing with the incident of 14 June 2009 concluded, on the basis of evidence such as witness statements and the content of G.G.'s text messages, that the applicant had been a victim of a physical attack, verbal threats and pressure by G.G. (see paragraphs 11 and 14 above). Therefore, there were no objective grounds to hold the incident of 14 June 2009 and the criminal investigation against the applicant. Indeed, before the Prosecutor General issued the order of 24 May 2010, the investigator in charge of the criminal investigation had already refused to open a criminal case against the applicant (in August 2009, see paragraph 11 above) and G.G. had been convicted by the first-instance court (in December 2009, see paragraph 12 above). It was thus clear to the Prosecutor General when dismissing the applicant that the latter had not been the protagonist but rather the victim in the criminal case.

57. Moreover, the Court finds it difficult to see how the applicant could be considered responsible for the articles published by G.G. about him. It also considers problematic the fact that the applicant's employer in effect demanded that he somehow prevent G.G. from complaining to various State bodies and publishing articles criticising him, and that his inability to stop the complaints and publications was used as a justification for his dismissal.

58. Furthermore, the domestic courts called on to examine the lawfulness of the dismissal failed to address the questions discussed in paragraphs 55-57 above. In particular, they failed to analyse and to take into consideration the decisions and judgments in favour of the applicant adopted during the criminal proceedings concerning the incident of 14 June 2009 and during the

defamation proceedings, despite the applicant's insistence that they should do so (see paragraphs 25-29 above). The domestic courts simply accepted the employer's characterisation of the factual grounds held against the applicant as actions incompatible with the position of prosecutor, or as damaging the dignity of the profession and grossly violating the Ethics Code; they mentioned that characterisation in their decisions (see paragraphs 26 and 28-29 above) and attached importance to it, yet failed to explain its legal relevance.

59. The Court considers that by finding that the above-mentioned provisions of domestic law (see paragraph 52 above) were applicable in the circumstances of the present case, the domestic authorities adopted an unpredictable and unforeseeably broad interpretation of those provisions. Therefore, the manner in which the domestic law was interpreted and applied in the present case did not afford the applicant protection against arbitrary interference (see, *mutatis mutandis*, *Selahattin Demirtaş*, cited above, § 275). Lastly, the fact that the domestic authorities referred to the Ethics Code in a general manner, without citing specifically any of its provisions, constituted another aspect of the unforeseeable application of domestic law in the present case.

60. In view of the above, the Court concludes that no factual or relevant legal grounds were established justifying the applicant's dismissal. Consequently, the Court finds that the interference in the present case was not lawful for the purposes of Article 8 § 2 of the Convention. In view of this conclusion, the Court is dispensed from having to examine whether the interference pursued any of the legitimate aims referred to in Article 8 § 2 and was necessary in a democratic society.

61. There has accordingly been a violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. The applicant complained under Article 6 of the Convention that he had not had a fair hearing in the proceedings he brought against his employer. He complained in particular that his right to a reasoned judgment had been violated. The relevant part of Article 6 § 1 of the Convention reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ..."

63. The Government contested the applicant's submissions. The applicant maintained his complaints.

64. Having regard to its findings in respect of Article 8 of the Convention above and the parties' submissions, the Court considers that there is no need to give a separate ruling on the admissibility and merits of the complaint under Article 6 (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. 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."

66. The applicant claimed 129,600 Azerbaijani manats (AZN – approximately 68,300 euros (EUR) at the time of submission of the claim) in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage. Regarding the alleged pecuniary damage, he argued that the sum claimed constituted the total salary that he would have received over nine years had he not lost his position as a prosecutor (according to the applicant, his salary at the time of his dismissal had been AZN 1,200 per month).

67. The Government argued that the applicant had failed to demonstrate a causal link between the alleged violation of the Convention and the pecuniary damage claimed. The applicant had merely made hypothetical assumptions as to the salary which he would allegedly have earned if he had not been dismissed. Moreover, he had failed to submit any evidence in support of his claim in respect of pecuniary damage. The Government asked the Court to dismiss the applicant's claims in respect of pecuniary damage.

68. The Government also argued that the applicant's claim in respect of non-pecuniary damage was excessive and unsubstantiated, and that the finding of a violation would constitute in itself sufficient reparation for any alleged non-pecuniary damage.

69. The Court reiterates that there must be a clear causal connection between the damage claimed by an applicant and the violation of the Convention. In appropriate cases, this may include compensation in respect of loss of earnings (see *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 81, ECHR 2014). A precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by an applicant may be prevented by the inherently uncertain character of the damage flowing from the violation. An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved, the more uncertain the link between the breach and the damage becomes. The question to be decided in such cases is the level of just satisfaction, in respect of either past or future pecuniary loss, to be awarded to an applicant, which is a matter to be determined by the Court at its discretion, having regard to what is equitable (see, among other authorities, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 171, ECHR 2005-VII).

70. Under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing, together with the relevant supporting documents or vouchers, failing which the Court may reject the

claim in whole or in part (see *Namazov v. Azerbaijan*, no. 74354/13, § 56, 30 January 2020). In the present case, the Court has found that the applicant's dismissal was in breach of the Convention. There is therefore a sufficient causal link between that violation of the Convention and the applicant's loss of earnings. However, considering that he did not submit any supporting evidence confirming the alleged amount of his monthly salary, the Court dismisses the claim for pecuniary damage on the grounds that it is unsubstantiated (compare ibid., §§ 56-57, and *Kulykov and Others v. Ukraine*, nos. 5114/09 and 17 others, § 154-55, 19 January 2017; contrast *Yunusova and Yunusov v. Azerbaijan (no. 2)*, no. 68817/14, § 206, 16 July 2020, and *Hülya Ebru Demirel v. Turkey*, no. 30733/08, § 57-58, 19 June 2018).

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

72. The applicant did not claim any compensation for costs and expenses. The Court therefore makes no award in this respect.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 8 admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 6 of the Convention;

4. *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, EUR 7,000 (seven thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President