



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

FIRST SECTION

CASE OF RFE/RL INC. AND OTHERS v. AZERBAIJAN

(Applications nos. 56138/18 and 3 others)

JUDGMENT

Art 10 • Freedom to receive and impart information • Wholesale blocking of four online media outlets on grounds some articles published by them featured allegedly unlawful content not “prescribed by law” • Insufficient safeguards against arbitrariness • Unforeseeable interpretation and/or application of domestic law

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 June 2024

FINAL

13/09/2024

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

In the case of RFE/RL Inc. and Others v. Azerbaijan,

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

Marko Bošnjak, *President*,

Alena Poláčková,

Lətif Hüseynov,

Péter Paczolay,

Ivana Jelić,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the applications (nos. 56138/18, 48735/19, 51207/19 and 58694/19) 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 the applicant organisations and individual applicants whose names are listed in the appended table (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints under Articles 10 and 18 of the Convention (in respect of all applications), Article 6 of the Convention (in respect of applications nos. 56138/18 and 48735/19) and Article 13 of the Convention (in respect of applications nos. 48735/19, 51207/19 and 58694/19);

the parties’ observations;

Having deliberated in private on 21 May 2024,

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

INTRODUCTION

1. The case concerns the wholesale blocking of four online media outlets on the grounds that some of the articles published by them featured allegedly unlawful content. The applicants raised complaints under Articles 10 and 18 of the Convention and other Convention provisions.

THE FACTS

2. The personal details of the applicant organisations and individual applicants and their representatives are set out in the appended table.

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

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

I. *RFE/RL INC. v. AZERBAIJAN*, APPLICATION No. 56138/18

5. The applicant organisation, RFE/RL Inc. (Radio Free Europe/Radio Liberty), is a private, non-profit corporation funded by the United States Congress.

6. In 2004 the applicant organisation began operating in Azerbaijan through its representative office. Apart from radio broadcasting, it also operated a news website under the domain name *azadliq.org*.

7. According to the applicant organisation, from the beginning of 2009 it was subjected to various forms of pressure by the authorities. In particular, in 2009 it was banned from broadcasting on FM frequencies. In 2014 Ms Khadija Ismayilova, who was the former head of the applicant organisation's Baku office and a freelance associate of the organisation at that time, was arrested and prosecuted (see *Khadija Ismayilova v. Azerbaijan* (no. 2), no. 30778/15, 27 February 2020, for more detail). In the same year, the applicant organisation's Baku office was raided and sealed. In 2015 the authorities instituted an investigation into alleged tax evasion by the applicant organisation.

8. By Law no. 539-VQD of 10 March 2017, the Law on Information, Informatisation and Protection of Information of 3 April 1998 ("the IPI Law") was amended to include a new Chapter III-I regulating "internet information resources" (see paragraph 54 below). This amendment entered into force on 19 March 2017.

9. By Law no. 580-VQD of 7 April 2017, the Code of Civil Procedure ("the CCP") was amended to include a new Chapter 40-6 concerning "the procedure for the restriction of access to an internet information resource" (see paragraph 57 below). This amendment entered into force on 20 April 2017.

10. In the meantime, by a letter of 27 March 2017 the Prosecutor General's Office had informed the Ministry of Transport, Communication and High Technology ("the MTCHT") that, following an inquiry, it had been established that *azadliq.org* and several other websites (unrelated to the applicant organisation) had "regularly breached the requirements of the [IPI Law] by carrying out destructive actions aimed at forcibly changing the constitutional order of the Republic of Azerbaijan and violating social stability, making open calls for the organisation of mass riots, promoting the activities of radical religious groups and engaging in other illegal activities". In view of this, the Prosecutor General's Office asked the MTCHT to take measures to stop the "broadcasts" of these websites and to apply other relevant restrictions. The letter did not specify any particular examples of any such information published on the relevant websites, or of any of the websites' "other illegal activities".

11. On the same date, 27 March 2017, relying on Articles 13-2.3 and 13-3.3 of the IPI Law, the MTCHT (which carried out the functions of

“the relevant executive authority” specified in Article 13-3 of the IPI Law) decided to temporarily block access to the websites in question, including azadliq.org, with immediate effect, pending an application for a court order blocking access to them, because there was prohibited information published on those websites which “threatened the State and public interests protected by law”. That decision did not refer to or quote any specific articles or statements published by those websites.

12. On 30 March 2017 the Cybersecurity Centre under the MTCHT, which was later replaced by the MTCHT itself as a party to the first-instance proceedings, applied to the Sabail District Court for access to azadliq.org and the other websites mentioned above to be blocked, as well as, if possible, access to other identifiable internet information resources which provided a platform by which to access those websites. It reiterated what the Prosecutor General’s Office had stated in its letter and noted that the websites had breached the requirements of Article 13-2.3.2 of the IPI Law, which prohibited the publication of information promoting violence and religious extremism and openly calling for ethnic, racial or religious hostility, a forcible change in the State’s constitutional order, a violation of territorial integrity, the forcible seizure or retention of State power, or the organisation of mass riots. It did not mention any specific information published by these websites which had been found to be unlawful. However, it appears that it provided the court with copies of several articles (according to the applicant organisation, seven articles) published by azadliq.org on various dates between November 2016 and March 2017.

13. During the relevant hearings, the applicant organisation argued that blocking access to its website breached its rights and freedoms under the Constitution and the Convention.

14. On 12 May 2017 the Sabail District Court allowed the MTCHT’s application and ordered the blocking of azadliq.org, in addition to other websites mentioned in the application, but rejected the part of the application concerning the blocking of access to other identifiable internet information resources which provided a platform to access those websites, on the basis that it was non-specific. In respect of azadliq.org, while it appears that the MTCHT submitted seven articles which it had published, the court referred to four articles which it had published in “March and April 2017” (according to the applicant organisation, those articles had actually been published in February and March 2017), quoting short passages from each.

15. In particular, the first quoted extract concerned a well-known journalist’s critical remarks concerning the recent changes to the Constitution adopted during the 2016 constitutional referendum, which he called “dangerous” because of the President’s exclusive power to appoint the First Vice-President, vice-presidents and the Prime Minister.

16. The second extract contained statements by a former main opposition candidate in the 2013 presidential elections, who had said that the economic

and social situation in the country was becoming more difficult and that there was a deepening crisis, that the problem of political prisoners was unresolved, that there were new instances of corruption, and that all of the above necessitated public protests by the people.

17. The third extract referred to certain statements published in an NGO report and in Western media concerning a recent corruption scandal which implicated the Azerbaijani Government and some members of the Parliamentary Assembly of the Council of Europe and was referred to as “caviar diplomacy”.

18. The fourth extract contained remarks by a person unnamed in that particular extract, who, from the context, appeared to be a recent emigrant to an unnamed country. He stated, *inter alia*, that “we” (apparently meaning the Azerbaijani people) had become a “false State”, had created a “false democracy” and had written a “false Constitution”, and that one day this situation would change.

19. The court noted that, according to the findings of the MTCHT, the information published by azadliq.org and the other websites mentioned above was in breach of Article 13-2.3.2 of the IIPI Law, and that therefore the Ministry’s application to block access to them was lawful. The blocking order was to be executed immediately following the delivery of the judgment.

20. The applicant organisation appealed, arguing, *inter alia*, that the articles in question did not contain any unlawful information, but merely criticism of various public authorities and an analysis of various social and political issues, and that the wholesale blocking of access to its website violated its freedom of expression guaranteed by the Constitution and the Convention. It also submitted that, while the relevant amendments to the IIPI Law and the CCP had entered into force on 19 March and 20 April 2017 respectively, the MTCHT’s reference to some articles published by azadliq.org before those dates had been unlawful, because in accordance with the Constitution, legal acts had no retroactive effect, except for those that improved the legal situation of individuals and legal persons and eliminated or mitigated their legal liability. It further submitted that, contrary to the requirement in Articles 13-3.1 and 13-3.2 of the IIPI Law, the MTCHT had not given it any advance warning in connection with the impugned publications. Moreover, although Article 355-22.1 of the CCP required a first-instance court to examine applications concerning the restriction of access to internet information sources within five days, the court in the present case had delivered its judgment one month and twelve days after the MTCHT’s application, during which time access to the website had remained blocked in the absence of a court order.

21. By a judgment of 19 December 2017 the Baku Court of Appeal dismissed the applicant organisation’s appeal, reiterating the first-instance court’s reasoning in support of the blocking order. As regards the applicant organisation’s arguments as to the absence of any unlawful content in the

impugned articles, the court noted, *inter alia*, that information promoting violence and religious extremism and openly calling for a forcible change in the State's constitutional order, the forcible seizure or retention of State power, or the organisation of mass riots did not necessarily refer to only information or calls expressed in "open text", and that the restrictions provided in the IPI Law also included information and calls of this nature expressed indirectly "in between the lines" ("*sətiraltı ifadə edilsə də*") which could be perceived as such information or calls by "individual members of the society". In this connection, the appellate court further referred to the extracts from the second and fourth articles quoted by the first-instance court (see paragraphs 16 and 18 above).

22. As to the applicant organisation's other objections, the appellate court further noted that the MTCHT's reference to some articles published before the entry into force of the amendments to the IPI Law and the CCP had not been unlawful, as those articles had not been removed from the website and had remained publicly accessible for an indefinite period after their publication, which had thus given rise to a continuing situation which had still obtained at the time when the MTCHT had applied to the court for a blocking order after the relevant amendments had entered into force. The appellate court further noted that, although the blocking order had been issued by the lower court following a delay, it had nevertheless been issued within a reasonable period of time required for the comprehensive examination of the case. This delay had not substantially affected the parties' rights and legal interests, and could not be considered a serious procedural shortcoming in the particular circumstances of the case. As to the MTCHT's failure to issue an advance warning before applying to the court for a blocking order, the court noted that the purpose of such warning was to provide an opportunity to resolve the matter out of court. However, since the applicant organisation had always denied that the impugned articles contained any information prohibited by law, issuing such a warning would in any event have been futile.

23. The applicant organisation lodged a cassation appeal with the Supreme Court, essentially reiterating its previous arguments and also disagreeing with the appellate court's reasoning concerning the nature of information whose publication was prohibited by the IPI Law and the court's broad interpretation of that Law.

24. By a final decision of 4 June 2018 the Supreme Court dismissed the appeal and upheld the lower courts' judgments, reiterating and agreeing with the appellate court's reasoning.

II. *TALIBOV v. AZERBAIJAN*, APPLICATION No. 48735/19

25. The applicant, a journalist, is the sole founder and editor of the online news portal anaxeber.az.

26. On 5 August 2018 the MTCHT sent a warning letter to the applicant's email address, noting that a number of articles published by anaxeber.az contained libellous (*böhtan*), false (*yalan*) and misleading (*qərəzli*) information and informing him that, if those articles were not removed from the website within eight hours, the MTCHT would apply to a court for a blocking order, in accordance with the IPI Law (no copy of the warning letter is available in the case file). According to the applicant, he was abroad at the time and was unaware of the warning until a court order was made blocking access to the website.

27. On an unspecified date the MTCHT applied to the Sabail District Court for a blocking order, submitting that anaxeber.az had published information prohibited by Article 13-2.3.9 of the IPI Law and Article 13-2.3.11 of the IPI Law in conjunction with Article 10 of the Law on Mass Media of 7 December 1999 ("the Law on Mass Media") (no copy of the application is available in the case file).

28. It appears that in its application the MTCHT referred to three particular articles published by anaxeber.az in June and July 2018, extracts from which were quoted in the first-instance court's judgment. In particular, the first article criticised officials from the Ministry of Healthcare, including the Minister himself, referring to them as "unscrupulous healthcare officials" who did everything to "destroy society" and who "were hated and cursed by the people". It also stated, *inter alia*, that "the healthcare system created by [the Minister was] a butcher and murderer of people", and that the Minister defended "bloody-handed doctors" and did not allow them to be punished.

29. The second article concerned a "two-year delay" in the appointment of vice-presidents of Azerbaijan, and insinuated that there was a clash of "three clans" for these posts and that in the coming years "there would be a new clan forming the power elite". The third article discussed recent riots which had taken place in Ganja which were officially considered to have been caused by religious radicals, and stated that the actual causes of those events had been "the tyranny of public officials", "miserable social conditions", unemployment, "the procrastination of public officials", "the seizure of people's lands", "the mistreatment of citizens", and so on.

30. By a judgment of 7 August 2018 the Sabail District Court granted the MTCHT's application and ordered that access to the website be blocked. It appears that the applicant was sent a summons informing him of the time and place of the hearing, but did not appear as he was still abroad. According to the court's judgment, he did not inform the court of the reasons for his failure to appear, and the application was examined in his absence.

31. The court considered that the above-mentioned information constituted information prohibited by Article 13-2.3.11 of the IPI Law, which prohibited the dissemination of "other information prohibited by the laws of the Republic of Azerbaijan", in conjunction with Article 10 of the Law on Mass Media, which prohibited the use of the mass media for,

inter alia, publishing false, misleading and libellous information or committing other unlawful acts. It issued an order blocking access to the website, to be executed immediately following the delivery of the judgment.

32. The applicant appealed, arguing that the blocking order breached his rights under the Constitution and other domestic laws, as well as the Convention, and that the articles in question did not contain any information prohibited by law and did not exceed the limits of protected freedom of speech, in particular political speech.

33. In so far as it was claimed that the articles in question contained libellous information, referring to Article 44 of the Law on Mass Media, among other things, the applicant noted that there had been no defamation claims or complaints made by any allegedly affected persons, and there had been no court judgments in respect of those particular articles finding that the statements made had amounted to libel.

34. On 21 September 2018 the Baku Court of Appeal dismissed the applicant's appeal and upheld the lower court's judgment, essentially reiterating its reasoning. It also noted, in respect of the third article, that while there were ongoing criminal investigations into the Ganja events, the figures of speech used in the article, which induced hatred of State authorities, could potentially lead to an escalation of the situation and the spreading of false information in respect of the criminal proceedings, and ultimately to panic among the population and a repeat of similar events.

35. The applicant lodged a further appeal, reiterating his previous arguments and disagreeing with the appellate court's assessment by arguing that the third article did not contain any calls or incitement to panic, but merely a subjective assessment by a journalist of events happening in the country.

36. By a final decision of 20 December 2018 (delivered to the applicant on 11 February 2019) the Supreme Court upheld the lower court's judgments. As to the applicant's argument that in the absence of any defamation claims or complaints made by any allegedly affected persons or any existing court judgments in that regard, the MTCHT had no right to allege that the impugned articles contained libellous information (see paragraph 33 above), the Supreme Court noted that Articles 13-3.1 and 13-3.2 of the IPI Law vested the MTCHT with the authority to identify prohibited content on its own initiative and not necessarily only on the basis of prior submissions by affected persons, and to apply for a court order restricting access to the relevant internet information resource in the event that the prohibited content which had been identified was not removed following a written warning.

III. *24SAAT.ORG LTD AND ALAKBAROV v. AZERBAIJAN*,
APPLICATION No. 51207/19

37. The applicant company, 24Saat.org, is a mass media company operating an online news portal, az24saat.org. The individual applicant, Mr Vugar Alakbarov, a journalist, is the sole founder of the applicant company and the editor of az24saat.org.

38. On 6 August 2018 the MTCHT sent a warning letter to the applicants' email address, noting that a number of articles published by az24saat.org contained libellous, false and misleading information and warning them that if those articles were not removed from the website within eight hours, the MTCHT would apply to a court for a blocking order, in accordance with the IPI Law. It appears that the applicants did not remove the articles in issue.

39. Following this, the MTCHT applied to the Sabail District Court for a blocking order, submitting that az24saat.org had published information prohibited by Article 13-2.3.9 of the IPI Law and Article 13-2.3.11 of the IPI Law in conjunction with Article 10 of the Law on Mass Media. According to subsequent arguments raised by the applicants before the domestic courts, the MTCHT applied for a blocking order on the same day that it issued the warning, and before the expiry of the eight-hour period referred to in that warning.

40. In its application for a blocking order, the MTCHT referred to four particular articles published by az24saat.org in February, May and August 2018, extracts from which were quoted in the first-instance court's judgment. All four articles concerned the same public official who held the position of Assistant to the President. The articles contained various statements about him, including comments saying that he would be dismissed from his position and appointed to another one, that he had been "attacked" by another unnamed influential official, that he had given false information to the President about a particular subject, and that he had been involved in a struggle with a certain political "clan" over control of the media in the country.

41. By a judgment of 7 August 2018 the Sabail District Court granted the MTCHT's application and ordered that access to the website be blocked. According to the individual applicant, he was informed of the time and place of the hearing only about three or four hours in advance. At the court hearing, the applicants' lawyer asked the court to adjourn the examination of the case for one or two days so that the applicants' defence could be prepared, but that application was refused.

42. The court considered that the above-mentioned information (see paragraph 40 above) constituted information prohibited by Article 13-2.3.11 of the IPI Law and Article 10 of the Law on Mass Media, and issued an order blocking access to the website, to be executed immediately following the delivery of the judgment. In response to the applicants' argument that in the

absence of any defamation claims or complaints made by any allegedly affected persons or any existing court judgments in that regard, the MTCHT had no right to allege that the impugned articles contained libellous information, the court noted that Article 13-3.1 of the IPI Law vested the MTCHT with the authority to identify prohibited content on its own initiative.

43. In appeals to higher courts, the applicants raised arguments which were essentially similar to those made by the applicant in application no. 48735/19 (see paragraphs 32-33 above).

44. On 17 September 2018 the Baku Court of Appeal dismissed an appeal by the applicants and upheld the lower court's judgment, essentially reiterating its reasoning. By a final decision of 24 January 2019 (delivered to the applicant on 18 March 2019) the Supreme Court upheld the lower courts' judgments.

IV. *KHURAL AND ZEYNALOV v. AZERBAIJAN*, APPLICATION No. 58694/19

45. The first applicant, *Khural*, is a newspaper published in Baku which operates a website, xural.com. The second applicant, Mr Avaz Zeynalov, is the founder and editor-in-chief of the newspaper.

46. On 7 August 2018 the MTCHT sent a warning letter to the applicants' email address, noting that a number of articles published by xural.com contained defamatory, false and misleading information and warning them that if those articles were not removed from the website within eight hours, the MTCHT would apply to a court for a blocking order, in accordance with the IPI Law. According to the second applicant, he had not used that email address for several years and was therefore unaware of the warning letter until the court hearing.

47. On the same day, the MTCHT applied to the Sabail District Court for a blocking order, submitting that xural.com had published information prohibited by Article 13-2.3.9 of the IPI Law and Article 13-2.3.11 of the IPI Law in conjunction with Article 10 of the Law on Mass Media. Having received a summons for the court hearing, on 8 August 2018, before going to the court, the applicant made a telephone call to the MTCHT to enquire which specific articles were considered to be in breach of the IPI Law. After being informed about three particular articles, he immediately removed those articles from xural.com.

48. It appears that in its application for a blocking order the MTCHT actually referred to four articles published by xural.com in July and August 2018, extracts from which were quoted in the first-instance court's judgment. The first article concerned the Deputy Prime Minister of Nakhchivan's alleged extramarital relations, and very expensive gifts which he had allegedly given to a woman. The second article criticised a particular hospital in Baku for mistreating patients, and apparently referred to it as a "morgue"

for that reason. The third article concerned E.V., Head of the Ganja City Executive Authority, on whom there had been an assassination attempt before the Ganja riots. It stated that E.V. had insulted the local population and persecuted Shia Muslims, and that he had an open conflict with the top regional police officer and had been beaten up by the latter after behaving indecently. The last article spoke about “more than 160 political prisoners”, and named several convicted and imprisoned youth activists and politicians, implying that some of them had not committed any criminal offences and that others had not been treated well in prison.

49. By a judgment of 8 August 2018 the Sabail District Court granted the MTCHT’s application. The court found that the statements made in the above-mentioned articles constituted information prohibited by Article 13-2.3.11 of the IPI Law in conjunction with Article 10 of the Law on Mass Media, and issued an order blocking access to the website, to be executed immediately following the delivery of the judgment. In response to the applicants’ argument that in the absence of any defamation claims or complaints made by any allegedly affected persons or any existing court judgments in that regard, the MTCHT had no right to allege that the impugned articles contained libellous information, the court noted that Article 13-3.1 of the IPI Law vested the MTCHT with the authority to identify prohibited content on its own initiative.

50. In appeals to higher courts, the applicants raised arguments which were essentially similar to those made by the applicants in applications nos. 48735/19 and 51207/19 (see paragraphs 32-33 and 43 above).

51. On 17 September 2018 the Baku Court of Appeal dismissed an appeal by the applicants and upheld the lower court’s judgment, essentially reiterating its reasoning. By a final decision of 21 February 2019 (delivered to the applicant on 18 April 2019) the Supreme Court upheld the appellate court’s judgment.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

52. The 1995 Constitution provides as follows:

Article 47. Freedom of thought and speech

- “I. Everyone enjoys the freedom of thought and speech.
- II. No one shall be forced to proclaim or to repudiate his or her thoughts and beliefs.
- ...”

Article 50. Freedom of information

- “I. Everyone is free to legally seek, receive, impart, produce and disseminate any information.

II. Freedom of mass information is guaranteed. State censorship of the mass media, including the press, is prohibited.

III. Everyone's right to refute or reply to information published in the mass media which violates his or her rights or is damaging to his or her interests shall be guaranteed."

53. The Constitutional Law regulating the implementation of human rights and freedoms in the Republic of Azerbaijan of 24 December 2002 provides as follows:

Article 3. Requirements for the lawful restriction of human rights and freedoms

"3.1. Human rights and freedoms provided for by the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party may be restricted only by law. ...

3.4. Restrictions on human rights or freedoms shall pursue a legitimate aim provided for by the Constitution of the Republic of Azerbaijan and this Constitutional Law, and shall be proportionate to that aim."

54. At the material time, the IPI Law provided as follows:

Article 13-2. Dissemination of information in internet information resources

"13-2.1. The owner of an internet information resource is independent in determining the content of the information placed in that information resource and the rules relating to the placement [of such information]. The owner of the internet information resource and its domain name must ensure the lawful functioning of that information resource, and is personally responsible for that.

...

13-2.3. The owner of the internet information resource and its domain name shall not allow the following information to be placed in that internet information resource:

...

13-2.3.2. information promoting violence and religious extremism, an open incitement to ethnic, racial or religious hatred and hostility, a forcible change in the constitutional order of the State, a violation of the State's territorial integrity, the forcible seizure or retention of State power, [or] the organisation of mass riots;

...

13-2.3.9. information of an insulting and libellous nature, as well as information breaching the inviolability of private life;

...

13-2.3.11. other information prohibited by the laws of the Republic of Azerbaijan.

13-2.4. The owner of an internet information resource and its domain name shall ensure that information whose dissemination is prohibited is removed from the information resource when the owner discovers such information in the resource or is informed about it.

13-2.5. When a host provider discovers or is informed about information placed in its information systems whose dissemination by internet information resources is

prohibited, it shall immediately take measures to have the owner of the internet information resource remove that information.”

Article 13-3. Preventing the placement in internet information resources of information whose dissemination is prohibited

“13-3.1. When the relevant executive authority discovers that information whose dissemination is prohibited has been placed in an internet information resource, or identifies [such information] on the basis of substantiated submissions by individuals, legal entities or State authorities, it shall give a written warning to the owner of the internet information resource and its domain name, and to the host provider.

13-3.2. If the information whose dissemination is prohibited is not removed from the internet information resource within eight hours of the warning, the relevant executive authority shall apply to the [relevant] district (city) court for an order restricting access to the internet information resource.

13-3.3. In urgent cases that threaten the State or public interests protected by law, or give rise to a real danger to people’s lives or health, access to the internet information resource shall be temporarily restricted by a decision of the relevant executive authority.

13-3.4. When the relevant executive authority takes a decision provided for in Article 13-3.3 of this Law, it shall simultaneously [*eyni zamanda*] apply to the court for an order restricting access to the internet information resource. The decision temporarily restricting access to the internet information resource shall remain in force until the court has examined the application for the restriction of access, or until the annulment of that decision.

13-3.5. The court shall examine the application for the restriction of access to the internet information resource and deliver a decision within five days. The decision shall be immediately enforceable, and an appeal lodged against it shall not suspend its execution. ...”

55. Articles 10 and 44 of the Law on Mass Media of 7 December 1999 provided as follows:

Article 10. Prohibition of abuse of freedom of mass information

“The mass media shall not be used for the purposes of disseminating secret information protected by the legislation of the Republic of Azerbaijan; forcibly changing the existing constitutional State order; attacking the integrity of the State; promoting war, violence and brutality, [or] ethnic, racial [or] social hostility or intolerance; publishing rumours discrediting the honour and dignity of citizens [and] false and misleading written [material] (*yalan və qərəzli yazılar*) [under the guise of being] a reliable source ...; libelling [somebody]; or committing other illegal acts.”

Article 44. The right to a retraction, correction and reply

“44.1. In the event that [the following information] is published in the mass media – information of a libellous and offensive nature which discredits the honour and dignity of an individual or a legal entity or distorts [his or her] opinions – the individual or his representative, and the management or authorised representative of a legal entity, have the right to demand, within one month, that a reply, retraction or correction of the false information, and an apology, be published in that mass media source within one month, or to apply directly to a court. ...”

56. Article 23 of the 2000 Civil Code provided as follows:

Article 23. Protection of honour, dignity and professional 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 professional 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 professional reputation of an individual is harmed ...

23.2. If information harming the honour, dignity or professional 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 professional reputation, the individual has the right to claim compensation for damage caused by the dissemination of such information ...”

57. Chapter 40-6 (Articles 355-20 to 355-22) of the CCP regulated court procedure on the removal from an internet information resource of information whose dissemination was prohibited, or the restriction of access to an internet information resource. The provisions of Chapter 40-6 were enacted by an amendment of 7 April 2017 and entered into force on 20 April 2017. In the event that the relevant executive authority (the MTCHT) determined that information prohibited by the IPI Law had been placed in an internet information resource, an application for the removal of the prohibited information from the internet information resource or for the restriction of access to the internet information resource or the relevant part thereof was to be lodged by the relevant executive authority (the MTCHT) with a court which had territorial jurisdiction over the relevant executive authority’s location (Article 355-20). The application had to specify the grounds provided for by law for such a removal or restriction of access, information about the internet information resource, measures taken prior to the court procedure, and the applicant authority’s application (Article 355-21). The court would examine the application and deliver a judgment within five days after the date of lodging the application (Article 355-22.1). The interested parties would be notified of the hearing, but if they failed to appear this would not prevent the court from examining the case in their absence (Article 355-22.2). The court would deliver a judgment either granting or refusing the application (Article 355-22.3). The judgment would become enforceable immediately and an appeal against it would not suspend its execution (Article 355-22.4).

II. RELEVANT INTERNATIONAL DOCUMENTS

58. The relevant international documents are summarised and quoted in *Ahmet Yildirim v. Turkey* (no. 3111/10, §§ 19-30, ECHR 2012), and *OOO Flavus and Others v. Russia* (nos. 12468/15 and 2 others, § 13-17, 23 June 2020).

THE LAW

I. JOINDER OF THE APPLICATIONS

59. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

60. The applicants complained that the authorities' decisions to block access to their websites had breached their rights under Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

1. *Compliance with the six-month time-limit in application no. 48735/19*

61. The Government submitted that the date on which the application had been dispatched could not be clearly established from the copy of the case file transmitted to them. A receipt stamp visible on the application form showed that the application had been received by the Court on 17 September 2019. According to the Government, since delivery by post took approximately ten to twenty days, the application must have been dispatched towards the end of August or the beginning of September 2019. For these reasons, the Government argued that the applicant had failed to comply with the six-month time-limit, since the final decision of the Supreme Court had been delivered to him on 11 February 2019.

62. The applicant submitted that the application had been dispatched on 10 August 2019 and provided the relevant postal tracking number.

63. The Court notes that the original envelope which contained the application form is postmarked 10 August 2019. That date was within the six-month time-limit, which started to run on 11 February 2019. For this reason, the Court rejects the Government's objection.

2. No significant disadvantage in respect of all applications

(a) The parties' submissions

64. The Government submitted that, in reality, the rulings by the domestic courts had not affected the applicants' ability to impart information and ideas, which were accessible not only via their websites, but also through numerous other means of communication and other open platforms which were easily accessible to the general public. In particular, the public could access the websites in question via various free VPN services or alternative web browsers (such as Opera). Also, the applicants' pages on social networks were accessible to the public via social networking sites (Facebook, Youtube, Twitter, Instagram, and so on). All the applicants were "widely present" and possessed separate pages or channels on major social networking platforms. Their websites could be easily accessed through links shared on the platforms provided by those social networks, and the blocking orders concerning the websites themselves had not created any significant obstacles to the general public and interested followers accessing information distributed by the applicants.

65. Moreover, the Government noted that it appeared that access to the websites of the applicants in applications nos. 51207/19 and 58694/19 (az24saat.org and xural.com) had not been blocked at all and that they remained accessible, while the website of the applicant in application no. 48735/19 was accessible under the same name but on a different top-level domain (that is, anaxeber.info instead of anaxeber.az, which had been the subject of the relevant blocking order). The Government argued that the applicants in the above applications had not submitted any evidence supporting their assertions to the contrary.

66. Lastly, the Government noted that the proceedings in question had had no financial implications for the applicants. In view of the foregoing, the Government argued that "no objective grounds could be discerned to hold that the applicants [had] suffered important adverse consequences as a result of the domestic court[s'] rulings to restrict direct access to these websites through some popular web browsers". They further argued that respect for human rights did not require that the cases be examined on the merits, and that the applicants' cases had been duly considered by a domestic tribunal.

67. The applicants disagreed with the Government's submissions and noted that they were simply not true. The websites had still been blocked in

the territory of Azerbaijan when the applicants had last communicated with the Court, and any proxy or mirror websites which the applicants had set up had also been blocked shortly after they had been set up. Therefore, individuals in Azerbaijan who wished to access the websites were required to download secondary tools to do so, including VPN and alternate web browser services. However, the free versions of these services were limited in their operation. Often, users were unable to access higher resolution content including graphics and videos, and they were not able to download all content from a website as those services operated very slowly. Remedies to circumvent the mentioned restrictions required users to pay for a full version of the service. In addition, VPN services could often collect user information and might be State-sponsored. Users were therefore reluctant to use these services, for fear of their personal information being compromised. Some of the applicants also noted that VPN users in the country amounted to no more than 5% of all internet users, and Opera browser users amounted to no more than 2%.

68. Furthermore, the applicants noted that the content on their pages on social media platforms differed from the content on their websites, both in terms of the types of information distributed and the audiences targeted. Moreover, the applicant organisation in application no. 56138/18 argued, albeit without elaborating in detail, that the Azerbaijani authorities' "continuous interference and censorship on social media platforms, including Facebook, ha[d] meant that the applicant [organisation] ha[d] been unable to use the platform successfully to distribute information". In addition, the applicants argued that, contrary to the Government's assertion, the consequences of the court orders restricting access to their websites had been substantial. The applicant organisation in application no. 56138/18 reported that as a result of the blocking measures, its website had lost a significant amount of internet traffic (approximately 90%), while the other applicants submitted that their websites' views had been reduced by more than 97%. In this regard, the applicant organisation in application no. 56138/18 submitted that not only had it suffered a loss of revenue from advertisements, but it had also lost a considerable number of readers "undoubtedly from within Azerbaijan but also more widely from individuals outside the country".

69. The applicant organisation in application no. 56138/18 further argued that it had suffered a significant disadvantage due to the blocking order, because it was one of "the last remaining independent media outlets in Azerbaijan". The blocking of access to its website had restricted its ability to report on matters of public interest and restricted Azerbaijani residents' ability to access that information. This had taken place "against the wider backdrop of systemic State harassment of journalists and media [outlets] that [were] critical of the Government".

(b) The Court's assessment

70. Article 35 § 3 (b) of the Convention provides:

“3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

...

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits.”

71. In applying this provision of the Convention, the Court has stated that the criterion of no significant disadvantage, which is inspired by the general principle *de minimis non curat praetor*, hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case. However, even if the Court should find that the applicant has suffered no significant disadvantage, it may not declare an application inadmissible if respect for human rights, as defined in the Convention and the Protocols thereto, requires an examination on the merits, or (prior to the entry into force of Protocol No. 15) if the matter has not been “duly considered” by a domestic tribunal. Following the entry into force of Protocol No. 15 on 1 August 2021, the latter criterion is no longer required, and the Court may declare an application inadmissible on the grounds of no significant disadvantage, even if this has not been duly considered by a domestic tribunal (see *Šeks v. Croatia*, no. 39325/20, § 47, 3 February 2022, with further references). The Court has already held that in cases concerning freedom of expression, the application of the admissibility criterion contained in Article 35 § 3 (b) of the Convention should take due account of the importance of this freedom and be subject to careful scrutiny by the Court (*ibid.*, § 48).

72. Having had regard to the parties' submissions, the Court cannot accept the arguments raised by the Government. In so far as the Government claimed that access to some of the websites in issue had not been blocked, no evidence was presented in this regard, and the Court itself is not in a position to verify whether the websites were or are accessible from Azerbaijan. Moreover, it was not disputed by the Government that two of the websites (*azadliq.org* and *anaxeber.az*) had actually been blocked. Given that all of the applicants consistently maintained that access to their websites had actually been blocked and that the court judgments in this regard had been immediately enforceable, and the Court finds it implausible that those judgments remained unexecuted, the Court accepts the applicants' submissions that access to all of the websites had actually been blocked. Moreover, as to the Government's

claim that one of the websites remained accessible under a different top-level domain name, the Court takes note of the applicants' submissions that all proxy and mirror websites set up by them had also been blocked. Similarly, the Court accepts the applicants' submissions that their presence on various social media and other platforms could not be considered an equivalent substitute for their main and fully-fledged news websites, in terms of the overall content that was published.

73. Moreover, the Court agrees with the applicants that the mere fact that the restrictions on access could be bypassed by individual users using VPN services or alternative web browsers could not, in reality, significantly alleviate the overall effect of the blocking measures. It would be reasonable to assume that the average internet user (whose knowledge of various software options may not be as extensive as that of a more advanced user), when confronted with the fact that a news website which he or she is trying to access is in fact inaccessible, would not necessarily seek to learn about, download and use VPN services or any alternative lesser-known web browsers in order to try to circumvent the access restrictions. Moreover, he or she might not even be aware that the website is inaccessible because of a judicial blocking order, rather than simply being defunct or non-functional due to technical problems. As for those users who are aware of such options and alternatives, the Court agrees with the applicants that some or many of them may indeed refrain from using those services for various privacy or other reasons, including the need to pay for fully functional versions of VPN services and the inferior performance of certain alternative web browsers.

74. The Court has also had regard to all the applicants' submissions that even though some internet users had apparently accessed their websites, either from Azerbaijan, using a VPN, or from abroad in an unrestricted manner, the websites had lost upwards of 90% of their previous traffic after the blocking measures. This has significantly restricted the applicants' ability to impart information to their usual website audiences in Azerbaijan. Having regard to the above, the Court cannot accept the Government's argument that the applicants did not suffer any significant disadvantage.

75. Moreover, in any event, the Court considers that respect for human rights requires an examination of the merits of these applications. It reiterates that this applies where a case raises questions of a general character affecting the observance of the Convention, for instance, whether there is a need to clarify a State's obligation under the Convention or to induce a respondent State to resolve a structural deficiency (see *C.P. v. the United Kingdom*, (dec.) no. 300/11, § 49, 6 September 2016). The Court is aware that in addition to the websites which are the subject of the present four applications, similar blocking orders under the IPI Law have been issued in respect of a number of other websites in Azerbaijan. A number of similar applications concerning some of those websites are currently pending before the Court. As respect for

human rights should be understood as encompassing the good administration of justice by the court, this is an additional reason to proceed with the examination of these four applications.

76. The Government's objection is therefore rejected.

3. Conclusion as to admissibility

77. The Court further 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

78. The applicants submitted that the blocking orders in respect of their respective websites constituted interferences with their right to freedom of expression. The applicant organisation in application no. 56138/18 argued that the interference in its case could not be considered to have been "prescribed by law". In particular, while the relevant provisions of the IIPI Law which had been applied in that case had entered into force on 19 March 2017, before the MTCHT had applied to the court for a blocking order on 30 March 2017, the relevant amendments to the CCP regulating judicial procedure on the examination of applications for the restriction of access to internet information resources had not yet been enacted. Those amendments had not entered into force until 20 April 2017, after the MTCHT had applied to the court. The applicant organisation argued that in such circumstances, the relevant legislation could not be considered sufficiently "accessible" or "foreseeable" to enable it to regulate its conduct.

79. The applicants in the other three applications argued that the interferences had not been prescribed by law, because the authorities had "misapplied" the law by using it to protect the reputation of various Government officials about whose corrupt activities allegedly libellous statements had been made in a number of articles published on their websites, even though those officials had a right to lodge defamation claims individually, but had not done so.

80. The applicants further argued that the interferences had not pursued a legitimate aim. They argued that the articles in issue, which had served as the basis for the indefinite blocking of access to their websites, had not contained any information prohibited by the IIPI Law. The blocking orders related to the authorities' "efforts to suppress the independent media" in the country. They had been sought precisely because the applicants had been "critical voices against the Government" and had exposed instances of abuse of power and corruption.

81. The applicants further argued that the measures taken against the websites, that is, the wholesale blocking of access to them, had been grossly disproportionate and extreme, and comparable to banning a newspaper or a television station. Those measures had not been limited to specific articles which had been referred to by the authorities, even assuming that those articles had contained unlawful information, but to entire websites, rendering large amounts of content which had not been identified as unlawful inaccessible. It was therefore clear that the authorities had referred to those articles merely as a “pretext” for their real intent to “stifle the applicants’ critical voices, paralyse their activities, and prevent the dissemination of independent and critical views in society”.

82. The applicant organisation in application no. 56138/18 further submitted that it had not been afforded any required procedural safeguards. In particular, it had not been given advance notice of the blocking proceedings or an opportunity to remove the allegedly prohibited content from the website either before or during the domestic judicial proceedings. The applicant in application no. 48735/19 submitted similar arguments, noting that, had he been aware of the warning given to him by the MTCHT, he would have removed the articles in issue from his website, but he had been given no such opportunity. Furthermore, the applicants argued that neither the authorities nor the courts had carried out any impact assessment of the blocking measures to justify the necessity and urgency of their immediate implementation. Contrary to the Government’s assertion, the domestic courts had not carried out “a thorough examination” in respect of the articles published on the websites. Instead, the courts had simply accepted the MTCHT’s assertions without giving the applicants an opportunity to have witnesses called or obtain independent expert opinions concerning the content of the articles in issue. For the above reasons, the applicants argued that the interferences could not be considered necessary in a democratic society.

83. The Government accepted that the blocking measures constituted interferences with the applicants’ right to freedom of expression. They submitted that the interferences had been “prescribed by law”, in particular Article 47 of the Constitution, Article 3.4 of the Constitutional Law regulating the implementation of human rights and freedoms in the Republic of Azerbaijan of 24 December 2002, Articles 13-2 and 13-3 of the IPI Law, and Article 10 of the Law on Mass Media. They further submitted that the interferences had pursued the legitimate aims of the protection of national security, territorial integrity or public safety, and the prevention of disorder and crime.

84. The Government argued that, while the articles on the websites on the whole might seem to be “general critique”, there were a lot of instances where “clear calls” aimed at a forcible change of the constitutional order, the violation of public stability, the organisation of mass riots, promoting radical religious groups and other illegal activities had been made. The Government

maintained that the articles could not be considered to concern matters of general interest which the applicants were entitled to bring to the public's attention through the press. They further submitted that the domestic courts had conducted a thorough examination in respect of the articles published on the websites and had correctly identified that the expressions used in the articles were of a "dangerous nature". The applicants had been given opportunities to defend themselves and provide at least some evidence to refute the claims against them, which they had failed to do. The decisions of the domestic authorities in the present cases had been based on relevant and sufficient reasons, and a fair balance had been struck between the competing rights and interests. The measures adopted in respect of the websites could not be considered disproportionate to the legitimate aims pursued.

2. *The Court's assessment*

(a) General principles

85. The Court reiterates that owing to its accessibility and capacity to store and communicate vast amounts of information, the internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information. The internet provides essential tools for participation in activities and discussions concerning political issues and issues of general interest, it enhances the public's access to news and facilitates the dissemination of information in general. Article 10 of the Convention guarantees "everyone" the freedom to receive and impart information and ideas. It applies not only to the content of information, but also to the means of its dissemination, for any restriction imposed on the latter necessarily interferes with that freedom (see *Ahmet Yıldırım v. Turkey*, no. 3111/10, §§ 48-54, ECHR 2012, and *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, § 28, 23 June 2020).

(b) Existence of interferences

86. It is undisputed by the parties that the measures involving the blocking of access to the applicants' websites constituted interferences with the applicants' right to freedom of expression. The Court reiterates that measures blocking access to websites are bound to have an influence on the accessibility of the internet and, accordingly, engage the responsibility of the respondent State under Article 10. The measures which prevented visitors to the applicants' websites from accessing their content amounted to "interference by a public authority" with the right to receive and impart information, since Article 10 guarantees not only the right to impart information, but also the right of the public to receive it (see *Ahmet Yıldırım*, cited above, §§ 51-55; *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, § 56-57, ECHR 2015 (extracts); and *OOO Flavus and Others*, cited above, § 29).

87. The Court reiterates that such interference will constitute a breach of Article 10 unless it is “prescribed by law”, pursues one or more of the legitimate aims referred to in Article 10 § 2 and is “necessary in a democratic society” to achieve those aims.

(c) Whether the interferences were justified

88. The principles relevant to an assessment of whether an interference with freedom of expression was “prescribed by law” have been summarised in detail in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 142-44, 27 June 2017; *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, §§ 93-98, 20 January 2020; and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 249-54, 22 December 2020). In particular, the Court reiterates that the expression “prescribed by law” in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see *Magyar Kétfarkú Kutya Párt*, cited above, § 93). As regards the requirement of foreseeability, the Court has repeatedly held that a norm cannot be regarded as a “law” within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable a person to regulate his or her conduct. That person must be able – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (*ibid.*, § 94).

89. 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 interferences by public authorities (*ibid.*, § 93). In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (see *Selahattin Demirtaş*, cited above, §§ 249-50, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 115, 15 November 2018).

90. However, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice. The level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question, the field it is designed to cover, and the number and status of those to whom it is addressed (see, among many other authorities, *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 64-65, ECHR 2004-I, and *Selahattin Demirtaş*, cited above, §§ 250 and 254). The role of adjudication vested in the national courts is precisely to dissipate such interpretational

doubts as may remain. The Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Gorzelik and Others*, cited above, §§ 65 and 100, and *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 144). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018, and *Jafarov and Others v. Azerbaijan*, no. 27309/14, § 69, 25 July 2019).

91. 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 the manner in which it was applied and interpreted by the domestic authorities (see *Jafarov and Others*, cited above, § 70, and *Rovshan Hajiye v. Azerbaijan*, nos. 19925/12 and 47532/13, § 58, 9 December 2021).

92. While the Government claimed that the interferences in the present case were prescribed, among other things, by Article 47 of the Constitution and Article 3.4 of the Constitutional Law regulating the implementation of human rights and freedoms in the Republic of Azerbaijan of 24 December 2002 (see paragraph 83 above), the Court notes that those legal norms did not expressly regulate measures restricting access to websites. The Court further notes that the interferences in all present cases were based on Articles 13-2 and 13-3 of the IPI Law and, in applications nos. 48735/19, 51207/19 and 58694/19, Article 10 of the Law on Mass Media. The procedural rules applicable to the judicial examination of the MTCHT's applications for the blocking of access to the applicants' websites were provided for by Articles 355-20 to 355-22 of the CCP.

93. In application no. 56138/18, after the Prosecutor General's Office had sent a letter in that regard, the MTCHT and the domestic courts found, in the same set of proceedings, that the applicant organisation's website, azadliq.org, and several other websites had published information prohibited by Article 13-2.3.2 of the IPI Law – "information promoting violence and religious extremism and openly calling for ethnic, racial or religious hostility, a forcible change in the State's constitutional order, the violation of territorial integrity, the forcible seizure or retention of State power, or the organisation of mass riots". Those findings in respect of all the websites concerned were of a summary nature, and neither the letter from the Prosecutor General's Office nor the MTCHT's application to the court or the court judgment specified which specific types of information prohibited by Article 13-2.3.2 of the IPI had been published by azadliq.org in particular, as opposed to the other websites concerned. Moreover, neither the Prosecutor General's Office nor the MTCHT identified any particular articles or statements published by

azadliq.org in the relevant letter or court application (see paragraphs 10 and 12 above).

94. The allegedly prohibited information published by azadliq.org which formed the basis for the above findings can be discerned only from the Sabail District Court's judgment of 12 May 2017 – namely, the four articles published by azadliq.org in early 2017 which were quoted in the court's judgment (see paragraphs 14-18 above).

95. As to the articles in question, the quote from the first article contained critical remarks by a journalist about the recently adopted changes to the Constitution. Such criticism concerned a matter of public interest and contained no express statements prohibited by Article 13-2.3.2 of the IPI Law, such as open calls for a change in the State's constitutional order or the forcible seizure of State power. The second article conveyed the critical opinions of a former presidential candidate about the political, economic and social situation in the country which, in his view, necessitated public protests. The Court cannot discern from this quote any promotion of violence or any calls for the forcible seizure of power, mass riots or other unlawful actions. Nothing in the quoted extract suggests that the person who gave his opinion called for anything more than for members of the public to protest within the permissible limits of their right to freedom of assembly and right to freedom of expression guaranteed by the Constitution and the Convention. The third article referred to information published in an NGO report and in Western media which was publicly available and concerned allegations of corruption implicating the Azerbaijani Government, and it does not appear that the article contained anything other than the allegations which had already been made in those sources. Lastly, the fourth article contained the political opinions of an individual (who was unnamed in the quote available in the case file) who criticised the level of democracy in the country and also expressed that "this situation would change". Again, the Court cannot discern how the information contained in the latter two articles could be understood or interpreted as information promoting or calling for any unlawful actions.

96. The Court also cannot accept the Baku Court of Appeal's reasoning that information prohibited by Article 13-2.3.2 of the IPI also comprised "information and calls ... expressed indirectly in between the lines", referring in this connection to the second and fourth articles (see paragraph 21 above). In the absence of any further elaboration by that court as to how the statements in the impugned extracts could be interpreted as such, the Court considers that it has not been shown that any information, statements or calls of such an "indirect" nature existed. In view of the above, the Court considers that the domestic authorities and courts applied Article 13-2.3.2 in an unforeseeably broad, arbitrary and manifestly unreasonable manner.

97. Furthermore, the Court notes that, unlike in applications nos. 48735/19, 51207/19 and 58694/19, in application no. 56138/18 the MTCHT decided to temporarily block access to azadliq.org on 27 March

2017 pending an application for a court order on the restriction of access to the website, referring to its power to do so under Article 13-3.3 of the IPI Law (see paragraph 11 above). In this connection, the Court reiterates that blocking measures taken before a judicial decision is issued on the illegality of published content amount to prior restraints on publications. The dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court and are justified only in exceptional circumstances. This is particularly true as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (see *Ahmet Yildirim*, cited above, § 47, and *Kablis v. Russia*, nos. 48310/16 and 59663/17, §§ 90-91, 30 April 2019). In cases of prior restraints on the operation of media outlets, a legal framework is required to ensure both tight control over the scope of bans and an effective Convention-compliant judicial review (see *Ahmet Yildirim*, cited above, § 64; *Kablis*, cited above, § 92; and *OOO Flavus and Others*, cited above, § 39).

98. While the domestic law provided for some procedural safeguards, those safeguards were not respected in this case. In particular, the applicant organisation in application no. 56138/18 was not given any advance written warning as required by Article 13-3.1 of the IPI Law, and was therefore deprived of the opportunity to remove the allegedly illegal content before blocking measures could be taken – an opportunity to which it was entitled under Article 13-3.2.

99. Moreover, while Article 13-3.3 authorised the MTCHT to take a decision temporarily blocking access to the website, it limited its power to do so to only “urgent” (“*təxirəsalınmaz*”) cases where, among other things, the State or public interests protected by law were threatened. However, it did not require the MTCHT to provide justification for the urgency of the measure, and the Ministry’s decision neither contained any reasoning justifying the urgency of the measure in the present case nor specified what particular information published by azadliq.org was considered to threaten the State or public interests protected by law. Furthermore, even though Article 13-3.4 of the IPI Law required the MTCHT to “simultaneously” apply to a court when it took a decision to temporarily block access pending a court examination, in this case, the MTCHT did not apply to the court for a blocking order until 30 March 2017, three days after its decision of 27 March 2017.

100. Lastly, the MTCHT’s application to the court was lodged twenty-one days before the relevant provisions of the CCP regulating judicial procedure on the examination of such applications entered into force on 20 April 2017. It may be assumed that, in such circumstances, prior to the entry into force of the relevant procedural rules, the domestic court was not in a position to examine the application, which might have contributed to its non-compliance with Article 13-3.5 of the IPI Law (which was already in force) and

Article 355-22.1 of the CCP, both of which provided that court judgments in respect of applications for the blocking of access to internet information resources be delivered within five days from the date of lodging the application. Even after the entry into force of the relevant provisions of the CCP on 20 April 2017, the first-instance court took over three weeks, namely until 12 May 2017, to deliver its judgment.

101. In respect of application no. 56138/18, and in addition to its findings in paragraphs 95-96 above, the Court therefore finds that the domestic law did not afford the applicant organisation sufficient safeguards against arbitrary interferences involving temporary blocking measures imposed by the MTCHT in the absence of a judicial decision, and that moreover, the safeguards which were actually provided for by law were not respected in this case.

102. Turning to applications nos. 48735/19, 51207/19 and 58694/19, the Court notes at the outset that, unlike the applicant organisation in application no. 56138/18, the applicants in these cases were given written warnings pursuant to Article 13-3.1 of the IPI Law. While the applicants in applications nos. 48735/19 and 58694/19 claimed that they had been unaware of those warnings until the subsequent court proceedings, either because they had been abroad or because they had not been using the email addresses which they had previously provided to the authorities (see paragraphs 26 and 46 above), the Court considers that their ignorance of the warnings was not attributable to the MTCHT. The Court further notes that, unlike in application no. 56138/18, in these three cases, the MTCHT did not decide to temporarily block access to the websites before applying to the courts for blocking orders.

103. In all these three cases, in its applications to the court for the blocking of access to the applicants' websites, the MTCHT submitted that they had published "false, misleading and libellous" information prohibited by Article 13-2.3.9 and Article 13-2.3.11 of the IPI Law in conjunction with Article 10 of the Law on Mass Media. However, for unexplained reasons, none of the court judgments in these three cases contained a finding that there had been a breach of Article 13-2.3.9 of the IPI Law, and instead they expressly stated that only Article 13-2.3.11 of the IPI Law in conjunction with Article 10 of the Law on Mass Media had been breached (see paragraphs 31, 42 and 49 above). Accordingly, the Court will limit its examination of the legal basis for the interferences in these three cases to the provisions relied on by the courts.

104. Article 13-2.3.11 of the IPI Law contained a blanket reference to "other information prohibited by the laws of the Republic of Azerbaijan" and, as noted above, in all three cases it was found that a number of articles published by anaxeber.az, az24saat.org and xural.com (see paragraphs 28-29, 40 and 48 above) contained "false, misleading and libellous" information prohibited by Article 10 of the Law on Mass Media. The Court, however, takes note of the applicants' submissions before it and before the domestic

courts that no defamation proceedings had ever been brought against them in respect of the statements made in those articles. In the present cases, no defamation claims were lodged by any of the allegedly affected individuals or legal entities before the initiation of the proceedings concerning the blocking of access to the relevant websites. The applicants never had an opportunity to defend the statements made in the impugned articles – an opportunity that they would normally have had in adversarial defamation proceedings. Such proceedings should have afforded them an adequate opportunity to provide sources and evidence for any factual statements made, argue that those statements should be considered “value judgments” rather than factual statements, and generally have the benefit of a comprehensive court assessment striking a fair balance between the right to freedom of expression and the right to respect for private life based on a number of the relevant criteria identified in the Court’s case-law (see, for the summary of the relevant principles, *Khadija Ismayilova v. Azerbaijan* (no. 3), no. 35283/14, §§ 54-64, 7 May 2020, and *Khural and Zeynalov v. Azerbaijan*, no. 55069/11, §§ 37-49, 6 October 2022).

105. In this connection, the Court notes that although the applicants were found to have breached the requirements of Article 10 of the Law on Mass Media prohibiting, *inter alia*, the use of the mass media for publishing libellous information, Article 44 of the same Law provided that only individuals and legal entities whose honour and dignity had been discredited by publications of a libellous nature had the right to demand a retraction, correction or reply and the right to apply directly to a court with a defamation claim (see paragraph 55 above). It follows that the Law on Mass Media did not give public authorities such as the MTCHT the right to make claims of this type on behalf of such individuals or legal entities, and did not confer jurisdiction on a domestic court to find that a certain publication was libellous in the absence of a direct relevant claim lodged by the individual or legal entity whose rights had been affected.

106. The Court notes that, in response to the objections and arguments raised in this regard by the applicants, the domestic courts held that Article 13-3.1 of the IPI Law vested the MTCHT with the authority to identify any content prohibited by Article 13-2.3 on its own initiative, and not necessarily on the basis of complaints or submissions by affected persons (see paragraphs 36, 42 and 49 above). This interpretation essentially meant that, by virtue of Article 13-3.1 and other provisions of the IPI Law, the MTCHT’s competence to find that a website had published information prohibited by Article 13-2.3 (and therefore the competence of the courts which were called upon to examine the MTCHT’s applications in this regard) extended beyond the limits allowed by other relevant legislation applied via the blanket reference contained in Article 13-2.3.11, namely Article 44 of the Law on Mass Media in the present case. However, such an interpretation is not compatible with the rule of law (see paragraph 89 above). In effect, it

granted the MTCHT unlimited scope for unchecked arbitrariness in its determination of what constituted libellous information in the absence of any prior relevant court judgments and, as a corollary to that, extended the courts' competence to make findings in this regard in the absence of any claims lodged by affected persons. In view of the above, the Court considers that Article 13-2.3 of the IIPI Law (and, in particular, the blanket reference contained in Article 13-2.3.11), as interpreted and applied by the domestic courts in the light of Article 13-3.1 of the IIPI Law, was not sufficiently foreseeable as to its effects to enable the applicants to regulate their conduct, and did not indicate with sufficient clarity the scope and manner of exercise of the discretion afforded to the authorities in the field it regulated. The discretion afforded was essentially expressed in terms of unfettered power and was not circumscribed with sufficient safeguards against arbitrariness. The provision in question did not therefore meet the "quality of law" requirement of the Convention.

107. Given the above finding in respect of the authorities' reliance on Article 13-2.3.11 of the IIPI Law in conjunction with Article 10 of the Law on Mass Media in the context of the alleged publication by the applicants of "libellous information", and given that the domestic authorities and courts summarily found that the impugned articles contained "false, misleading and libellous" information without clarifying those individual terms and which specific statements each or all of them applied to, the Court considers it unnecessary to further analyse separately whether the level of precision of the domestic legislation as to the definition of the terms "false and misleading written [material]" ("*yalan və qərəzli yazılar*") was compatible with the requirement of foreseeability.

108. In view of the above considerations, the Court finds that the interferences in these cases failed to meet the "prescribed by law" requirement under Article 10 § 2 of the Convention. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 10 § 2 (legitimate aim and necessity of the interference) have been complied with.

109. There has accordingly been a violation of Article 10 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. The applicants complained under Article 18 of the Convention in conjunction with Article 10 of the Convention that the blocking measures imposed on their websites had been applied for ulterior purposes not prescribed by the Convention. The applicants in applications nos. 56138/18 and 48735/19 also complained under Article 6 of the Convention of a breach of their right to a fair trial. Lastly, the applicants in applications nos. 48735/19, 51207/19 and 58694/19 further complained under Article 13

that they had not had at their disposal an effective domestic remedy for their Convention complaints.

111. The Government raised objections as to the admissibility of some of these complaints and, as to the merits, argued that there had been no violations of the Convention provisions relied on by the applicants. The applicants reiterated their complaints.

112. Having regard to the facts of the cases, the parties' submissions and the conclusions reached above under Article 10 of the Convention (see paragraphs 108-109 above), the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to give a separate ruling on the admissibility and merits of the applicants' remaining complaints (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; *Emin Huseynov v. Azerbaijan* (no. 2), no. 1/16, § 67-68, 13 July 2023; *Ayyubzade v. Azerbaijan*, no. 6180/15, § 58-60, 2 March 2023; and *Rustamzade v. Azerbaijan* (no. 2), no. 22323/16, § 61-62, 23 February 2023).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. The applicant organisation in application no. 56138/18 claimed 10,000 euros (EUR) in respect of non-pecuniary damage. The applicants in applications nos. 48735/19, 51207/19 and 58694/19 claimed EUR 12,000 per application in respect of non-pecuniary damage.

115. The Government argued that the sums claimed were excessive and that a finding of a violation of the Convention would constitute sufficient reparation for any non-pecuniary damage suffered by the applicants.

116. The Court awards the applicants EUR 5,000 per application in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

117. The applicant organisation in application no. 56138/18 claimed EUR 34,102.90 for the costs and expenses incurred before the Court. In support of this claim, it submitted a letter signed by one of its officials specifying the total amount of legal fees incurred by the organisation in connection with two applications lodged with the Court, including the present one.

118. The Government argued that the amount claimed was excessive and that the claim was unsupported by any relevant evidence.

119. 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. The Court also points out that 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 *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017). In the present case, the applicant organisation failed to produce any contract with its representative or any other documents showing that it had paid or was under a legal obligation to pay the fees claimed (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017, and *Tagiyeva v. Azerbaijan*, no. 72611/14, § 92, 7 July 2022). Therefore, the Court dismisses the claim of the applicant organisation in application no. 56138/18 in respect of costs and expenses.

120. The applicants in applications nos. 48735/19, 51207/19 and 58694/19 claimed EUR 3,000 per application in respect of costs and expenses incurred before the domestic courts and the Court. In support of their claims, the applicants submitted copies of contracts for legal services concluded with their representatives. They also requested that the amounts awarded in respect of costs and expenses be paid directly into their respective representatives' bank accounts.

121. The Government argued that the claims were excessive and that the contracts for legal services were not compliant with the domestic law, as the amounts indicated in them were expressed in euros and not Azerbaijani manats. They further argued that EUR 1,000 for all three applications jointly would be a reasonable award in respect of costs and expenses, in the circumstances of the present case.

122. Regard being had to the documents in its possession and the above criteria, in respect of applications nos. 48735/19, 51207/19 and 58694/19, the Court considers it reasonable to award the sum of EUR 1,000 per application covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaint under Article 10 admissible;
3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that there is no need to examine the admissibility and merits of the complaints under Articles 6, 13 and 18 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros) per application (as regards applications nos. 56138/18, 48735/19, 51207/19 and 58694/19), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) per application (as regards applications nos. 48735/19, 51207/19 and 58694/19), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly into their respective representatives' bank accounts;
 - (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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Marko Bošnjak
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence/Registration Nationality	Principal representative
1.	56138/18	RFE/RL Inc. v. Azerbaijan	22/11/2018	RFE/RL INC. Washington, DC USA	Padraig HUGHES
2.	48735/19	Talibov v. Azerbaijan	10/08/2019	Azer Mammad oglu TALIBOV 1974 Barda Azerbaijani	Elchin SADIGOV
3.	51207/19	24Saat.org Ltd and Alakbarov v. Azerbaijan	18/09/2019	24SAAT.ORG LTD Baku Azerbaijan Vugar ALAKBAROV 1981 Baku Azerbaijani	Elchin SADIGOV
4.	58694/19	<i>Khural</i> and Zeynalov v. Azerbaijan	18/10/2019	KHURAL Baku	Zibeyda SADIGOVA

RFE/RL INC. AND OTHERS v. AZERBAIJAN JUDGMENT

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence/Registration Nationality	Principal representative
				Azerbaijan Avaz Tapdig oglu ZEYNALOV 1970 Baku Azerbaijani	