



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

Communicated on 7 January 2014

FIRST SECTION

Application no. 60659/08
Agil KHALIL against Azerbaijan
and 2 other applications
(see list appended)

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Agil Khalil, is an Azerbaijani national, who was born in 1983 and lives in Paris. He is represented before the Court in respect of his applications nos. 60659/08 and 53585/09 by Mr E. Sadigov and Mr R. Hajili and in respect of his application no. 38175/09 by Mr E. Sadigov, lawyers practising in Azerbaijan.

At the time of the events described below, the applicant was a journalist working as a reporter for the *Azadliq* newspaper.

The facts of the cases, as submitted by the applicant, may be summarised as follows.

A. Application no. 60659/08, *Khalil v. Azerbaijan*

1. Incident of 22 February 2008 and institution of criminal proceedings by the prosecution authorities

On 22 February 2008 the applicant went to an area called Olive Gardens in Baku, which was managed by a private company named Zeytun Baglari KFT, to prepare a report concerning the ongoing cutting down of olive trees. The applicant took photographs of the trees that had been cut down and conversed with people working at the site.

When two men approached the applicant and asked him to identify himself, he presented his press card and stated that he was preparing a report about the cutting down of olive trees. One of the men then slapped the applicant on the neck and punched him. The applicant fell to the ground and the other man kicked him in the chest and head. He also stepped on the

applicant's right hand, breaking one of the applicant's fingers. The two men also tried to strangle the applicant with the cable of his camera.

In order to stop the men beating him up further, the applicant said that he would give them the photographs. When the aggressors stopped beating him, the applicant managed to stand up and fled.

The incident was observed by a group of teenagers who filmed it with their mobile phone cameras. The applicant also managed to take photographs of the aggressors.

On an unspecified date the applicant reported the incident to the police.

On 24 February 2008 the applicant was invited to the Binagadi District Prosecutor's Office. He was accompanied there by his lawyer and a colleague. During the meeting, the Binagadi District Prosecutor, the head of police station no. 7 and an unidentified older man asked the applicant to withdraw his complaint and to reach an amicable solution with his aggressors. The applicant refused to do so and insisted that the aggressors be prosecuted.

On an unspecified date the applicant was examined by a forensic expert. However, he was not provided with a copy of the forensic report.

The applicant was not kept informed of the examination of his complaint by the police. In the meantime, the investigation was able to identify one of his aggressors as an officer (D.A.) of the Ministry of National Security ("the MNS").

Meanwhile, the applicant realised that, since the incident, he had been permanently followed by a person on foot and by a Mercedes car.

On an unspecified date, E.S., the spokesman of "Adalat", a political party, went to the applicant's workplace. He urged the applicant to withdraw his complaint because his life was in danger and he had to protect himself.

The applicant informed the police and the Ombudsman of those facts.

2. Stabbing of 13 March 2008 and the police investigation

On 13 March 2008 as the applicant was returning home from work he was violently attacked by four men in the street. One of the men stabbed the applicant in the chest with a knife. The depth of the wound was about five centimeters. The knife did not reach his heart. The applicant was taken to hospital by the police.

A criminal investigation was launched in connection with the stabbing. At that time, the applicant became aware of the investigator's decision of 7 March 2008 refusing to institute criminal proceedings in connection with the incident of 22 February 2008. On 14 March 2008 the latter decision was quashed by the Baku City Prosecutor, and the Baku City Police Office was charged with the investigation of both incidents (the beating and the stabbing) involving the applicant.

On 14 March 2008 the applicant was questioned by the police about the stabbing incident.

On 16 March 2008 the police heard the three teenagers who had witnessed the incident of 22 February 2008. The police also carried out an identification procedure in respect of the two persons who had beaten up the applicant on 22 February 2008. The witnesses identified two officers of the MNS, D.A. and A.C., as the aggressors. During the investigation it was also

established that the director of Zeytun Baglari KFT, which managed the area where the applicant had been beaten up, was D.A.'s brother.

On 17 March 2008 the investigator ordered a new forensic examination of the applicant.

On an unspecified date the investigation of the case was removed from the police and transferred to the prosecution authorities.

3. Investigation by the prosecution authorities between 3 and 5 April 2008

On an unspecified date the applicant left Baku for his parents' place in Kurdemir.

On 3 April 2008 the applicant was invited to the Kurdemir District Prosecutor's Office. He arrived at the Kurdemir District Prosecutor's Office at around 7 p.m on the same day. He was subjected to a body search and his mobile phone was taken away. The investigator and an officer of the prosecution authorities (named E.) insulted the applicant and showed him a video recording of a person (S.) speaking Russian which the applicant did not understand. The investigator then stated that S. had said in the video recording that he had been having a homosexual relationship with the applicant and admitted that he had stabbed the applicant. The investigator noted that the applicant's stabbing was a jealousy crime by S.

The investigator said that unless the applicant gave a statement in line with S.'s submissions, the video recording would be broadcast on all television channels. The investigator also threatened the applicant with ill-treatment of his parents. In the meantime, the applicant's parents were taken to the Kurdemir District Prosecutor's Office, where they were also threatened. The investigator and E. continued to physically and verbally abuse the applicant, eventually forcing him to make a statement that he knew S.

Subsequently, at around 2 a.m. on 4 April 2008, the applicant and his parents were allowed to leave the Kurdemir District Prosecutor's Office.

At 7 a.m. on 4 April 2008 the applicant took a bus for Baku. However, the investigator phoned him and instructed him to get off the bus. The applicant followed the investigator's instructions as he feared that the investigator might again use violence against him.

At around 7.30 a.m. the investigator and E. took the applicant to Baku by car. During the journey, the applicant was denied permission to contact his lawyer.

At around 10 a.m. the applicant was taken to the premises of the Serious Crime Investigation Department ("the SCID") of the Prosecutor General's Office, where he was again subjected to ill-treatment. He was handcuffed and a plastic bag was placed over his head. He was slapped in the face, punched in the stomach, and his hands were shut in doors.

The applicant was again forced by the investigator to make a formal statement that he knew S. At around 2 p.m., after having obtained the statement, the investigator phoned the applicant's lawyer and invited him to the SCID.

The applicant was again heard in the presence of his lawyer. However, the investigator did not allow the applicant's lawyer to participate effectively in the applicant's questioning. In these circumstances, the

applicant and his lawyer expressed a wish to leave the premises of the SCID, but were not allowed to do so.

Later, a confrontation was organised between the applicant and another person, X.M., who also stated that he had had a homosexual relationship with the applicant. The applicant stated that he did not know X.M.

Another confrontation was carried out between S. and the applicant. During the confrontation, S. stated that he had stabbed the applicant on 13 March 2008.

At around 2 a.m. on 5 April 2008 the applicant was allowed to leave the premises of the SCID.

4. Remedies used by the applicant

On 7 April 2008 the applicant lodged a complaint with the Prosecutor General's Office alleging that he had been ill-treated on the premises of the Kurdemir District Prosecutor's Office and the SCID.

On the same day, a special broadcast on the applicant's alleged homosexual relationship with S. was transmitted on various TV channels. The broadcast had been prepared by the Prosecutor General's Office using the video recordings of the confrontations between the applicant and other persons.

On 23 April 2008 the applicant lodged a new complaint with the Prosecutor General's Office. He complained in particular that the criminal investigation concerning the incident of 22 February 2008 had been ineffective, that he had been ill-treated by the investigator, that he had been unlawfully detained in the Kurdemir District Prosecutor's Office and in the SCID, and that his freedom of expression had been violated.

On 7 May 2008 the applicant lodged a complaint with the Nasimi District Court reiterating his previous complaints. He noted that his rights protected under Articles 3, 5, 10 and 13 of the Convention had been violated.

On 17 July 2008 the Nasimi District Court dismissed the applicant's complaint, holding that the applicant had failed to prove that he had been ill-treated by the investigator. The court further found that the investigation concerning the beating and stabbing incidents had been effective. As for the applicant's detention by the investigator, the court held that the applicant had been under an obligation to collaborate with the investigation and that it could not be interpreted as deprivation of liberty.

On 25 July 2008 the applicant appealed against that decision, reiterating his previous complaints.

On 28 August 2008 the Court of Appeal dismissed the applicant's appeal.

5. Further developments in the investigation

On 17 May 2008 the investigator in charge of the case decided to discontinue the criminal proceedings instituted in respect of the incident of 22 February 2008. He concluded that MNS officers D.A. and A.C. had not beaten up the applicant, but had simply asked him to give them the photographs that he had taken. As to the part of the criminal case concerning the applicant's stabbing, the investigator decided to continue the

investigation and maintain the charges against S. The investigator held in this connection that the applicant had been stabbed by S. with whom he had allegedly had a homosexual relationship.

On an unspecified date the indictment against S. was filed with the Nasimi District Court.

On 15 July 2008 the Nasimi District Court convicted S. of stabbing the applicant and sentenced him to one and half year's imprisonment. The applicant, who was heard at the court hearing as a victim, submitted that he did not know S. and that he had not had a homosexual relationship with him. The applicant further claimed that he had not been stabbed by S. and that his stabbing had been organised by the MNS.

B. Application no. 38175/09, *Khalil v. Azerbaijan*

1. The applicant's attempts to leave the country

Following the incident of 22 February 2008 and his stabbing on 13 March 2008, on 7 May 2008 there was an attempted attack on the applicant in the Baku Metro. After that incident, the applicant decided to leave Azerbaijan for fear for his life.

At that time, the criminal proceedings in respect of the stabbing were still pending.

On 8 May 2008 the head of the SCID of the Prosecutor General's Office wrote a letter to the head of the Anti-terrorism Centre of the MNS requesting that the applicant's freedom to leave the country be restricted. He justified his request by stating that if the applicant left the country, an effective investigation could not be carried out.

The head of the Anti-terrorism Centre of the MNS replied by letter of 10 May 2008 to the head of the SCID, noting that the applicant was under operational surveillance at all the State border checkpoints.

On an unspecified date the applicant bought a ticket for a flight from Baku to Istanbul scheduled for 10 May 2008.

The applicant arrived at Baku Heydar Aliyev Airport on the day of the flight. However, the State Border Service did not allow him to board the flight.

On the following day the applicant made two attempts to cross the land border between Azerbaijan and Georgia in the Balakan and Zagatala regions. However, again he was not allowed to leave the country.

The applicant's inability to leave the country was extensively covered by the media. In an interview published on 13 May 2008 the head of the press service of the Prosecutor General's Office, V.A., confirmed that the applicant had been prevented from leaving the country on 10 and 11 May 2008 because, as a victim in criminal proceedings, he was required to assist with the investigation.

On 18 June 2008 the applicant tried to leave Azerbaijan for France by air. However, he was not authorised to leave the country at Baku Airport.

Another attempt by the applicant to leave the country on 22 July 2008 also failed.

On 23 July 2008 the applicant finally managed to leave Azerbaijan for France.

2. Remedies used by the applicant

On 23 May 2008 the applicant brought an action against the Prosecutor General's Office and the State Border Service, complaining of the violation of his freedom of movement. The applicant asked the court to declare unlawful the State authorities' actions preventing him from leaving the country and asked for compensation for the violation of his right protected under Article 2 of Protocol No. 4 to the Convention. In support of his claim, the applicant relied on the interview of the head of the press service of the Prosecutor General's Office, who had confirmed that the applicant's attempts to leave the country had been prevented by the State authorities.

On 6 June 2008 the Nasimi District Court refused to admit the applicant's complaint, because it did not meet the procedural requirements set out under Articles 149 and 150 of the Code of Civil Procedure. In particular, the judge held that the applicant had failed to submit the document banning his departure from the country.

The applicant appealed against that decision, pointing out that he had been unlawfully prevented from leaving the country. As to the first-instance court's refusal to admit his complaint, the applicant stressed that his complaint was against the unlawful actions of the State authorities and that the court could not refuse to admit his action on the ground that he had failed to submit the document proving that his freedom of movement had been restricted.

On 1 August 2008 the Baku Court of Appeal dismissed an appeal lodged by the applicant. The appellate court held that the first-instance court's decision had been justified, because the applicant had failed to submit any official document proving that his right to leave the country had been restricted.

On 19 December 2008 the Supreme Court upheld the decision of the Baku Court of Appeal.

On 9 July 2008 during the trial concerning the applicant's stabbing, the applicant complained that his freedom of movement had been violated. He argued that he had been unlawfully prevented from leaving the country in the absence of any official decision in that respect.

On 15 July 2008 the Nasimi District Court convicted S. of stabbing the applicant (see above, application no. 60659/09, E.). The court's judgment, however, was silent concerning the applicant's complaint concerning the restriction of his freedom of movement.

In an appeal lodged by the applicant on 21 July 2008 against the first-instance court's judgment, he reiterated his complaint that the domestic authorities had unlawfully prevented him from leaving the country.

On 4 December 2008 the Baku Court of Appeal dismissed the applicant's appeal. It held that it did not appear from the case file that any restriction had been put on the applicant's freedom of movement and that the applicant had already left the country.

The applicant reiterated the same complaint in a cassation appeal.

On 19 March 2009 the Supreme Court dismissed the applicant's appeal. The Supreme Court noted that there had been no restriction on the applicant's freedom of movement.

C. Application no. 53585/09, *Khalil v. Azerbaijan*

Following the investigator's decision of 17 May 2008 to continue the investigation in connection with the applicant's stabbing and maintain the charges against S., the applicant learned that the decision in question relied largely on telephone messages allegedly sent by him to S. It also appears that the telephone conversations between the applicant and other persons, including his colleagues, had been intercepted.

On 9 July 2008 the applicant lodged a request with the Nasimi District Court asking the court to declare unlawful the tapping of his telephone by the investigation. He noted in particular that information concerning his telephone conversations and messages had been obtained by the MNS at the request of the Yasamal District Police Office without a court order. The applicant also claimed that some of the messages allegedly sent to S. had not been sent by him but had been fabricated by the MNS.

On 15 July 2008 the Nasimi District Court convicted S. of stabbing. In the same judgment, the court also examined the applicant's complaints concerning telephone tapping and use of the messages and held that the evidence in question had been lawfully obtained on the basis of a court decision, as required by the domestic law. However, the court failed to refer to the court decision authorising the telephone tapping and the use of the messages in question.

On 21 July 2008 the applicant lodged an appeal against the Nasimi District Court's judgment of 15 July 2008, claiming, *inter alia*, that his rights protected under Articles 8 and 10 of the Convention had been breached. In this connection, the applicant noted that his telephone had been unlawfully tapped by the MNS and his messages had been unlawfully used by the investigation.

On 4 December 2008 the Baku Court of Appeal dismissed the applicant's appeal, holding that the evidence referred to by the first-instance court had been lawfully obtained. However, the appellate court failed to refer to the court decision which had authorised it.

The applicant lodged a cassation appeal against that decision, reiterating his previous complaints.

On 19 March 2009 the Supreme Court dismissed the applicant's complaint.

COMPLAINTS

A. Application no. 60659/08, *Khalil v. Azerbaijan*

The applicant complains under Article 2 of the Convention that the State failed in its obligation to protect his life. In particular, he alleges that despite the fact that he informed the police that he was being permanently followed by a person on foot and by a car after his beating on 22 February 2008, no action was taken by the relevant authorities and he was subsequently stabbed on 13 March 2008.

The applicant complains under Article 3 of the Convention that he was ill-treated by officers of the MNS on 22 February 2008 and that the domestic authorities failed to effectively investigate his allegations of ill-treatment.

The applicant further complains under Article 3 of the Convention that he was ill-treated in April 2008 by the investigator on the premises of the Kurdemir District Prosecutor's Office and in the SCID, and that the domestic authorities failed to carry out an effective investigation in that respect.

The applicant complains under Article 5 of the Convention that his detention between 7.30 a.m. on 4 April 2008 and 2 a.m. on 5 April 2008 in the Kurdemir District Prosecutor's Office and in the SCID amounted to a deprivation of liberty and was unlawful.

The applicant complains under Article 10 of the Convention that his freedom of expression was violated, arguing that he was beaten by State agents on 22 February 2008 because of his journalistic activity.

Relying on Article 13 in conjunction with Articles 3 and 5 of the Convention, the applicant complains that he had no effective remedies in respect of his complaints concerning his ill-treatment by MNS officers and by the investigator, and his unlawful deprivation of liberty.

B. Application no. 38175/09, *Khalil v. Azerbaijan*

The applicant complains under Article 6 of the Convention that his right of access to court was violated, because the domestic courts refused to admit his complaint.

The applicant further complains under Article 2 of Protocol No. 4 to the Convention that his right to freedom of movement was breached because the domestic authorities unlawfully prevented him from leaving the country.

C. Application no. 53585/09, *Khalil v. Azerbaijan*

The applicant complains under Article 8 of the Convention that the MNS unlawfully intercepted his telephone conversations and accessed his messages without a court order.

The applicant complains under Article 10 of the Convention that his right to freedom of expression was violated because the State failed to investigate effectively his stabbing on 13 March 2008. He also complains that the telephone surveillance by the MNS violated his freedom of expression as a journalist and was organised in order to discover his journalistic sources.

QUESTIONS TO THE PARTIES

A. Questions relating to application no. 60659/08, *Khalil v. Azerbaijan*

1. Has the applicant's right to life, ensured by Article 2 of the Convention, been violated in the present case? In particular, was the State under a positive obligation to take appropriate measures to safeguard the applicant's life? Did the applicant inform the police of any real risk to his life? If so, which measures were taken by the police in this respect? Did the applicant exhaust the domestic remedies in respect of this complaint?

2. Has the applicant been subjected to torture or inhuman or degrading treatment, in breach of Article 3 of the Convention?

a) In particular, were State agents involved in the applicant's beating on 22 February 2008?

b) In particular, did the investigator subject the applicant to torture or inhuman or degrading treatment on 3 and 4 April 2008 in the Kurdemir District Prosecutor's Office and the Serious Crime Investigation Department of the Prosecutor General's Office?

c) Having regard to the procedural protection from torture or inhuman or degrading treatment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

3. The parties are requested to submit copies of the following documents:
(a) all of the applicant's complaints and appeals concerning his ill-treatment allegations lodged with the relevant domestic authorities;
(b) all the decisions of the domestic investigating or judicial authorities and any other documents related to the domestic investigation (if any) into the applicant's allegations of ill-treatment; and
(c) any available forensic evidence, medical reports and all other evidence (such as the video recording of 22 February 2008, photographs, etc.) attesting the applicant's alleged injuries.

4. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention? Was the alleged deprivation of liberty from 7.30 a.m. on 4 April 2008 to 2 a.m. on 5 April 2008 compatible with the requirements of Article 5 of the Convention?

5. Did the applicant have at his disposal an effective domestic remedy for his complaints concerning his ill-treatment by agents of the Ministry of National Security and by the investigator and his deprivation of liberty by the investigator, as required by Article 13 of the Convention?

B. Questions relating to application no. 38175/09, *Khalil v. Azerbaijan*

1. Was any restriction placed on the applicant's freedom to leave the territory of the respondent State, as guaranteed by Article 2 § 2 of Protocol No. 4? If so, was that restriction in accordance with the law and necessary in terms of Article 2 § 3 of Protocol No. 4?
2. Was Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present case? Did the refusal to admit the applicant's action by the domestic courts constitute a breach of the applicant's right of access to court?

C. Questions relating to application no. 53585/09, *Khalil v. Azerbaijan*

1. Has there been an interference with the applicant's right to respect for his private life or correspondence within the meaning of Article 8 § 1 of the Convention? In particular, was the applicant subjected to telephone tapping? Were the applicant's telephone messages intercepted? If so, was that interference in accordance with the law and justified in terms of Article 8 § 2?
2. Was the interception of the applicant's telephone conversations and messages carried out in order to identify his journalistic source? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?

D. Common questions relating to applications nos. 60659/08 and 53585/09, *Khalil v. Azerbaijan*

1. Has there been an interference with the applicant's freedom of expression, in particular his right to impart information and ideas, within the meaning of Article 10 § 1 of the Convention? Did the Government comply with their positive obligations under Article 10 of the Convention as defined by the Court (see *Özgür Gündem v. Turkey*, no. 23144/93, §§ 42-46, ECHR 2000-III)?
2. In particular, was the applicant's beating on 22 February 2008 related to his journalistic activity?
3. In particular, was the applicant's stabbing on 13 March 2008 related to his journalistic activity?

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	60659/08	24/11/2008	Agil KHALIL 27/09/1983 Paris	Elchin Ali Oglu SADIGOV
2.	38175/09	19/06/2009	Agil KHALIL 27/09/1983 Paris	Elchin Ali Oglu SADIGOV
3.	53585/09	09/09/2009	Agil KHALIL 27/09/1983 Paris	Rashid Ramazan Oglu HAJILI