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

FIRST SECTION

DECISION

Application no. 8135/12
Khalid Dunyamali oglu AGALIYEV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 10 January 2023 as a Committee composed of:

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Ivana Jelić*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 8135/12) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 December 2011 by an Azerbaijani national, Mr Khalid Dunyamali oglu Agaliyev ("the applicant"), who was born in 1977 and lives in Baku and who was represented by Mr R. Hajili and Mr F. Namazli, lawyers based in Strasbourg and Baku respectively;

the decision to give notice of the application to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application, lodged under Articles 6, 10 and 13 of the Convention, concerns an alleged breach of the applicant's right of access to arguably State-held information of public interest and the alleged unfairness of civil proceedings instituted by him in that respect.

2. According to the applicant's submissions before the Court, he was a lawyer and at the relevant time was working at the Media Rights Institute ("the MRI"), a non-governmental organisation ("NGO") dealing with various projects relating to freedom of information and freedom of expression.

3. On 17 February 2010 the applicant sent a request for information to the State-owned Azerbaijan Television and Radio Broadcasting Company (AzTV). He requested information on the following for the year of 2009: the amount of funding AzTV received from the State budget; the amount allocated by AzTV for its employees' salaries; the monthly salaries of various management personnel; the amount allocated by AzTV for purchasing and repairing its vehicles and for fuel; the amount allocated by AzTV for the repair of its main premises and other buildings; and the amount spent on the maintenance of its website. He did not explain the exact purpose of the request and did not mention his alleged affiliation with the MRI.

4. Having received no response, on an unspecified date the applicant lodged a claim with the Sabayil District Court. He argued that, as a State-owned company, AzTV was required by law to disclose information concerning the expenditure of funds from the State budget, and asked the court to order AzTV to provide the information requested. In his claim, the applicant did not explain the exact purpose of his request and did not mention his affiliation with the MRI.

5. Before the claim was examined, by a letter of 27 April 2010 AzTV responded to the applicant's request, noting that it had received 30,103,665 Azerbaijani manats (AZN) from the State budget in 2009 and that this information had been published in the newspapers. It further noted that the applicant had not submitted his identity document as required by the Law on Access to Information, which was grounds for refusing access to information. In any event, AzTV refused to disclose the rest of the requested information, noting that its financial statements constituted confidential commercial information under the Law on Commercial Confidentiality, and access to such information could be lawfully refused under the Law on Access to Information.

6. By a judgment of 23 July 2010 the Sabayil District Court dismissed the applicant's claim, finding that the information requested constituted confidential commercial information.

7. The applicant appealed, arguing that the first-instance court had misinterpreted the provisions of the relevant domestic law. He noted that he worked at the MRI, without specifying his role or elaborating on the nature of the work, and argued in general terms that the information requested was of public interest.

8. On 1 February and 21 June 2011 respectively the Baku Court of Appeal and the Supreme Court dismissed the applicant's appeals.

9. The applicant complained under Article 10 of the Convention that AzTV's refusal to provide all of the information requested had amounted to a breach of his right of access to information of public interest. He further complained that the domestic courts had delivered unreasoned and biased judgments, in breach of his rights to a fair trial and to an effective domestic remedy.

THE COURT'S ASSESSMENT

A. Article 10 of the Convention

10. The Court notes that AzTV was a State-owned broadcasting company and not a public authority. A question arises whether, in such circumstances, the alleged interference could be considered attributable to the State as such. However, it is not necessary to make a determination on this matter in the present case because, even assuming that the alleged interference could be attributable to the State, the application is in any event inadmissible for the following reasons.

11. Article 10 of the Convention does not confer on the individual a right of access to information held by a public authority, nor does it oblige the State to impart such information to the individual. However, such a right or obligation may arise, firstly, where disclosure of the information has been imposed by an enforceable court order and, secondly, in circumstances where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression. Whether and to what extent the denial of access to information constitutes an interference with an applicant's freedom of expression must be assessed in each individual case and in the light of its particular circumstances (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 156-57, 8 November 2016). In order to determine whether Article 10 can be said to apply to a public authority's refusal to disclose information, the situation must be assessed in the light of the following criteria: (a) the purpose of the request for information; (b) the nature of the information sought; (c) the particular role of the seeker of the information in "receiving and imparting" it to the public; and (d) whether the information was ready and available (ibid., §§ 157-70).

12. As to the "nature of the information sought", the Court has difficulty accepting, without further relevant contextual elaboration, the applicant's submissions that the entirety of the information requested by him, for example information on AzTV's fuel and repair costs and website maintenance expenses, necessarily constituted a matter of public interest. Likewise, given the peculiarities and the detailed nature of the questions posed by the applicant, a question arises whether the information was "ready and available". In connection with the latter criterion, the Court reiterates that the Convention does not impose an obligation to collect information on the applicant's request and provide it in the particular form that the applicant is looking for (see, *mutatis mutandis*, *Weber v. Germany* (dec.), no. 70287/11, §§ 25-27, 6 January 2015; *Bubon v. Russia*, no. 63898/09, §§ 44-45, 7 February 2017; and *Mikiashvili and Others v. Georgia* (dec.), nos. 18865/11 and 51865/11, § 55, 19 January 2021). However, the Court does not consider it necessary to examine in detail whether the above two criteria have been met as the other threshold criteria, namely the purpose of

the request for information and the role of the applicant, which are closely interlinked in the circumstances of the present case, have not been demonstrated to have been met in the present case.

13. As regards the purpose of the information requests, the Court reiterates that for that criterion to be satisfied, it would not be sufficient for an applicant to explain that purpose for the first time in proceedings before the Court. It is before the relevant domestic authorities that the seeker of information must first sufficiently explain the exact purpose of a request by specifying, among other things, how his or her particular role in receiving and imparting information to the public is compatible with the nature of the information sought and why access to it is instrumental for the exercise of his or her right to freedom of expression (see *Mikiashvili and Others*, cited above, § 50). It is not sufficient for an applicant to make an abstract point to the effect that certain information should be made accessible as a matter of the general principle of transparency (see *Centre for Democracy and the Rule of Law v. Ukraine* (dec.), no. 75865/11, § 54, 3 March 2020). Furthermore, the specific role of the seeker of the information in "receiving and imparting" it to the public is of particular importance. An important consideration is whether the person seeking access to the information in question does so with a view to informing the public in the capacity of a public "watchdog", which includes, but is not necessarily limited to, journalists, NGOs, academic researchers, authors of literature on matters of public concern, and, in certain circumstances, bloggers and popular users of social media (see *Magyar Helsinki Bizottság*, cited above, §§ 166-68).

14. In the present case the applicant did not explain the exact purpose of the request either to AzTV or to the domestic courts, and thus he failed to specify why access to the information was instrumental for the exercise of his right to freedom of expression (compare *Namazli v. Azerbaijan* (dec.), no. 28203/10, §§ 36-37, 7 June 2022; compare also, *mutatis mutandis*, *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, §§ 40-42, 30 January 2020, and *Centre for Democracy and the Rule of Law*, cited above, §§ 57-61).

15. Furthermore, although the applicant stated in his submissions before the Court that he was a lawyer and had worked for the MRI, had written reports for it on various issues and had intended to conduct research on the efficiency of AzTV's spending of public funds, he did not submit any evidence in support of those submissions. Instead he submitted two MRI reports, dated 2010 and 2011 and of which he was the author, which aimed to assess the compliance of numerous State authorities and State-owned companies (including AzTV) with the requirements of the Law on Access to Information. The reports consisted to a large extent of a statistical analysis of various authorities' reactions (full, partial or no response) to numerous information requests sent to them by the MRI and various persons affiliated with it (including journalists and other persons, as

well as the applicant himself, who was listed in the reports as a "civil-society activist" and not a MRI employee), as well as the related court proceedings. However, those reports did not concern, in substance, any of the specific information requested by the applicant from AzTV in the present case and they contained no discussion or analysis of the efficiency of its expenditure. Moreover, neither before the Court nor at the domestic level has the applicant presented any documentary material showing the specific details of his affiliation with the MRI in the context of its primary activities, or of his authorisation to represent it before various institutions in relation to its activities. In the present case, he applied to AzTV in his personal capacity, providing his own personal contact details. Likewise, he personally acted as the claimant in the domestic proceedings, and all the submissions and appeals were made by him on his own behalf. He only briefly mentioned his affiliation with the MRI in his appeals before the higher courts, without any further detail.

16. In such circumstances, the available material suggests that the request for information made to AzTV forming the subject matter of the present case might have been one of the numerous other information requests sent by the MRI and persons affiliated with it to various authorities and companies, with the actual purpose of conducting the statistical analysis made in the 2010 report (see paragraph 15 above). Accordingly, AzTV's refusal to provide the requested information appears to have been used as a statistic in that report. However, contrary to the applicant's submissions, it cannot be established from the material available in the case file that the information requested by him in the present case was also actually needed for any genuine research project relating specifically to AzTV's activities and purportedly conducted by the applicant with a view to imparting information on that research to the public. For these reasons, and also taking into account the applicant's failure to explain the exact purpose of this request at the domestic level, the Court considers that it has not been demonstrated that the applicant was acting in the capacity of a "public watchdog" in respect of the specific information requested in this case (compare *Namazli*, cited above, § 38).

17. The above considerations, assessed as a whole, are sufficient to conclude that no right of access to the information requested by the applicant arose in the present case, as it cannot be established either that he requested the information in question with the purpose of conducting any genuine research on issues of public interest relating to AzTV's expenditure or that he was acting as a "public watchdog" in respect of those issues. It has not been shown that access to the information sought would have been instrumental for the exercise of his right to freedom of expression and, therefore, its denial did not constitute an interference with that right.

18. It follows that Article 10 does not apply and that this complaint must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4.

B. Article 6 § 1 and Article 13 of the Convention

19. As to the complaint under Article 6 § 1 of the Convention, even assuming that that provision applies under its civil limb to the domestic proceedings in the present case by virtue of the determination of a "civil right" arising under the provisions of the applicable domestic law (see *Namazli*, cited above, § 43), the Court considers that the complaint is in any event inadmissible for the following reasons.

20. The Court notes that the applicant was given an opportunity to raise his factual and legal arguments before the domestic courts. Those arguments were examined by the courts, which provided reasons in their judgments which were pertinent to the grounds on which the claim was dismissed. It has not been demonstrated that the courts' findings were arbitrary or manifestly unreasonable to the point of prejudicing the fairness of the proceedings or resulting in a "denial of justice". In such circumstances, the Court is not in a position to assume the role of a fourth-instance body by reviewing any particular errors of law allegedly made by the domestic courts (compare *Namazli*, cited above, § 45).

21. Accordingly, this complaint, being of a "fourth-instance" nature, is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

22. As to the complaint under Article 13 of the Convention, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 February 2023.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President