

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

FIRST SECTION

CASE OF ADILOV v. AZERBAIJAN

(Application no. 51856/14)

JUDGMENT

STRASBOURG

17 October 2024

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Adilov v. Azerbaijan,

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

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 51856/14) 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 8 July 2014 by an Azerbaijani national, Mr Natig Gulahmad oglu Adilov (*Natiq Güləhməd oğlu Adilov* – "the applicant"), who was born in 1979, lives in France and was represented by Mr R. Hajili and Ms Z. Sadigova, lawyers practising in France and Azerbaijan, 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 in private on 26 September 2024,

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

SUBJECT MATTER OF THE CASE

1. The application, brought under Articles 6 and 10 of the Convention, concerns an alleged violation of the applicant's right of access to information of public interest allegedly held by the State and the alleged lack of fairness of the domestic proceedings initiated by him in that regard.

2. The applicant is a journalist and, according to him, at the material time he had been carrying out research on the expenditure of funds allocated from the State budget to educational institutions. To that end, he had submitted information requests to several educational institutions.

3. On 27 December 2012 the applicant submitted an information request to the Ministry of Finance ("the Ministry"), asking for a copy of the final annual financial report of Baku State University ("BSU") for 2011.

4. By a letter of 28 January 2013, the Ministry refused to provide the applicant with the requested report, stating:

> "Your information request submitted to [the Ministry] has been considered.
>
> In order to obtain more detailed information about the matter raised in the request, it would be expedient (*məqsədəmüvafiq*) to apply to [BSU]."

5. The applicant lodged a claim against the Ministry with Baku Administrative Economic Court no. 1, asking the court to find that the Ministry's response had been unlawful and to order it to provide the requested document. By a judgment of 29 May 2013, the court dismissed the claim, referring to Article 21.1.2 of the Law on Access to Information of

30 September 2005 and finding that, by having responded to the applicant's letter, the Ministry had complied with its obligations under the law.

6. Further appeals by the applicant were dismissed on 5 September 2013 and 22 January 2014 by the Baku Court of Appeal and the Supreme Court, respectively.

7. Meanwhile, the applicant submitted two information requests to BSU of a similar nature. By a letter of 4 February 2014, BSU refused to provide the report to him, stating that to do so would not be "expedient" and adding that, as a State-funded entity, it submitted its financial reports to the Ministry.

8. On 26 February 2014 the applicant lodged a claim against BSU, which was dismissed by the first-instance court. According to the applicant, after lodging the claim, he had moved to France, and therefore could not pursue those proceedings further.

9. The applicant complained under Article 10 of the Convention that the Ministry's refusal to provide the requested document had amounted to a breach of his right to access information of public interest. The applicant also complained under Article 6 of the Convention that his right to a reasoned decision had been violated.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. Admissibility

10. Although the Government have not raised an objection as regards the applicability of Article 10 of the Convention, the Court considers that it must address this issue of its own motion.

11. The Court reiterates that Article 10 does not confer on the individual a right of access to information held by a public authority or oblige the Government to impart such information to the individual. However, such a right or obligation may arise where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular "the freedom to receive and impart information", and where its denial constitutes an interference with that right (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 156, 8 November 2016). In determining this question, the Court will have regard to the principles laid down in *Magyar Helsinki Bizottság*, in particular the following criteria: (a) the purpose of the information request; (b) the nature of the information sought; (c) the role of the applicant; and (d) whether the information was ready and available (ibid., §§ 149-80).

12. As regards the purpose of the information request and the role of the applicant, the Court notes that the applicant was a journalist exercising the function of a "public watchdog". In his request to the Ministry, he expressly stated that he needed the report in issue because he was carrying out research

on the expenditure of funds allocated from the State budget to educational institutions.

13. As to the nature of the information, the Court considers – and the Government did not contest – that, for the purposes of the present complaint, the information sought was of public interest.

14. Lastly, the Court observes that the existence of the report has never been disputed by the parties and that in a letter of 4 February 2014, BSU informed the applicant that it submitted its financial reports to the Ministry. Therefore, the information in question was, in principle, "ready and available".

15. In sum, the Court is satisfied that access to this information was instrumental for the applicant, as a journalist, to exercise his right to receive and impart information.

16. For these reasons, Article 10 of the Convention is applicable.

17. As to the Government's argument that the applicant had not pursued proceedings against BSU in the higher courts, the Court notes that the scope of the complaints in the present case concerns only the Ministry's refusal to provide information and the proceedings relating to the applicant's claim against the Ministry, and not the proceedings against BSU, and therefore the Court will confine itself to examining whether the Ministry's refusal to provide the requested report to the applicant constituted a violation of his rights under Article 10.

18. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. At the outset, the Court notes that it cannot accept the Government's argument that the applicant should have requested the report in question from BSU, which was the actual owner of the information. It further notes that in a letter of 4 February 2014, BSU refused to provide the requested report to the applicant (see paragraph 7 above), referring him back to the Ministry, and that a similar request by him to the Ministry had already been refused by that time.

20. Having regard to the fact that the Ministry did not provide the applicant with the requested report, the Court finds that this amounted to an "interference" with the applicant's right to receive and impart information.

21. The Court notes that such interference infringes the Convention if it does not satisfy the requirements of Article 10 § 2. It should therefore be determined whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph, and whether it was "necessary in a democratic society" in order to achieve those aims.

22. The relevant applicable domestic law, and the Court's case-law on the "lawfulness" of an interference, have been summarised in *Rovshan Hajiyev*

v. Azerbaijan (nos. 19925/12 and 47532/13, §§ 25-37 and 57-58, 9 December 2021, with further references).

23. The Court observes that, despite the applicant's repeated arguments in this regard in his submissions before the courts, they did not adequately address in their judgments whether the Ministry's response had been compliant with Articles 21 and 23 of the Law on Access to Information, which provided for an exhaustive list of the situations in which the information owner could refuse to "execute" the information request and the situations where a State authority that was not in possession of the requested information was required to forward the request to the relevant information owner.

24. In this connection, the Court observes that the domestic courts confined their reasoning for dismissing the applicant's claim to essentially referring to Article 21.1.2 of the Law on Access to Information, which provided that the information owner could refuse the request if it did not possess the requested information, or if it could not identify the information owner. The courts held that the Ministry had refused to provide the requested report because it was not in possession of it and therefore had referred the applicant to BSU. However, the Court notes that nothing in the case file, including the Ministry's response to the applicant, demonstrates that the Ministry had ever denied that it had the report in its possession. On the contrary, according to the applicant, the representative of the Ministry had stated at the first-instance court hearing that "[the Ministry] had the report, but [its] building was undergoing renovation and documents [had been] misplaced". The Court also observes that the Government did not provide any evidence or argument to the contrary, and their submissions do not clarify the matter further. Accordingly, it is not clear from the decisions of the domestic courts how they came to the conclusion that the Ministry was not in possession of the report. Having regard to the particular circumstances of the present case and the documents available in the case file, the Court finds that no other grounds under Article 21 of the Law on Access to Information for refusing the applicant's request have been shown to have existed in the present case.

25. Furthermore, pursuant to Article 21.3 of the Law on Access to Information, a refusal to provide access to information had to be made in a clear and substantiated manner, referring to the relevant provisions of the applicable law. However, the Court observes that the Ministry's letter of refusal did not contain any reasoning or reference to the applicable law.

26. Moreover, the Court accepts the applicant's argument that if it was true that the Ministry did not have the report, the Ministry should, in accordance with Article 23 of the Law on Access to Information, have forwarded the request to BSU of its own motion and informed the applicant accordingly, but it had failed to do so (compare *Rovshan Hajiyev*, cited above, § 59).

27. The Court therefore considers that the domestic courts failed to duly assess the compatibility of the Ministry's refusal with Articles 21 and 23 of the Law on Access to Information, and arbitrarily applied Article 21.1.2 without establishing its applicability to the factual circumstances of the present case. In other words, the domestic courts did not duly address the Ministry's failure to forward the information request to the relevant information owner, in case it did not have the information in its possession, and to provide an appropriately justified response to the information seeker, as well as to duly verify the existence of any substantive grounds for a refusal to provide access to information (see, *mutatis mutandis*, *Rovshan Hajiyev*, cited above, § 64, with further references).

28. The above-mentioned considerations are sufficient to enable the Court to conclude that the interference with the applicant's right in the present case was not "prescribed by law". Having reached that conclusion, the Court does not consider it necessary to determine whether the interference pursued a legitimate aim or was necessary in a democratic society in accordance with Article 10 § 2 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

30. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the complaint under Article 6 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,992 in respect of costs and expenses incurred before the domestic courts and the Court.

32. The Government submitted that findings of violations would constitute sufficient compensation for any non-pecuniary damage sustained. They also submitted that the claims in respect of costs and expenses were excessive, and that 500 Azerbaijani manats would be reasonable under that head.

33. Regard being had to the approach taken in similar cases (see, in particular, *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 41, 14 April 2009, and *Rovshan Hajiyev*, cited above, § 73), the Court considers that the finding of a violation constitutes, in the specific circumstances of the present case, sufficient just satisfaction for any non-pecuniary damage which the applicant may have sustained and therefore makes no award under this head.

34. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,500 covering costs under all heads, plus any tax that may be chargeable to the applicant, and dismisses the remainder of the claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

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

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative, Mr R. Hajili;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President