

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

FIRST SECTION

CASE OF ALIYEV v. AZERBAIJAN

(Applications nos. 34717/10 and 8791/11)

JUDGMENT

STRASBOURG

2 February 2023

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



In the case of Aliyev v. Azerbaijan,

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

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

Having regard to:

the applications (nos. 34717/10 and 8791/11) 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 9 June and 2 August 2010 respectively by an Azerbaijani national, Mr Sardar Mahammadali oglu Aliyev (*Sərdar Məhəmmədəli oğlu Əliyev* – "the applicant"), who was born in 1965 and lives in Baku, and was represented before the Court by Mr R. Hajili and Mr E. Sadiqov, lawyers based in Strasbourg and Baku respectively;

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

the parties' observations;

Having deliberated in private on 10 January 2023,

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

SUBJECT MATTER OF THE CASE

1. The applications concern two separate sets of proceedings resulting in two criminal convictions of the same applicant, a journalist who wrote under the pen name "Sardar Alibeyli", on account of defamatory articles. At the material time the applicant was editor-in-chief of *Nota*, a newspaper published in Azerbaijan.

I. APPLICATION No. 34717/10

2. On 26 April 2009 the applicant published an article in *Nota* concerning T.N., the chairman of an NGO, about whom several other articles had previously been published in the same newspaper. The article was entitled "An apology piece about T.N., whose honour has been trampled and whose dignity has been humiliated". The article in issue was published following a court judgment ordering the applicant to publish an apology for defaming T.N. in previous articles. The text of the article in issue did not appear to contain an actual apology, but instead criticised the court judgment ordering the publication of an apology and repeatedly stated that T.N. had been humiliated and had no honour and dignity, and that an apology could not repair that.

3. T.N. lodged a criminal complaint against the applicant under the private prosecution procedure. By a judgment of 22 July 2009 the Nizami District Court convicted the applicant under Article 148 of the Criminal Code (insult) and sentenced him to three months' imprisonment, finding that the statements made in the article in respect of T.N. had amounted to an insult. After a series of appeals in which the applicant argued that there had been an unjustified and disproportionate interference with his freedom of expression, the applicant's conviction and sentence were upheld by the Supreme Court in a final decision of 9 December 2009.

II. APPLICATION No. 8791/11

4. In April 2009 the applicant also published a series of three articles concerning the allegedly corrupt activities of officers of the Internal Troops of the Ministry of Internal Affairs. In the first article it was stated, *inter alia*, that, according to information provided to the newspaper by an unnamed officer of the Internal Troops, several high-ranking officers of the Internal Troops, identified by name, had engaged in fraudulent and corrupt activities in the process of calling for and awarding tenders for goods purchased for the Troops, first by awarding the tenders to sham companies affiliated to themselves and then by buying goods from the latter at artificially high prices and pocketing the difference. In the second article it was stated, *inter alia*, that a high-ranking officer, identified by name, had requested a bribe from a commander of an unspecified military unit. In the third article, it was stated that several high-ranking officers, identified by name, had been embezzling funds by providing lower quantities and a lower quality of food to soldiers.

5. A group of the officers named in the articles lodged a criminal complaint under Article 147.2 of the Criminal Code (slander by accusation of having committed a serious or especially serious criminal offence) against the applicant under the private prosecution procedure. During the court proceedings, the applicant argued that he had received an unsigned letter from an informant in the Internal Troops who was the source of the information published in the articles and whose identity he could not reveal; he submitted a copy of that letter to the court (no copy of the letter is available in the Court's case file).

6. By a judgment of 20 July 2009, the Nizami District Court convicted the applicant under Article 147.2 of the Criminal Code and sentenced him to seven months' corrective labour and the deduction of 10% of his monthly income in favour of the State. It found that the applicant had slandered the private prosecutors by accusing them of having committed serious criminal offences, such as embezzlement of public funds, without providing any factual basis for his accusations. As to the applicant's argument concerning his unnamed source, the court found that the letter submitted by the applicant

was an unsigned photocopy and therefore could not be accepted as evidence demonstrating the existence of such an informant.

7. Following an appeal, the Baku Court of Appeal upheld the conviction, but reclassified it under Article 147.1 of the Criminal Code (slander) and changed the sentence to four months' imprisonment by way of merging it with the three-month imprisonment sentence imposed in the other set of proceedings (see application no. 34717/10 above). On 3 February 2010 the Supreme Court upheld the conviction and sentence.

III. COMPLAINTS

8. In respect of both sets of proceedings, the applicant complained under Article 10 that there had been unjustified and disproportionate interferences with his right to freedom of expression.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

9. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATIONS OF ARTICLE 10 OF THE CONVENTION

10. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

11. The Court considers, and it was not disputed by the parties, that the applicant's convictions by the national courts in connection with the publication of the articles authored by him amounted to "interferences" with his right to freedom of expression.

12. Such interferences infringe the Convention if they do not satisfy the requirements of paragraph 2 of Article 10. It should therefore be determined whether they were "prescribed by law", whether they pursued one or more of the legitimate aims set out in that paragraph and whether they were "necessary in a democratic society" in order to achieve those aims.

13. The Court notes that the applicant's convictions were indisputably based on Articles 147.1 and 148 of the Criminal Code and considers that they were designed to protect "the reputation or rights of others", namely the private prosecutors in both sets of proceedings. The interferences were accordingly "prescribed by law" and had a legitimate aim under Article 10 § 2 of the Convention. Consequently, the Court's remaining task is to determine whether the interferences were "necessary in a democratic society".

14. The general principles concerning the "necessity" of an interference, including its proportionality to the legitimate aim pursued, have been summarised in *Mahmudov and Agazade v. Azerbaijan* (no. 35877/04, §§ 33-35 and 48-49, 18 December 2008), and *Balaskas v. Greece* (no. 73087/17, §§ 36-39 and 61, 5 November 2020).

15. Having regard to the particular circumstances of the present applications, the Court considers that it is not necessary to examine in detail whether the domestic courts provided relevant and sufficient reasons demonstrating the existence of a "pressing social need" for the interferences, and in particular whether they made a distinction between value judgments and factual statements and assessed whether the articles concerned a matter of general interest, or, in the second set of proceedings, whether the courts duly took into account the fact that the private prosecutors were public figures and provided relevant reasons for dismissing the applicant's argument that the statements made in the articles were based on information provided by an unnamed informant. Even assuming that all of the above was done, the interferences with the applicant's right to freedom of expression in the present cases cannot, in any event, be considered to have been justified, for the following reasons.

16. The Court takes note of the severity of the penalties imposed on the applicant, who was convicted in two sets of criminal proceedings and, notwithstanding the availability of lighter penalties under domestic law, such as a fine, community service or corrective labour, was given a sentence of three months' imprisonment in the first set of proceedings, which was subsequently increased to four months' imprisonment in the second set of proceedings by way of a decision to merge the sentences. The Court reiterates in this connection that a criminal conviction is a serious sanction, having regard to the existence of other means of intervention and rebuttal (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 273, ECHR 2015 (extracts)). Moreover, although sentencing is in principle a matter for the national courts, the Court does not consider that the circumstances of the present cases disclosed any justification for the imposition on the applicant of such severe sanctions (compare *Mahmudov and Agazade*, cited above, §§ 50-51).

17. In view of the above, the Court considers that the criminal sanctions imposed on the applicant were disproportionate to the legitimate aim pursued. Therefore, the domestic courts in the instant cases went beyond what would have amounted to "necessary" restrictions on the applicant's freedom of expression (ibid., §§ 52-54).

18. There have accordingly been violations of Article 10 of the Convention in respect of both sets of domestic proceedings.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed 27,000 euros (EUR) and EUR 29,000 respectively in respect of non-pecuniary damage sustained as a result of each of the two criminal convictions. He also claimed, in respect of each application, EUR 11,000 in respect of costs and expenses incurred before the domestic courts and before the Court.

20. The Government submitted that findings of violations would constitute sufficient compensation for any non-pecuniary damage suffered and that the claims in respect of costs and expenses were excessive and unsupported by valid documents.

21. In respect of both applications jointly and having regard to the circumstances of the case, the Court considers it reasonable to award the applicant a total amount of EUR 2,500 in respect of non-pecuniary damage plus any tax that may be chargeable on that amount.

22. 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there have been violations of Article 10 of the Convention in respect of both sets of proceedings resulting in the applicant's criminal convictions;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

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

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President