

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

THIRD SECTION

CASE OF ISMAYILOVA v. AZERBAIJAN

(Application no. 10952/17)

JUDGMENT

STRASBOURG

14 October 2025

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



In the case of Ismayilova v. Azerbaijan,

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

Canòlic Mingorance Cairat*, President*,

Lətif Hüseynov,

Vasilka Sancin*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 10952/17) 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 28 January 2017 by an Azerbaijani national, Ms Khadija Rovshan gizi Ismayilova (*Xədicə Rövşən qızı İsmayilova* - "the applicant"), who was born in 1976 and lives in Baku and who was represented by Mr F. Namazli and Mr Y. Imanov, lawyers based in Azerbaijan;

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 23 September 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns criminal defamation proceedings brought by E.H., an opposition party member and private prosecutor, against the applicant for an allegedly defamatory information which she published on her social media account in 2011.

2. The applicant is an investigative journalist who was working for the Azerbaijani service of Radio Free Europe/Radio Liberty ("Azadliq Radio") at the material time.

3. On 17 February 2014 the applicant shared on Facebook a photograph of a document resembling a report purportedly issued by an official of the "Confidential department" of the Ministry of National Security (MNS) and addressed to his supervisor. The applicant wrote the following comment on the photograph:

> "In 2011 a photograph of a piece of paper was sent to me. The sender was a former employee of the MNS ... Why was it sent, what the purpose of that was, I do not know. But since I did not have an opportunity to check whether this piece of paper was genuine and could be called a document, it remained as it was. ...
>
> In the version sent to me, the names and details were not obscured. I covered them so that I could not be used to smear anyone."

4. According to the material in the case file, the "report" contained allegations about an individual named E.H. who had been found in an intimate situation with four individuals of "non-traditional sexual

orientation" in 2003, reportedly under the influence of drugs. It further claimed that this incident was video-recorded and subsequently used by the MNS to recruit E.H. as an informant.

5. On an unspecified date, E.H. instituted private prosecution proceedings against the applicant in the Binagadi District Court under Article 147 (libel) of the Criminal Code. E.H. claimed that the applicant had shared two documents on her Facebook account on 2 October 2011 and had later deleted them. One of the documents contained accusations against him of raping N.L. in 1992 and the other document concerned the incident discussed in the paragraph above. During the proceedings in the first-instance court, E.H. amended his original complaint and, referring to the document containing the rape accusation, claimed that the applicant had accused him of committing a serious crime. E.H. further stated that he had not lodged any complaints against her in 2011, but that when the applicant had shared one of those documents again on 17 February 2014, he had decided to lodge a complaint about the rape allegation.

6. On 5 December 2014 the Sabail District Court remanded the applicant in custody in separate criminal proceedings brought against her under Article 125 (incitement to suicide) of the Criminal Code (for further details concerning these events see *Khadija Ismayilova v. Azerbaijan (no. 2)*, no. 30778/15, 27 February 2020).

7. On 23 February 2015, in a hearing held in camera, the Binagadi District Court convicted the applicant under Article 147.2 (libel by accusation of having committed a serious criminal offence) of the Criminal Code and ordered her to pay E.H. 2,500 Azerbaijani manats (AZN) (approximately 1,500 euros (EUR) at the material time).

8. The court admitted in evidence and examined a letter produced by the Anti-terror Centre of the MNS. The letter stated that on 17 February and 7 October 2014 the applicant had shared two documents about alleged covert cooperation between E.H. and the MNS. These documents had been created by the same person or persons. They had initially been shared by the applicant on 2 October 2011 on her Facebook account and were later deleted from that account. The documents were also published in a full and unredacted version on 24-25 October 2011 on the Facebook account of an individual identified as M.K., where they remained accessible at the time of the proceedings. In February and October 2014 the applicant republished the documents on her Facebook account, covering the name of the person referred to.

9. The court also addressed the submissions of the Prosecutor General's Office which claimed, *inter alia*, that both documents contained false information because the MNS did not have a structural unit called the "Confidential department," and none of the individuals referred to in the disputed documents as MNS officials had ever worked there, and no individual identified as N.L. had been living in the district where the alleged rape had taken place.

10. The court referred to those documents and held that by disseminating documents on her Facebook account on 2 October 2011 which were subsequently deleted the applicant had falsely accused E.H. of raping N.L. in 1992, which had allegedly led to her suicide.

11. The applicant appealed against this judgment. In particular, she argued that the courts had convicted her on the basis of unreliable evidence and that her arguments had not been properly heard by the court. She further maintained that there was no evidence that she had published the disputed publications about E.H. in 2011 and that the information she had published in 2014 did not disclose the identity of the individual concerned as she had concealed all such details. The applicant also asked the appellate court to summon the employee of the Anti-Terror Centre of the MNS, who had written the letter relied on by the trial court to testify as a witness.

12. By a judgment of 29 September 2015, the Baku Court of Appeal dismissed the applicant's appeal, endorsing the findings of the first-instance court. The applicant's cassation appeal was dismissed by a final decision of the Supreme Court on 28 June 2016.

13. The applicant complained that she did not have a public and fair hearing, and in particular that she had been convicted on the basis of inadmissible evidence, that her request to call a particular witness was refused and that the domestic courts' judgments were in breach of her freedom of expression.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

14. The Court 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.

15. The general principles concerning the right to fair trial, in particular, admissibility of evidence have been summarised in *Yüksel Yalçınkaya v. Türkiye* [GC] (no. 15669/20, §§ 302-08, 26 September 2023), and *Ilgar Mammadov v. Azerbaijan (no. 2)* (no. 919/15, §§ 205-10, 16 November 2017). The applicable general principles concerning the right to examine witnesses or to have them examined have been summarised in, for example, *Schatschaschwili v. Germany* [GC] (no. 9154/10, §§ 111-31, ECHR 2015).

16. The Court notes at the outset that the applicant's conviction rested primarily on the domestic courts' finding that on 2 October 2011 she had shared two "documents" on her social media account: the first, which the applicant later deleted, included an accusation against E.H. of rape, and the second was about his alleged confidential cooperation with the MNS.

17. The Court observes that in finding that the applicant had shared the disputed documents in 2011 the domestic courts relied, to a decisive extent, on the letter produced by the Anti-Terror Centre of the MNS. The Court further observes that this letter included information about both "documents"; however, the applicant repeatedly maintained that she had not published any document about E.H. in 2011, and that she had, in fact, shared only one document, and only for the first time in February 2014, and that the identity of E.H. could not be discerned from that document. Moreover, the Court notes that the document published by the applicant in February 2014 and reshared in October did not contain any accusation of rape – the serious crime underlying E.H.'s complaint and the applicant's conviction under Article 147.2 of the Criminal Code. Instead, it referred to E.H.'s alleged intimate relationships and his confidential cooperation with the MNS, neither of which constituted criminal conduct.

18. The Court further observes that the domestic courts did not rely on any other evidence apart from the disputed letter for their finding that the applicant had published those documents in 2011. In particular, the rest of the evidence examined, in particular the prosecution authorities' denial of all the facts asserted in both documents - such as the existence of the specific department within the MNS and that it employed the individuals named as MNS officials - did not relate to the issue of whether the applicant had published those documents. Moreover, the Court observes that, despite the applicant's repeated arguments, the domestic courts did not clarify how the publication of the documents in question by M.K. on 24 or 25 October 2011 had led them to conclude that those documents had originally been published by the applicant earlier that same month. Nor did the Government's submissions elaborate on that issue.

19. In this connection, the Court considers that because the statements of fact in the letter had been decisive for the applicant's conviction, she should have had an adequate opportunity to challenge the person from the Anti-Terror Centre of the MNS who had written that letter as a witness and who had made statements against her (see, *mutatis mutandis*, *Ilgar Mammadov (no.2),* cited above, § 229, and *Insanov v. Azerbaijan*, no. 16133/08, § 161, 14 March 2013). However, despite having asked repeatedly for that particular witness to be called, the applicant was never given an opportunity to question the writer of the letter as a witness and nor was she given a reasoned response to her requests; the appellate court refused those requests stating that there was no need to examine any new evidence. The Court considers that no good reasons were given for the failure to have the writer of the letter examined at the court hearings (see *Insanov*, cited above, § 163). Since the letter had been decisive evidence in the applicant's conviction and her request for that particular witness to be called had been refused, that untested evidence weighs heavily in the balance and requires sufficient counterbalancing factors to compensate for the consequential

difficulties caused to the defence by the admission of that evidence (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 161, ECHR 2011). However, there is no indication in the case file that the domestic courts approached this letter with any specific caution; on the contrary it appears that they accepted the contents of this letter as established facts. The Court finds that the fact that the letter was written by a law-enforcement authority was, in itself, of no significance, as it is the task of a court of law, vested with the competence to determine the question of guilt in criminal cases, to examine the relevant original evidence and to establish the facts (see *Ilgar Mammadov (no.2),* cited above, § 229).

20. While it is true that the letter was read out at the trial and that the applicant had the opportunity to give her own version of the events during the hearing and that she availed herself of that possibility, that fact alone cannot be regarded as a sufficient counterbalancing factor to compensate for the handicap under which the defence laboured (compare *Lubarda and Milanov v. Serbia* [Committee], nos. 6570/19 and 43604/19, § 18, 29 April 2025).

21. Having regard to the above considerations, the Court concludes that the absence of any opportunity for the applicant to examine that particular witness or to have that witness examined at any stage of the proceedings rendered the trial as a whole unfair.

22. In view of the above conclusion, the Court considers in the particular circumstances of the present case that it is unnecessary to examine the applicant's grievances concerning the breach of her right to a public hearing any further.

23. There has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. OTHER COMPLAINT

24. The applicant also complained under Article 10 of the Convention. 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 this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, compare also *Haziyev v. Azerbaijan* [Committee], no. 65893/16, § 30, 24 October 2024).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 20,000 Azerbaijani manats (AZN) (approximately 10,900 euros (EUR) on 23 February 2024, when the claim was submitted) in respect of non-pecuniary damage and AZN 3,600 (approximately EUR 1,960 on 23 February 2024, when the claim was submitted) in respect of costs and expenses incurred before the domestic

courts and the Court. The applicant did not make any claim in respect of pecuniary damage.

26. The Government did not comment on these claims.

27. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,600 under this head, plus any tax that may be chargeable on this amount.

28. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,500 covering costs under all heads for costs and expenses in the domestic proceedings and for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 6 §§ 1 and 3 (d) of the Convention admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 10 of the Convention;

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 3,600 (three thousand six 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 14 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Canòlic Mingorance Cairat President