

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

FIRST SECTION

CASE OF MURSALIYEV v. AZERBAIJAN

(Applications nos. 35960/14 and 71554/14[1])

JUDGMENT

This version was rectified on 4 April 2024
under Rule 81 of the Rules of Court.

STRASBOURG

28 March 2024

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

[1] Rectified on 4 April 2024: the number of the second application has been corrected from "71445/14" to "71554/14".



In the case of Mursaliyev 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 Attila Teplán, *Acting Deputy Section Registrar,*

Having regard to:

the applications 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 April 2014 and 27 October 2014, by an Azerbaijani national, Mr Azad Ogtay oglu Mursaliyev (*Azad Oqtay oğlu Mursalıyev* – "the applicant"), who was born in 1970 and lives in Baku, and who was represented by Mr F. Asadov, a lawyer based in Azerbaijan;

the decision to give notice of the complaint under Article 8 of the Convention to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov, and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 5 March 2024,

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

SUBJECT MATTER OF THE CASE

1. The applications concern the applicant's complaint about the domestic courts' alleged failure to protect his right to reputation, and raise an issue under Article 8 of the Convention.

2. The applicant's uncle M.A. went missing in 2003 and criminal proceedings were initiated in relation to his disappearance. At the time of the events described below, no one had been charged as a suspect in those proceedings. The applicant had been questioned as a witness. E.A., who was M.A.'s brother and the applicant's other uncle and was a former rector of one of the private universities in Azerbaijan, had fled the country pending criminal proceedings against him in relation to charges of corruption, and currently lives in France.

3. In 2013 an interview with R.Z., a lawyer, entitled "Warning bell from a well-known lawyer", was published by the *Təzadlar* newspaper. The interview contained the following passage:

> "Some of you, ... – unlike his nephew, the lawyer in this case, the official spokesperson who has been jailed by the 'Parisian uncle' [referring to E.A.] and who is now presenting himself as his [E.A.'s] representative, whom I consider a suspect in killing M.[A.] as he attempted to flee the country but was prevented from doing so – are still not free from the disease of wanting to stay in the spotlight ...

> If you [referring to E.A.] loved your brother so much, why did you kill him for money and involve your other brothers and your nephew ... in this affair?"

I. CRIMINAL PROCEEDINGS

4. On 29 March 2013 the applicant lodged a criminal complaint against R.Z. under the private prosecution procedure and asked the Yasamal District Court to find him guilty under Article 147.2 of the Criminal Code (defamation by accusing a person of having committed a serious crime). The applicant complained that, in his interview, R.Z. had accused him of committing an especially serious crime, namely killing his uncle M.A., and then attempting to flee the country.

5. On 6 May 2013 the Yasamal District Court dismissed the applicant's complaint and acquitted R.Z. It held that R.Z. had merely passed on information that he had received from A.K., a client of his (who, at the relevant time, following a complaint by E.A., had been accused of fraud under Article 178 of the Criminal Code), to the investigation authorities for examination and had shared some of that information during his interview with the newspaper. The court further held that as the investigation of the criminal case in question was ongoing (see paragraph 2 above), it was not possible to establish whether the information given by R.Z. was true or false.

6. On 5 July and 7 November 2013 the Baku Court of Appeal and the Supreme Court dismissed appeals brought by the applicant.

II. CIVIL PROCEEDINGS

7. On 1 April 2013 the applicant brought civil proceedings against R.Z. and the *Təzadlar* newspaper, asking the Yasamal District Court to order the defendants to issue a retraction and an apology, to be published in the same newspaper. He complained that the defendants had defamed him and had caused him moral suffering and distress.

8. On 5 June 2013 the first-instance court dismissed the applicant's claim. Referring to the judgment of 6 May 2013 delivered in the criminal proceedings (see paragraph 5 above), it found that the statements in question were not defamatory. It noted that the statements made by R.Z. were of a general nature, that they did not specifically concern the applicant and that R.Z. had not mentioned the applicant by name. It held that R.Z.'s statements had to be regarded as assumptions or opinions which had been presented to the reader not as a concrete event that had already taken place, but as important information which required investigation.

9. The applicant appealed, arguing that the first-instance court's conclusion was devoid of any legal basis. He argued that it was evident from the text of the interview that R.Z. was talking about him, as he was the person who represented E.A.'s interests, and he had been unlawfully prevented from leaving the country when travelling to Türkiye. He submitted that, moreover,

R.Z. had himself admitted at the court hearing that the nephew mentioned in his interview was the applicant.

10. On 4 December 2013 the Baku Court of Appeal dismissed an appeal by the applicant, giving the same reasons. By a judgment of 25 April 2014 (sent to the applicant on 2 May 2014), the Supreme Court upheld the appellate court's judgment.

11. The applicant complained that the domestic courts had failed to protect his right to reputation.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

12. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

13. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012). The Court considers that the statements made in respect of the applicant affected his private life to such a degree as to engage Article 8 of the Convention (compare *Abbasaliyeva v. Azerbaijan,* no. 6950/13, § 25, 27 April 2023). That provision is therefore applicable in the present case.

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 relevant general principles concerning the right to reputation under Article 8 were summarised in *Pfeifer v. Austria* (no. 12556/03, §§ 33-37, 15 November 2007); *Khadija Ismayilova v. Azerbaijan (no. 3)* (no. 35283/14, §§ 35-39, 7 May 2020); and *Abbasaliyeva* (cited above, §§ 29-30).

16. The Court observes that the applicant complained before the domestic courts that R.Z. had accused him of committing a serious crime against his own uncle in the statements made in his interview with the newspaper in question. The domestic courts, however, dismissed his complaints, holding mainly that the statements in question were not defamatory as R.Z. had shared information which required investigation. They also noted that, since the

investigation concerning the disappearance of M.A. was ongoing, it was impossible to establish whether the statements made by R.Z. were true or not.

17. The Court cannot but note that the reasoning provided by the domestic courts in the present case is not compliant with the general principles established under its case-law (see paragraph 15 above) and does not demonstrate that the courts duly examined whether the statements made about the applicant had overstepped the permissible bounds of freedom of expression (compare *Yayla v. Turkey* [Committee], no. 3914/10, § 21, 24 March 2020, and *Ghimpu and Others v. the Republic of Moldova* [Committee], no. 24791/14, § 34, 1 February 2022). Neither does the domestic courts' reasoning demonstrate that they carried out an adequate assessment of all the relevant circumstances and duly considered the importance and scope of the applicant's right to respect for his private life, which was one of the two Convention rights at stake in the present case, both rights being of equal importance (compare *Khadija Ismayilova (no. 3)*, § 76, and *Abbasaliyeva*, § 36, both cited above).

18. The foregoing considerations are sufficient to enable the Court to conclude that the respondent State has failed to fulfil its positive obligations under Article 8 of the Convention. There has accordingly been a violation of that provision.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed, without indicating the currency, an amount of "10,000" as "compensation".

20. The Government submitted that the applicant had not specified the nature of the damage allegedly suffered or the expenses incurred. They also submitted that the applicant had not claimed any compensation for non-pecuniary damage at the domestic level.

21. The Court reiterates that an applicant who has already exhausted domestic remedies to no avail before complaining to this Court of a violation of his or her rights is not obliged to do so a second time in order to be able to obtain just satisfaction from the Court (compare *Jeret v. Estonia* [Committee], no. 42110/17, § 85, 9 June 2020, with further references). It considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated for by the finding of a violation of Article 8 of the Convention. Making its assessment on an equitable basis, it awards the applicant 2,000 euros in respect of non-pecuniary damage.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 28 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Attila Teplán Acting Deputy Registrar	Krzysztof Wojtyczek President