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

FIRST SECTION

DECISION

Application no. 42845/10
Azer Seyfali oglu MEHTIYEV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 13 December 2022 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. 42845/10) 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 July 2010 by an Azerbaijani national, Mr Azer Seyfali oglu Mehtiyev ("the applicant"), who was born in 1967 and lives in Baku and 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 and 10 of the Convention, concern an alleged breach of the applicant's right of access to arguably State-held information of public interest, and his right to a fair trial in civil proceedings instituted by him in this regard.

2. The applicant was the chairman of the Public Union for Assistance in Economic Initiatives, an NGO created by him which dealt with various projects relating to social and economic issues. According to the applicant's submissions before the Court, together with a number of other NGOs, his

NGO conducted research into the activities of large State-owned companies funded by the State budget. The same submissions were not made at domestic level.

3. On 27 February 2009 the applicant sent an information request to the State Oil Company of the Republic of Azerbaijan (SOCAR), a fully State-owned petroleum company. The applicant requested information about the following: (a) SOCAR's investment projects abroad in "recent years", "the value of those projects", funds already allocated to the projects, and the "sources of such funding"; (b) credit agreements which SOCAR currently had in place, and the amount of foreign credit received; (c) the amount of SOCAR's charter capital, and the amount and sources of the funds allocated for increasing the charter capital in the preceding three years. The request was on a piece of paper with the NGO's letterhead printed on it. The applicant did not explain why the information was being requested.

4. By a letter of 11 March 2009, one of SOCAR's vice-presidents refused to provide the requested information, noting that, under Article 9 of the Law on Access to Information, SOCAR was not an "information owner" obliged by law to provide access to the type of information sought by the applicant.

5. The applicant lodged an action with the Sabayil District Court. Arguing, *inter alia*, that SOCAR was a "legal entity performing public functions" under Article 9.1.2 of the Law on Access to Information, and therefore an "information owner" obliged to provide access to information of public interest, he asked the court to order SOCAR to provide the requested information. He also noted that the requested information was not available on SOCAR's website.

6. By a judgment of 17 April 2009, the Sabayil District Court dismissed the applicant's claim, finding, with reference to the relevant provisions of the domestic law and SOCAR's charter, that within the meaning of the Law on Access to Information, SOCAR was not the type of "information owner" which was required to disclose the type of information sought by the applicant.

7. On 8 September 2009 and 21 January 2010 respectively the Baku Court of Appeal and the Supreme Court dismissed appeals by the applicant.

8. The applicant complained to the Court under Article 10 of the Convention that SOCAR's refusal to provide the information requested had amounted to a breach of his right of access to information of public interest. He further alleged under Article 6 of the Convention that the domestic courts had failed to give reasons for their judgments.

THE COURT'S ASSESSMENT

A. Article 10 of the Convention

9. The Court notes at the outset that SOCAR was not a State authority, but a commercial legal entity wholly owned by the State. Therefore, a question arises as to whether, in such circumstances, the alleged interference could be considered to be attributable to the State. 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.

10. The Court reiterates that 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 information request; (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).

11. As regards the purpose of the information requests, the Court reiterates that in order for that criterion to be satisfied, it would not be sufficient for an applicant to explain that purpose for the first time in the proceedings before the Court. It is in the first place before the relevant domestic authorities that the seeker of information must sufficiently explain the exact purpose of the request by specifying, *inter alia*, 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 v. Georgia* (dec.), nos. 18865/11 and 51865/11, § 50, 19 January 2021, with further references). It is not sufficient that an applicant make an abstract point to the effect that certain information should be made accessible as a matter of general principle as regards openness (see *Centre for Democracy and the Rule of Law v. Ukraine* (dec.), no. 75865/11, § 54, 3 March 2020). The Court notes that in the present case

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

12. Turning to the question of "the nature of the information sought", the Court acknowledges that, in general, information about the investment and financial activities of a large State-owned company may be of public interest. However, the Court notes that SOCAR's annual reports – which contain, *inter alia*, information on various joint ventures and investments, and detailed annual financial reports and statements, including information on charter capital, current and long-term liabilities, and so on – are currently publicly available on SOCAR's website, with the earliest report available online dating back to 2005. It appears that at least some, if not most, of the information requested by the applicant had already been disclosed in those reports, which had been published in paper form at the relevant time and are also apparently available online, at least currently. However, it is true that it is not clear from the material in the case file whether those reports and statements had already been uploaded to SOCAR's website at the time when the information request was made in February 2009. In this connection, the Court notes that the applicant argued before the domestic courts, albeit in very general terms, that the information sought was not available on SOCAR's website. Nevertheless, even if the relevant annual reports and statements had not been uploaded to the website at the material time, the applicant could have requested and obtained the published paper copies of them, which would have put him in a position to carry out research on the topic of his interest, or he could then have asked for further specific information which might have been missing from those documents (compare *Weber v. Germany* (dec.), no. 70287/11, § 27, 6 January 2015). However, instead, and notwithstanding the above, the applicant made an information request which was worded in very broad and general terms, and which, in respect of one of the points, vaguely requested information related to an unspecified period of time ("recent years") (see paragraph 3 above). The request did not make clear what specific pieces of information requested could not be found in the published annual reports and financial statements, or why those particular pieces of information were of public interest. The Court thus considers that, in the specific circumstances of the present case, the particular form in which the information was requested did not satisfy a public-interest test (compare *Mikiashvili and Others*, cited above, § 54).

13. Moreover, for the same reasons as those stated in the above paragraph, the Court considers that it has not been demonstrated that the information requested was "ready and available" within the meaning of the Convention.

In particular, even though it appears that at least some of the information was already available in the published annual reports and financial statements, while some of it might have been contained in other documents, the applicant's request called for SOCAR to provide information compiled about investment projects, credit agreements and charter capital relating to either an unspecified period of time ("recent years") or, in respect of charter capital, a three-year period. In this regard, the Court reiterates that the Convention does not impose an obligation to collect information upon an applicant's request and provide it in the particular form that the applicant is seeking (see, *mutatis mutandis*, *Weber*, cited above, §§ 25-27; *Bubon v. Russia*, no. 63898/09, §§ 44-45, 7 February 2017; and *Mikiashvili and Others*, cited above, § 55).

14. The above considerations, assessed as whole, are sufficient for the Court to conclude that no right of access to the information requested by the applicant in the particular form arose in the present case. It therefore considers that it is not necessary to further assess whether the applicant, through his NGO, could be considered as acting in the capacity of a "public watchdog" on this particular occasion, as in the present case satisfying that criterion alone would not be sufficient to lead the Court to a different conclusion.

15. Accordingly, the Court considers that it has not been shown that access to the requested information was instrumental for the exercise of the applicant's right to freedom of expression, and finds that the denial of such access did not constitute an interference with that right.

16. 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 of the Convention

17. The applicant complained that the domestic courts had delivered unreasoned judgments, in breach of the requirements of Article 6 § 1 of the Convention.

18. Even assuming that Article 6 § 1 of the Convention 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.

19. 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 domestic courts, which provided reasons in their judgments that were pertinent to the grounds on which the applicant's claim was dismissed. While the applicant disagreed with the domestic courts' reasoning and findings, it has not been demonstrated that those 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 embarking on a review of any particular alleged errors of law committed by the domestic courts (compare *Namazli*, cited above, § 45).

20. Accordingly, this complaint is 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 19 January 2023.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President