



## Freedom of expression no excuse for publishing inaccurate and unreliable information

In today's **Chamber** judgment<sup>1</sup> in the case of [Khural and Zeynalov v. Azerbaijan](#) (application no. 55069/11) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the civil liability of the *Khural* newspaper for publishing defamatory statements about a well-known high-ranking government official.

The Court noted in particular that, although the newspaper could claim to have a public “watchdog” function, reporting on issues of high public interest, it also had a duty to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. The Court found that the newspaper had failed in its “duties and responsibilities” under Article 10 of the Convention.

### Principal facts

The first applicant, *Khural*, is a newspaper published in Baku. It has legal personality under Azerbaijani law. The second applicant, Avaz Tapdig oglu Zeynalov, a founder and the editor-in-chief of *Khural*, was born in 1970 and lives in Baku.

In May 2010 an article concerning a well-known high-ranking government official, the head of the President's Office, Ramiz Mehdiyev, and his alleged relationships with a prominent Azerbaijani poet, Bakhtiyar Vahabzade, and with the former head of the executive authority in Sheki, Ashraf Mammadov, was published in *Khural*. The article suggested that Mr Mehdiyev hated Mr Vahabzade and had tried, without success, to prevent his being elected as a Member of Parliament in 2000; had organised a riot against Mr Mammadov in Sheki because he had not prevented Mr Vahabzade's re-election; had tried to have Mr Vahabzade's mandate as an MP called off; and had prevented him from being commemorated following his death.

The following month, Mr Mehdiyev lodged a civil action against *Khural* arguing that the article contained false statements damaging his honour, dignity, and professional reputation, and alleging that the title of the article and certain extracts in particular were defamatory.

The first-instance court found that the allegations in the article were statements affecting Mr Mehdiyev's reputation and lacking any factual basis, that *Khural* had failed to submit any evidence proving those allegations and that the article amounted to an abuse of the right to freedom of expression. It ordered the newspaper to issue an apology, to refute the statements and to pay 10,000 Azerbaijani Manat (AZN) (which at the time was equivalent to approximately 10,000 euros (EUR)) in respect of non-pecuniary damage, to be transferred to an orphanage as requested by the plaintiff.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

The newspaper appealed, arguing that by publishing the article it had performed its role of public “watchdog”, reporting on topics of high public interest; that Mr Mehdiyev, who was a well-known high-ranking government official, should have been more tolerant of criticism; that the statements made in the article constituted value judgments and therefore no proof was required; and that the article merely reproduced and commented on information that had been published earlier that month in the *Gundam Khabar* newspaper.

The Baku Court of Appeal upheld the first-instance court’s judgment, and the Supreme Court dismissed a subsequent cassation appeal as unfounded.

## Complaints, procedure and composition of the Court

The applicants complained under Article 10 (freedom of expression) of the Convention that the civil defamation proceedings against the newspaper and the ensuing penalty had breached their right to freedom of expression. The *Khural* newspaper argued that the penalty imposed on it for non-pecuniary damage had been unduly harsh and excessive and had caused its closure.

The application was lodged with the European Court of Human Rights on 17 August 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O’Leary** (Ireland), *President*,  
Mārtiņš **Mits** (Latvia),  
Lətif **Hüseynov** (Azerbaijan),  
Ivana **Jelić** (Montenegro),  
Mattias **Guyomar** (France),  
Kateřina **Šimáčková** (the Czech Republic),  
Mykola **Gnatovskyy** (Ukraine),

and also Victor **Soloveytchik**, *Section Registrar*.

## Decision of the Court

The Court observed that the *Khural* newspaper possessed a legal personality as a registered media entity and consequently had its own rights and responsibilities, distinct from those of its founder and editor-in-chief. As the latter had not been a party to the domestic civil defamation proceedings and had not claimed to be the author of the article, the domestic proceedings could not be said to have affected him as a journalist. Therefore, the Court found that he was not a victim of the alleged violation of Article 10, and rejected this part of the application.

In cases concerning a conflict between the right to reputation and the right to freedom of expression, the Court reiterated that domestic courts were expected to perform a balancing exercise between the two rights, applying the criteria established in the Court’s relevant case-law and basing their decisions on relevant and sufficient reasons. Finding that the domestic courts had failed to carry out the required balancing exercise between the newspaper’s freedom of expression and Mr Mehdiyev’s rights and interests under Article 8 (right to respect for private and family life) of the Convention, it did so itself, on the basis of the criteria generally applicable to the dissemination of statements affecting private life by the media – namely, whether the article in question had contributed to a debate of public interest, the degree of notoriety of the person affected, the content and form of the statements made, the way in which the information had been obtained and its veracity, and the nature and severity of the penalty imposed.

It found that the statements made in the article could be seen to contribute to a debate of public interest because they were about issues such as parliamentary elections, and the person concerned,

Mr Mehdiyev, as the head of the President's Office, was a well-known high-ranking government official. Given that he was a public figure, the limits on acceptable criticism of him were wider.

Whereas the Court acknowledged that some of the statements had been charged with subjective feelings and emotions and could be deemed to be "value judgments", the article had mainly referred to specific dates, persons, and incidents, which the Court considered to be assertions of facts. It observed that the newspaper had not demonstrated that it had checked them for truthfulness. Although it could claim to have a public "watchdog" function, reporting on issues of high public interest, the newspaper also had a duty to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. The Court concluded that the newspaper had failed in its "duties and responsibilities" under Article 10 of the Convention.

Regarding the nature and severity of the penalty imposed, the newspaper had not complained of its severity before the domestic courts, nor contested the measures taken to enforce it. Moreover, no documents had been submitted to the domestic courts or to the Court detailing its financial situation at the time. Consequently, there was nothing to show that the penalty had undermined its financial situation to such a degree and had led to its closure as claimed. Moreover, it appeared that *Khural* had ceased its paper version only; its Internet version ([www.xural.com](http://www.xural.com)) had remained active and had continued to publish. Furthermore, according to an article on its website, the failure to publish a paper version of *Khural* had been due to the lack of a publisher.

The Court concluded that there had been no violation of Article 10 of the Convention.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.