



Conviction of author and editor for article's remarks on Islam was excessive, breached their freedom of expression

In today's Chamber judgment¹ in the case of [Tagiyev and Huseynov v. Azerbaijan](#) (application no. 13274/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the applicants' conviction for inciting religious hatred and hostility with their remarks on Islam in an article they had published in 2006.

The Court found in particular that the national courts had not justified why the applicants' conviction had been necessary when the article had clearly only been comparing Western and Eastern values, and had contributed to a debate on a matter of public interest, namely the role of religion in society.

Indeed, the courts had simply endorsed a report finding that certain remarks had amounted to incitement to religious hatred and hostility, without putting them in context or even trying to balance the applicants' right to impart to the public their views on religion against the right of religious people to respect for their beliefs.

Principal facts

The applicants, Rafig Nazir oglu Tagiyev and Samir Sadagat oglu Huseynov, are Azerbaijani nationals who were born in 1950 and 1975 respectively. Mr Tagiyev, now deceased, lived in Baku and was a well-known writer and columnist. Mr Huseynov lives in Lankaran (Azerbaijan) and used to work as editor-in-chief of *Sanat Gazeti* (*Art Newspaper*).

The case concerns the applicants' conviction for the publication of an article in November 2006 in *Sanat Gazeti* as part of a series written by Mr Tagiyev comparing Western and Eastern values. The article, entitled "Europe and us", led to criticism by various Azerbaijani and Iranian religious figures and groups and to a religious fatwa calling for the applicants' death.

Shortly after publication of the article, the applicants were prosecuted for inciting religious hatred and hostility. A district court ordered the applicants' detention pending trial.

The investigator in charge of the case ordered a forensic linguistic and Islamic assessment of the article. The resulting report characterised certain remarks, in particular those concerning morality in Islam, the Prophet Muhammad, Muslims living in Europe and Eastern philosophers, as incitement to religious hatred and hostility.

Endorsing the conclusions of that report, the domestic courts found the applicants guilty as charged in May 2007 and sentenced them to three and four years' imprisonment respectively. All their subsequent appeals were unsuccessful.

The applicants were released in December 2007 following a presidential pardon, having spent more than one year in detention.

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.

Mr Tagiyev's death in a stabbing outside his home in 2011 is part of a separate application which is pending before the European Court of Human Rights.

Complaints, procedure and composition of the Court

Relying in particular on Article 10 (freedom of expression), the applicants alleged that their criminal conviction had been unjustified and excessive.

The application was lodged with the European Court of Human Rights on 7 March 2008.

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

Angelika Nußberger (Germany), *President*,
Gabriele Kucsko-Stadlmayer (Austria),
Ganna Yudkivska (Ukraine),
Síofra O'Leary (Ireland),
Mārtiņš Mits (Latvia),
Lətif Hüseynov (Azerbaijan),
Lado Chanturia (Georgia),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

First, the Court noted that there was no dispute that the applicants' criminal conviction had amounted to an interference with their right to freedom of expression. That interference had had a basis in national law, Article 283 of the Criminal Code, and had aimed at protecting the rights of others and preventing disorder.

The Government had argued that the applicants' conviction had also met a pressing social need as their article had been an abusive attack on Islam and had offended and insulted religious feelings.

The Court, on the other hand, found that it was clear from reading the whole text of the article that it had mainly been a comparison of Western and European values and should therefore be examined not only in the context of religious beliefs, but also in that of a debate on a matter of public interest, namely the role of religion in society.

Furthermore, it found that the national courts had failed to justify the applicants' conviction with "relevant and sufficient" reasons. The courts had merely endorsed the forensic report, without giving any explanation as to why certain remarks in the article had been singled out as constituting incitement to religious hatred and hostility. The report had essentially provided a legal characterisation of those remarks, thus going far beyond resolving language and religious issues. Such a situation was unacceptable for the Court, which stressed that all legal matters should be resolved exclusively by the courts.

Moreover, the courts had not assessed the remarks in context. They had neither considered the public interest nor the author's intention, and in particular whether the use of provocation or exaggeration had been justified.

Indeed, in their decisions convicting the applicants, the courts had not even tried to balance the applicants' right to impart to the public their views on religion against the right of religious people to respect for their beliefs.

Lastly, the Court found that there had been no justification for the imposition of imprisonment on the applicants. Such a severe sanction could dissuade the press from openly discussing religion and its role in society, and generally have a chilling effect on freedom of expression in Azerbaijan.

The Court concluded that the applicants' conviction had been disproportionate and had therefore not been "necessary in a democratic society", in violation of Article 10.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay Mr Tagiyev's wife and Mr Huseynov 12,000 euros (EUR) each in respect of non-pecuniary damage and EUR 850 in respect of costs and expenses.

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.