



Confiscation and destruction of manuscript written in detention breached journalist's right to freedom of expression

In today's **Chamber judgment**¹ in the case of [Zayidov v. Azerbaijan \(no. 2\)](#) (application no. 5386/10) 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, and a violation of Article 6 § 1 (right to a fair trial).

The case mainly concerned Mr Zayidov's allegation that the authorities had confiscated and destroyed the manuscript of a book he had written while he was in pre-trial detention for hooliganism. It also concerned the ensuing proceedings he had brought to claim damages.

The Court found that the confiscation and destruction of Mr Zayidov's manuscript had not been "prescribed by law" within the meaning of Article 10 § 2 of the Convention. In particular, the rule the authorities had relied on to confiscate and destroy the manuscript was susceptible to a wide range of interpretations with no safeguards against arbitrary decisions. In addition, the Court found that, even though at the time there were no specific domestic provisions for the presence of prisoners at civil hearings – notwithstanding a general right for all civil parties to attend –, the domestic civil courts had failed to assess whether Mr Zayidov should be present at the hearings on his case. They had also flatly refused to call additional witnesses to the stand, without providing any reasons, thus depriving Mr Zayidov of the opportunity to present his case effectively and placing him at a substantial disadvantage *vis-à-vis* the opposing party. Furthermore, they had not provided adequate reasons for their dismissal of Mr Zayidov's submissions and objections.

Principal facts

The applicant, Ganimat Salim oglu Zayidov, is an Azerbaijani national who was born in 1963 and currently lives in Strasbourg (France). He is a journalist, and used to be the chief editor of the opposition newspaper *Azadliq* in Azerbaijan.

In November 2007 Mr Zayidov was arrested and charged with hooliganism. Following a trial, he was convicted in March 2008 and sentenced to four years' imprisonment. While in detention, Mr Zayidov wrote a 278-page manuscript on his experiences and thoughts on his ongoing detention, as well as on political developments in the country and his memories of certain events and personalities over the previous twenty years.

According to Mr Zayidov, he informed the detention facility officials about his manuscript and his intention to give it to his family for publication. He alleges that they took the manuscript from him in two batches – the first 203 pages on 27 April 2008 and the remaining 75 pages in May 2008 before his transfer to the prison following his criminal conviction – and the head of the facility assured him that they would be passed on to his family or his lawyer.

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.

In contrast, records drawn up by the detention facility officials on 27 April 2008 state that Mr Zayidov asked an official of the detention facility to secretly send 203 pages of the manuscript to the editorial office of the *Azadliq* newspaper for publication. Instead, the manuscript was confiscated by the deputy head and two other officials of the detention facility. A handwritten report by the deputy head submitted to the head of the detention facility stated that the confiscated manuscript contained “indecent (*nalayiq*) and insulting statements about the republic’s leadership” and “information about the detention facility which could not be disclosed” and should be destroyed in accordance with the Internal Disciplinary Rules of Penal Facilities. A search record drawn up on the day of the applicant’s transfer from the detention facility to the prison, stated that 75 more pages of the manuscript had been found in his clothes bag and had been confiscated. Neither of the two confiscation records were signed by the applicant, purportedly because he had refused to sign them. According to Mr Zayidov, he had never been shown any confiscation records.

On 3 June 2008 the applicant’s lawyer wrote to the Penal Service of the Ministry of Justice and to the detention centre where Mr Zayidov had been held, requesting the return of the manuscript. Each replied that it was the other’s responsibility. Subsequently, on 11 July 2008, one of his lawyers lodged a civil claim with the Sabail District Court against the Penal Service of the Ministry of Justice and Baku Detention Facility No. 1.

Pending examination of the claim, on 14 July 2008 his lawyers wrote to both of the defendant authorities, requesting that the manuscript not be burned pending a court decision. In addition, they sought an injunction from the Sabail District Court prohibiting the defendant authorities from destroying the manuscript pending the examination of the civil claim. However, on the same day, pursuant to a handwritten decision (*akt*) drawn up by the deputy head and two other officials of the detention facility, the manuscript was burned.

Mr Zayidov’s lawyers subsequently lodged an addendum to the civil claim, arguing that the defendant authorities had breached his rights to freedom of expression and political speech, and claiming compensation for the fact that the manuscript had been unlawfully confiscated and destroyed.

At the first hearing, the court rejected outright the lawyers’ request that Mr Zayidov be present in person at the court hearings. Similarly, it also rejected requests to call the head of the detention facility and the applicant’s cellmates as witnesses, providing no reasons. During the next hearing, the court examined copies of the records, reports and the decision to burn the manuscript, submitted by the Penal Service of the Ministry of Justice. Mr Zayidov alleged that he and his lawyers only learned of the existence of those documents at that moment. The court questioned the deputy head of the detention centre, who reiterated the assessments made in his written reports and added that the manuscript contained “illegal expressions” inciting the public to war in Nagorno-Karabakh. However, the deputy head of the detention facility was unable to quote any particular statements from the manuscript because, according to Mr Zayidov, he had never read it. In October 2008, the Sabail District Court dismissed Mr Zayidov’s claim.

Mr Zayidov appealed, reiterating his complaints and submitting that he had learned of the existence of the confiscation records and other documents presented by the defendant authorities only during the first-instance proceedings. He argued that it was necessary to call the head of the detention facility as a witness, as he had promised to pass the manuscript on to his family or lawyers. He also complained that the first-instance hearings had been held in his absence whereas the four officials of the detention facility heard by the court had simply signed the confiscation records, without reading the manuscript, and he maintained that the court had failed to properly assess their inability to substantiate their findings with any concrete and pertinent examples of the allegedly indecent statements or prohibited information.

During the appeal hearing, Mr Zayidov’s lawyer requested repeatedly that the applicant be allowed to be present in person at the hearing and that the additional witnesses be called. Those requests

were rejected outright without reasoning, and the appeal was dismissed without specifically addressing any of the arguments raised by the applicant.

Mr Zayidov lodged a cassation appeal. In June 2009, the Supreme Court examined the appeal in his absence and in the absence of his lawyers and the defendant authorities' representatives. The Supreme Court upheld the lower courts' judgments without addressing his complaints concerning the first-instance and appellate courts' refusal to grant him leave to appear at the hearings or to call additional witnesses.

By a presidential pardon given on 17 March 2010, Mr Zayidov was released from serving the remainder of his sentence. Some months after his release, he moved to France, where he was granted political asylum.

Complaints, procedure and composition of the Court

Relying in particular on Article 10 (freedom of expression), Mr Zayidov complained that the confiscation and destruction of his manuscript, which he intended to publish as a book, had not been lawful. Also relying on Article 6 § 1 (right to a fair trial), he alleged that the civil proceedings concerning his claim for damages had been unfair, in particular because he had not been heard in person at the court hearings, some of his requests to call witnesses had been refused and the courts' decisions had lacked adequate reasoning.

The application was lodged with the European Court of Human Rights on 16 December 2009.

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

Síofra **O'Leary** (Ireland), *President*,
Ganna **Yudkivska** (Ukraine),
Stéphanie **Mourou-Vikström** (Monaco),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),

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

Decision of the Court

Article 10

The Court recalled that freedom of expression did not stop at the prison gate. Any restrictions had to be justified under Article 10 § 2 of the Convention. It noted that the manuscript had not been written in the form of a letter addressed to a particular person or persons, but had been the manuscript of a book that Mr Zayidov had intended to publish. It considered that the confiscation and destruction of the manuscript had constituted an interference with his right to freedom of expression.

The legal basis relied on by the authorities being the provisions of the Internal Disciplinary Rules, the Court found that Rule 110 – the rule relied on for the interference –, was susceptible to a wide range of interpretations with no safeguards against arbitrary decisions. As that did not meet the “quality of law” requirement of the Convention, the interference could not be considered to have been “prescribed by law” within the meaning of Article 10 § 2 of the Convention. Having reached that conclusion, the Court did not need to examine whether the other requirements of Article 10 § 2 (legitimate aim and necessity of the interference) had been complied with. There had accordingly been a violation of Article 10 of the Convention.

Article 6 § 1

The Court found that, even though at the time there were no specific domestic provisions for the presence of prisoners at civil hearings – notwithstanding a general right for all civil parties to attend –, the domestic civil courts had failed to properly assess whether Mr Zayidov’s presence was indispensable and to consider appropriate procedural arrangements enabling him to be heard in person.

They had also refused – without providing reasons for doing so – to call additional witnesses to the stand, depriving Mr Zayidov of the opportunity to present his case effectively and placing him at a substantial disadvantage *vis-à-vis* the opposing party. In addition, the domestic courts’ decisions lacked adequate reasoning in respect of their dismissal of his submissions and objections.

There had thus been a violation of Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay the applicant 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 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.