



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

FIFTH SECTION

**CASE OF KHADIJA ISMAYILOVA v. AZERBAIJAN**

*(Applications nos. 65286/13 and 57270/14)*

JUDGMENT

STRASBOURG

10 January 2019

**FINAL**

**10/04/2019**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Khadija Ismayilova v. Azerbaijan,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President*,

André Potocki,

Síofra O’Leary,

Mārtiņš Mits,

Gabriele Kucsko-Stadlmayer,

Lətif Hüseyinov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 November 2018,

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

**PROCEDURE**

1. The case originated in two applications (nos. 65286/13 and 57270/14) 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”) by an Azerbaijani national, Ms Khadija Rovshan qizi Ismayilova (*Xədicə Rövşən qızı İsmayilova* – “the applicant”), on 26 September 2013 and 31 July 2014 respectively.

2. The applicant was represented by Ms A. Vermeer, Ms Y.-O. Jansen and Ms L. Talsma of the Media Legal Defence Initiative, lawyers based in London, Mr L. Crain of De Brauw Blackstone Westbroek, a lawyer practising in the Netherlands, Mr Y. Imanov, a lawyer practising in Azerbaijan, and Mr S. Finizio, a lawyer practising in London. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that her rights under Articles 6, 8, 10 and 13 of the Convention had been breached, owing to the authorities’ failure to protect her from unjustified intrusions into her private life linked to her work as a journalist.

4. On 17 December 2015 the applications were communicated to the Government. The applicant and the Government each submitted written observations on the admissibility and merits of the applications. Observations were also received from PEN International, Privacy International, Article 19, Committee to Protect Journalists, Index on Censorship, International Media Support, the Institute for Reporters’ Freedom and Safety, International Partnership for Human Rights, PEN American Center, Front Line Defenders, Canadian Journalists for Free Expression, International Federation for Human Rights, World Organisation

Against Torture, Norwegian Helsinki Committee, and Human Rights House Foundation, to whom the President had given leave to intervene as third parties in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Baku.

#### **A. Background**

6. The applicant worked as an investigative journalist since 2005. She worked as a staff reporter and director at the Azerbaijani service of Radio Free Europe/Radio Liberty (“Azadliq Radio”), whose broadcasts were often critical of the government, covering various topics, including corruption and violations of human rights. In addition, she worked as a regional coordinator for the Organised Crime and Corruption Reporting Project, where she trained journalists in investigation techniques and cross-border reporting. She has received a number of international awards for her journalistic activity.

7. In August 2010 and June 2011, before the events giving rise to the present case, the applicant had published and contributed to articles concerning the alleged involvement of the President’s daughters in various commercial ventures. In early 2012 the applicant claimed that her research had uncovered that the presidential family controlled a mining consortium which had just been awarded a lucrative extraction licence by the Azerbaijani government.

8. During the events giving rise to the present case, the applicant continued to report on the above matters. In particular, on 3 May 2012 she published an article on the above-mentioned mining consortium. On 7 May 2012 she published an article entitled “President’s family benefits from Eurovision Hall”. On 11 October 2012 she wrote about the alleged investments of the presidential family in an article entitled “Azerbaijani enclave in the Czech Republic”. On 3 April 2013 she published an investigative report entitled “Offshore companies provide link between corporate mogul and Azerbaijan’s president”.

9. According to the applicant, since she began reporting critically on the government she has been threatened and intimidated in various ways.

## **B. Threatening letter and publication of videos depicting the applicant's intimate life**

10. On 7 March 2012 the applicant received a letter enclosing six still images from a video taken in her bedroom with a hidden camera. Those images showed her engaged in sexual intercourse with a man who, according to the applicant, was her then boyfriend. The message accompanying the images stated: “Whore, refrain from what you are doing, otherwise you will be shamed! ☺” (“*Qəhbə, özünü yığışdır. Əks halda rüsvay olacaqsan! ☺*”). The letter had been sent by post from an address in Moscow. The sender's name as noted on the envelope was “Valeriy Mardanov”.

11. The same images were also sent to two opposition newspapers, *Yeni Müsavat* and *Azadlıq*, which did not publish them.

12. On the same day the applicant made a statement, distributed through social media, that she would not cease her journalistic activity and would not be silenced.

13. On 9 March 2012 the applicant reported the above-mentioned letter to the prosecution authorities and lodged a formal request for an investigation, arguing that the letter amounted to blackmail related to her recent journalistic activities. She also requested measures to protect her safety. The investigation was formally launched on 15 March 2012 (see section C below).

14. In the meantime, on 13 March 2012 the newspaper *Yeni Azərbaycan* (the official newspaper of the ruling New Azerbaijan Party) published an article titled “Khadija Ismayilova as she seems and as she is”. The article began with a reference to the applicant's statement about receiving the threatening letter. It further criticised the applicant and those who had spoken in her support. In particular, it criticised both her and a colleague at *Azadlıq Radio* for lack of professionalism and anti-government bias. Moreover, citing another former employee of *Azadlıq Radio*, it also insinuated that the applicant was a person of immoral behaviour who spent a great deal of her time in bars and clubs and regularly held all-night parties and “orgies” with her friends in her office. The same article was published in the newspaper *İki Sahil* on 15 March 2012.

15. On 14 March 2012 a video was posted online on a website named “musavat.tv”, featuring scenes of a sexual nature involving the applicant and her then boyfriend, taken with the same camera hidden in her bedroom. *Müsavat* is a political opposition party, which indicated that it had nothing to do with the website and condemned the posting of the video. According to the applicant, the domain name “musavat.tv” was apparently chosen solely for the posting of the video, to create the suggestion of a link with the *Müsavat* party or its newspaper, *Yeni Müsavat*.

16. On 16 March 2012 the newspaper *Səs* published an article titled “Not surprising”. The article spoke about a number of scandals in which various opposition politicians had been involved. At the end, the article briefly alluded to the incident involving the applicant, without going into much detail about it, but stating that it was not surprising that many opposition-oriented individuals were involved in “sex scandals”.

17. On 5 April 2012 *Səs* published another article titled “Who should Khadija sue?” attacking the applicant for “immoral behaviour” and suggesting that the video scandal had been created by herself and her friends at “musavat.tv”.

18. Several more articles attacking the applicant were published later in *Səs*.

19. In April 2013 another video purporting to show the applicant engaged in sexual activities was posted on a website named “ictimaipalatka.com” where, according to the applicant, similar videos of other activists and anti-government figures had been posted previously. This particular video did not in fact involve the applicant, but rather a woman meant to resemble her.

20. While the investigation in connection with the threatening letter and the posting of the first video was under way (see below), in July 2013 another video of the applicant and her then boyfriend filmed in the applicant’s bedroom was posted on “ictimaipalatka.com”. This video actually featured the applicant, and had been taken with the same hidden camera used for the first video. According to the applicant, the webpage of the video was contained in a frame marked “SesTV Player”.

### **C. Criminal investigation**

#### *1. Opening of the criminal investigation and steps taken*

21. As noted above, on 9 March 2012 the applicant reported the threatening letter received on 7 March 2012 to the Ministry of Internal Affairs and the Prosecutor General’s Office, complaining that it was blackmail in connection with her journalistic activity, and asking the prosecution authorities to ensure her safety, to investigate the matter, and to hold those responsible for the threat and the video accountable.

22. On 15 March 2012, one week after the applicant’s formal complaint and a day after the video was posted, the Prosecutor General’s Office launched criminal proceedings under Article 156 (breach of inviolability of private life) of the Criminal Code on the basis of the applicant’s request, and assigned the case to the Baku City Prosecutor’s Office.

23. On 17 March 2012 the applicant was questioned by Mr N.A., an investigator of the Baku City Prosecutor’s Office.

24. On 17 March 2012 the applicant found out, with the help of friends, that as well as the camera in the bedroom there were multiple other hidden cameras installed in her flat. Moreover, they found a newly installed second telephone line and data wires which had evidently been used for transmitting the footage shot with the hidden cameras.

25. According to the applicant, she and her friends returned to the flat the next day and discovered several signs indicating that someone had been in it overnight.

26. On 19 March 2012 the applicant went to the Baku City Prosecutor's Office to request an inspection of her flat. According to the applicant, the investigators visited her flat, but refused to comment on the purpose or implications of the wires, indicating that they did not possess the technical expertise to do so. They also refused to arrange for an inspection by an expert, but agreed that the applicant would herself contact the Automatic Telephone Station No. 538 (ATS), operated by Baktelekom, a State-owned communications company, which was responsible for the telephone box outside the flat to which the wires were connected.

27. The applicant was told at the ATS that the designated service engineer for the applicant's building was Mr N.J., an employee of the ATS. The applicant managed to track down Mr N.J. and arranged to meet him in her flat the same day. She also arranged for two investigators from the Baku City Prosecutor's Office, Mr N.A. and his assistant, to be present during the meeting.

28. According to the applicant, during the meeting in her flat on 19 March 2012, Mr N.J. admitted, in the presence of the investigators, the applicant, her lawyer and three of her friends, that in July 2011, on a day off work, Saturday (either 2 or 9 July 2011), on the instructions of his supervisor, he had installed a second telephone line and connected the wires from the ATS to the telephone box outside the applicant's flat. He had been asked by an unknown man he had met outside the flat to leave an extra fifteen metres of wire so that they could be connected inside the flat. He had also heard other people at work with the wires inside the flat. According to the applicant, during the conversation the investigator Mr N.A. appeared to be recording the engineer's statements. However, he later tore up his handwritten investigation record and made a new document that did not contain the engineer's account. He also asked the engineer to remove the second phone line, without documenting its removal. According to the applicant, despite her objections, he did not include Mr N.J.'s statements in the investigation case file and did not mention in the investigation record that there had been a meeting with Mr N.J. at the applicant's flat.

29. On 21 March 2012 the applicant asked the Chief Prosecutor's Office and the Baku City Prosecutor's Office to question Mr N.J. Then, according to her, on 3 April and 12 April 2012 she visited the Baku City Prosecutor's Office to get an update on the status of the investigation, but to no avail.

30. According to the documents submitted by the Government, on 30 March 2012 Mr N.A., the investigator of the Baku City Prosecutor's Office, took a formal decision granting the applicant's request to have Mr N.J. questioned and to take investigative steps to determine who had instructed him to install wires leading to the applicant's flat. The Government did not submit any records of Mr N.J.'s questioning or any further decisions by the prosecuting authorities taken in this regard.

31. In the meantime, on 19 March 2012 the investigator ordered an expert examination of gloves, pieces of newspaper and a lock found in the applicant's flat.

32. Between April 2012 and August 2013, the investigator issued a series of decisions ordering expert examinations of the following items: the still images sent to the applicant and the *Yeni Müsavat* newspaper; wires found in the applicant's flat; a disc containing the video recording published on "mustavat.tv"; the postal packaging in which the threatening letter and the still images had been sent to the applicant and the *Yeni Müsavat* newspaper; and a disc containing the video recording published on "ictimaipalatka.com".

33. The Government did not submit any expert reports or other documents relating to the above-mentioned decisions. No further documents concerning the investigative steps taken have been made available to the Court by the parties.

*2. The applicant's complaints concerning the alleged ineffectiveness of the investigation*

34. On 4 April 2012 the applicant published a press release in which she criticised the Baku City Prosecutor's Office for failing to conduct an adequate investigation, and stated that her access to the investigation material was "extremely limited".

35. On 13 April 2012 the applicant lodged a complaint with the Prosecutor General's Office against the officials of the Baku City Prosecutor's Office, complaining that the latter were refusing to take obvious and simple investigative steps.

36. The Prosecutor General's Office did not act on the applicant's complaint. Instead, on 26 April 2012 the Prosecutor General's Office and the Baku City Prosecutor's Office published a joint public statement on the status of the investigation ("the status report"). The content of the status report and the proceedings relating to it are described in section D below.

37. On 12 November 2012 the applicant requested from the Prosecutor General's Office and the Baku City Prosecutor's Office information on the status of the investigation, and copies of any decisions taken. According to the applicant, by letters of 14 and 21 November 2012 the Baku City Prosecutor's Office replied that the investigation was being conducted and that decisions on the applicant's various requests had been taken on



31 March and 3 April 2012 (no copies of those letters or decisions are available in the case file). According to the applicant, she wrote a letter dated 28 November 2012 asking for copies of those decisions, since she had not received them.

38. Having received no further replies, on 2 April 2013 the applicant again requested information from the prosecuting authorities on the status of the investigation. On 4 April 2013 the Baku City Prosecutor's Office replied that decisions taken in respect of her requests had been sent to her on 30 March 2012 and 3 December 2012 (no copy of a decision taken on the latter date is available in the case file). The letter further stated that a number of investigative steps, including various expert examinations, had been taken, and that the investigation was under way. By a letter of 30 April 2013 the Prosecutor General's Office gave the applicant a similar reply.

39. On 12 August 2013, after the publication of the second hidden video recording in July 2013 (see paragraph 20 above), the applicant lodged a complaint against the prosecuting authorities with the Sabail District Court under the judicial supervision procedure, noting that there had been no effective investigation for over a year, and that the prosecuting authorities had limited themselves to vague indications to the effect that the investigation was ongoing. She asked the court to find the prosecuting authorities' inactivity unlawful, and sought monetary compensation.

40. By a decision of 13 August 2013 the Sabail District Court refused to examine the complaint, finding that it had no competence to examine it under the judicial supervision procedure, because the matter complained of was not among the exclusive list of types of decisions and steps by the prosecuting authorities, established by Articles 449.3.1 to 449.3.7 of the Code of Criminal Procedure ("the CCrP"), that could be challenged under the judicial supervision procedure. The court noted that a complaint concerning the alleged inactivity of the prosecuting authorities should be made under the rules of administrative procedure.

41. On 16 August 2013 the Baku City Prosecutor's Office, ruling on a request by the applicant, refused to allow her access to the investigation case file until the investigation was complete, relying on Articles 87, 281.3 and 284-286 of the CCrP. On the same day, it refused her request for the criminal offence to be reclassified as falling under Article 163.1 (hindrance of a journalist's lawful professional activity) of the Criminal Code.

42. On 28 August 2013 the applicant lodged another complaint with the Sabail District Court under the judicial supervision procedure, with content similar to that of the previous complaint of 12 August 2013. On 30 August 2013 the Sabail District Court rejected the complaint, for the same reasons as in the decision of 13 August 2013. On 9 September 2013 the applicant appealed. On 18 September 2013 the Baku Court of Appeal upheld the Sabail District Court's inadmissibility decision.

43. On 18 September 2013 the applicant lodged a third complaint with the Sabail District Court under the judicial supervision procedure, which was again rejected by that court on 30 September 2013, and by the Baku Court of Appeal on 17 October 2013.

44. In the meantime, as recommended by the Sabail District Court, on 28 August 2013 the applicant lodged a complaint against the prosecuting authorities with the Baku Economic Administrative Court no. 1 under the rules of administrative procedure.

45. On 19 September 2013 the Baku Economic Administrative Court no. 1 refused to hear the complaint, finding that under the Code of Administrative Procedure and the Law on Administrative Proceedings it had no competence to examine complaints concerning the activities of criminal prosecution authorities in criminal proceedings.

46. On 14 October 2013 the applicant appealed, stating that she had been instructed to pursue the administrative procedure by the Sabail District Court.

47. On 4 December 2013 the Baku Court of Appeal rejected the applicant's appeal and upheld the decision of the Baku Economic Administrative Court no. 1.

48. On 20 December 2013 the applicant lodged a further appeal with the Supreme Court, which was rejected on 6 February 2014.

#### **D. Publication of the status report and the civil proceedings against the prosecuting authorities**

49. As mentioned above, in response to the applicant's complaint of 13 April 2012, on 26 April 2012 the Prosecutor General's Office and the Baku City Prosecutor's Office published a status report on the investigation (see paragraph 36 above). The status report noted that the applicant and her lawyer had been spreading false information in the media about the alleged inadequacy of the investigation and, as such, had attempted to "create a negative opinion" among the public concerning the investigation. It further noted that the investigating authorities had taken a number of investigative steps, in particular:

"At the request of [the applicant], on 15 March 2012 the Prosecutor General's Office opened a criminal case under Article 156.1 of the Criminal Code and assigned the investigation to the Investigation Department of the Baku City Prosecutor's Office. At the initial stages of the investigation [the applicant] was questioned in the presence of her representative A. Ismayilov; she was designated a victim of crime, and her rights and obligations were explained to her.

Thereafter, in order to discover the traces of crime and material evidence and to determine other circumstances important for the case, [the investigating authorities] conducted, with the participation of an expert, a criminalist, [the applicant], her representative and attesting witnesses, an inspection of the place of the incident, namely the flat located at ..., and owned by ..., where the applicant lived as a tenant,

took relevant material evidence from the place of the incident, ordered and obtained expert reports, and made relevant inquiries and issued instructions relating to the case.”

50. The status report then provided information about the period during which the applicant had rented the flat, as well as the identities of individuals to whom she had subsequently sublet the flat, and the financial arrangements between them.

51. The status report proceeded as follows:

“In addition to this, the investigation also established that envelopes containing photographs of [the applicant] were mailed under the name of Valeriy Mardanov from Moscow to [the applicant’s] registered address at ... and to the editorial office of the *Yeni Məsavat* newspaper. The envelopes were seized by the investigation and added to the case material.

[The applicant’s] request for additional persons to be questioned as witnesses, received by the investigation on 28 March 2012, was granted, and those persons were questioned.”

52. The status report then noted that in addition to the above steps being taken, a number of other persons were also questioned. The report disclosed the full names of those individuals, as well as their professional occupations or their relation to the applicant. They included reference to the man with whom, according to the report, the applicant was “in a liaison”, her sister, her brother, her friends and her colleagues who had visited her flat. In all, the report gave the full names of fifteen people, as well as the professional occupations of most of them.

53. The status report concluded as follows:

“On 13 and 17 April 2012 [the applicant] was invited to the investigation department in connection with the necessary investigative steps, but she did not appear; she only appeared for questioning on 26 April 2012.

Since the beginning of the investigation, in addition to [the applicant] and her representative being summoned by the investigation, on 17 March, 3 April and 14 April 2012 the administration of the Baku City Prosecutor’s Office received visits from her and her representative during which they heard her requests and gave specific instructions to the investigation team for full, impartial and comprehensive conduct of the investigation.”

54. As to the information mentioned in paragraphs 50 and 52 above, according to the applicant she herself had reluctantly provided much of the above information to the investigators at the request of a prosecutor, in order to assist the investigation, expecting that the information would be kept confidential. She had been promised by officials of the Baku City Prosecutor’s Office that the information would remain confidential.

55. On 27 April 2012 the spokesman of the Baku City Prosecutor’s Office indicated in an interview that the status report had been released in response to the applicant’s public complaints about the lack of an effective

investigation. He also stated that there was nothing unlawful in the contents of the status report.

56. On 21 June 2012 the applicant lodged a civil claim with the Sabail District Court against the Prosecutor General's Office, the Baku City Prosecutor's Office, Mr N.A. (an investigator at the Baku City Prosecutor's Office) and Mr A.A. (the Baku City Deputy Prosecutor). She argued that the publication of detailed information concerning her private life in the status report of 26 April 2012 constituted an unlawful and unjustified interference with her right to respect for private life and freedom of expression, arguing that the status report was an integral part of the "slander campaign" against her, which also included the release of the "sex video" and the newspaper articles. She argued that the publication of this information had been in breach of, *inter alia*, Article 32 of the Constitution, Article 199 of the Code of Criminal Procedure, and Article 8 of the Convention. She sought compensation for distress in the amount of 40,000 Azerbaijani manats (AZN) and a public apology by the defendants.

57. By a judgment of 27 July 2012 the Sabail District Court dismissed the applicant's claims, finding that the purpose of the status report had been to counter the possibility of the public forming a negative opinion about the investigating authorities as a result of the applicant's public complaints that the investigation was ineffective. The court found that the information in the status report was of a "general character", and had not breached the requirements of the domestic law concerning individuals' privacy. Specifically, it found as follows:

"[The status report] contained information of a general character in order to prevent creation of a negative opinion among the public; when the information was written, the requirements of the domestic legislation concerning the protection of Khadija Ismayilova's private and family confidentiality were not breached. Therefore, the information in [the status report] cannot be considered damaging to the plaintiff's reputation or her private and family life."

58. The court also held that the applicant had been unable to demonstrate that she had suffered any non-pecuniary damage under the provisions of the Civil Code and the Code of Civil Procedure as interpreted by the Plenum of the Supreme Court.

59. On 24 September 2012 the applicant appealed, reiterating her arguments and complaining further that the first-instance court had ignored her legal and factual arguments and had failed to rely on any legal provisions in arriving at its decision.

60. On 20 November 2012 the Baku Court of Appeal dismissed the applicant's appeal and upheld the first-instance court's judgment, agreeing with its reasoning.

61. On 29 March 2013 the Supreme Court dismissed the applicant's appeal on points of law and upheld the lower courts' judgments, finding that the publication of the status report had not interfered with the applicant's

private or family life and had not been in breach of the relevant domestic legal provisions.

### **E. The applicant's arrest and the criminal proceedings against her**

62. In December 2014 the applicant was arrested and detained on the charge that she had incited a former colleague to commit suicide. In February 2015 she was additionally charged with the criminal offences of large-scale misappropriation, illegal entrepreneurship, large-scale tax evasion and abuse of power in connection with her activity as the director of Azadliq Radio during the period from 1 July 2008 to 1 October 2010. The events relating to her arrest and detention are the subject of a separate application (no. 30778/15), in which the applicant raised complaints under Articles 5, 6 § 2, 10 and 18 of the Convention.

63. On 1 September 2015 the applicant was sentenced to seven and a half years' imprisonment. After a series of appeals, on 25 May 2016 she was acquitted in part and her sentence was reduced to three and a half years' imprisonment, conditionally suspended for five years. She was released from prison on the same day.

## **II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS**

### **A. Constitution**

64. Article 32 of the Constitution, as in force at the material time, provided as follows:

#### **Article 32. Right to personal inviolability**

"I. Everyone has the right to personal inviolability.

II. Everyone has the right to keep secret private and family life. It is prohibited to interfere with private or family life, except in cases established by law. Everyone has the right to be protected from unlawful interference in his or her private and family life.

III. No one may collect, keep, use and disseminate information about a person's private life without his or her consent. Except in cases prescribed by law, no one may be subjected to being followed, videotaped or photographed, tape recorded or subjected to other similar actions without his or her knowledge and against his or her objection.

IV. The State guarantees everyone the right to confidentiality of correspondence, telephone communications, post, telegraph messages and information sent by other communication means. This right may be restricted, in accordance with a procedure provided by law, in order to prevent crime or to discover the true facts when investigating a criminal case.

V. Except in cases prescribed by law, everyone may become familiar with the information collected concerning him or her. Everyone has a right to demand

correction or elimination of information concerning him or her which does not correspond to the truth, is incomplete or has been collected by means of violation of the requirements of the law.”

## **B. Criminal Code**

65. Article 156 of the Criminal Code, as in force at the material time, provided as follows:

### **“Article 156. Breach of inviolability of private life**

156.1. The illegal collecting of information constituting private and family secrets, and disseminating, selling and sharing with others of documents, video and photo materials and sound recordings of such information –

is punishable by a fine in the amount of one thousand to two thousand manats, or community work for a period of two hundred and forty hours to four hundred and eighty hours, or corrective work for a period of up to one year.

156.2. The same acts, committed by a public official using his position –

is punishable by restriction of liberty for a period of up to two years, with or without deprivation of the right to hold a certain position or engage in certain activities for a period of up to three years.”

66. Article 163 of the Criminal Code provided as follows:

### **“Article 163. Hindrance of journalists’ lawful professional activities**

163.1. Hindering journalists in their lawful professional activities, that is forcing them to disseminate or refuse to disseminate information by applying violence or by threatening to apply violence –

is punishable by a fine in the amount of five hundred to one thousand manats or by corrective works for a period of up to one year.

163.2. The same act committed by a public official using his position –

is punishable by corrective works for a period of up to two years or by imprisonment for a period of up to one year, with or without deprivation of the right to hold a certain position or to engage in certain activities for a period of up to three years.”

## **C. Code of Criminal Procedure**

67. Article 199 of the Code of Criminal Procedure (“the CCrP”) provided as follows:

### **“Article 199. Protection of personal and family secrets**

199.1. During criminal proceedings measures shall be taken under this Code and other laws of the Republic of Azerbaijan to protect information constituting personal and family secrets.

199.2. In the course of procedural activities, it shall be prohibited to unnecessarily collect, disseminate or use information relating to the private life of any person and other information of a personal nature which that person considers must be kept

secret. At the request of the investigator, prosecutor or court, the participants in investigative and court procedures shall be under an obligation not to disseminate such information, and shall give a written undertaking to this effect.

199.3. If the prosecuting authority asks any person for details of his private life on the basis of a relevant court decision, he shall have the right to ensure that there is a need to collect this information for the purposes of the ongoing criminal case; otherwise he shall have the right to refuse to divulge it. If the prosecuting authority asks the person for information concerning his own or another person's private life on the grounds that it is necessary, the authority shall include observations confirming the need for this information in the record of the questioning or of other investigative activity.

199.4. Evidence which discloses personal or family secrets shall be examined by the court in camera.

199.5. Damage caused to any person as a result of a breach of the inviolability of private life or the dissemination of personal or family secrets shall be compensated under the procedure provided by the legislation of the Republic of Azerbaijan.”

68. Article 449 of the CCrP, as in force at the material time, provided as follows:

**“Article 449. Complaints to the court concerning procedural acts or decisions of the prosecuting authority**

...

449.2. The following persons shall have the right to lodge a complaint concerning procedural acts or decisions of the prosecuting authority:

...

449.2.2. the victim of the criminal offence and his legal representative;

...

449.3. The persons referred to in Article 449. 2 of this Code shall have the right to lodge a complaint with the court concerning the procedural acts or decisions of the prosecuting authority in connection with the following matters:

449.3.1. refusal to accept an application concerning a criminal offence;

449.3.2. being in police custody or detention in remand;

449.3.3. violations of the rights of an arrested person;

449.3.4. torture or other cruel treatment of a detained person;

449.3.5. opening of a criminal case and suspension or discontinuation of criminal proceedings;

449.3.6. the compulsory conduct of an investigative procedure, the application of a coercive procedural measure, or the conduct of a search operation without a court order;

449.3.7. the removal of defence counsel for the accused (or suspect) from the criminal proceedings.”

#### **D. Council of Europe documents**

69. The following are extracts from Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (adopted by the Committee of Ministers on 13 April 2016 at the 1,253rd meeting of the Ministers' Deputies):

“1. It is alarming and unacceptable that journalists and other media actors in Europe are increasingly being threatened, harassed, subjected to surveillance, intimidated, arbitrarily deprived of their liberty, physically attacked, tortured and even killed because of their investigative work, opinions or reporting, particularly when their work focuses on the misuse of power, corruption, human rights violations, criminal activities, terrorism and fundamentalism. These abuses and crimes have been extensively documented in authoritative reports published by the media, non-governmental organisations and human rights defenders.

2. Journalists and other media actors are often specifically targeted on account of their gender, gender identity, sexual orientation, ethnic identity, membership of a minority group, religion, or other particular characteristics which may expose them to discrimination and dangers in the course of their work. Female journalists and other female media actors face specific gender-related dangers, including sexist, misogynist and degrading abuse; threats; intimidation; harassment and sexual aggression and violence. These violations are increasingly taking place online. There is a need for urgent, resolute and systemic responses.

3. The abuses and crimes described above, which in practice are committed by both State and non-State actors, have a grave chilling effect on freedom of expression, as safeguarded by Article 10 of the European Convention on Human Rights (ETS No. 5, ‘the Convention’), including on the ability to access information, on the public watchdog role of journalists and other media actors and on open and vigorous public debate, all of which are essential in a democratic society. They are often met with insufficient efforts by relevant State authorities to bring the perpetrators to justice, which leads to a culture of impunity and can fuel further threats and violence, and undermine public trust in the rule of law.

...

6. In order to create and secure a favourable environment for freedom of expression as guaranteed by Article 10 of the Convention, States must fulfil a range of positive obligations, as identified in the relevant judgments of the European Court of Human Rights and set out in the principles appended to this recommendation. Such obligations are to be fulfilled by the executive, legislative and judicial branches of governments, as well as all other State authorities, including agencies concerned with maintaining public order and national security, and at all levels – federal, national, regional and local.

7. Under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1), the Committee of Ministers recommends that governments of member States:

i. implement, as a matter of urgency and through all branches of State authorities, the guidelines set out in the appendix to this recommendation, taking full account of the principles included there;



ii. review relevant domestic laws and practice and revise them, as necessary, to ensure their conformity with States' obligations under the European Convention on Human Rights;

iii. promote the goals of this recommendation at the national level and engage and co-operate with all interested parties to achieve those goals."

70. In the Appendix to Recommendation CM/Rec(2016)4, the Committee of Ministers offers detailed guidelines to member States on how to fulfil their relevant obligations on the effective protection of journalism and safety of journalists and other media actors, combining legal, administrative and practical measures, which are organised into four "pillars": prevention, protection, prosecution (including a specific focus on impunity) and promotion of information, education and awareness-raising. The guidelines are based on an extensive body of principles anchored in the European Convention on Human Rights and in the relevant judgments and decisions of the Court.

71. The following are extracts from the Report by the Commissioner for Human Rights of the Council of Europe (CommDH(2013)14, dated 6 August 2013), following his visit to Azerbaijan from 22 to 24 May 2013:

**"I. Freedom of expression**

7. The situation of freedom of expression, including freedom of the media, in Azerbaijan has been a long-standing concern among national and international observers. The latter include Commissioner Muižnieks' predecessor, Mr Thomas Hammarberg, who also highlighted important shortcomings in these areas in a report on Azerbaijan released in 2010, as well as in observations published in 2011. As detailed below, the Commissioner notes that most of these shortcomings remain unaddressed today and that in certain areas, a clear deterioration can also be observed.

**1. Judicial harassment, intimidation and violence against journalists**

8. The Commissioner is seriously concerned at the apparent intensification of the practice, highlighted by his predecessor in 2010 and 2011, of unjustified or selective criminal prosecution of journalists and others who express critical opinions. In recent years, several media workers have been prosecuted and/or sentenced for incitement to national, racial or religious hatred and in some instances terrorism, as well as for hooliganism, tax evasion, drug possession and illegal possession of weapons, with the credibility of the relevant charges being widely challenged. As a result, a number of journalists have to serve long prison terms or carry out corrective labour and/or pay heavy fines. According to the prison census conducted by the Committee to Protect Journalists (CPJ) in December 2012, Azerbaijan ranked among the top countries jailing journalists with nine imprisoned journalists.

...

11. In addition to facing charges and imprisonment, journalists documenting and reporting human rights violations are reported to be sometimes subjected to physical attacks. According to the Azerbaijani Institute for Reporters' Freedom and Safety (IRFS), there have been more than 200 violent attacks against journalists since 2005 and more than 50 domestic and foreign journalists were harassed or attacked in 2011 alone. Moreover, impunity prevails and those responsible are reportedly rarely, if ever, brought to justice. The murder of the editor of *Monitor* magazine, Elmar

Huseynov, in 2005, and the fatal stabbing of the journalist and writer Rafiq Tagi in 2011 remain unsolved to date. The Commissioner also notes that no effective and independent investigation into the death in prison of Novruzali Mammadov has been conducted.

12. Another recent incident concerns the photo-journalist Mehman Huseynov, who faces up to five years' imprisonment on hooliganism charges over an argument he reportedly had with law enforcement officers while covering a demonstration in Baku in May 2012.

13. Some Azerbaijani journalists documenting on-going demolitions of properties have been prevented from carrying out their professional activities, and have also been subjected to physical attacks. On 18 April 2012, Idrak Abbasov and other journalists were attacked by approximately 20 policemen and security guards of the State oil company as they attempted to film house demolitions in the outskirts of Baku. Idrak Abbasov, a journalist with the *Zerkalo* newspaper and the IRFS, was taken to hospital unconscious and suffered from broken ribs, damage to his internal organs and injuries to his eyes.

...

16. In addition to physical attacks, journalists and media workers in Azerbaijan have reported having been subject to various forms of intimidation. In March 2012, for instance, unknown persons attempted to blackmail Khadija Ismayilova, a journalist with Radio Free Europe/Radio Liberty (RFE/RL) who had notably investigated the business holdings of the family of President Aliyev. As she refused to be silenced, an intimate video of her, filmed by hidden camera, was posted on the Internet.

17. Across the aforementioned areas, the need for a fully independent and impartial review by the judiciary of cases involving journalists and others expressing critical voices appears urgent. The Commissioner notes that a lack of independence of the justice system in Azerbaijan was highlighted in the last monitoring report of the Parliamentary Assembly of the Council of Europe, which stressed that the executive branch continues to exert influence on the judiciary, thus contributing to the continuation of the problem ...

...

#### *Conclusions and recommendations*

19. The Commissioner notes with concern that harassment of journalists and others expressing critical views has heightened in recent months, with charges being brought against them for increasingly serious crimes. The Commissioner reiterates that releasing all persons who are in detention because of the views they hold and express should be a priority for the Azerbaijani authorities in order to protect freedom of expression.

20. The Commissioner calls on the Azerbaijani authorities to respect in all cases their obligation to initiate prompt, thorough and transparent investigations when violence or threats of violence against journalists occur, and to bring the perpetrators to justice, where punishments should reflect the seriousness of this crime. He furthermore recalls that the Azerbaijani authorities must not hamper the work of journalists, especially those covering demonstrations or more generally documenting human rights violations. ...”

### III. THIRD-PARTY SUBMISSIONS

72. The third party interveners listed in paragraph 4 above made the following joint submissions.

73. The interveners' submissions consist of two parts: firstly, they provide an overview of the general situation of independent journalists and media actors in Azerbaijan; secondly, they submit that Articles 8 and 10 of the Convention impose positive obligations on the respondent State to protect journalists by taking measures to prevent and to investigate conduct designed to restrict journalistic activity such as that in the present case.

74. The third-party interveners noted that Azerbaijan had one of the most restrictive environments for freedom of expression in the world and that State repression of journalists, media outlets, bloggers and human rights defenders was widespread and severe. In recent years, the authorities had engaged, and continued to engage, in systematic repression of freedom of expression in the country, including through intimidation, targeting and persecution of journalists and voices critical of the government. Independent journalists and activists faced arrest, conviction and extended jail periods on spurious, politically motivated charges. They also countenanced violence and reprisals from State and non-State actors alike, which were treated with impunity.

75. At the time of the submission of the third-party comments, eleven journalists, bloggers and other activists critical of the government were imprisoned. Moreover, journalists had been subjected to violent attacks, in respect of which the third-party interveners mentioned the following examples, which were illustrative but not exhaustive:

(a) Uzeyir Jafarov, a newspaper journalist, was violently attacked in 2007 by unknown assailants after publishing an article accusing a senior military officer of corruption and illegal activities (see, in this connection, *Uzeyir Jafarov v. Azerbaijan*, no. 54204/08, 29 January 2015);

(b) Agil Khalil, an investigative journalist, was attacked by agents of the Ministry of National Security for trying to take photographs as part of an investigative story. No effective investigation into the attack was carried out. In the related proceedings before the Court, the Government acknowledged, by way of a unilateral declaration, breaches of the rights that were the subject of the applicant's complaints (see, in this connection, *Khalil v. Azerbaijan* (dec.), nos. 60659/08, 38175/09 and 53585/09, 6 October 2010);

(c) Afghan Mukhtarly was allegedly attacked by uniformed police officers in January 2009 while covering a rally in Baku, despite identifying himself as a member of the press. An official investigation was subsequently abandoned for lack of evidence;

(d) Elmin Badalov, a newspaper reporter, was beaten by seven unidentified men in July 2010 while taking photographs as part of an

investigation into luxury property owned by the Minister of Transport. No investigation was carried out;

(e) Idrak Abbasov, a correspondent of IRFS, was allegedly severely beaten by approximately twenty police and security guards of the State Oil Company of Azerbaijan (SOCAR) in April 2012 when he attempted to film the demolition of local houses by SOCAR. No effective investigation was carried out;

(f) In October 2013 a group of journalists covering a campaign event were attacked and seriously injured by onlookers. It was alleged that police officers were present at the event but did not intervene. No investigation was carried out, despite a call to the authorities by the OSCE Representative on Freedom of the Media;

(g) Emin Huseynov, director of IRFS, was ill-treated in detention (see *Emin Huseynov v. Azerbaijan*, no. 59135/09, 7 May 2015), forced to flee the country and stripped of his citizenship.

76. Furthermore, independent media organisations had likewise come under attack. As examples, the third-party interveners mentioned cases of harassment of reporters and raids on the offices of IRFS, Azadliq Radio and Meydan TV.

77. According to the third party interveners, the State's failure to investigate or punish attacks on critical voices had created and entrenched a climate of impunity. Where punishment or sanction had ensued, it had largely targeted the attacked rather than their attacker.

78. The third-party interveners also noted that various international and regional human rights organisations, including the Council of Europe, the OSCE and the UN, had repeatedly called upon the Azerbaijani authorities to improve respect for the right to freedom of expression, both through the release of imprisoned journalists and the end of reprisals against voices critical of the government.

79. In respect of the States' specific obligations under the Convention, referring to *Palomo Sánchez and Others v. Spain* ([GC], nos. 28955/06 and 3 others, § 59, ECHR 2011); *Özgür Gündem v. Turkey* (no. 23144/93, § 43, ECHR 2000-III); *Dink v. Turkey* (nos. 2668/07 and 4 others, § 137, 14 September 2010); and a number of other judgments of the Court, the third-party interveners argued that there was a positive obligation under Article 10 on member States to take necessary measures to prevent and investigate conduct designed to restrict journalistic activity. Moreover, referring to *Von Hannover v. Germany* (no. 59320/00, ECHR 2004-VI), *Von Hannover v. Germany (no. 2)* ([GC], nos. 40660/08 and 60641/08, ECHR 2012); *Sciacca v. Italy* (no. 50774/99, ECHR 2005-I); *X and Y v. the Netherlands* (26 March 1985, Series A no. 91), and a number of other judgments and decisions of the Court, they noted that there was a positive obligation under Article 8 to take measures within States' margin of appreciation, including in certain cases an effective investigation into

crimes, to secure protection of the right to private life even in the sphere of relations between individuals themselves. Lastly, as to protection of personal data, a State's negative obligation under Article 8 of the Convention was engaged in the context of the police and prosecution authorities' specific obligations relating to the protection of personal information that they obtained in the course of their investigation.

80. The third-party interveners argued that the combined effect of the above-mentioned case-law was that, where the privacy of journalists was interfered with as a result of their journalistic work, a member State's obligations under both Articles 8 and 10 were engaged.

81. They therefore requested the Court to consider the present case in the context of the gravity of the situation of journalists in the country and the systemic failure by the State to investigate or prevent the infringements of their rights, resulting in a general culture of impunity for attacks on journalists. They argued that in the context of interference with journalists' private lives, positive obligations under Article 10 must necessarily extend to actual or threatened breaches of Article 8 rights, and the positive obligations under Article 8 must be subjected to particularly close review by the Court where Article 10 rights were engaged. The ability of journalists to perform their role as "public watchdogs" depended on their freedom from intimidation, harassment, unlawful surveillance and deliberate intrusions into their private affairs. Failure to ensure respect for journalists' private lives had a chilling effect upon their journalism, working to the detriment of society as a whole.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

82. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

### II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN CONNECTION WITH THE THREATENING LETTER AND THE SECRET FILMING AND DISSEMINATION OF INTIMATE VIDEOS

83. In connection with the threatening letter, the secret installation of hidden cameras in her flat and the dissemination of secretly filmed videos depicting her private life, the applicant complained under Articles 8 and 13 of the Convention that: (a) the respondent State had breached its negative obligation by being directly responsible for the above-mentioned acts and

by arranging a smear campaign against her in the press; or (b) alternatively, the respondent State had failed to meet its positive obligation to protect her right to respect for her home and private life, which included her physical and moral integrity, by failing to conduct an effective investigation in order to identify those responsible, and by not affording her a remedy against the investigating authorities' inactivity.

The Court considers that the complaint falls to be examined solely under Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

### **A. Admissibility**

84. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

#### *1. The parties' submissions*

##### **(a) The applicant**

85. The applicant argued that the respondent State had breached its negative obligation under Article 8, because there had been an unjustified interference with her right to respect for her home and private life by a number of entities which qualified as “public authorities” owing to their institutional and operational dependence from the State. In the alternative, she argued that, in any event, the respondent State had failed to comply with its positive obligation to protect her right to respect for her home and private life.

86. In respect of the negative obligation, the applicant claimed that State agents had installed the hidden cameras in her bedroom, recorded the intimate videos and posted them online. In particular, she noted that the second phone line and additional wires, through which hidden videos were transmitted out of her flat, had been connected to her flat by an employee of ATS belonging to Baktelekom, a telephone services company fully owned and controlled by the State, forming part of the official structure of the Ministry of Communications and Information Technologies. Additionally,

the Ministry of National Security also had full access to the ATS. It was clear that a company which was owned and controlled by the Government was responsible for the installation of the second telephone line to the applicant's flat.

87. Moreover, the applicant argued that the Government had had a clear motive to instigate a smear campaign against her. The installation of the hidden cameras and wires had occurred just a few days after the applicant had published a report on the activities of the President's daughters (see paragraphs 7 and 28 above). The timing of the threatening letter and the release of the first intimate video was also linked to the applicant's reporting on the presidential family. Specifically, the threatening letter had been sent, and the video released, approximately one month after the applicant had started working on an article concerning the gold-mining consortium (see paragraphs 7, 10 and 15 above).

88. The applicant also noted that, following her publications on alleged corruption, the National Assembly had adopted legislative amendments allowing commercial enterprises to withhold information about their registration, ownership and structure, limiting the ability of investigative journalists "to identify private assets of public figures". It had also passed a law granting all former presidents and first ladies lifelong legal immunity.

89. Furthermore, the *Yeni Azərbaycan*, *İki Sahil* and *Səs* newspapers had then run stories about the intimate videos, as part of a systematic smear campaign conducted by the authorities against the applicant in 2011 to 2013. The articles were offensive in nature, publicly discussing her sex life and insulting her morality, which was damaging to her personal and professional relationships in conservative Azerbaijani society. The applicant argued that all three newspapers were State-controlled, because they operated as media organs of the ruling party, YAP, and expressed clear allegiance to YAP and the ruling Government. In particular, *Yeni Azərbaycan* was owned by YAP, and a member of YAP's political council was the chief editor of the newspaper. *İki Sahil* was owned by SOCAR, the State-owned oil company, and a member of YAP's political council was the chief editor of the newspaper. *Səs* was owned by Alinja Charitable Society, which was one of the founders of YAP, and a senior YAP official was the newspaper's chief editor.

90. According to the applicant, the second video, released in July 2013, was displayed in a browser frame containing the words "SesTV Player", indicating that it was produced in the studio of *Səs*.

91. The applicant argued that the above evidence indicated that the interference in question was attributable to the State, because public authorities included not only government institutions, but also separate legal entities that did not enjoy sufficient institutional and operational independence from the State. Moreover, the interference was unjustified within the meaning of Article 8 § 2. According to the applicant, such a

pattern of harassment was nothing new and the tactic of filming and disseminating videos and photographs of sexual activity through the media to embarrass and intimidate journalists critical of the President had been used before, such as in the case of a fellow journalist, N. Adilov, who had also worked at Azadliq Radio.

92. The applicant further submitted that, in the alternative, should the Court find that there was no interference directly attributable to the State, the respondent State had in any event breached its positive obligation under Article 8 by failing to take adequate measures to secure respect for her private life.

93. In this case, the State should have acted to prevent or put an end to the breach of the applicant's rights by applying the existing criminal law through effective investigation and prosecution. However, the investigation had been ineffective.

94. Firstly, the Baku City Prosecutor's Office had not opened the criminal investigation in a timely manner. Following the applicant's complaint concerning the threatening letter, it had taken a week to open the investigation, during which time the intimate video had been leaked on the internet and some articles about it had appeared in the newspapers.

95. Secondly, on several occasions the investigation authorities had failed to collect and secure evidence relevant to the complaint. In particular, the investigators had failed to collect threatening letters and accompanying images from the other recipients (see paragraph 11 above) in a timely manner and, as a consequence, the letter received by *Azadliq* had disappeared. Moreover, despite the fact that the envelope bore the stamp of a Moscow post office, the investigators had not pursued this lead. They had also refused to inspect the second phone line and evidence of hidden cameras in her flat, claiming that they lacked the technical expertise to do so, while also refusing to arrange for an expert.

96. Furthermore, when, during a meeting organised by the applicant in her flat on 19 March 2012, the Baktelekom engineer had admitted to installing the second phone line to the applicant's flat at his employer's request (see paragraph 28 above), the investigator had not only refused to include the witness testimony in the case file, but had actively sought to destroy it. He had torn up his handwritten investigation record, on which he had recorded the engineer's statement, and had made a new document that did not contain the engineer's account. He had also asked the engineer to remove the second phone line, without documenting its removal. Together with her observations to the Court she had enclosed witness statements by her three friends who had been present at the meeting in her flat on 19 March 2012, all of whom had confirmed that the investigator had not mentioned the engineer's presence at the meeting, nor had it been mentioned in the investigation record. When the applicant had asked for the



engineer to be formally questioned, the investigation authorities had not responded.

97. Thirdly, the Baku City Prosecutor's Office had repeatedly failed to inform the applicant about the status of the investigation.

98. Moreover, the investigation authorities' failure to promptly investigate leads and collect evidence had dragged the investigation out for several years, unjustifiably protracting the criminal proceedings.

99. Lastly, the applicant argued that she had been denied an effective remedy at domestic level with respect to her complaints regarding the inaction on the part of the investigating authorities and the ineffectiveness of the investigation, as the domestic courts refused to examine on the merits her complaints lodged both under the procedure of judicial supervision provided by the CCrP and the administrative procedure provided by the CAP.

**(b) The Government**

100. The Government submitted that there was no interference by the State with the applicant's rights under Article 8 § 1 of the Convention in respect of the threats against her, installation of hidden cameras and wires in her flat, publication of secretly filmed videos, related press articles, and other related incidents. The investigation of the above-mentioned incidents has not identified the person or persons responsible for those incidents. Nevertheless, it has not revealed any link between the incidents and the State or its agents either.

101. The Government submitted that no smear campaign was organised against the applicant in retaliation for her articles about the President, noting that there were large time gaps between the applicant's articles and the posting of the video. They noted that the applicant's articles were published in August 2010, June 2011, May 2012, October 2012 and April 2013, while the threatening letter was received and the video posted in March 2012, that is a year and seven months after the first article, nine months after the second article, and a month and a half before the applicant's next articles appeared.

102. As to the adoption of the Constitutional Law on guarantees for ex-President and his or her family members and the amendment to the Law on commercial confidentiality, the Government noted that, contrary to the applicant's argument (see paragraph 88 above), there was no connection between the passing of those legislative acts and the applicant's case. The first vote by the National Assembly on the draft Constitutional Law had taken place in November 2011, almost six months before the applicant's articles had been published in May 2012. Following its passing on 12 June 2012, this Constitutional Law had granted immunity to ex-President Mutalibov, allowing him to return to Azerbaijan after many years in exile. As regards the amendment to the Law on commercial confidentiality,

passed on 12 June 2012, it was aimed at promoting and protecting entrepreneurial activity and work on that amendment had started before the publication of the applicant's articles in May 2012.

103. As to the articles about the applicant published in a number of newspapers, the Government submitted that the applicant was a public figure and that it was not surprising that a number of domestic media should on various occasions comment on matters related to her. The articles had been triggered by the intimate video of the applicant posted on the internet. The Government disputed the applicant's assertion that the media sources in question were "State-controlled" or "pro-Government". They further noted that the website "ictimaipalatka.com" was no longer operational and it was not possible to identify the person or persons who had run it.

104. As concerns the positive obligation of the State under Article 8, the Government noted that, following the applicant's complaint, the relevant authority had taken the necessary investigative steps, including an examination of her flat, collection of evidence from the flat, questioning of witnesses, forensic, computer and phonoscopic examinations, physical and chemical examinations, technical and graphological examination of documents and requests for mutual legal assistance to various authorities. The applicant had been properly informed about the course of the investigation. As to the applicant's complaint against the investigation authorities concerning the ineffectiveness of the investigation, the domestic courts had no competence to examine the applicant's complaint within the judicial supervision procedure.

## 2. *The Court's assessment*

### (a) **Applicability of Article 8**

105. The Court notes that the applicant, a well-known investigative journalist, received a threatening letter demanding that she cease her activities, had hidden cameras installed in her flat by unknown persons without her knowledge and consent, and had intimate videos of her taken secretly and disseminated on the internet, which fact was subsequently further publicised by the media.

106. There is thus no dispute as to the applicability of Article 8: the facts underlying the application, which included covert filming of the applicant in her own home and highly intimate aspects of her life, clearly concern a matter of "private life". The latter concept covers the physical and moral integrity of the person, as well as his or her sexual life (compare *K.U. v. Finland*, no. 2872/02, § 41, ECHR 2008; see also *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I; *E.B. v. France* [GC], no. 43546/02, § 43, 22 January 2008; *A, B and C v. Ireland* [GC], no. 25579/05, § 212, ECHR 2010; and *Söderman v. Sweden* [GC], no. 5786/08, § 86, ECHR 2013).

107. The applicant also complained in terms of a breach of her right to respect for her home and the Court recognises the extraordinary intensity of an intrusion into a person's home of the type complained of. It considers, however, that the totality of the facts giving rise to the present complaint can be examined principally in the light of the requirements of protection of "private life".

**(b) Positive or negative obligation**

108. In her application form, the applicant complained expressly of a breach by the respondent State of its positive obligation under Article 8 to secure respect for her private life, by failing to conduct an effective investigation, although she also noted that the secret installation of wires and video cameras might have been carried out by "someone related to or at the orders of the authorities", implying that the acts in question might have been committed by State agents in breach of the State's negative obligation under Article 8.

109. In her further submissions, the applicant elaborated on her complaint, arguing that there had been a breach of either the negative obligation or, alternatively, and in any event, the positive obligation.

110. In respect of the negative obligation, she argued that there had been an unjustified interference with her Article 8 rights by persons or entities that could be considered "State agents", undermining respect for her private life and connected to her journalistic investigative work concerning alleged corruption by the President's family.

111. However, having regard to the applicant's arguments in support of the alleged breach of the negative obligation (see, in particular, paragraphs 86-91 above), the Court considers that they are based either on circumstantial evidence or on assertions requiring corroboration and further investigation. While the Court must remain sensitive to the potential evidentiary difficulties encountered by a party, it has not been possible, on the basis of the material available, to establish in the present case to the requisite standard of proof, "beyond reasonable doubt" (see *Nuri Kurt v. Turkey*, no. 37038/97, § 101, 29 November 2005), that there was unjustified interference attributable to the State.

112. The Court reiterates that, although the object of Article 8 is essentially to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of the relations of individuals between themselves (see *Söderman*, cited above, § 78). Moreover, the boundaries between the State's positive and negative obligations under Article 8 do not always lend themselves to precise

definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the competing interests (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 70, ECHR 2007-V; *Odièvre v. France* [GC], no. 42326/98, § 40, ECHR 2003-III; and *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 164-65, 15 November 2016).

113. In the present case the identity of those who committed the various acts of which the applicant complains is unknown and the question whether they were linked to State agents abusing their official power remains an open one. Nevertheless, given the applicant's credible allegations, the contextual information provided by the third party interveners and the careful planning and execution of the covert surveillance operation (see paragraph 121 below), the Court would emphasise that it has concerns as regards the answer to that question.

114. In the light of the above considerations, and having had regard to the parties' arguments, the factual circumstances and the available material, the Court considers that the present complaint must be examined from the standpoint of the State's positive obligations under Article 8 of the Convention.

**(c) Compliance with the positive obligation**

115. The choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. There are different ways of ensuring respect for private life, and the nature of the State's obligation will depend on the particular aspect of private life that is in issue. Where a particularly important facet of an individual's existence or identity is at stake, or where the activities at stake involve a most intimate aspect of private life, the margin allowed to the State is correspondingly narrowed (see *Söderman*, cited above, § 79, with further references). In particular, effective deterrence against grave acts, where fundamental values and essential aspects of private life are at stake, requires the States to ensure that efficient criminal-law provisions are in place (see *X and Y v. the Netherlands*, cited above, §§ 23-24 and 27; *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII; *K.U. v. Finland*, cited above, § 43; *A, B and C v. Latvia*, no. 30808/11, § 148, 31 March 2016; and *M.S. v. Ukraine*, no. 2091/13, § 62, 11 July 2017). Concerning such serious acts, the State's positive obligation under Article 8 to safeguard the individual's physical or moral integrity may also extend to questions relating to the effectiveness of the criminal investigation (see, among other authorities, *M.C. v. Bulgaria*, cited above, § 152; *C.A.S. and C.S. v. Romania*, no. 26692/05, § 72, 20 March 2012; and *M.P. and Others v. Bulgaria*, no. 22457/08, § 109-10, 15 November 2011).

116. The Court considers that the acts complained of were grave and an affront to human dignity: an intrusion into the applicant's home in the form of unauthorised entry into her flat and installation of wires and hidden video cameras inside the flat; a serious, flagrant and extraordinarily intense invasion of her private life in the form of unauthorised filming of the most intimate aspects of her private life, which had taken place in the sanctity of her home, and subsequent public dissemination of those video images; and receipt of a letter threatening her with public humiliation. Furthermore, the applicant is a well-known journalist and there was a plausible link between her professional activity and the aforementioned intrusions, whose purpose was to silence her (see further paragraph 119 below).

117. This kind of invasion of private life was punishable under Article 156 of the Criminal Code, and the domestic authorities did, in fact, institute criminal proceedings in the present case. Having regard to the gravity of the above-mentioned acts (compare, for example, *K.U. v. Finland*, cited above, §§ 45 and 49), and the method of protection actually chosen by the domestic authorities (see *Alković v. Montenegro*, no. 66895/10, § 67, 5 December 2017), the Court considers that practical and effective protection of the applicant required that effective steps be taken in the framework of the criminal investigation with a view to identifying and prosecuting the perpetrator or perpetrators of those acts.

118. For an investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means (see *Alković*, cited above, § 65). In examining the effectiveness of criminal investigations in the context of the positive obligations under, *inter alia*, Article 8 of the Convention in cases analogous to the present case, the Court has previously used the "significant flaw" test. The Court's task under that test is to determine whether the alleged shortcomings in the investigation had such significant flaws as to amount to a breach of the respondent State's positive obligations under Article 8 of the Convention. The Court is not concerned with allegations of minor errors or isolated omissions in the investigation; it cannot replace the domestic authorities in the assessment of the facts of the case; nor can it decide on possible alleged perpetrators or their criminal responsibility (see *M.C. v. Bulgaria*, cited above, §§ 167-68, and *M. and C. v. Romania*, no. 29032/04, §§ 112-13, 27 September 2011).

119. The Court has had to deal with a number of cases concerning respondent States' obligations to investigate criminal offences against journalists (see, for examples, *Adalı v. Turkey*, no. 38187/97, § 231, 31 March 2005; *Gongadze v. Ukraine*, no. 34056/02, §§ 8-15 and 179, ECHR 2005-XI; *Uzeyir Jafarov v. Azerbaijan*, no. 54204/08, § 52, 29 January 2015; *Huseynova v. Azerbaijan*, no. 10653/10, § 115, 13 April 2017; and *Mazepa and Others v. Russia*, no. 15086/07, § 73, 17 July 2018).

Even though in the present case the criminal offence committed against the applicant was of a different nature, and the relevant complaints concern different Convention provisions giving rise to procedural obligations which are not entirely identical, the similarity with those cases is that the offence was committed against a well-known investigative journalist highly critical of the government. This distinctive feature is highlighted by the fact that the threatening letter received by the applicant demanded that she refrain from what she was doing, which can be understood in the overall context of the case as referring most likely to her professional activity. In a situation where the applicant was well known in society specifically for her journalistic activity and for that activity only, it is difficult to discern any motive for threats of public humiliation received by her other than a motive connected to that activity. The absence of such a motive could be demonstrated only if it was conclusively and convincingly ruled out as a result of an effective investigation.

120. Accordingly, the above-mentioned aspect of the case made it of the utmost importance to investigate whether the threat was connected to the applicant's professional activity and by whom it had been made (see, *mutatis mutandis*, *Huseynova*, cited above, § 115, and *Mazepa and Others*, cited above, §§ 73 and 75).

121. The Court notes that the acts committed against the applicant appeared at first sight to have been the result of a carefully planned and executed operation involving a coordinated effort by a number of individuals. A threatening letter with still pictures from the subsequently published video was allegedly sent to her from Moscow; wires and hidden video cameras had been installed in her flat in advance by more than one person (apparently, the wires were traced to her flat from outside by a Baktelekom engineer, while the wires and cameras inside the flat were installed by other, unknown individuals); a website with what appears to be a deliberately misleading name was created for the purpose of posting the video on the internet; and a number of newspaper articles were published about the subject at around the same time as the video was posted on that website.

122. Furthermore, although the applicant's allegations that State agents might have been behind the criminal offence committed against her are not supported by evidence meeting the standard of proof required for finding a breach of the negative obligation under Article 8 of the Convention (see paragraph 111 above), her arguments in this respect were nevertheless strong and could not be discarded as being *prima facie* untenable. Therefore, those arguments required the investigation to seek out corroborative evidence.

123. From the outset, based on the above facts and available evidence, the investigation authorities already had several different and obvious leads. However, for the reasons set out below, the Court considers that it has not

been shown that the investigating authorities have taken sufficient steps in that regard.

124. The Court notes that the Government submitted only a few documents from the investigation file and that it therefore possesses little information regarding the impugned investigation. The only materials they submitted were copies of several decisions by the investigator ordering various procedural steps (see paragraphs 30-32 above), which included granting the applicant's request to question the Baktelekom engineer and obtaining a number of expert examinations. In the status report published on 26 April 2012, the investigating authorities noted, in addition, that they had questioned a number of other witnesses who were mostly the applicant's friends, social or professional contacts and family members (see paragraphs 49-53 above). Similar general statements about procedural steps taken were made in the investigating authorities' letters addressed to the applicant (see paragraphs 37-38 above). However, the Government did not submit any documents showing that all of those investigative steps had been carried out, such as records of questioning, expert reports, and records of examination of physical evidence. The Government did not put forward any explanation as to their failure to provide full copies of the investigation file. In such circumstances, the Court's capacity to assess the nature and extent of the investigation is greatly diminished.

125. As to the questioning of an important witness identified by the applicant herself, Mr N.J., an employee of Baktelekom, it has not been shown convincingly by the Government that the investigation obtained his statement in an adequate manner or that they pursued any leads arising from that statement. From the material available and from the applicant's submissions, which have not been expressly disputed by the Government, it appears that, on their first encounter on 19 March 2012, the investigator failed to properly record and possibly even actively avoided recording Mr N.J.'s statements, which were highly relevant to the case. The Government submitted the investigator's subsequent order of 30 March 2012 granting the applicant's request to formally question Mr N.J. However, no further documents, such as a formal record of questioning, were submitted by the Government. As the case file stands, it has not been shown that Mr N.J. had been properly questioned. The information that he could provide in his statement was very likely to shed further light on the identity of the person who might have ordered him to trace wires to the applicant's flat and that person's link to the "intellectual author" of the crime. It might also have assisted in establishing whether Mr N.J. had been acting on official orders from his State-owned employer, or whether it was some form of "unofficial" request by his superiors. This could have clarified a number of questions as to the possible involvement of State agents in the operation carried out in the applicant's flat.

126. Another lead to be investigated was the identity of the person who sent the threatening letter to the applicant from Moscow. The envelope addressed to the applicant bore his name and address. There is no material in the case file showing that steps were taken to investigate this lead and to identify that individual; for example, a formal request could have been made to the Russian authorities for legal assistance in this matter (compare *Huseynova*, cited above, §§ 100-11).

127. Furthermore, given that both the first and the second videos were posted online on two different websites (*musavat.tv* and *ictimaipalatka.com*), a further immediate investigative step would have been to identify the owners and/or operators of those websites and to determine the source of the videos and the identity of their uploaders. There is no information in the case file showing that anything had been done in this respect by the investigative authorities.

128. While the Government argued that no obvious connection could be made between the impugned acts and the time of publication of the applicant's articles, as well as new domestic legislation (see paragraphs 101-02 above), it has not been shown that the investigating authorities took steps to determine whether a link could be established between the impugned acts and any of the applicant's publications (either those she specifically highlighted or others). In the context of a series of criminal acts possibly linked to the applicant's journalistic activity, such a line of inquiry seems necessary.

129. The Court also takes note of the applicant's submission that the frame of the second video, posted on "*ictimaipalatka.com*", was marked with the words "SesTV Player"; this matter could have been investigated to see, *inter alia*, whether there was any connection to the *Səs* newspaper.

130. Lastly, the Court notes that the investigation was handled with significant delays, and it has not been shown that any progress was made after August 2013, despite the applicant's attempted complaints in this regard. Those complaints were not admitted by the courts.

131. Having regard to the significant flaws in the manner in which the authorities investigated the case, as well as the overall length of the proceedings, the Court finds that the authorities failed to comply with their positive obligation to ensure the adequate protection of the applicant's private life by carrying out an effective criminal investigation into the very serious interferences with her private life. Having reached this finding, the Court does not consider it necessary to examine the applicant's other arguments raised in this respect.

132. There has accordingly been a violation of Article 8 of the Convention.



### III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN CONNECTION WITH THE PUBLICATION OF THE AUTHORITIES' REPORT ON THE STATUS OF THE INVESTIGATION

133. The applicant complained under Article 8 of the Convention that the public disclosure of the personal information in the Status Report published by the authorities on 26 April 2012 constituted an unlawful and unjustified interference with her right to respect for her private and family life.

Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### A. Admissibility

134. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### B. Merits

##### *1. The parties' submissions*

135. The applicant submitted that, although the status report purported to give an update on the status of the investigation, it disclosed an excessive amount of sensitive personal information collected during the course of the investigation. That information included the address of her flat, the identity of her then boyfriend who also featured in the intimate videos, and the names and occupations of her friends and colleagues. The nature and sheer extent of the information disclosed provided a complete picture of her private life.

136. The applicant submitted that the disclosure of her home address had added to her feeling of being in personal danger. The disclosure of the identity and occupations of her business relations and friends had interfered with her free communications with them, amounting to a further hindrance of her journalistic work. Furthermore, revealing that she had had an intimate relationship outside marriage had caused harm to her reputation and dignity in the largely conservative Azerbaijani society.

137. The applicant argued that the disclosure of the above-mentioned information constituted interference by the State authorities, the Prosecutor General's Office and the Baku City Prosecutor's Office, with her right to private and family life. She argued that the interference had not been in accordance with the law: the domestic legislation actually prohibited disclosing information relating to a person's private life (see paragraphs 64 and 67 above). Furthermore, in any event, the interference had not pursued any of the legitimate aims listed in paragraph 2 of Article 8 of the Convention, and had not been necessary.

138. The Government submitted that the status report of 26 April 2012 had been published in response to the applicant's and her lawyer's public statements and complaints that the investigation was ineffective. It had been intended to inform the public about the progress of the investigation, and also to counter the possibility of the public forming a negative opinion about the investigating authorities as a result of the applicant's public complaints. The domestic courts, which had examined the applicant's complaints related to the status report, had come to the same conclusion. They had also concluded that the information in the status report had not breached the requirements of the domestic law concerning individuals' privacy, and that the applicant had failed to prove that she had suffered any non-pecuniary damage.

## 2. *The Court's assessment*

139. The Court notes that the concept of "private life" is a broad term not susceptible to exhaustive definition. As indicated in paragraph 106 above, it is a concept which covers the physical and psychological integrity of a person, and can therefore embrace multiple aspects of the person's physical and social identity. Article 8 is not limited to the protection of an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. It also protects the right to establish and develop relationships with other human beings and the outside world (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 70, 5 September 2017, with further references). Private life may even include activities of a professional or business nature (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 100-01, 25 September 2018). The Court has also held that everyone has the right to live privately, away from unwanted attention (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 95, ECHR 2003-IX (extracts), and *Bărbulescu*, cited above, § 70).

140. Furthermore, the Court notes that the home address of a person constitutes personal information that is a matter of private life and, as such, enjoys the protection afforded in that respect by Article 8 of the Convention (see *Alkaya v. Turkey*, no. 42811/06, § 30, 9 October 2012).

141. The storing and the release of information relating to an individual's private life come within the scope of Article 8 § 1. Public information can fall within the scope of private life where it is systematically collected and stored in files held by the authorities (see *Rotaru v. Romania* [GC], no. 28341/95, § 43, ECHR 2000-V, and *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, § 168, 24 May 2011).

142. In the present case, the status report published in the press by the prosecution authorities disclosed the applicant's home address, the fact of her relationship with her then boyfriend and his full name and occupation, the full names of her landlord and her family members, and the full names and occupations of her friends and colleagues. It also disclosed information about individuals to whom the applicant had sublet the flat during various periods, and the details of the financial arrangements between them. The Court considers that all of the above information, taken as a whole, related to the applicant's "private life". The Government did not expressly dispute this. While in the applicant's view the above information also related to her "family life", the Court considers that, in the context of the present case, the entirety of the information disclosed should be examined in the light of the requirements of protection of "private life" only.

143. The Court notes that the above information was obtained in the course of the criminal investigation. The applicant did not complain about the collection of the information, and the Court sees no issue arising under Article 8 in connection with such routine investigative steps as, for example, identifying the people who had visited the applicant's flat or questioning them as witnesses.

144. However, the public disclosure of the above-mentioned information in a press release by the Prosecutor General's Office and the Baku City Prosecutor's Office clearly constituted an interference with the applicant's right to respect for her private life.

145. In order to be justified under Article 8 § 2 of the Convention, any interference must be in accordance with the law, pursue one of the listed legitimate aims, and be necessary in a democratic society.

146. As to lawfulness, the applicant argued that the interference was in breach of Article 32 of the Constitution and the domestic legislation, in particular Article 199 of the CCrP, which prohibited disclosure by the investigating authorities of information constituting private secrets. The Government did not comment in detail on the issue of lawfulness, noting merely that the domestic courts had concluded that the publication of the status report had not breached the requirements of the domestic law concerning individuals' privacy. In the circumstances of the present case, the Court does not consider it necessary to determine whether the interference was "in accordance with the law", because in any event it lacked justification on other grounds.

147. In particular, the Government have not been able to demonstrate either a legitimate aim or the necessity for the interference in question. They argued that the purpose of the status report was “to inform the public about the progress of the investigation, and also to counter the possibility of the public forming a negative opinion about the investigating authorities as a result of the applicant’s public complaints”. However, in the present case, the applicant complained not about the fact that the investigating authorities had informed the public about the progress of the investigation (which, in itself, is not a matter of interference with Article 8 rights), but about the excessive and superfluous disclosure of sensitive private details in the status report. The Court considers that it would have been possible to inform the public about the nature of the investigative steps taken by the authorities (questioning of witnesses, examination of material evidence, and so on), while also at the same time respecting the applicant’s privacy. The Government did not explain what legitimate aim was pursued by the publication of the address and the identity of the partner of someone who had been secretly and unlawfully filmed in the privacy of their own home when engaged in intimate acts and who had subsequently been threatened and subjected to the public dissemination of those videos.

148. The protection of the applicant’s privacy was paramount in the overall context of the case, given that the criminal investigation itself, which the authorities purportedly aimed to inform the public about, had been launched in connection with the unjustified and flagrant invasion of her private life. The situation itself called for the authorities to exercise care in order not to compound further the already existing breach of the applicant’s privacy.

149. Having regard to the above considerations, the Court finds that the interference was not justified.

150. There has accordingly been a violation of Article 8 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

151. In connection with the incidents involving the threatening letter, the unauthorised installation of wires and hidden cameras in her flat, the dissemination of the covertly filmed videos and related newspaper articles in pro-government newspapers, the ineffectiveness of the investigation and lack of remedies against the inaction of prosecuting authorities, as well as the publication of the status report by the investigating authorities, the applicant further complained that the respondent State had breached its obligations under Articles 10 and 13 of the Convention.

The Court considers that the complaint falls to be examined solely under Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

### **A. Admissibility**

152. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

#### *1. The parties' submissions*

153. The applicant submitted that the harassment she had suffered was just one case in a pattern of politically-motivated smear campaigns conducted against journalists in Azerbaijan. The country was ranked by many international NGOs and observer organisations as having one of the worst freedom-of-speech records in the world. Journalists working in the country were often violently attacked, or prosecuted on baseless criminal charges. Another tactic used against journalists and activists was publication of intimate videos or photographs in order to harass them. She gave several examples of journalists who had been the victims of covert filming of intimate videos or of violence.

154. In connection with the facts relating to the incidents complained of in the present case (except the publication of the status report), the applicant argued that the respondent State had breached either its negative obligation not to interfere with her freedom of expression or, in the alternative, its positive obligation to take steps to prevent or redress the systematic smear campaign against her. Her submissions in this regard were similar to those in relation to her Article 8 complaint.

155. With respect to the publication of the status report, she argued that there had been a breach of the negative obligation. The fact that the investigating authorities had published information of a personal nature that went far beyond what would be required for its stated purpose demonstrated that their goal was something other than what they had stated it to be. In the

applicant's opinion, the disclosure of this information was intended both as retribution for her complaints about the investigating authorities and as a warning against further criticism. It therefore constituted an interference with her freedom of expression, which was not justified under Article 10 § 2 of the Convention.

156. The Government submitted that the wording of the threatening letter received by the applicant did not clearly indicate that she was being threatened specifically because of her journalistic activity. Nevertheless, the prosecuting authorities had taken the necessary steps to investigate the threats against the applicant. However, they had been unable to identify the person or persons responsible.

157. As to the status report of 26 April 2012, the Government reiterated that it had had the purpose of informing the public about the progress of the investigation and countering the possibility of the public forming a negative opinion about the investigating authorities as a result of the applicant's public complaints. The report had not been published to punish the applicant for her criticism of the prosecuting authorities; neither had it been "a part of the active effort by the authorities to create an environment where the applicant could not freely work as an investigative journalist".

## 2. *The Court's assessment*

158. The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest which the public is, moreover, entitled to receive (see, for example, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 124-26, 27 June 2017, and *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 165, 8 November 2016). The Court also reiterates that the key importance of freedom of expression as one of the preconditions for a functioning democracy is such that the genuine, effective exercise of this freedom is not dependent merely on the State's duty not to interfere, but may call for positive measures of protection, even in the sphere of relations between individuals (see *Fuentes Bobo*, cited above, § 38; *Özgür Gündem*, cited above, §§ 42-43; and *Palomo Sánchez and Others* [GC], cited above, § 59). In particular, the positive obligations under Article 10 of the Convention require States to create, while establishing an effective system of protection of journalists, a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even irritating or shocking to the latter (see *Dink*, cited above, § 137).

159. Moreover, the Court has repeatedly stressed that interference with freedom of expression may have a "chilling effect" on the exercise of that freedom (see, among other authorities, *Baka v. Hungary* [GC],

no. 20261/12, § 160, 23 June 2016), and this is more so in cases of serious crimes committed against journalists, making it of utmost importance for the authorities to check a possible connection between the crime and the journalist's professional activity (see *Huseynova*, cited above, § 115, and *Mazepa and Others*, cited above, § 73).

160. Having had regard to the parties' submissions and the circumstances of the case, the Court considers that the entirety of the applicant's complaint falls to be examined from the standpoint of the positive obligations of the respondent State under Article 10 of the Convention.

161. The Court takes note of the reports on the general situation in Azerbaijan concerning the freedom of expression and safety of journalists, as described by the Commissioner for Human Rights of the Council of Europe (see paragraph 71 above), the third-party interveners (see paragraphs 74-78 above), and the applicant herself (see paragraph 153 above). In particular, it takes note of the reports of physical attacks and other types of alleged persecution of journalists, and the perceived climate of impunity for such acts, as those responsible were reportedly rarely, if ever, brought to justice. The Court considers that such an environment may produce a grave chilling effect on freedom of expression, including on the "public watchdog" role of journalists and other media actors and on open and vigorous public debate, all of which are essential in a democratic society (see also, in this regard, Recommendation CM/Rec(2016)4, cited in paragraphs 69-70 above).

162. The applicant in the present case is a well-known investigative journalist who has received a number of international awards. As noted above, the acts of a criminal nature committed against the applicant were apparently linked to her journalistic activity; no other plausible motive for the harassment she had to face has been advanced or can be discerned from the case file (see paragraph 119 above).

163. The applicant herself had concerns and fears that she was the victim of a concerted campaign orchestrated in retaliation for her journalistic work, and those concerns and fears were repeatedly brought to the attention of the authorities (compare *Özgür Gündem*, cited above, § 41).

164. In such circumstances, having regard to the reports on the general situation concerning freedom of expression in the country and the particular circumstances of the present case, the Court considers that the threat of public humiliation and the acts resulting in the flagrant and unjustified invasion of the applicant's privacy were either linked to her journalistic activity or should have been treated by the authorities when investigating as if they might have been so linked. In this situation Article 10 of the Convention required the respondent State to take positive measures to protect the applicant's journalistic freedom of expression, in addition to its

positive obligation under Article 8 of the Convention to protect her from intrusion into her private life.

165. However, as the Court has found above, although the authorities launched a criminal investigation in connection with the acts committed against the applicant, there were significant flaws and delays in the manner in which they investigated the case (see paragraph 131 above). Moreover, the articles published in the newspapers, which the applicant claimed were pro-government, as well as the unjustified public disclosure by the authorities during the investigation of the additional information relating to the applicant's private life, further compounded the situation (see paragraphs 148-49 above), contrary to the spirit of an environment protective of journalism.

166. It follows that the respondent State has failed to comply with its positive obligation to protect the applicant in the exercise of her freedom of expression. There has accordingly been a violation of Article 10 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

167. The applicant further complained that in the civil proceedings concerning the status report of 26 April 2013 the domestic courts had failed to address essential issues raised by her and had failed to provide sufficient reasons for their decisions. The relevant part of Article 6 provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

168. The Government contested the applicant's arguments.

169. The Court notes that this complaint is linked to the second complaint under Article 8 and the complaint under Article 10 examined above and must therefore likewise be declared admissible.

170. Having regard to its findings under Articles 8 and 10 (see paragraphs 149-50 and 165 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

171. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”



### **A. Damage**

172. The applicant claimed 85,000 euros (EUR) in respect of non-pecuniary damage.

173. The Government argued that the claim was excessive.

174. The Court refers to its findings of violations of Articles 8 and 10 of the Convention. The acts complained of were of particular gravity (see paragraph 116 above) and the authorities failed to comply with their positive obligations to take effective investigative and protective measures, instead disclosing further personal information in breach of the applicant's privacy. The Court considers that she must have suffered significant distress and damage to her personal and professional life as a result. In such circumstances, ruling on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

### **B. Costs and expenses**

175. The applicant also claimed 3,000 Azerbaijani manats (AZN) in respect of legal fees for the services of Mr Y. Imanov incurred in the proceedings before the Court. In support of her claim, she submitted a copy of the contract concluded with Mr Y. Imanov on 14 December 2015. The contract specifies that the amount is to be paid after the conclusion of the proceedings. The applicant also noted that, on the date of conclusion of the contract AZN 3,000 was equivalent to approximately EUR 2,605.

176. The Government submitted that the amount awarded by the Court should be indicated in the currency specified in the contract concluded with the lawyer, namely Azerbaijani manats.

177. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

178. The Court also notes that, in principle, according to its practice, it makes awards of just satisfaction under all heads, including in respect of costs and expenses, in euros. When a claim is expressed in a currency other than the euro, it is first converted into euros before the award is made (see *Shukurov v. Azerbaijan*, no. 37614/11, § 32, 27 October 2016).

179. In the present case, the claim itself is expressed in Azerbaijani manats. The applicant also noted its equivalent in euros as of the date of conclusion of the contract for legal services with the lawyer, which was 14 December 2015.

180. However, in cases where just satisfaction claims (under various heads) are made in the national currency and in situations where a claim has lost considerable value when the Court reaches its decision owing to currency depreciation, the Court, as a general rule, converts such claims into

euros as of the date of submission of the claims (*ibid.*, §§ 32-33, with further references).

181. In the present case, the applicant submitted the claim expressed in the national currency on 7 July 2016 and therefore, according to the general rule stated above, it should be converted into euros as of that date. As per the exchange rate on 7 July 2016, the applicant's claim was equivalent to approximately EUR 1,750.

182. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,750 for the proceedings before the Court.

### **C. Default interest**

183. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 in connection with the domestic authorities' failure to comply with their positive obligation to investigate effectively very serious intrusions into the applicant's private life;
4. *Holds* that there has been a violation of Article 8 of the Convention in connection with the disclosure of the private information published in the authorities' report on the status of the investigation;
5. *Holds* that there has been a violation of Article 10 of the Convention;
6. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,750 (one thousand seven hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Angelika Nußberger  
President