



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

Information Note on the Court's case-law 225

January 2019

Khadija Ismayilova v. Azerbaijan - 65286/13 and 57270/14

Judgment 10.1.2019 [Section V]

Article 8

Positive obligations

Article 8-1

Respect for private life

Failure to effectively investigate serious interferences into well-known journalist's private life: *violations*

Article 10

Positive obligations

Failure to protect journalist's freedom of expression: *violation*

Facts – The applicant, a well-known investigative journalist highly critical of the Government, had published articles alleging corruption involving the President and his family. In 2012 she received a threatening letter demanding that she cease her activities. Hidden cameras were installed in her flat by unknown persons without her knowledge and consent, and intimate videos of her were taken secretly and disseminated on the Internet.

During the ensuing criminal investigation, the applicant lodged a complaint that the prosecuting authorities were refusing to take obvious and simple investigative steps. In response, the prosecuting authorities published a report on the status of the investigation. That status report alleged that the applicant and her lawyer had been spreading false information in the media and went on to disclose sensitive personal details such as the names and addresses of her friends, family and colleagues.

The applicant complained that her rights under Articles 8 and 10 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.

Law – Article 8

(a) *Threatening letter, secret filming and dissemination of intimate videos* – The acts complained of were grave and an affront to human dignity. There was a plausible link between the applicant's professional activity and those intrusions, whose purpose had been to silence her. In a situation where the applicant was well known in society specifically for her journalistic activity, it was 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. Accordingly, that aspect of the case made it of the utmost importance to investigate whether the threat had been connected to the applicant's professional activity and by whom it had been made. Although the applicant's allegations that State agents might have been behind the criminal offence committed against her were not supported by evidence meeting the standard of proof required for finding a breach of the negative obligation under Article 8, her arguments in that 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.

From the outset, the investigating authorities had several different and obvious leads, however had not taken sufficient steps in that regard. It had not been shown convincingly that the investigating authorities had obtained the statement of an important witness in an adequate manner or that they had pursued any leads arising from that statement. It appeared that, on their first encounter, the investigator had failed to properly record and possibly even actively avoided recording the witness' statements, which were highly relevant to the case. There was no information showing any steps had been taken to identify the person who had sent the threatening letter, the owners and/or operators of the websites onto which the videos had been uploaded, nor the identity of their uploaders.

Having regard to the significant flaws in the manner in which the authorities had investigated the case, as well as the overall length of the proceedings, the authorities had 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.

Conclusion: violation (unanimously).

(b) *Publication of the authorities report on the status of the investigation* – The status report published in the press by the prosecution authorities disclosed sensitive private details obtained in the course of the criminal investigation. The Government had not been able to demonstrate either a legitimate aim or the necessity for the interference in question. It would have been possible to inform the public about the nature of the investigative steps taken by the authorities, while also at the same time respecting the applicant's privacy, which was paramount in the overall context of the case, given that the criminal investigation itself 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.

Conclusion: violation (unanimously).

Article 10: 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 had been advanced or could be discerned. The applicant had repeatedly brought her concerns and fears that she was the victim of a concerted campaign orchestrated in retaliation for her journalistic work, to the attention of the authorities.

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 applicant's case, 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 that situation, Article 10 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 to protect her from intrusion into her private life.

Although the authorities had launched a criminal investigation, there had been significant flaws and delays in the manner in which they had investigated the case. Moreover, the articles published in the newspapers, which the applicant claimed were pro-government, as well as the unjustified public disclosure by the authorities of the additional information relating to the applicant's private life, further compounded the situation, contrary to the spirit of an environment protective of journalism.

Conclusion: violation (unanimously).

Article 41: EUR 15,000 in respect of non-pecuniary damage.

(See also *Huseynova v. Azerbaijan*, 10653/10, 13 April 2017, [Information Note 206](#); *Uzeyir Jafarov v. Azerbaijan*, [54204/08](#), 29 January 2015; and Recommendation [CM/Rec\(2016\)4](#) of the Committee of Ministers of the Council of Europe to member States on the protection of journalism and safety of journalists and other media actors)

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