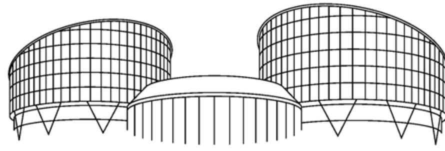

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF UZEYIR JAFAROV v. AZERBAIJAN

(Application no. 54204/08)

JUDGMENT

STRASBOURG

29 January 2015

FINAL

29/04/2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Uzeyir Jafarov v. Azerbaijan,

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

Isabelle Berro, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 54204/08) 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, Mr Uzeyir Eldar oglu Jafarov (*Üzeyir Eldar oğlu Cəfərov* - "the applicant"), on 26 July 2008.

2. The applicant was represented by Mr R. Hajili and Mr E. Sadigov, lawyers practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged that he had been subjected to a violent physical attack because of his journalistic activity. He also alleged that State agents had been involved in the attack on him and that the domestic authorities had failed to carry out an effective investigation in this respect.

4. On 21 June 2013 the application was communicated to the Government. In addition, third-party comments were received from the non-governmental organisation "Article 19", which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Baku.

6. The applicant is an independent journalist who at the relevant time was working for the *Gündəlik Azərbaycan* newspaper.

7. At the time of the events described below, criminal proceedings were pending against the editor-in-chief of the newspaper for publication of certain articles.

A. The attack on the applicant

8. The applicant regularly authored articles in which he criticised the Government's security and defence policies, as well as the activities of various senior military officers.

9. On 20 April 2007 an article entitled "Comrade General, I am ready to ransack the army" ("*Yoldaş general, ordunu çapıb-talamağa hazıram*") and signed by the applicant was published in the *Gündəlik Azərbaycan* newspaper. In the article the applicant criticised a colonel in the army (F.M.), accusing him of corruption and illegal activities.

10. On the same day the applicant was present at the hearing held in the Yasamal District Court as part of the criminal proceedings instituted against Eynulla Fatullayev, the editor-in-chief of the *Gündəlik Azərbaycan* newspaper. Following the hearing, the Yasamal District Court convicted Eynulla Fatullayev of defamation and sentenced him to two and half years' imprisonment (see *Fatullayev v. Azerbaijan*, no. 40984/07, 22 April 2010).

11. At around 5.45 p.m. on 20 April 2007 the applicant left the Yasamal District Court building and went to the offices of the newspaper.

12. At around 11.45 p.m. on 20 April 2007, when the applicant left the newspaper office, he was subjected to a violent attack by two men. The applicant was hit several times on head with a hard blunt object. He was also punched by his aggressors.

13. Having heard the applicant's screams, his colleagues came out of the office. At that moment, the assailants left the scene of the incident by car.

14. The applicant was immediately taken to hospital where, owing to the gravity of his injuries, he received in-patient treatment for a period of seven days. It appears from the medical certificate issued by the doctor who examined him that the applicant arrived at the hospital at 1.45 a.m. on 21 April 2007 and left the hospital on 28 April 2007. The applicant was diagnosed with cranial injury and contusions on the upper lip.

B. The criminal proceedings

15. On 23 April 2007 the Yasamal District Police Office instituted criminal proceedings under Article 132 (beating) of the Criminal Code in connection with the attack on the applicant.

16. On 25 April 2007 the investigator questioned the applicant in hospital. It appears from the record of the questioning that the applicant

described in detail the circumstances of the attack, giving a detailed physical description of his assailants. He further stated that he had seen one of his assailants before, on 20 April at the Yasamal District Court. He also stated that on the same day at around 10 p.m. his colleagues had seen the assailants in the vicinity of the newspaper office. As to the investigator's question whether he had an ongoing dispute with anyone, the applicant answered that he had had a dispute with T.C. (the person who had instituted the criminal proceedings for defamation against the editor-in-chief of the *Gündəlik Azərbaycan* newspaper), who had threatened him verbally and in the media. At the end of the questioning, the applicant stated that, as he had authored articles relating to the activities of the Ministry of Defence, the attack on him could have been organised by officials of that Ministry.

17. On 1 May 2007, while watching a video recording of a court hearing in the criminal proceedings against the editor-in-chief of the *Gündəlik Azərbaycan* newspaper, the applicant recognised one of his two assailants. This person (N.R.) was a police officer from the Yasamal District Police Office. The applicant's colleagues also recognised N.R. as the person whom they had seen standing outside the newspaper office on the day of the attack.

18. The applicant immediately informed the investigator of the identity of N.R., requesting an official identity parade and the questioning of his colleagues as witnesses. The applicant also submitted that, as one of the assailants was a police officer, he suspected F.M. of being the person behind the attack. He therefore asked the investigator to check whether F.M. had called N.R. by telephone prior to or on the day of the attack and to obtain video recordings from the security cameras situated in the vicinity of the scene of the incident.

19. In the meantime, in an interview published on 3 May 2007 in the newspaper *Üç Nöqtə*, the Minister of Internal Affairs was questioned about the attack on the applicant. He made the following statement:

> "We have the information that this incident is an act of sabotage and had been organised by Uzeyir Jafarov [the applicant] himself."

In reply to a journalist's suggestion that Uzeyir Jafarov had already provided the police with some facts concerning the attack, the Minister stated:

> "Uzeyir Jafarov may give a lot of things to the police. If he has the facts, he can give them. But it is up to the investigation to establish whether his allegations are true or not."

The Minister did not reply to the journalist's further question as to what measures would be taken if it was established that the assailant was a police officer.

20. On 3 May 2007 the applicant lodged a complaint with the Prosecutor General complaining of the police authorities' failure to conduct an effective investigation. He asked the Prosecutor General to remove the

investigation from the police and to order the prosecution authorities to conduct an effective investigation. In this connection, he submitted that as one of the assailants was, in his view, a police officer from the Yasamal District Police Office, an investigator from the same police office could not carry out an effective investigation.

21. On 8 May 2007 the applicant was examined by a forensic expert, who found numerous injuries on his head and upper lip. The expert also concluded that these injuries caused minor harm to the applicant's health.

22. Following the forensic examination, the criminal proceedings were continued under Article 128 (deliberate infliction of minor injury to health) of the Criminal Code.

23. On 13 June 2007 the investigator in charge of the case sent a letter to the applicant which reads:

> "In reply to your request of 3 May 2007, you are informed that the investigation instituted in connection with the attack on you on 20 April 2007 is pending, but it has not yet been possible to identify the assailant. At the same time, you are informed that N.N., the police officer from the Yasamal District Police Office, was not prosecuted because it had not been established that he had inflicted bodily injury on you."

24. On 23 June 2007 the investigator issued a decision suspending the criminal proceedings in connection with the attack on the applicant. The investigator substantiated the decision by the fact that, although all possible investigative steps had been taken, it had not been possible to determine who had assaulted the applicant. The relevant part of the decision reads:

> "During the investigation the necessary investigative actions were taken, some persons were questioned as witnesses, U. Jafarov was questioned and granted victim status. However, it has not been possible to identify the person who committed this act. Therefore, taking into consideration that the two-month investigation period of the criminal case ends on 23 June 2007, it is appropriate to suspend the criminal proceedings until the perpetrator has been identified."

25. The applicant was not informed of the decision suspending the investigation.

26. On 1 October 2007 the applicant lodged a new complaint with the Prosecutor General. The applicant complained of the investigator's failure to conduct an effective investigation, claiming a violation of the rights protected under Articles 3 and 10 of the Convention. In this connection he complained that, although he had informed the investigator that one of his assailants was, in his view, the police officer N.R., no action had been taken by those conducting the investigation. In particular, the investigator had failed to arrange an identity parade including N.R., to question his colleagues as witnesses, and to order a face-to-face confrontation between him and N.R. and between his colleagues and N.R. The applicant also complained about the statements made by the Minister of Internal Affairs, noting that the police could not conduct an effective investigation after the

Minister of Internal Affairs had stated that the applicant had staged the attack on himself.

27. The Prosecutor General's Office forwarded the applicant's complaint to the Yasamal District Police Office by letter on 31 October 2007.

28. On 14 December 2007 the applicant lodged a complaint with the Yasamal District Court. Relying on Articles 3 and 10 of the Convention, he maintained that one of his aggressors had been a police officer and complained that the domestic authorities had failed to carry out an effective investigation in this respect. He reiterated his previous complaints, noting that the investigator had failed to arrange an identity parade including N.R., to question his colleagues as witnesses, and to order a face-to-face confrontation between him and N.R. and between his colleagues and N.R. He also submitted that the investigator had failed to obtain video recordings from security cameras situated in the vicinity of the scene of the incident and to check F.M.'s telephone calls. He further argued that the State had failed to comply with its positive obligations under Article 10 of the Convention, since – although he had been attacked because of his journalistic activity – the State had failed to protect him as a journalist and to prosecute his aggressors.

29. At the subsequent hearing before the court the applicant learned of the investigator's decision of 23 June 2007 suspending the criminal proceedings.

30. On 27 December 2007 the Yasamal District Court dismissed the applicant's complaint, finding that he should have complained to the prosecutor and not to the court concerning the actions of the investigator.

31. On 11 January 2008 the applicant appealed against this decision, reiterating his previous complaints. He also complained about the decision to suspend the investigation, noting that the investigator had failed to take appropriate procedural steps with the aim of identifying the perpetrators.

32. On 28 January 2008 the Baku Court of Appeal dismissed the applicant's appeal and upheld the Yasamal District Court's decision of 27 December 2007.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution of the Republic of Azerbaijan

33. Article 46 (III) of the Constitution of the Republic of Azerbaijan reads:

> "No one shall be subjected to torture or ill-treatment. No one shall be subjected to degrading treatment or punishment. ..."

B. Criminal responsibility for physical violence

34. Under the provisions of the Criminal Code in force at the material time, the deliberate infliction of a minor injury to health is a crime punishable by a fine or correctional work for a term up to one year (Article 128). Beating is a crime punishable by a fine or community work for a term up to two hundred and forty hours or correctional work for a term up to one year or imprisonment for a term up to six months (Article 132). Obstruction of the lawful professional activity of journalists by subjecting them to violence or threatening such violence is a crime punishable by a fine or correctional work for a term up to one year (Article 163.1). If the same act was committed by an official exploiting his service position, it is punishable by correctional work for a term up to two years or imprisonment for a term up to one year with or without deprivation of the right to hold a certain position or engage in certain activities (Article 163.2).

C. The Code of Criminal Procedure ("the CCrP")

35. Pursuant to Article 37 of the the CCrP, criminal proceedings are instituted on the basis of a complaint being lodged by the victim of an alleged criminal offence. By virtue of Article 87 § 6 of the CCrP, a person recognised as a victim has various procedural rights and is entitled to submit material to the criminal case file, object to actions of the criminal prosecution authority, lodge applications, have access to transcripts and documents in the case file, be informed and obtain copies of any procedural decision made by the criminal prosecution authority affecting his rights and interests (including a decision to suspend proceedings), and lodge appeals against procedural steps or decisions.

36. Chapter LII of the CCrP lays down the procedure by which parties to criminal proceedings may challenge actions or decisions of the prosecuting authorities before a court. Article 449 provides that a victim or his counsel may challenge actions or decisions by the prosecuting authorities concerning, *inter alia*, to suspend criminal proceedings, to terminate criminal proceedings or refusal to institute criminal proceedings. The judge examining the lawfulness of the prosecuting authorities' actions or decisions may quash them if he or she finds them to be unlawful (Article 451). The judge's decision may be challenged before an appellate court in accordance with the procedure established in Articles 452 and 453 of the CCrP.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

37. Relying on Articles 3 and 13 of the Convention, the applicant complained that State agents had been behind the attack on him and that the domestic authorities had failed to carry out an effective investigation in respect of his ill-treatment. The Court considers that the present complaint falls to be examined solely under Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

38. The Government submitted that the application should be declared inadmissible, since it fell outside the Court's jurisdiction *ratione temporis*. The Government further submitted that the applicant had not been diligent and had failed to lodge his application with the Court until 16 April 2009, in other words fifteen months after the delivery of the Court of Appeal's decision.

39. The applicant contested the Government's submissions, stating that he had complied with the six-month rule.

40. The Court observes at the outset that the Government's objection concerning the Court's competence *ratione temporis* is irrelevant in the present case because all the events complained of happened after 15 April 2002, the date on which the Convention entered into force in respect of Azerbaijan. As to the Government's submissions that the application had been lodged with the Court on 16 April 2009, the Court points out that it is clear from the documents in the case file that the applicant introduced his application before the Court on 26 July 2008. Therefore, bearing in mind that the six-month time-limit in the present case started running on 28 January 2008 – the date of the Court of Appeal's decision – the applicant had complied with the six-month rule.

41. The Court notes that the 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. *Alleged failure to carry out an effective investigation*

(a) The parties' submissions

42. The Government did not make any specific observations on this point.

43. The applicant submitted that the domestic authorities had failed to conduct an effective investigation into the attack on him. In particular, the applicant pointed out that the investigator had failed to order an official identity parade including the police officer N.R. who had been one of his aggressors, to question his colleagues from the newspaper as witnesses and to obtain video recordings from security cameras situated in the vicinity of the scene of the incident. The applicant further noted that he had not been informed of the investigator's decision of 23 June 2007 suspending the criminal proceedings and had only learned about this decision in the course of the proceedings before the Yasamal District Court. Lastly, the applicant submitted that the statement made by the Minister of Internal Affairs concerning the attack on him was a characteristic example of the ineffectiveness of the investigation.

(b) The Court's assessment

44. Where an individual raises an arguable claim that he or she has been ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The Court further reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion", even if such treatment is administered by private individuals (see, among many other authorities, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005; *Mehmet Ümit Erdem v. Turkey*, no. 42234/02, § 26, 17 July 2008; and *Beganović v. Croatia*, no. 46423/06, § 66, 25 June 2009).

45. For an investigation required by Article 3 of the Convention to be effective, those who bear responsibility for it and those who carry it out must be independent and impartial, in law and in practice. This calls for not only a lack of any hierarchical or institutional connection with those implicated in the events, but also independence in practical terms (see *Najafli v. Azerbaijan*, no. 2594/07, § 52, 2 October 2012, and *Layijov v. Azerbaijan*, no. 22062/07, § 55, 10 April 2014).

46. An investigation into allegations of ill-treatment must be thorough, meaning that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to form the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all steps reasonably available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. Moreover, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the complainant must be afforded effective access to the investigatory procedure (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, §§ 134 and 137, ECHR 2004-IV).

47. Turning to the circumstances of the present case, the Court observes that an investigation into the attack on the applicant was carried out by the investigating authorities. Following the attack on the applicant, on 23 April 2007 the Yasamal District Police Office instituted criminal proceedings under Article 132 (beating) of the Criminal Code. The case was subsequently re-classified under Article 128 (deliberate infliction of minor injury to health) of the Criminal Code. On 23 June 2007 the investigator decided to suspend the criminal proceedings until the perpetrators had been identified. In these circumstances, the Court considers that, as a criminal investigation was carried out in the present case, it remains to be assessed whether it was effective, as required by Article 3.

48. In this connection, the Court observes numerous shortcomings in the investigation carried out by the domestic authorities.

49. Firstly, the Court has repeatedly stressed that the procedural obligation under Article 3 requires an investigation to be independent and impartial, both in law and in practice (see paragraph 45 above). However, in the present case, the applicant's allegation that he had been attacked by a police officer from the Yasamal District Police Office was examined by an investigator who was also from the Yasamal District Police Office, and who took the decision to suspend the criminal proceedings concerning the attack on the applicant. The applicant's complaint was therefore examined by the police office where the agent who had allegedly committed the offence was based. In the Court's view, an investigation by the police into an allegation of misconduct by its one of own officers could not be independent in these circumstances (see *Layijov*, cited above, § 55).

50. Secondly, the Court notes that, despite explicit requests by the applicant, the domestic authorities failed to take all steps reasonably available to them to secure the evidence concerning the attack. In particular, the investigator never ordered an identity parade including N.R. or a face-to-face confrontation between the applicant and N.R. The investigator also

failed to question the applicant's colleagues as witnesses in connection with the attack. No explanation was provided by the Government as to why the domestic authorities failed to take these investigative steps. Moreover, although the applicant argued that he had been attacked by the police officer N.R., in his letter of 13 June 2007 the investigator informed the applicant that it had not been established that he had been attacked by the police officer N.N. (see paragraph 23 above). However, the letter was silent as to the alleged involvement of N.R. in the attack.

51. Thirdly, the Court notes that the investigating authorities failed to keep the applicant informed of the progress of the investigation and to provide him with the decisions taken within the framework of the criminal proceedings. In particular, the applicant was not provided with the investigator's decision of 23 June 2007 suspending the criminal proceedings and learned about its existence only in the course of the proceedings before the Yasamal District Court.

52. Lastly, the Court reiterates that an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice (see *Assenov and Others*, cited above, § 102, and *Labita*, cited above, § 131). In this connection, the Court notes that only ten days after the beginning of the investigation, the Minister of Internal Affairs described the attack on the applicant as sabotage, alleging that it had been organised by the applicant himself (see paragraph 19 above). The Court considers that this statement by the Minister of Internal Affairs, who was also the hierarchical superior of the investigator in charge of the investigation, shows that during the investigation the domestic authorities were more concerned with proving the lack of involvement of a State agent in the attack on the applicant than with discovering the truth about the circumstances of that attack. In particular, it does not appear that adequate steps were taken during the investigation to investigate the possibility that the attack could have been linked to the applicant's work as a journalist. On the contrary it appears that the responsible authorities had already discarded that possibility in the early stages of the investigation and with insufficient reason (compare *Gongadze v. Ukraine*, no. 34056/02, § 179, ECHR 2005-XI, and *Adalı v. Turkey*, no. 38187/97, § 231, 31 March 2005).

53. The foregoing considerations are sufficient to enable the Court to conclude that the investigation of the applicant's claim of ill-treatment was ineffective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

2. *Alleged ill-treatment of the applicant by the police officer*

(a) The parties' submissions

54. The Government submitted that the applicant's allegation that State agents had been behind the attack on him was pure speculation. There was no solid evidence demonstrating that any high-ranking official of the Ministry of Defence was behind the attack. In this connection, the Government relied on the record of questioning of 25 April 2007, noting that when the applicant had been questioned he had not quoted the name of any State agent, but had referred to a previous dispute that he had had with T.C. The Government finally submitted that, even assuming that one of the applicant's aggressors had been a police officer, the Government could not be held responsible for his alleged actions because he was not acting as a State agent in his official capacity when he attacked the applicant.

55. The applicant submitted that he had been attacked by two men, one of whom was a State agent, namely a police officer. In this connection, the applicant pointed out that he had personally identified N.R., who was a police officer at the Yasamal District Police Office, and that his colleagues had also identified N.R. as one of the two persons who had been in the vicinity of the newspaper office a few hours before the attack. The applicant drew attention to the timing of the attack, noting that on the same day he had published an article criticising a high-level officer of the Ministry of Defence. The applicant further argued that this attack should be considered in the light of a series of violent attacks on journalists in Azerbaijan in recent years.

(b) The Court's assessment

56. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions, and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Assenov and Others*, cited above, § 93, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

57. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in assuming the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nevertheless, where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny, even if certain domestic proceedings and investigations

have already taken place (see *Avşar v. Turkey*, no. 25657/94, §§ 283-84, ECHR 2001-VII (extracts), and *Muradova v. Azerbaijan*, no. 22684/05, § 99, 2 April 2009). In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Avşar,* cited above, § 282).

58. Turning to the circumstances of the present case, the Court observes at the outset that it is undisputed between the parties that on 20 April 2007 when the applicant left the newspaper office he was attacked by two men, as a result of which he sustained serious injuries. The medical certificate and the forensic report also confirmed that the applicant was diagnosed with cranial injury and contusions on the upper lip. However, there is disagreement between the parties about the question of whether State agents were behind the attack on the applicant and that it was State agents who subjected the applicant to the violence (compare *Stoica v. Romania*, no. 42722/02, § 58, 4 March 2008, and *Muradova*, cited above, § 107).

59. In this connection, the Court observes that the applicant made serious allegations concerning the involvement of State agents in the attack of 20 April 2007. In particular, he alleged to have identified one of his aggressors (N.R.) who was a police officer at the Yasamal District Police Office. His colleagues also alleged to have identified N.R. as one of the two persons who had been in the vicinity of the newspaper office a few hours before the attack. Moreover, the applicant was always consistent in his statements concerning the alleged involvement of the Ministry of Defence in the attack, submitting in his questioning by the investigator on 25 April 2007 that the Ministry of Defence could have been behind the attack on him and subsequently asking the investigator to check the telephone calls between N.R. and F.M.

60. However, the Court considers that the above-mentioned evidence placed before it does not enable it to find beyond reasonable doubt that the applicant was subjected to treatment contrary to Article 3 by State agents or that they were behind the attack on the applicant. In particular, although the applicant was attacked on the day of publication of his article criticising a high-ranking officer of the Ministry of Defence, there is no direct or indirect evidence proving that the Ministry of Defence or any of its officers was involved in any way in the attack. As to the alleged involvement of the police officer N.R. in the attack, the Court notes that although the applicant alleged to have identified N.R. as one of his aggressors and that his colleagues allegedly saw him in the vicinity of the newspaper office a few hours before the attack, there were no eyewitnesses to the attack, nor any video recordings or other direct evidence supporting the applicant's allegations (compare *Akdeniz v. Turkey*, no. 25165/94, §§ 78-82, 31 May 2005).

61. The Court would nonetheless like to emphasise that its inability to reach any conclusions as to whether there has, in substance, been treatment prohibited by Article 3 of the Convention derives to a large extent from the failure of the domestic authorities to carry out an effective investigation at the relevant time (see *Gharibashvili v. Georgia*, no. 11830/03, § 57, 29 July 2008; *Lopata v. Russia*, no. 72250/01, § 125, 13 July 2010; and *Jannatov v. Azerbaijan*, no. 32132/07, § 61, 31 July 2014).

62. Consequently, the Court cannot establish a substantive violation of Article 3 of the Convention in respect of the attack on the applicant.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

63. The applicant complained under Article 10 of the Convention that there had been a violation of his freedom of expression since he had been attacked because of his journalistic activity. Article 10 of the Convention provides:

> "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

64. 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

65. The Government submitted that the applicant's right to freedom of expression had not been violated. In this connection, the Government submitted that the applicant's allegation was pure speculation and that he

had failed to submit any evidence proving that he had been attacked because of his journalistic activity and that State agents had been behind the attack.

66. The applicant maintained his complaint. In particular, he submitted that he had been attacked because of articles he had written criticising the activities of the Ministry of Defence. He pointed out that the domestic authorities' failure to investigate the attack on him had amounted to a violation of his right to freedom of expression. Relying on the Court's judgment in the case of *Özgür Gündem v. Turkey* (no. 23144/93, 16 March 2000), the applicant also argued that the Government had failed to comply with their positive obligations under Article 10 of the Convention.

67. The third-party intervener – the NGO "Article 19" – submitted that the Government had failed to comply with their obligation to protect the exercise of the right to freedom of expression. In particular, they had failed to comply with their obligations to protect journalists from physical assaults and to launch independent, speedy, and effective investigations into any incidents of violence. Relying on numerous reports from international and regional organisations, as well as from the NGOs specialised in the field of human rights, concerning the general situation of freedom of expression in Azerbaijan, Article 19 pointed out that there continues to be impunity in cases involving violence against and the intimidation of journalists in Azerbaijan.

2. The Court's assessment

68. 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, the *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). 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 *Özgür Gündem v. Turkey*, no. 23144/93, § 43, ECHR 2000-III). In particular, the positive obligations under Article 10 of the Convention require States to create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear (see *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 137, 14 September 2010).

69. Turning to the circumstances of the present case, the Court observes at the outset that the present application should be distinguished from cases in which it has been established that a journalist was subjected to the use of force in breach of Article 3 of the Convention by a State agent (compare

Najafli, cited above, § 67). In the present case, although the Court found a violation of Article 3 of the Convention under its procedural limb, it was not possible to establish that the applicant had been subjected to the use of force by a State agent or that a State agent had been behind the attack on the applicant with the aim of interfering with his journalistic work (see paragraphs 58-62 above).

70. The Court considers that the present case should also be distinguished from the case of *Özgür Gündem v. Turkey*, where the domestic authorities – which were aware of a series of violent actions against a newspaper and persons associated with it – did not take any action to protect the newspaper and its journalists (compare *Özgür Gündem*, cited above, § 44). In the present case, by contrast, at the time of the events in question – although criminal proceedings were pending against the editor-in-chief of the *Gündəlik Azərbaycan* newspaper for publication of certain articles – neither the applicant nor the *Gündəlik Azərbaycan* newspaper had been subjected to violent actions. Moreover, it does not appear from the documents in the case file that the applicant had lodged any application or request for protection with the domestic authorities before the attack on him on 20 April 2007.

71. In these circumstances, the Court observes that the only issue raised by the applicant's complaint under Article 10 of the Convention is that of establishing whether or not the applicant's right to freedom of expression had been violated on account of the domestic authorities' failure to conduct an effective investigation into the attack on him. However, the Court notes that the applicant's allegations in this respect arise out of the same facts as those already examined under Article 3 of the Convention and it has already found a violation of Article 3 under its procedural limb because of the ineffectiveness of the investigation into the attack on the applicant.

72. Having regard to those findings, the Court considers that the complaint under Article 10 of the Convention raises no separate issue and, that being so, it is not necessary to examine the complaint again under Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 25,000 Azerbaijani manats (AZN)

in compensation for non-pecuniary damage.

75. The Government did not make any specific comments on this point.

76. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violation and that compensation should thus be awarded. However, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 10,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

77. The applicant also claimed AZN 4,400 for costs and expenses incurred before the domestic courts and the Court. This claim was supported by a contract concluded between the applicant and his lawyers.

78. The Government did not make any specific comments on this point.

79. 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. Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,400 covering costs under all heads.

C. Default interest

80. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;

4. *Holds* that there is no need to examine the complaint under Article 10 of the Convention;

5. *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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 4,400 (four thousand four hundred 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;

6. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 29 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President