European Court of Human Rights: *Anar Mammadov v. Azerbaijan*

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The European Court of Human Rights (Third Section) held unanimously in its *Anar Mammadov v. Azerbaijan* judgment of 6 October 2026 that a journalist's rights to private life, freedom of expression and peaceful enjoyment of possessions had been violated in a case concerning a search of his home and seizure of his mobile phones and laptop.

The applicant is a journalist and chief editor of the news website *criminal.az*. The instant case arose out of articles he published concerning an assassination attempt on E.V., the head of the Ganja City Executive Authority, on 3 July 2018. E.V. and his bodyguard were seriously injured in the attack. The incident was followed by riots in Ganja during which two police officers were killed.

The applicant published several articles discussing what was possibly behind the assassination attempt and the riots; two of these articles were implicated in criminal proceedings against the applicant (hereafter, the impugned articles).

The Prosecutor General's Office issued a press statement on 9 July 2018 in which it stated that various media and individuals had spread false and provocative information online. The prosecuting authorities opened criminal proceedings for, *inter alia,* public incitement to terrorism and openpublic calls against the state. On the same day, the applicant was questioned about the impugned articles by the Baku City Prosecutor's Office for several hours without legal representation. He claimed that the investigators seized and examined his two mobile phones, without a court order. He was required to sign a statement that he had voluntarily handed over his mobile phones. After the questioning, he went to his flat, accompanied by an investigator. A seizure operation was conducted in his flat – again without a court order authorizing it – during which a laptop and documents belonging to C*riminal.az* LLC were seized. The applicant's wife's laptop was also inspected. The applicant lodged complaints in relation to these operations, but they were dismissed. He claimed that the seized devices were only returned to him five years later and in an unusable state.

An expert forensic linguistic report on the impugned articles was ordered. It found that the applicant had, *inter alia*, openly incited the public to hatred against the government and the constitutional order. Criminal proceedings were instituted against the applicant for offences of open calls against the state, exceeding the

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limits of authority and forgery by an official. He was found guilty of all charges and sentenced to five and a half years in prison, suspended for two years on probation, and a two-year ban on holding public office. The conviction was upheld by appellate courts, endorsing the reasoning of the lower courts. In February 2020, the Supreme Court partially upheld the lower courts' judgments and reduced the sentence by three months.

The applicant felt that several of his rights, as guaranteed by the European Convention on Human Rights (ECHR) had been violated and lodged an application at the European Court of Human Rights.

Alleged violation of Article 8 (right to respect for private and family life)

The Court observed that search and seizure operations, as they constitute a serious interference with private life, home and correspondence, must be based on a law that is "particularly precise". National law must therefore provide "appropriate and sufficient safeguards against arbitrariness". The Court must be "particularly vigilant" when national law empowers the authorities to "order and effect searches without a judicial warrant": "very strict limits on such powers" are called for under Article 8 ECHR. However, as the Court observed, "the absence of a judicial warrant may be counterbalanced by the availability of an effective and diligently conducted *ex post facto* judicial review".

The Court went on to observe that the national authorities had relied on two different legal grounds for carrying out the seizure operation and that the decision ordering the seizure failed to comply with the requirements of the national law. It underscored that searching the contents of a mobile phone "seriously interferes" with a person's private life and correspondence and that such a measure cannot be left to "an investigator's unfettered discretion" – a search warrant issued by an independent body is required. It found that in the absence of any references by the government to, or other evidence of, an *ex post facto* judicial review, such a review was not carried out – despite a legislative requirement for the same.

The above findings led the Court to conclude that the interference in question was not in accordance with the law and that it was accordingly not necessary to determine whether the interference was necessary in a democratic society in order to hold that Article 8 had been violated.

Alleged violation of Article 1 of Protocol 1 (protection of property) and Article 13 (right to an effective remedy) in conjunction with Article 1 of Protocol 1

The Court found that the continued retention of the applicant's mobile phones (which were in any case not material evidence in any criminal proceedings) and laptop after the relevant decisions were taken about them was "unlawful and

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arbitrary". It concluded that the seizure and retention of the applicant's possessions amounted to a violation of Article 1 of Protocol 1 to the ECHR (A1P1), but that there was no need to also consider the complaint under Article 13 *juncto* A1P1.

Alleged violation of Article 10 (freedom of expression)

In its assessment of the alleged violation of Article 10, the Court reiterated a selection of its key principles pertaining to the right to freedom of expression, including the strong protection afforded by Article 10 to debate on matters of public interest; the wide limits of permissible criticism of the government; the duties and responsibilities of chief editors, media owners and publishers that govern the exercise of their right to freedom of expression; and the need for restrictive use of criminal sanctions and especially custodial sentences to avoid a chilling effect on freedom of expression.

As mentioned above, the domestic courts relied heavily on a report by a forensic linguistic expert – and also on statements by two witnesses. The Court found it "difficult" to identify any language in the impugned articles that amounted to the criminal acts for which the journalist was convicted or as described in the expert report. Nor did the two witnesses point to any specific remarks or statements from the applicant's articles that would have constituted calls against the state.

As the applicant's articles did not contain any incitement to violence, the domestic courts could not rely on Article 10(2) reasons such as the protection of territorial integrity and national security and the prevention of disorder or crime to limit the public's right to receive the applicant's articles.

The Court also considered the nature and proportionality of the sanctions. It recalled one of its key principles in this regard:

"*Although sentencing is in principle a matter for the domestic courts, the imposition of a prison sentence for an offence in the area of a debate on an issue of legitimate public interest will be compatible with freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence*".

It then pointed out that the suspended nature of the custodial sentence did not erase the applicant's conviction or the "long-term effects of [sic] any criminal record could have on the work of media professionals, including journalists".

In light of the above reasons, the Court held that the applicant's right to freedom of expression had been breached.

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Alleged violation of Article 18 (limitation on use of restrictions on rights) in conjunction with Article 10

The Court noted its general principles about the interpretation and application of Article 18, including that a separate examination of a complaint under Article 18 "is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case". Another general principle is that when examining whether a restriction pursued an ulterior purpose, the Court will assess all of the evidence and it does not confine itself to "direct evidence of the authorities' intentions: contextual facts and the sequence of events may also support the necessary inferences". In the present case, while the Court was unable to identify any purpose provided for by the Convention in respect of the restriction, it nevertheless saw a need to determine whether there was an "identifiable ulterior purpose". Ultimately, the Court found that the evidence available to it did not permit it to establish beyond reasonable doubt that the applicant's conviction was "motivated by an ulterior purpose linked to his journalistic activities". This prompted the Court to conclude that Article 18 *juncto* Article 10 had not been violated.

Anar Mammadov v. Azerbaijan, Application Nos. 12043/19 and 50484/20, 6 October 2026.

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