

# European Court of Human Rights: Huseynova v. Azerbaijan

**IRIS 2017-7:1/1**

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The European Court of Human Rights (ECtHR) recently dealt with a case that illustrates the dramatic situation of violence against journalists in some countries and the often remaining impunity for crimes against journalists (see IRIS 2017-3/3 and IRIS 2016-5/3). It also shows the difficulties the victims or their families can be confronted with in invoking the European Convention on Human Rights (ECHR).

Elmar Huseynov was a prominent independent journalist in Azerbaijan and the editor-in-chief of the weekly magazine Monitor. Various civil and criminal proceedings had been brought against him for the publication of critical articles about the President of Azerbaijan and members of his family, and about members of the parliament, government and other state officials. Moreover, copies of the magazine had been confiscated on several occasions and the domestic authorities sometimes prevented its publication. After having received threats because of his critical articles, and in particular shortly after having been told by a public official to stop writing about the President and his family, on 2 March 2005, Mr Huseynov was shot dead in his apartment building as he returned home from work. Huseynov's murder received widespread local and international media coverage and was unanimously condemned by various politicians, international organisations, and local and international NGOs. Criminal investigations were instituted immediately after the murder and numerous investigative actions were taken, but 12 years later the criminal proceedings were still ongoing and the perpetrators of the crime had not yet been prosecuted. Before the ECtHR, Ms Rushaniya Saidovna Huseynova alleged that her husband had been murdered by Azerbaijani State agents and that the authorities had failed to conduct an effective investigation, and hence breached Article 2 (the right to life) of the European Convention on Human Rights (ECHR). She further alleged that the killing of her husband had constituted a breach of the right to freedom of expression (Article 10 ECHR), as he had been targeted on account of his journalistic activity.

With regard to the merits of the complaint and the alleged violation of Article 2 ECHR, the ECtHR observes that Ms Huseynova made allegations about the involvement of state agents or the state in general in the murder of her husband, because of his journalistic activity. The ECtHR however considered that there was no evidence for these allegations. The Court next referred to the duty of the state not only to refrain from the intentional and unlawful taking of life, but also to take

appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty for the state to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression, and punishment of breaches of such provisions. It also extends, in appropriate circumstances, to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose lives are at risk. However, for a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of a particular individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The ECtHR points out that Mr Huseynov had never applied to the domestic authorities for protection or informed them of any danger or threat to his life and it further observes that the law enforcement authorities had not been aware of any danger to his life, nor had they held any information which might give rise to such a possibility. The ECtHR concluded that it had no evidence indicating that the domestic authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of Mr Huseynov and failed to protect his right to life. Accordingly, there has been no violation of the substantive limb of Article 2 ECHR.

As to the procedural limb of Article 2 ECHR, with regard the alleged failure to carry out an effective investigation, the ECtHR did find a violation. The ECtHR referred to a number of shortcomings in the criminal investigation carried out by the domestic authorities. The ECtHR is of the opinion that the Azerbaijani authorities did not effectively examine the possibility of prosecuting the alleged perpetrators of the murder in Georgia by transferring the criminal case there, after the investigation had identified two suspects who were on the territory of the State of Georgia, which refused to extradite them. The ECtHR also noted that even though Ms Huseynova was granted victim status in the investigation, she has been constantly denied access to the case file during the investigation, and she only obtained copies of some documents from the case file for the first time when the Government submitted its observations to the ECtHR. That situation deprived her of the opportunity to safeguard her legitimate interests and prevented any scrutiny of the investigation by the public. The ECtHR furthermore considered that the criminal investigation was not carried out promptly, taking into account its overall length of over 12 years. Finally, it was apparent that the murder of Mr Huseynov could have a “chilling effect” on the work of other journalists in Azerbaijan. According to the ECtHR it does not appear that adequate steps were taken during the investigation to inquire sufficiently into the motives behind the killing of Mr Huseynov and to investigate the possibility that the attack could have been linked to his work as a journalist. On the basis of these findings the ECtHR concludes that the domestic authorities failed to carry out an adequate

and effective investigation into the circumstances surrounding the killing of Ms Huseynova's husband. It accordingly held that there had been a violation of the procedural limb of Article 2 ECHR.

With regard to the complaint under Article 10, the ECtHR noted that the allegations arise out of the same facts as those already examined under Article 2. Having regard to its finding of a violation of Article 2 under its procedural limb because of the ineffectiveness of the investigation into the killing of Ms Huseynova's husband, the ECtHR considers that it is not necessary to examine the complaint under Article 10 ECtHR separately.

***Judgment by the European Court of Human Rights, Fifth Section, Huseynova v. Azerbaijan, Application no. 10653/10, 13 April 2017***

<https://hudoc.echr.coe.int/eng?i=001-172661>

