European Court of Human Rights: Khadija Ismayilova v. Azerbaijan

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A recent judgment delivered by the European Court of Human Rights (ECtHR) reveals how powerful persons and their entourage sometimes use clearly illegal and immoral techniques to intimidate investigative journalists in order to make them stop critically reporting on their actions, policy or corruptive activities. The judgment in the case of Khadija Ismayilova v. Azerbaijan once more illustrates the practice of harassment and intimidation, and the blatant lack of respect for the rights of journalists to critically report on the government or the president in Azerbaijan (see IRIS 2010-8/2, IRIS 2015-3/1 and IRIS 2017-7/1). The case mainly concerns a smear campaign against a well-known journalist who is reporting on corruption and human rights violations in her country. Khadija Rovshan qizi Ismayilova 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. In addition, she trained journalists in investigation techniques and cross-border reporting, and she has received a number of international awards for her journalistic activity. After publishing a series of articles on government corruption involving the president of Azerbaijan and his family, she began receiving threats and was subject to acts of intimidation and gross violations of her privacy, all designed to prevent her from pursuing her journalistic work. In particular, she was sent a letter threatening her with public humiliation if she did not stop her investigative reporting. When she refused, a video recorded with a hidden camera featuring scenes of a sexual nature involving her and her then boyfriend was posted on the Internet. Around the same time, newspapers ran stories accusing her of anti-government bias, immoral behaviour and being involved in “sex scandals”. A short time later, Ismayilova discovered several hidden cameras in her flat. She reported the threats and the intrusion into her privacy to the authorities, complaining that she felt intimidated 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. About a month later, Ismayilova published a press release in which she criticised the authorities for failing to conduct an adequate investigation, and she lodged a complaint against the officials of the Baku City Prosecutor’s Office. Instead of effectively investigating the threats and the gross violation of her privacy, the authorities published a status report, referring to a number of investigative steps which had been taken. The report also criticised Ismayilova for spreading false information and it disclosed more private

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information not only about her, but also about some of her friends and family. Having received no effective redress from the Azerbaijani authorities, and after exhausting all relevant national judicial remedies, in September 2013, Ismayilova petitioned the ECtHR.

The ECtHR was in no doubt that the covert filming of highly intimate aspects of Ismayilova's life in her own home clearly concerned a matter of "private life", a concept that covers the physical and moral integrity of a person, as well as his or her sexual life. But the ECtHR found no sufficient evidence "beyond reasonable doubt" that the state itself was responsible for the very serious invasion of Ismayilova's privacy. Her arguments were based on circumstantial evidence or on assertions requiring corroboration and further investigation. According to the ECtHR, the question of whether state agents had abused their official power remains an open one, although it emphasised its concerns as regards the answer to that question, referring to Ismayilova's credible allegations and the contextual information provided by reports from various international and regional human rights organisations, including the Council of Europe, the OSCE and the United Nations, who had repeatedly called upon the Azerbaijani authorities to improve respect for the rights of journalists who report on human rights violations or critically report on the government.

The ECtHR specifically focused on the authorities' positive obligation under Article 8 of the European Convention of Human Rights (ECHR) to secure respect for private life, and it found that there had been significant flaws and delays in the manner in which the authorities had investigated the case. By failing to conduct an effective criminal investigation, the Azerbaijani authorities had not fulfilled their duty to adequately protect Ismayilova against such a serious, flagrant and extraordinarily intense invasion of her private life. The ECtHR also found that Article 8 ECHR had been violated through the public disclosure of confidential and personal information in the status report published by the authorities. By not effectively investigating the flagrant invasion of her privacy and by acting carelessly in further compounding the already existing breach of Ismayilova's privacy, the Azerbaijani authorities had clearly interfered with her right to private life in an unjustified manner.

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 on the Internet, the publication of newspaper articles about her in pro-government newspapers, the ineffectiveness of the investigation and the lack of remedies against the inaction of the prosecuting authorities, as well as the publication of the status report by the investigating authorities, Ismayilova also complained that the Azerbaijani State authorities had breached their obligations under Articles 10 ECHR, which guaranteed the right to freedom of expression. The ECtHR reiterated that it had repeatedly stressed that interference with freedom of expression may have a "chilling effect" on the exercise of that

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freedom and even 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. Therefore, the ECtHR examined the entirety of Ismayilova's complaint from the standpoint of the positive obligations of the Azerbaijani State under Article 10 ECHR. Referring to its findings under Article 8 ECHR and emphasising that the acts of a criminal nature committed against Ismayilova were apparently linked to her journalistic activity, the ECtHR was of the opinion that the authorities had failed to comply with their positive obligation to protect her in the exercise of her freedom of expression. The ECtHR referred to the significant flaws and delays in the criminal investigation, the articles published in the newspapers, and the unjustified public disclosure in the status report on the criminal investigation. In the context of many other reported violations of journalists' rights in Azerbaijan, the ECtHR unanimously came to the conclusion that the authorities had acted "contrary to the spirit of an environment protective of journalism", and that, accordingly, there had been a violation of Article 10 ECHR. The Azerbaijani Government was ordered to pay the journalist EUR 15 000 in respect of non-pecuniary damage and EUR 1 750 for the costs and expenses of the proceedings before the ECtHR.

Judgment by the European Court of Human Rights, Fifth Section, case of Khadija Ismayilova v. Azerbaijan, Application nos. 65286/13 and 57270/14, 10 January 2019

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