European Court of Human Rights: *Tagiyev and Huseynov v. Azerbaijan*

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The European Court of Human Rights (ECtHR) has delivered an important judgment about the conviction and imprisonment of a journalist and an editor for publishing an article critizing Islam. The judgment is to be situated in a series of judgments by the Strasbourg Court dealing with religious insult, religious hate speech or blasphemy, such as in *Otto-Preminger-Institut v. Austria* (IRIS 1995-1/1), *Wingrove v. the United Kingdom* (IRIS 1997-1/8), I.*A. v. Turkey* (IRIS 2005-10/3), *Klein v. Slovakia* (IRIS 2007-1/1) *Giniewski v. France* (2006-4/1), *Aydin Tatlav v. Turkey* (IRIS 2006-7/2), *Fouad Belkacem v. Belgium* (2017-9/1), *Mariya Alekhina and others (Pussy Riot) v. Russia* (IRIS 2018-8/2) and *E.S. v. Austria* (IRIS 2019-1/1). In *Tagiyev and Huseynov v. Azerbaijan*, the ECtHR found that the fact that some people can be offended in their religious beliefs cannot be a sufficient argument to interfere with the right to freedom of expression as part of a public debate on matters of religion. The crucial issue is whether the offensive or insulting statements about a religion incite to hatred or violence.

In Strasbourg, journalist Rafig Nazir oglu Tagiyev and editor Samir Sadagat oglu Huseynov argued that their criminal conviction for incitement to religious hatred violated their right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). Both had spent over a year in an Azerbaijan prison, and following his release, Tagiyev was stabbed to death in an attack in Baku while his case was pending before the European Court. Tagiyev's wife has continued the proceedings over her husband's conviction and imprisonment, proceedings that took more than 11 years before the European Court. Mrs Tagiyev has also a separate case pending over her husband's killing, claiming that the Azerbaijani Government had failed to protect his right to life, and that he was targeted over his journalistic activities.

The case started in November 2006, when Tagiyev wrote an article headlined 'Europe and us', which was published in the Sanat Gazeti newspaper, where Huseynov was editor-in-chief. The bi-weekly newspaper focused on visual art, literature and theatre and the article at issue was part of a series on 'East-West studies', which discussed the role of religion in society, and the influence of Iran in Azerbaijan. The article contained comments on Islam, including the statements that 'Morality in Islam is a juggling act; its humanism is not convincing' and that 'in comparison with Jesus Christ, the father of war fatwas the Prophet Muhammad

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is simply a frightful creature'. The article also criticised Iran, referring to the oppressive and strict Shiite-Islamic regime of Iran and Persian chauvinism. These statements led to public protests against Tagiyev, as well as criticism by various Azerbaijani and Iranian religious groups. In particular, a religious leader of Iran issued a religious fatwa calling for Tagiyev's death. Criminal proceedings were initiated against Tagiyev and Huseynov, and both were convicted of incitement to religious hatred. The district court relied on the conclusions of a report by the department at the State Committee for Work with Religious Organisations, that had concluded that the article 'seeks to spread propaganda of hatred and hostility against Islam', and that there were 'sufficient grounds to conclude the existence of elements of actions leading to incitement to religious hatred and hostility'. Tagiyev and Huseynov appealed their convictions, claiming a violation of Article 10 ECHR. However, both the Court of Appeal and the Supreme Court rejected their appeals. In December 2007, Tagiyev and Huseynov were released from prison following a presidential pardon decree, having spent more than 13 months in prison. Both made applications to the ECtHR in 2008, claiming that their convictions and imprisonment violated their right to freedom of expression.

As the convictions were 'prescribed by law' and pursued the legitimate aims of 'protection of the rights of others' and 'prevention of disorder', the crucial question for the ECtHR was whether the convictions were 'necessary in a democratic society'. First, the ECtHR found that the article was not to be examined 'only' in the context of religious beliefs, but also in the context of a debate on a matter of public interest, reiterating the principle that under Article 10, there is 'little scope' for restrictions on political speech and expression on matters of public interest. The Court then examined the impugned remarks characterised by the domestic courts as incitement to religious hatred, and noted that some of the remarks 'may' be seen by 'certain religious people' as an 'abusive attack on the Prophet of Islam and Muslims living in Europe, capable of causing religious hatred'. Crucially, however, the ECtHR held that it could not accept the reasons provided by the Azerbaijan courts as 'relevant and sufficient' for imposing the convictions. The ECtHR held that the domestic courts had failed to carry out any assessment of the remarks by examining them within the general context of the article, and had failed to assess the author's intention and the public interest of the matter discussed. The ECtHR also found it unacceptable that the domestic courts based their findings and the convictions solely on the conclusions of the State Committee's report without striking the right balance between the rights protected under Articles 9 (freedom of religion) and 10 ECHR. The ECtHR recognises that a state may legitimately consider incitement to religious intolerance to be incompatible with respect for the freedom of religion and take proportionate restrictive measures, and that it may be considered necessary in democratic societies 'to sanction or even prevent all forms of expression which spread, incite, promote or justify violence or hatred based on intolerance'. However, the ECtHR also reiterated that 'a religious group must tolerate the denial by others of their religious beliefs and even the propagation by

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others of doctrines hostile to their faith, as long as the statements at issue do not incite to hatred or religious intolerance'. Finally, the ECtHR drew attention to the severity of the penalties imposed, namely criminal proceedings, three- and four-year prison sentences, and detention for more than 13 months. It held that the case did not present any justification for such severe sanctions, which were capable of producing a chilling effect on the exercise of freedom of expression in Azerbaijan and dissuading the press from openly discussing matters relating to religion, its role in society or other matters of public interest. The ECtHR concluded unanimously that Tagiyev and Huseynov's criminal convictions were disproportionate and not necessary in a democratic society, in violation of Article 10 ECHR.

ECtHR Fifth Section, Tagiyev and Huseynov v. Azerbaijan, Application no. 13274/08, 5 December 2019

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