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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication 2307/2013*, **

Communication submitted by:	Yashar Agazade (represented by counsel Fariz Namazli)
Alleged victim:	The author
State party:	Azerbaijan
Date of communication:	6 November 2013 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 4 December 2013 (not issued in document form)
Date of adoption of Views:	24 July 2019
Subject matter:	Refusal of the authorities to provide public information
Procedural issues:	Non-substantiation of the claims, exhaustion of domestic remedies
Substantive issues:	Freedom of expression, right to a remedy
Articles of the Covenant:	2 (3), 14 (1), 19
Articles of the Optional Protocol:	2, 5 (2) (b)

1. The author of the communication is Yashar Agazade, an Azerbaijani national born in 1979, who claims to be a victim of a violation, by Azerbaijan, of his rights under article 19 and article 14 (1), read in conjunction with article 2 (3) of the Covenant. The author is represented by counsel, Fariz Namazli.

The facts as presented by the author

2.1 The author submits that he is an investigative journalist and a lawyer in Azerbaijan. At the time of the events described below, he occupied senior positions with two weekly

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The communication was examined pursuant to the procedure for repetitive communications, set out in rule 105 of the Committee's rules of procedure. The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

newspapers in Azerbaijan, *Mukhalifat* ("Opposition") and *Muhakima*, known for their criticism of the national Government and its policies.

2.2 The author submits that the situation as regards freedom of expression in Azerbaijan is generally "worrying". At the date of submission of the present communication, 11 journalists and bloggers were behind bars. Journalists are often prosecuted on charges that are not related to their work, as retaliation for their journalistic activities. Such charges include hooliganism, bribery, tax evasion, possession of weapons or drugs among others. Defamation remains a criminal offence, despite commitments from the Government to decriminalize it. Moreover, the authorities have introduced stricter penalties for such offences as insults or slander published via the Internet. The State dominates the media outlets and the few existing independent newspapers face pressure, threats of lawsuits and financial penalties. For example, in 2013, the independent newspaper *Azadlig* was fined 62,000 euros as a result of a civil lawsuit for defamation.

2.3 In 2005, Azerbaijan adopted a Law on the Right to Obtain Information. This law obliges the governmental authorities to make public on their websites information that has not been requested. This obligation is poorly implemented, and only a few institutions have viable Internet resources. In June 2012, the parliament adopted two amendments to the law, limiting certain types of information from being disclosed to the public. The amendments, for example, prohibit information about the founders of legal entities and their shares in the statutes of a company being published.

2.4 On 27 July 2010, the author requested the Cabinet of Ministers (the Government) to provide him with information regarding the distribution of funds earmarked for compensating the victims of a flood which had seriously affected several regions and destroyed over 20,000 homes in May 2010. In particular, he sought to obtain copies of relevant decrees, decisions or orders from the Cabinet of Ministers, which was in charge of the distribution of the funds in question. The Cabinet of Ministers did not respond to his request.

2.5 On 17 August 2010, the author sued the Cabinet of Ministers over the failure to provide the information he sought. In his lawsuit, he claimed that the authorities had violated his rights to obtain information, as guaranteed by article 50 (I) of the Constitution, and articles 2 (2) and 2 (3) of the Law on the Right to Obtain Information. According to this law, in the case of a refusal to provide information, the owner of that information shall clearly state the reasons for such a refusal, citing the specific clauses of the national legislation. On 22 December 2010, the Sabail district court rejected the author's claims. The Cabinet of Ministers did not attend the hearing, despite being summoned, and did not provide any explanations against the author's claims.

2.6 On 22 January 2011, the author filed an appeal to the Baku Court of Appeals. In his application, he argued that the Sabail district court had no intention or real power to obtain an explanation from the Cabinet of Ministers on its refusal to provide information. The appeal was rejected by the Baku Court of Appeals on 28 February 2011. On 13 April 2011, the author filed a cassation appeal to the Supreme Court of Azerbaijan, which was dismissed on 21 July 2011. The Supreme Court in its decision stated that the Cabinet of Ministers was not obliged to provide the information requested.

The complaint

3.1 The author contends that the above-mentioned facts demonstrate that he has been a victim of unjustified interference with, and a violation of, his rights to freedom of expression and to seek and impart information to the public in his role as a journalist and a "public watchdog", under article 19 (2) of the Covenant. He argues that the Cabinet of Ministers failed to fulfil its obligation, under article 19, either to provide him with the information he had requested or to justify the restrictions on his rights to receive such information. He also claims that Azerbaijan failed to fulfil its positive obligation to ensure that public information is disclosed to meet the public interest. With reference to the Committee's general comment no. 34 (2011) on the freedoms of opinion and expression, he states that article 19 (2) of the Covenant embraces the right to access information held by public bodies. With reference to the Committee's jurisprudence, he argues that the right to

seek and receive information includes the right of individuals to receive State-held information, with the exceptions permitted by the restrictions established in the Covenant;[1] that the freedom of expression embraces a right whereby the media may receive information on the basis of which it can carry out its functions;[2] that the right of access to information includes the right of the media to have access to information on public affairs and the right of the general public to receive media output;[3] and that the requests for State-held information regarding matters of legitimate public interest by associations or individuals warrant protection by the Covenant similar to that afforded to the press.[4]

3.2 The author further contends that, in breach of the fair trial guarantees under article 14 (1) of the Covenant, the domestic courts failed to duly assess his arguments, to protect his right to freedom of expression and to provide clear and sufficient reasons for their decisions. Under such circumstances, his right to an effective domestic remedy under article 2 (3) was also violated by the State party.

State party's observations on admissibility and the merits

4.1 By note verbale, dated 25 July 2014, the State party provided its observations on the admissibility and merits of the communication. It claims that the communication is both inadmissible and the author's allegations are "false and irrelevant" to the present communication.

4.2 The Optional Protocol requires the Committee to reject communications where the author has failed to exhaust domestic remedies. This rule allows the State party the opportunity to correct the alleged violation. A State party that claims non-exhaustion has a burden to show that the remedy was effective and "available in theory and in practice" at the relevant time, that is, that the remedy was "accessible", and offered the possibility of providing redress to the author with a reasonable prospect of success. Once this burden is met, it falls upon the author to argue that the remedy advanced by the State party was for some reason "inadequate and ineffective" in the particular circumstances of the case.

4.3 The State party notes that the author's complaints to the domestic courts in Azerbaijan were not examined on the merits, but were rejected as "incompatible with the requirements of the procedural legislation". The author had an opportunity to lodge a complaint which would be compatible with procedural requirements, which in turn would allow the domestic courts to provide necessary redress. Having failed to do so, the author failed to exhaust domestic remedies in connection with his claims under article 19 of the Covenant.

4.4 Regarding the author's claim under article 14 (1), read in conjunction with article 2 (3), of the Covenant, the State party submits that the author filed a civil lawsuit against an entity, the Government Commission, "which was not a legal entity" and was not "operational" at the time in question. The Commission was a temporary structure and "since its existence at the material time was not shown in the lawsuit, the domestic courts returned" the matter to the author. Under the Code of Civil Procedure of Azerbaijan, lawsuits must be returned to the complainant, if the "form and content" of the complaint have not been in compliance with the requirements of article 149 of the Code of Civil Procedure.

Author's comments on the State party's observations on admissibility and the merits

5.1 In his response dated 8 October 2014, the author submits that he was exercising his constitutional rights to receive and impart information. Intending to investigate the distribution of public funds in areas damaged by a natural disaster, he requested the Cabinet of Ministers to provide him with copies of decisions, decrees or orders in relation to the

[1] See *Nurbek Toktakunov v. Kyrgyzstan* (CCPR/C/101/D/1470/2006 and Corr.1), para. 6.3.
[2] See *Gauthier v. Canada* (CCPR/C/65/D/633/1995); and *Mavlonov and Sa'di v. Uzbekistan* (CCPR/C/95/D/1334/2004).
[3] See *Nurbek Toktakunov v. Kyrgyzstan*, para. 6.3.
[4] Ibid., para. 7.4.

distribution of funds. Under the Law on the Right to Obtain Information, the respondent has seven working days to reply but the Cabinet of Ministers failed to do so.

5.2 As is clear from the court decisions that were attached to the initial communication to the Committee, three domestic courts accepted the author's complaints and appeals, recognized the complaints as admissible and examined them on the merits. The complaints were not rejected on "procedural" grounds, as argued by the State party. That is clear from the text of the decision of the Sabail district court, for example, where it states that it will review the complaint without the presence of the representative of the Cabinet of Ministers. The court failed to address the author's arguments that the State party had an obligation of either providing the requested information or providing reasons not to do so.

5.3 As for the State party's argument that the lawsuit was filed against an entity that was not a legal entity, the author submits that the complaint was filed against the Cabinet of Ministers. That is the entity that was responsible for distributing funds during the emergency and that role was assigned to it by the presidential decree of 2 July 2010. The respondent was therefore correctly identified in the lawsuit and should have responded. None of the domestic courts concluded that the respondent was chosen incorrectly and they all considered the lawsuit on the merits.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 97 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (2) (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claim that he has exhausted all effective domestic remedies available to him. The State party claims that the author failed to exhaust domestic remedies, arguing that the domestic courts rejected the author's complaints as "incompatible with the requirements of the procedural legislation". The Committee notes that the State party does not indicate what specific procedural requirements were violated, nor does it specify what exact remedies the author should have pursued. The Committee also notes from the review of the copies of the court decisions that three instances of domestic courts did indeed look into the merits of the complaints and did not reject the author's claims as inadmissible because of procedural shortcomings. Considering the text of the court decisions, and in the absence of other explanations or arguments from the State party in this connection, the Committee concludes that the requirements of article 5 (2) (b), of the Optional Protocol have been met.

6.4 The Committee has noted the author's claims under article 14 (1), read in conjunction with article 2 (3), of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, those allegations. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 In the Committee's view the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims under article 19, it therefore declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claims that he requested information from the Cabinet of Ministers of Azerbaijan and that this information was of a public nature and

directly relevant to his work of an investigative journalist. The Committee further notes that the State party does not present its argument on the merits of potential violation of article 19, arguing instead that these claims must be considered inadmissible.

7.3 The Committee recalls that in its general comment No. 34, it states that article 19 (2) embraces a right of access to information held by public bodies. Such information includes records held by public bodies, regardless of the form in which that information is stored, its source and the date of production. In general comment No. 34, paragraph 7, the entities that are considered public bodies are listed. They include all branches of the State (executive, legislative and judicial) and other public or government authorities, at whatever level – national, regional or local. The Committee considers that is undisputed that the Cabinet of Ministers of Azerbaijan is a public body. It is also not contested that the Cabinet of Ministers would have the information sought by the author. Furthermore, to give effect to the right of access to information, States parties should proactively put into the public domain government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. The procedures should provide for the timely processing of requests for such information. The State party Law on the Right to Obtain Information seems to provide for similar, if not exactly the same, rights and procedures for obtaining public information.

7.4 The Committee notes, however, that in the present case, the Cabinet of Ministers did not respond to the author's request for public information, nor did it provide an explanation for its inaction in the domestic courts during the judicial proceedings, which the author points out is contrary to the provisions of the State party's domestic legislation and its Constitution. The Committee notes that the State party therefore limited the author's access to public information under article 19 (2) and the Committee must therefore decide whether that restriction is compatible with restrictions under article 19 (3) of the Covenant. The Committee regrets the State party's lack of response to this specific argument raised by the author, instead arguing that the author's claims should be declared inadmissible. In the absence of relevant explanations from the State party regarding the restrictions that were placed on the author, due weight should be given to the author's claims as far as they are substantiated. Accordingly, the Committee concludes that the author's rights under article 19 (2) were violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 19 (2), of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, (a) to provide the author with the information requested and (b) reimburse the author's legal costs. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.