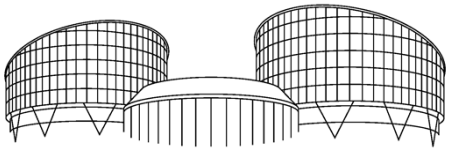

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF IMANOV v. AZERBAIJAN

(Application no. 62/20)

JUDGMENT

Art 10 • Freedom of expression • Disproportionate disbarment of a lawyer on account of statements made to the press about the alleged ill-treatment of his client in prison • Statements directly targeted the prison staff, calling into question their professionalism and integrity • Statements concerning a matter of public interest and not *a priori* baseless or devoid of any substance • Narrow margin of appreciation • Impugned sanction capable of having a chilling effect on the performance by lawyers of their duties as defence counsel • Lack of sufficient reasons
Art 8 • Private life • Applicant's disbarment not supported by relevant and sufficient reasons and constituted a disproportionate sanction

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 October 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Imanov v. Azerbaijan,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Ioannis Ktistakis*, President*,
Peeter Roosma,
Lətif Hüseynov,
Darian Pavli,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva,
Úna Ní Raifeartaigh*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 62/20) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Yalchin Jamil oglu Imanov (*Yalçın Cəmil oğlu İmanov* – "the applicant"), on 10 December 2019;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints concerning Articles 8, 10 and 18 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 25 March, 2 and 9 September 2025,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The application concerns the disbarment of the applicant on account of statements that he had made to the press about the alleged ill-treatment of his client in prison. The applicant raised various complaints under Articles 8, 10 and 18 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1973 and lives in Sumgayit. He was represented by Ms R. Remezaite, Mr P. Leach, Ms J. Gavron, Ms J. Evans, Ms K. Levine and Mr T. Collis, lawyers based in the United Kingdom, and by Mr S. Yusifli, a lawyer based in Azerbaijan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case may be summarised as follows.

I. BACKGROUND INFORMATION

5. On 26 November 2015 the Organised Crime Unit of the Ministry of Internal Affairs carried out an operation which involved entering a house in Nardaran, a suburb of Baku, where a number of people, including A.H., were attending a religious gathering.

6. According to police records, the operation was organised following information that a founder of an unregistered religious movement called Müsəlman Birliyi ("Muslim Union") and several others were, among other things, gathering to prepare a violent seizure of power, mass disorder and terrorist acts, organising armed groups and obtaining weapons.

7. During the operation shots were fired, killing six people (four persons who had attended the gathering and two police officers) and injuring many others. According to police records, among the items found and seized at the scene were weapons, explosive substances and booklets containing calls for violence.

8. The domestic proceedings concerning the ill-treatment of several individuals, including A.H. (the applicant in application no. 27247/17), during their arrest and subsequent days in police custody have already been the subject of the Court's judgment in *Mustafayev and Others v. Azerbaijan* ([Committee], nos. 25054/17 and 6 others, 13 June 2024). In that judgment, the Court found a breach of Article 3 of the Convention under both its substantive and procedural limbs in respect of A.H.

II. THE APPLICANT'S COMMENTS ON THE ALLEGED ILL-TREATMENT OF A.H. IN PRISON

9. The applicant was a lawyer (*vəkil*) and a member of the Azerbaijani Bar Association (*Azərbaycan Respublikası Vəkillər Kollegiyası* – hereinafter "the ABA") at the time of the events described below. The applicant specialised in the protection of human rights and had represented numerous applicants before the Court.

10. It appears from the documents in the case file that on 20 July 2017 the Baku Court of Appeal delivered its judgment on the merits concerning A.H.'s criminal conviction and on 22 July 2017 A.H. was transferred to Gobustan Prison in order to serve his sentence.

11. On 28 July 2017 the applicant became one of A.H.'s representatives in the domestic proceedings concerning his criminal conviction.

12. On 8 August 2017 the applicant went to Gobustan Prison to meet A.H., who was serving his prison sentence there. According to the applicant, during their meeting he saw signs of ill-treatment on A.H.'s body. A.H. explained that he had been severely tortured by the prison staff after his transfer to Gobustan Prison on 22 July 2017. In particular, he told the applicant that he had been dragged on the floor, beaten with batons, punched

all over his body many times, tied to a metal pole in the prison yard for a period of three hours, and kept in solitary confinement for a period of nine days; his hands and legs had been cuffed and he had been kept in a "crucifix position" for two days.

13. According to the applicant, following the end of the visit, on the same day he received telephone calls from journalists of various media outlets enquiring about A.H.'s state of health. He told the journalists what he had been told by A.H. and that he had seen injuries on A.H.'s body.

14. On the same date various media outlets published information indicating that A.H. had been tortured in prison, referring to the applicant's statements to the media, in which he conveyed A.H.'s allegations and described the injuries he himself had seen. According to copies of news reports available in the case file, some media outlets also quoted the applicant as having mentioned the names of the prison staff who had allegedly tortured A.H., based on what he had heard from A.H.

15. On 9 August 2017 the applicant lodged complaints with the Prosecutor General of the Republic of Azerbaijan, the Prison Service and the Ombudsman, complaining of A.H.'s alleged ill-treatment in Gobustan Prison. In the complaints, he recounted what he had heard from A.H., described the injuries he had seen, noted the names of prison staff who were allegedly responsible, and requested an investigation and the institution of criminal proceedings against them.

16. Following the publication of the information about A.H.'s alleged ill-treatment in the media (see paragraph 14 above), on 9 August 2017 gatherings were held in front of Gobustan Prison and the administrative building of the Prison Service in protest against A.H.'s alleged ill-treatment.

III. DISCIPLINARY PROCEEDINGS INSTITUTED AGAINST THE APPLICANT

17. On 10 August 2017 the acting head of the Prison Service sent a letter to the ABA asking for disciplinary proceedings to be instituted against the applicant. He alleged that the applicant had made defamatory and false statements to the press accusing the Prison Service of subjecting A.H. to ill-treatment and that his statements had given rise to the unlawful gathering organised by A.H.'s relatives in front of the administrative building of the Prison Service situated in Baku.

18. On 9 September 2017 the ABA Disciplinary Commission issued an opinion, deciding to refer the complaint against the applicant to the Presidium of the ABA (*Azərbaycan Respublikası Vəkillər Kollegiyası Rəyasət Heyəti* – hereinafter "the Presidium"). It held, in particular, that the applicant had breached lawyers' ethics because, although on 9 August 2017 he had lodged complaints with the relevant authorities about the alleged ill-treatment of A.H., he had made unsubstantiated statements to the press concerning A.H.'s

ill-treatment relying only on A.H.'s statements and his own assessment, without waiting for the outcome of his complaints. It also held that by making the unsubstantiated statements in question to the press, the applicant had damaged the honour and reputation of the prison staff and breached their right to the presumption of innocence. It appears from the opinion that the ABA Disciplinary Commission heard the applicant, who stated that he had informed journalists of A.H.'s alleged ill-treatment following his meeting with A.H. in prison on 8 August 2017, relying on A.H.'s description of his alleged ill-treatment. The applicant also stated that on 9 August 2017 he had lodged complaints with the prosecuting authorities, the Prison Service and the Ombudsman. Moreover, he asserted that he had not been aware of the gathering held on 9 August 2017 in front of the administrative building of the Prison Service.

19. Relying on the opinion of the ABA Disciplinary Commission of 9 September 2017, the Presidium decided on 20 November 2017 to refer the applicant's case to a court with a view to his disbarment. It also decided to suspend the applicant's activity as a lawyer pending a judicial decision.

20. On 26 January 2018 the Presidium lodged an application with the Ganja Administrative-Economic Court, seeking the applicant's disbarment.

21. On 22 February 2019 the Ganja Administrative-Economic Court delivered its decision on the merits and ordered the applicant's disbarment. The court held that the applicant had failed to comply with the provisions of the Law on Advocates and Advocacy Activity of 28 December 1999 ("the Law") and the rules of conduct for lawyers, as he had shared information about the alleged ill-treatment of his client in prison without having any evidence as to the reliability of the information in question. In that connection, the court held that sharing unsubstantiated information about the commission of unlawful acts, in the absence of a court decision, was contrary to the protection of the rights of others and the principle of the presumption of innocence. Accordingly, by making accusations that the prison staff had committed unlawful acts of violence against a person detained in prison, the applicant had failed to respect the reputation and the rights of others and had caused unwarranted anxiety among the relatives and family members of persons detained in prison.

22. On 15 March 2019 the applicant appealed against the decision, arguing that his disbarment had constituted an unjustified interference with his right to freedom of expression under Article 10 of the Convention and had also violated, *inter alia*, his rights under Articles 8 and 18 of the Convention. He stated that he had made the statements in question as A.H.'s lawyer and that they had been made in the context of protecting A.H.'s right not to be subjected to ill-treatment. Furthermore, it was not prohibited or against lawyers' ethics for lawyers to make statements to the press.

23. On 17 May 2019 the Ganja Court of Appeal dismissed the appeal and upheld the Ganja Administrative-Economic Court's decision of 22 February

2019. In addition to the reasoning provided by the lower court, the appellate court held, relying on the Court's case-law in *Schöpfer v. Switzerland* (20 May 1998, *Reports of Judgments and Decisions* 1998-III), that the applicant, as a lawyer, should have used the relevant domestic remedies before making such statements to the press.

24. On 19 June 2019 the applicant lodged a cassation appeal, repeating his previous complaints and arguments.

25. On 1 October 2019 the Supreme Court upheld the Ganja Court of Appeal's decision of 17 May 2019.

IV. FURTHER DEVELOPMENTS

26. On 11 December 2017 A.H. lodged an application with the Court (application no. 84594/17), complaining under Articles 3 and 13 of the Convention that he had been ill-treated by the prison staff in Gobustan Prison after his transfer to that prison on 22 July 2017.

27. On 17 January 2023 the Court decided to strike that application out of its list of cases, having regard to the Government's unilateral declaration dated 23 February 2022 by which the Government had acknowledged that there had been a violation of A.H.'s rights guaranteed under the Convention (see *Jabbarov and Others v. Azerbaijan* (dec.) [Committee], nos. 61239/17 and 7 others, 17 January 2023). Application no. 84594/17 was eventually restored to the list of cases and is currently pending before the Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE AND INTERNATIONAL DOCUMENTS

28. The relevant provisions of the Law on Advocates and Advocacy Activity of 28 December 1999 ("the Law") and extracts from a number of relevant international documents are set out in detail in the Court's judgments in *Bagirov v. Azerbaijan* (nos. 81024/12 and 28198/15, §§ 38-41, 25 June 2020), and *Namazov v. Azerbaijan* (no. 74354/13, §§ 28-31, 30 January 2020).

29. The relevant extracts of the Report of the UN Special Rapporteur on the Situation of Human Rights Defenders on his mission to Azerbaijan, published on 20 February 2017, read as follows:

> "For those lawyers who are members of the Bar Association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities. ... The Special Rapporteur considers that disbarments of human rights lawyers, together with criminal prosecutions, searches and freezing of their assets are part of the broader intimidation facing human rights defenders in the country."

30. The relevant extracts of Report (CommDH(2019)27) of 11 December 2019 by the Commissioner for Human Rights of the Council of Europe, following her visit to Azerbaijan from 8 to 12 July 2019, read as follows:

> "The Commissioner notes that most of the lawyers recently disbarred or who had their licenses suspended are those working on cases considered to be politically sensitive, suggesting that disciplinary proceedings are used as a tool for punishing lawyers who take on sensitive cases. ... A number of the Commissioner's interlocutors have also expressed serious concern about threats of disbarment or suspension, used to discourage lawyers from taking on sensitive cases or from filing appeals in these cases."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

31. The applicant complained under Articles 10 and 11 of the Convention that his rights to freedom of expression and to freedom of association had been infringed in that he had been disbarred on account of statements he had made about the alleged ill-treatment of his client in prison. Having regard to the circumstances of the case, the Court considers that the applicant's complaint does not raise a separate issue under Article 11 of the Convention (see *Hajibeyli and Aliyev v. Azerbaijan*, nos. 6477/08 and 10414/08, § 42, 19 April 2018) and falls to be examined solely under Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

32. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The applicant maintained that his disbarment had amounted to an infringement of his right to freedom of expression. He contested the Government's submissions, asserting that preventing the sharing of unsubstantiated information was not a legitimate aim provided for by Article 10 of the Convention and that the legitimate aim of maintaining the

authority and impartiality of the judiciary was irrelevant and had no bearing on the present case.

34. The applicant submitted that his disbarment could not be regarded as necessary in a democratic society or proportionate. In that connection, he pointed out the importance of lawyers' freedom of expression and noted that the statements had been made on a matter of public interest. Moreover, referring to the Government's unilateral declaration in respect of the case concerning the ill-treatment of A.H. in prison (see paragraph 27 above), he argued that there had been no justification for his disbarment, a sanction which had been devoid of sufficient reasons and grossly disproportionate.

35. The Government submitted that the interference had been prescribed by Article 22 of the Law and had pursued the legitimate aims of preventing the sharing of unsubstantiated information, which could be damaging to the reputation of penal institutions and breach the presumption of innocence of prison guards, and maintaining the authority and impartiality of the judiciary.

36. As regards the necessity of the interference in a democratic society, the Government submitted that the applicant had made the statements in question while the criminal proceedings had still been pending against A.H. before the Supreme Court. According to the Government, that could be regarded as an attempt to exert pressure on the independence of the judiciary. Relying on the Court's case-law, the Government also stressed the need to maintain public confidence in the judicial system and drew attention to the special status of lawyers in the administration of justice and the difference between them and journalists.

2. The Court's assessment

(a) Whether there was interference

37. The Court notes that it is clear from the documents in the case file, and undisputed by the parties, that the disciplinary proceedings and subsequent domestic court proceedings resulting in the applicant's disbarment were instituted on account of the statements that the applicant had made to the press about the alleged ill-treatment of his client in prison. Accordingly, the Court cannot but conclude that the applicant's disbarment amounted to an interference with the exercise of his right to freedom of expression, as guaranteed by Article 10 of the Convention (see *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, §§ 52 and 70, 25 June 2020).

(b) Whether the interference was justified

38. Such an interference will constitute a breach of Article 10 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2, and was "necessary in a democratic society" for the achievement of those aims (see *Hajibeyli and Aliyev*, cited above, § 54, and *Bagirov*, cited above, § 71).

(i) Prescribed by law

39. The Court observes that while the Government submitted that the interference had been prescribed by Article 22 of the Law, the applicant did not make any submissions in his observations in that regard. The Court notes that Article 22 of the Law, at the material time, provided that, if there were grounds for the expulsion of a lawyer from the ABA, the Presidium, on the basis of an opinion of the Disciplinary Commission, was able to apply to a court for a ruling on the matter and suspend the lawyer's activity until the court's decision on the issue took effect (see reference in paragraph 28 above). The Court therefore accepts that the sanction imposed on the applicant had a basis in domestic law and that the law was accessible (see *Bagirov*, cited above, § 73).

40. As regards the foreseeability of the relevant provisions of the Law, the Court, having regard to the parties' submissions, will proceed on the assumption that they were also foreseeable as to their application and that the interference with the applicant's right to freedom of expression was therefore "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

(ii) Legitimate aim

41. The Court observes that the parties disagreed as to the legitimate aim pursued by the interference (see paragraphs 33 and 35 above). In view of the content of the statements, the Court considers that the interference in question was aimed at protecting the reputation and rights of the prison officers against the applicant's statements and consequently pursued the legitimate aim of protecting the reputation or rights of others within the meaning of Article 10 § 2 of the Convention (compare *Nikula v. Finland*, no. 31611/96, §§ 37-38, ECHR 2002-II; *Steur v. the Netherlands*, no. 39657/98, § 31, ECHR 2003-XI; *Coutant v. France* (dec.), no. 17155/03, 24 January 2008; and *Shahanov and Palfreeman v. Bulgaria*, nos. 35365/12 and 69125/12, § 56, 21 July 2016).

(iii) Necessary in a democratic society

42. The Court refers to the general principles established in its case-law as set out in *Morice v. France* ([GC], no. 29369/10, §§ 124-39, ECHR 2015), which are equally pertinent to the present case.

43. The Court reiterates that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar. Regard being had to the key role of lawyers in this field, it is legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence therein (see *Nikula*, cited above, § 45; *Peruzzi v. Italy*, no. 39294/09, § 50, 30 June 2015; and *Rogalski v. Poland*, no. 5420/16, § 39, 23 March 2023).

44. In the present case the Court observes that the domestic courts ordered the applicant's disbarment on the grounds that after visiting his client in prison the applicant had made unsubstantiated statements to the press about the alleged ill-treatment of his client in prison and that in his capacity as a lawyer he should have used the relevant domestic remedies before making such statements (see paragraphs 21 and 23 above).

45. The Court notes at the outset that it cannot accept the Government's submissions that the applicant's statements could be regarded as an attempt to exert pressure on the independence of the judiciary, as those statements did not concern the conduct of the criminal proceedings against A.H. pending before the domestic courts, but the alleged ill-treatment of A.H. in prison. In that connection, the Court reiterates that the possibility of reporting alleged irregularities and making complaints against public officials takes on added importance in the case of persons under the control of the authorities, such as prisoners (see *Shahanov and Palfreeman*, cited above, § 64). Moreover, it was the duty of the applicant, in his capacity as a lawyer, to protect the interests of his client by using all the means provided for by the law, in accordance with Article 16 of the Law (see reference in paragraph 28 above).

46. The Court observes that the statements accusing the prison staff of A.H.'s ill-treatment were quite serious, even mentioning the names of some of the prison officers allegedly involved in A.H.'s ill-treatment (see paragraphs 13-14 above). The Court considers that those statements were not a general criticism of the functioning of the penal system or the conditions of detention in prison, but directly targeted the prison staff of Gobustan Prison, calling into question their professionalism and integrity. Nevertheless, the Court must ascertain whether the sanction imposed on the applicant by the domestic courts struck a fair balance between the need to protect the reputation or rights of others and the need to protect the applicant's right to freedom of expression (see *Igor Kabanov v. Russia*, no. 8921/05, § 54, 3 February 2011; *Bono v. France*, no. 29024/11, § 51, 15 December 2015; and *Bagirov*, cited above, § 79).

47. The Court considers that the domestic courts failed to consider a number of elements which should have been taken into account in the assessment of the applicant's statements. In particular, they did not give any consideration to the fact that the statements in question concerned the alleged ill-treatment of a prisoner in prison, which is without any doubt a matter of public interest. The Court reiterates that a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest (see *Morice*, cited above, § 125). Moreover, the courts did not take into consideration the fact that the prison staff allegedly defamed by the applicant had not pursued any legal action themselves.

48. The Court also notes that the statements in question could not be *a priori* considered to be baseless or devoid of any substance. Although the

applicant decided to make those statements to the press before using the relevant domestic remedies, the remarks in question had some factual basis, namely the statement of A.H. during his meeting with the applicant and the signs of ill-treatment that the applicant had seen on A.H.'s body. The Court also does not lose sight of the Government's unilateral declaration dated 23 February 2022 acknowledging a violation of A.H.'s rights guaranteed under the Convention (see paragraph 27 above).

49. The Court further notes that, in assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see *Mor v. France*, no. 28198/09, § 61, 15 December 2011; *Morice*, cited above, § 175; and *Bagirov*, cited above, § 83). However, in the present case the domestic courts failed to give any reasons for choosing the sanction of disbarment, which can only be regarded as a harsh sanction, capable of having a chilling effect on the performance by lawyers of their duties as defence counsel (see *Igor Kabanov*, cited above, §§ 55 and 57).

50. In the light of the foregoing, the Court considers that the reasons given by the domestic courts in support of the applicant's disbarment were not sufficient, and that the sanction imposed on him was disproportionate to the legitimate aim pursued.

51. There has accordingly been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

52. The applicant complained under Article 8 of the Convention that his disbarment had amounted to a breach of his right to respect for private life. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. Applicability

53. The Court observes at the outset that the Government did not raise any objection as regards the applicability of Article 8 to the present case. In that connection, it reiterates that the notion of "private life" within the meaning of Article 8 of the Convention is a broad term not susceptible to exhaustive definition. It can embrace multiple aspects of the person's physical and social identity. Article 8 protects in addition a right to personal development and the

right to form and develop relationships with other human beings and the outside world, including relationships of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 95-96, §§ 100-09, §§ 115-17, 25 September 2018). In the present case it is undisputed that the applicant's disbarment for professional misconduct prevented him from exercising his profession, and therefore affected a wide range of his professional and other relationships and encroached upon his professional and social reputation. The applicant's suspension and disbarment also caused him a considerable loss of earnings (see paragraph 82 below) and must have had serious negative effects on his private life. The Court thus considers that the impugned measures had very serious consequences for the applicant and affected his private life to a very significant degree (compare and contrast *Denisov*, cited above, §§ 123 and 125; *Namazov v. Azerbaijan*, no. 74354/13, § 34, 30 January 2020; and *Bagirov*, cited above, § 87). Article 8 therefore applies.

2. Exhaustion of domestic remedies

54. The Government argued that the applicant had failed to exhaust the available domestic remedies in respect of this complaint, as he had not mentioned this Convention provision in his complaints to the domestic courts.

55. The applicant submitted that he had raised this complaint, among other complaints, in all of his submissions and appeals lodged with the domestic courts, including, *inter alia*, his appeal of 15 March 2019 to the Ganja Court of Appeal, and his cassation appeal of 19 June 2019 (with an addendum of 19 July 2019).

56. Having had regard to the documents available in the case file, the Court notes that, in addition to the complaint concerning the violation of his right to freedom of expression and other complaints, the applicant also expressly complained of the alleged violation of his rights guaranteed by Article 8 of the Convention in his domestic appeals (see paragraphs 22 and 24 above). Accordingly, the Court dismisses the Government's objection.

3. Conclusion as to admissibility

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

58. The applicant maintained that his disbarment had amounted to an interference with his right to respect for his private life. Similarly to his submissions in respect of Article 10 of the Convention, the applicant argued that the above-mentioned interference had not been justified because it had not been in accordance with the law, did not pursue a legitimate aim and could not be considered as necessary in a democratic society and proportionate.

59. The Government agreed that the applicant's disbarment had constituted an interference with his right to respect for his private life. They made submissions similar to those made in respect of Article 10 of the Convention, noting that the interference had been prescribed by law, had pursued the legitimate aim of prevention of disorder or crime, and had been necessary in a democratic society and proportionate to the aim pursued.

2. The Court's assessment

60. The Court notes that it is undisputed by the parties that the applicant's disbarment amounted to an interference with his right to respect for his private life, as guaranteed by Article 8 of the Convention. The Court shares this view.

61. Such an interference will infringe Article 8 unless it satisfies the requirements of Article 8 § 2, that is to say, if it is in accordance with the law, pursues one of the aims set out in that paragraph and is necessary in a democratic society.

62. The Court refers to its findings in paragraphs 39-40 above and will therefore similarly proceed on the assumption that the interference in question may be regarded as in accordance with the law, within the meaning of Article 8 § 2 of the Convention.

63. The Court accepts that the interference had pursued the legitimate aim of "the prevention of disorder" within the meaning of Article 8 § 2 of the Convention, since it concerns the regulation of the legal profession which participates in the good administration of justice (see *Bigaeva v. Greece*, no. 26713/05, § 31, 28 May 2009; *Namazov*, cited above, § 44; and *Bagirov*, cited above, § 97).

64. Such an interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 124, ECHR 2014 (extracts), and *Bagirov*, cited above, § 98).

65. The Court has already highlighted in paragraph 43 above the specific status and role of lawyers and their central position in the administration of justice.

66. Turning to the circumstances of the present case, the Court notes that its findings in the context of the examination of the applicant's complaint under Article 10 of the Convention, arising from the same facts, that the reasons given by the domestic courts in support of the applicant's disbarment were not relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued (see paragraphs 47-50 above) are equally relevant for the purposes of the examination of his complaint under Article 8 of the Convention.

67. In particular, in the judicial proceedings relating to the applicant's disbarment the domestic courts failed to sufficiently assess the proportionality of the interference, keeping in mind that the disbarment sanction constituted the harshest disciplinary sanction in the legal profession, having irreversible consequences on the professional life of a lawyer. The Court considers it necessary to draw attention to Recommendation R (2000) 21 of the Council of Europe's Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, which clearly states that the principle of proportionality should be respected in determining sanctions for disciplinary offences committed by lawyers (see *Bagirov*, cited above, §§ 39 and 101). The Special Rapporteur of the Human Rights Council on the independence of judges and lawyers also stated in the annual report (A/71/348) to the UN General Assembly that disbarment "constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards" and "should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer" (ibid., §§ 41 and 101). The domestic courts did not explain why the applicant's misconduct was so serious that it justified the harshest disciplinary sanction.

68. In view of the above considerations, the Court concludes that the reasons given by the domestic courts in support of the applicant's disbarment were not relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued.

69. In this respect, the Court also points out that in a series of cases it has noted a pattern of arbitrary arrest, detention or other measures taken in respect of government critics, civil society activists, journalists and human rights defenders (see, *inter alia*, *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 223, 20 September 2018; *Rashad Hasanov and Others v. Azerbaijan*, nos. 48653/13 and 3 others, §§ 122-25, 7 June 2018; *Natig Jafarov v. Azerbaijan*, no. 64581/16, § 64, 7 November 2019; *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, §§ 153-57, 13 February 2020; *Khadija Ismayilova v. Azerbaijan (no. 2)*, no. 30778/15,

§§ 113-19, 27 February 2020; and *Ayyubzade v. Azerbaijan*, no. 6180/15, §§ 48-49, 2 March 2023). Against this background, the Court underlines that, notwithstanding the duties, in particular, with respect to their conduct, with which all lawyers must comply, the alleged need in a democratic society for a sanction of disbarment of a lawyer in circumstances such as this would need to be supported by particularly weighty reasons.

70. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 8 AND 10 OF THE CONVENTION

71. On the basis of the same facts and relying on Article 18 of the Convention in conjunction with Articles 8 and 10 of the Convention, the applicant complained that his Convention rights had been restricted for purposes other than those prescribed in the Convention. Article 18 provides:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

72. Having regard to the conclusions reached above under Articles 10 and 8 of the Convention (see paragraphs 51 and 70 above), the findings regarding the general context surrounding the case (see, in particular, paragraphs 67-69 above), and given the elements available in the case file and the arguments relied on by both parties, the Court considers that there is no need to give a separate ruling on the admissibility and merits of the present complaint (compare *Haziyev v. Azerbaijan*, no. 19842/15, § 44, 6 December 2018; *Bagirov*, cited above, § 106; *Atilla Taş v. Turkey*, no. 72/17, § 196, 19 January 2021; and *Ayyubzade v. Azerbaijan*, no. 6180/15, § 60, 2 March 2023).

IV. OTHER ALLEGED VIOLATION OF THE CONVENTION

73. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant complained that there had been an unjustified interference with his right to peaceful enjoyment of his possessions as a result of his disbarment.

74. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case, and that there is no need to examine the admissibility and merits of this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; *Emin Huseynov v. Azerbaijan (no. 2)*, no. 1/16, § 68, 13 July 2023; and *Afgan Mammadov v. Azerbaijan*, no. 43327/14, § 88, 14 November 2024).

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

75. Article 46 of the Convention, in so far as relevant, reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

76. The applicant argued that the most appropriate form of individual redress would be the restoration of his membership of the ABA.

77. The Government did not make any submissions in that respect.

78. The Court reiterates that a judgment in which it finds a violation of the Convention or the Protocols thereto imposes on the respondent State a legal obligation to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects. The respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention provided that such means are compatible with the "conclusions and spirit" set out in the Court's judgment (see *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, § 195, 29 May 2019). In the present case, given the variety of means available to achieve *restitutio in integrum* and the nature of the issues involved, the Committee of Ministers is better placed than the Court to assess the specific measures to be taken.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

80. The applicant claimed 14,355 Azerbaijani manats (approximately 8,500 euros (EUR) at the material time) in respect of pecuniary damage for his loss of earnings following his disbarment, relying on the amount earned in contracts entered into with his clients between 2015 and 2017, and submitted a document in that connection. The applicant also claimed EUR 30,000 in respect of non-pecuniary damage.

81. The Government asked the Court to reject the applicant's claim in respect of pecuniary damage, submitting that the applicant could not claim any amount under that head, as it could not be estimated how many clients he

would have had, or how much money he could have earned. Moreover, despite the disbarment the applicant had continued his activity and provided legal services to various groups of clients. As regards the amounts claimed by the applicant in respect of non-pecuniary damage, the Government submitted that they were unsubstantiated and excessive. The Government contended that a finding of a violation would constitute sufficient just satisfaction.

82. As to the part of the claim concerning the loss of earnings, the Court notes that there is a causal link between the damage claimed and the violation found; the applicant submitted a document in support of his claim. At the same time, it would be speculative to calculate the exact amount of the pecuniary damage. The Court also considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making an assessment on an equitable basis and in the light of all the information in its possession, the Court considers it reasonable to award the applicant an aggregate sum of EUR 10,000, covering all heads of damage, plus any tax that may be chargeable on that amount (see *Bagirov*, cited above, § 116, and *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 121, 14 October 2021).

B. Costs and expenses

83. The applicant claimed, in total, EUR 17,786 for legal services incurred in the proceedings before the domestic courts and the Court, as well as for translation, postage, travel and clerical expenses. In support of that claim, he submitted various documents, invoices and two contracts with his representatives.

84. The Government contested the applicant's claims, submitting that the amounts claimed by the applicant were unrealistic and extremely excessive given the volume of the case file and the amount of work done by the applicant's representatives.

85. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the amount of work done by the applicant's representatives, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints under Articles 8 and 10 of the Convention admissible;

2. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

3. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

4. *Holds*, by five votes to two, that there is no need to examine the admissibility and merits of the remaining complaints;

5. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, by five votes to two, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Ioannis Ktistakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Ktistakis and Pavli is annexed to this judgment.

JOINT PARTLY DISSENTING OPINION OF JUDGES KTISTAKIS AND PAVLI

1. We have voted in support of the majority's finding that Articles 8 and 10 of the Convention have been violated in the present case. However, we take a different view from the majority as to whether the interference with the applicant's rights under those Convention provisions pursued legitimate aims. For similar reasons, we have voted against the majority's finding that there is no need to examine the applicant's claims under Article 18 of the Convention (see operative provision no. 4 and paragraph 72 of the judgment). We consider, in fact, that there has also been a violation of Article 18 in the present case. These two aspects of the case are clearly interrelated.

I. DISBARMENT DID NOT PURSUE ANY LEGITIMATE AIMS UNDER ARTICLES 8 AND 10

2. The majority have concluded that the applicant's disbarment pursued the legitimate aim of "protecting the reputation and rights of the prison officers" who had been named by the applicant as responsible for his client's mistreatment, for purposes of Article 10; and the aim of "prevention of disorder", within the meaning of Article 8 (see paragraphs 41 and 63 of the judgment, respectively).

3. The premise of the disbarment proceedings launched by the national Bar Association was that the applicant had committed grave ethical breaches, as a member of the Bar, by making the statements in question. This is a premise that we do not share; nor, what is more, does the judgment reach such a conclusion. Firstly, it states that reporting on possible serious ill-treatment of prisoners is entitled to "added importance" under Article 10 (see paragraph 45 of the judgment). Secondly, as a lawyer, the applicant had a duty to protect his client by using all lawful means (ibid.)[1]. Thirdly, there is no indication that the named prison staff pursued any legal action on their own behalf (see paragraph 47 of the judgment).

4. The majority go on to make certain findings that appear to be somewhat critical of the applicant's conduct; namely, that the applicant's statements

[1] See also Article 7 (Freedom of Expression) of the recently adopted Council of Europe Convention for the Protection of the Profession of Lawyer (opened for signature on 13 May 2025, not yet in force, CETS 226). The Explanatory Report to that Convention states: "Paragraph 1 [of Article 7] is concerned with the ability of lawyers to inform the public about matters relating to the cases of their clients, together with them being able to make critical comments based upon that information. The possibility of doing so is important because discussing such cases is not only important for protecting the rights of individual clients but also because their situation and treatment may raise matters of wider concern, such as … shortcomings or abuses in the way the justice system is functioning and problems in fulfilling constitutional and international obligations relating to human rights and fundamental freedoms." Available at https://rm.coe.int/1680b4c6c0.

were "quite serious" and directly targeted the professionalism and integrity of the named prison guards (see paragraph 46 of the judgment). However, making strong allegations is not *per se* unethical or contrary to Article 10. It depends, among other things, on the strength of the evidence the speaker possesses and on his or her diligence in reaching those conclusions.

5. The ability to name (suspected) abusers has historically been an important measure of accountability, sometimes years or even decades after the fact. Furthermore, owing to the risk of ongoing ill-treatment of his client, who was no longer under the protection of the trial court, the applicant may have justifiably felt that he had to go public in order to prevent further abuse. Such a cause for concern is reinforced by the fact that this was not the first time that the applicant's client had been subjected to serious ill-treatment in detention, as later confirmed by this Court (see paragraph 8 of the judgment). In any event, the named individuals had the option of pursuing private remedies against the applicant had they felt defamed.

6. In fact, they did not do that. In December 2017 the applicant's client filed a complaint with the Court about the same incident of alleged ill-treatment that was the subject of the present case (see paragraph 26 of the judgment). In February 2022 the respondent Government offered a unilateral declaration in which they "acknowledged that there had been a violation of A.H.'s rights" under the Convention (see paragraph 27 of the judgment). While we have no confirmation that anyone has ever been held accountable at national level for those violations, there is nothing in the record before us to suggest that the applicant's statements at the time were reckless, malicious or otherwise such as to amount to a serious breach of professional ethics.

7. In view of the above, we are unable to agree that the proceedings seeking the applicant's disbarment – the most serious professional sanction that can be imposed on a Bar member and which is typically reserved only for the gravest ethical breaches – pursued any legitimate aims for the purposes of Articles 8 and 10 of the Convention. In fact, it is our view that the applicant has convincingly shown that the proceedings were motivated solely by "ulterior motives".

II. PURSUIT OF DISBARMENT WAS IN VIOLATION OF ARTICLE 18

8. The majority have opted to take no position on the Article 18 claim, finding instead that "there is no need to give a separate ruling" on the matter (see paragraph 72 of the judgment). We consider this unwarranted as a matter of case-law and misguided as a matter of judicial policy: we have no doubt that, for the reasons indicated below, the Article 18 claim is a fundamental aspect of the case that deserved thorough consideration.

9. There are three principal grounds for our conclusion that there has been a violation of Article 18 in the present case. Firstly, having considered that the disbarment did not serve any legitimate purposes under Articles 8 and 10

of the Convention, we are of the view that the assumption that the authorities had acted in good faith is consequently undermined. For the same reason, we do not need to consider whether a plurality of purposes have been pursued and/or which of them was the predominant one.

10. This first factor is reinforced, secondly, by the extreme and grossly disproportionate nature of the sanction, for which no adequate justification has been provided, as well as the overall conduct of the disciplinary proceedings. It is the blatant irrationality of the outcome that tends to betray the disguised motive. Thirdly, the applicant's case fits with a broader *pattern* of the use of disbarment by the national authorities as a method of punishing lawyers disfavoured by them or by the Bar's management – especially lawyers willing to take up human rights cases – and of teaching a lesson to the rest of the profession. Taken together, and seen in the light of the circumstances of the case as a whole, these elements are sufficient in our view to establish a violation of Article 18.

11. Regarding the second aspect, the proceedings against the applicant were initiated at the request of the Prison Service, made within 24 hours of his public statements. The repeated ill-treatment of the applicant's client in detention speaks to the animosity of the authorities towards him and, by implication, his counsel. The ABA's Disciplinary Commission referred the complaint to its Presidium, after making two key findings: (i) the applicant had made unsubstantiated statements to the press and (ii) he had done so without waiting for the outcome of his complaints against the Prison Service (see paragraph 18 of the judgment). With regard to the first point, we are at a loss to understand on what basis the Disciplinary Commission found the applicant's factual claims to be "unsubstantiated", given that the applicant had directly witnessed the signs of ill-treatment on his client, there had not been any official investigation into the matter and no defamation proceedings had been brought by the prison guards. As to the second point, the applicant was apparently expected to keep silent about serious torture allegations while waiting for the results of an official investigation – which, to our understanding, has not led to any accountability to date – even though the Commission itself rushed to conclusions without waiting for any such results.

12. The rulings of the national courts followed a similarly flawed logic. They relied, in particular, on this Court's judgment in *Schöpfer v. Switzerland* (20 May 1998, *Reports of Judgments and Decisions* 1998-III), which involved a criminal lawyer who was fined 500 francs for disparaging the cantonal judiciary, while the criminal proceedings against his client were still pending, by making prejudicial statements that were partly untrue. It is difficult for us to comprehend how this precedent can support the ultimate sanction that was imposed on Mr Imanov, who protested against a much more serious matter that had no bearing whatsoever on an already concluded criminal trial. The domestic courts made no effort even to begin to justify the extreme nature of the sanction.

13. Lastly, the present case fits within a pattern involving at least six other cases of disbarment[2] or refusal to admit[3] lawyers by the Azerbaijani Bar Association in which the Court has found violations of one or more Convention provisions in recent years. While no violation of Article 18 was found in any of these prior cases[4], the Court noted that the sanctions typically followed criticism expressed by the applicants regarding the administration of justice, the state of the legal profession or State authorities; criticism of the human rights record of law-enforcement authorities seemed to trigger especially prompt proceedings and extreme sanctions (see *Bagirov*, cited in footnote 2 above). In *Namazov* (cited in footnote 2 above) the Court found that the Bar authorities had also held against the applicant his membership of an opposition party and his frequent media appearances. Mr Bagirov, for his part, was accused of inciting public protests against detainee ill-treatment and of contributing to negative media coverage of the police.

14. In view of this recent case-law, it becomes difficult to ignore the clear pattern of misuse of disciplinary powers by the ABA as a means of suppressing dissent within the profession (whether or not some other pretext was available to justify the toughest sanctions). The present case is the clearest example yet of this trend.

15. This Court's own findings have been further corroborated by the conclusions of multiple credible international authorities, some of which are quoted in the judgment itself (though one wonders to what effect). Thus, the UN Special Rapporteur on the Situation of Human Rights Defenders, in a 2017 report published only months before the relevant incidents, concluded that "disbarments of human rights lawyers ... are part of the broader intimidation facing human rights defenders in the country" (see paragraph 29 of the judgment). Two years later the Council of Europe's Commissioner for Human Rights published similar findings, highlighting the general chilling effects that the calculated use of threats of, or actual, disbarment were having on the legal profession (see paragraph 30 of the judgment).

16. This ought to be considered in the context of a broader pattern of targeting "government critics, civil society activists, journalists and human rights defenders" over a similar period (see paragraph 69 of the judgment). Finally, disbarments or suspensions are not the only means of putting pressure on lawyers; another leading case involved, for example, the attachment of

[2] See *Namazov v. Azerbaijan*, no. 74354/13, 30 January 2020; *Aslan Ismayilov v. Azerbaijan*, no. 18498/15, 12 March 2020; *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, 25 June 2020; and *Afgan Mammadov v. Azerbaijan*, no. 43327/14, 14 November 2024.

[3] See *Hajibeyli and Aliyev v. Azerbaijan*, nos. 6477/08 and 10414/08, 19 April 2018, and *Farhad Mehdiyev v. Azerbaijan*, no. 36057/18, 18 March 2025.

[4] In some of the cases, there had also been verbal altercations with judges during court proceedings.

monies sent to one of the applicants, a practising lawyer, as legal aid by the Council of Europe and the blocking of his bank accounts[5].

17. Lastly, as regards the relevant evidentiary standards[6], the Court has never held that "smoking gun" evidence, in the form of some unequivocal admission of improper motive by government sources, is required for finding a violation of Article 18. On the contrary, the case-law establishes that we do not need "a particularly inculpatory piece of evidence which clearly reveals an actual reason (for example, a written document ...) or a specific isolated incident" (see *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 158, 17 March 2016). The Court has found violations of Article 18 based on the "totality of the circumstances" of a case, such as the status of the applicant, the nature of the restrictions on his or her rights, the arbitrary manner in which they were implemented, any statements made by public officials, the general regulatory or practical context and the potential chilling effects of the measures on society at large (see, among other authorities, *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, §§ 206-15, 20 September 2018). For similar reasons, and on the basis of all the considerations outlined above, we must conclude that there has been a violation of Article 18 of the Convention in the present case.

18. It is worth recalling in conclusion that, in establishing the Court, the founders of the Convention system hoped that the institution would, first and foremost, help protect a democratic way of life in the continent. At the same time, Article 18 of the Convention was added as an innovative provision designed to safeguard against some of the most blatant anti-democratic tendencies among the States Parties. It does no justice to that weighty mandate when the Court chooses not to engage with meritorious Article 18 claims in circumstances such as those of the present case.

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[5] *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan* (nos. 74288/14 and 64568/16, §§ 107-08, 14 October 2021).

[6] These are summarised in *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 311-17, 28 November 2017), including by noting that there is "no reason for the Court to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations" (ibid., § 316).