



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

FIRST SECTION

CASE OF PIRALI ORUJOV v. AZERBAIJAN

(Application no. 8460/07)

JUDGMENT

STRASBOURG

3 February 2011

FINAL

03/05/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Piralı Orujov v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinvernı,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 8460/07) 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 Piralı Maharram oğlu Orujov (*Pirəli Məhərrəm oğlu Orucov* – “the applicant”), on 29 January 2007.

2. The applicant was represented by Mr I. Ashurov, a lawyer practising in Baku. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that his right to a fair trial had been breached as a result of the Supreme Court's failure to send him a summons to attend the hearing of his cassation appeal. He further alleged that his right to the presumption of innocence under Article 6 § 2 of the Convention had not been respected by the domestic authorities.

4. On 29 June 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Baku.

6. The applicant was a lawyer and a member of the opposition Musavat Party.

A. The applicant's arrest and the application of the preventive measure of remand in custody

7. On 11 June 2005 the applicant was arrested by agents of the Ministry of National Security ("the MNS") on suspicion of attempted deliberate destruction of property. The applicant was charged with the criminal offence of attempted deliberate destruction of property as set out Articles 29 and 186 of the Criminal Code.

8. On 13 June 2005, a judge of the Nasimi District Court, relying on the official charges brought against the applicant and the prosecutor's request to apply the preventive measure of remand in custody, ordered the applicant's detention for a period of two months.

9. The applicant appealed against the Nasimi District Court's decision of 13 June 2005, complaining of a lack of evidence or justification to support the application of the preventive measure of remand in custody. On 22 June 2005 the Court of Appeal dismissed his appeal noting that the lower court's decision was justified.

10. The applicant's detention was subsequently extended twice by the Nasimi District Court, by its decisions of 6 August and 3 October 2005. Both decisions were upheld by the Court of Appeal following the applicant's appeals.

B. Joint statement by law-enforcement authorities concerning the criminal proceedings against the applicant and the domestic proceedings relating to this joint statement

11. On 14 June 2005 the official newspaper *Azərbaycan* published a joint statement headlined as "Special Information of the Prosecutor General's Office and the Ministry of National Security of the Republic of Azerbaijan". This joint statement officially informed the public of the institution of criminal proceedings against a group of persons, including the applicant, in connection with the attempted destruction of property. It was noted in the joint statement that the applicant and other persons had intended to blow up the private cars of a judge of the Court of Appeal and the chairman of ATV, a private television channel.

12. The joint statement of 14 June 2005 stated, *inter alia*:

"A.N. confirmed that preparations were being made to carry out an explosion and stated that the people behind this act were Orujov Piralı Maharram oğlu, who was born in 1958 and resides in Baku, a person close to the Musavat Party who had worked in different positions in the internal affairs and military prosecutor authorities

of the Republic of Azerbaijan and has been a retired lieutenant colonel since 1994, and G.R., who was born in 1958 and works in Moscow as a businessman.

It has been found that Piralı Orujov introduced A.N., known in the circle of the people close to the opposition by the nickname of “Saboteur” because of his radicalism, to R.G. in order to discuss the details of the plan to carry out this act and that they thus entered into criminal complicity. They promised A.N. a large amount of money for carrying out the explosion and decided not to communicate with each other by telephone and to discuss any details only in their private meetings.

The persons mentioned above intended first to blow up the car of the Court of Appeal's judge B.S. and a few days later the car of the president of the independent television company ATV ...”

13. On 20 June 2005 the applicant wrote to the Prosecutor General and the Ombudsman complaining, *inter alia*, of a violation of his right to the presumption of innocence caused by the joint statement of the law-enforcement authorities of 14 June 2005. On 27 June 2005 the applicant again wrote to the Prosecutor General reiterating his complaint.

14. On an unspecified date in July 2005 the applicant brought an action claiming a violation of his right to the presumption of innocence relying on Article 449 of the Code of Criminal Procedure (“the CCrP”) concerning appeals against the prosecuting authorities' actions and decisions.

15. On 26 July 2005 the Sabayıl District Court dismissed the applicant's claim. The court held, *inter alia*, that the joint statement of the Prosecutor General's Office and the MNS could not be considered as a type of procedural act or decision that could be challenged under Article 449 of the CCrP.

16. On 12 August 2005 the applicant appealed against this decision reiterating his complaints. It appears from the documents in the case file that the applicant's appeal was received by a court clerk on the same day. The applicant has not received any reply to his appeal.

C. The applicant's trial and conviction

17. On 3 March 2006 the Yasamal District Court delivered a judgment finding the applicant guilty under Articles 29 (attempting to commit a crime) and 186 (deliberate destruction of or damage to property) of the Criminal Code and sentenced him to four years' imprisonment. The court noted that the applicant's guilt had been proved by the testimony of another accused person and the facts of the case. The applicant appealed against this judgment, claiming his innocence. He argued that he had been convicted on the basis of the statements of one person only and that his guilt had not been established by any other evidence.

18. On 26 May 2006 the Court of Appeal dismissed the applicant's appeal noting that his guilt had been proved by the facts of the case and that the relevant law had been applied correctly by the first-instance court.

19. By a decision of 19 September 2006 the Supreme Court upheld the Court of Appeal's judgment, noting that the proceedings before the lower courts had been in accordance with the relevant law. It appears from the Supreme Court's decision that both the applicant and his lawyer were absent from the hearing, but the prosecutor was present and made oral submissions. The Supreme Court's decision stated that, despite the fact that the applicant's lawyer had been informed of the date and place of the cassation hearing, he had failed to appear. The decision was silent as to the absence of the applicant from this hearing.

20. According to the Government, on 28 August 2006 the Supreme Court informed the applicant that the cassation appeal hearing concerning his case would be held on 19 September 2006. According to the applicant, he did not receive any such summons.

21. The applicant was released from prison by a presidential pardon in December 2007.

II. RELEVANT DOMESTIC LAW

22. The relevant provisions of domestic law concerning proceedings in the Supreme Court are described in detail in the Court's judgments in *Maksimov v. Azerbaijan* (no. 38228/05, §§ 22-24, 8 October 2009) and *Abbasov v. Azerbaijan* (no. 24271/05, §§ 19-21, 17 January 2008).

23. Under Article 21.1 of the Code of Criminal Procedure ("the CCrP"), any person suspected of having committed an offence shall be considered innocent if his guilt is not proven in accordance with this Code and there is no final court judgment to that effect.

24. Chapter LII of the CCrP lays down the procedure by which parties to criminal proceedings could challenge acts or decisions of the prosecuting authorities before a court. Article 449 provides that the accused (or the suspected) person or his counsel can challenge acts or decisions of the prosecuting authorities concerning, *inter alia*, his or her arrest or detention, refusal to institute criminal proceedings or discontinue criminal proceedings, violation of an arrested person's rights, torture or ill-treatment of a detained person, and so on. The judge examining the lawfulness of the prosecuting authorities' actions or decisions can quash them if he or she finds them to be unlawful (Article 451). The decision of the judge on the lawfulness of the prosecuting authorities' actions or decisions can be disputed before an appellate court in accordance with the procedure established in Articles 452-453 of the CCrP. A chamber of an appellate court composed of three judges examines this kind of appeal within three days of its receipt (Article 453).

25. Under Article 455 of the CCrP, the finding of a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights is a ground

for reopening the proceedings. Pursuant to Article 456, in this case, the Plenum of the Supreme Court examines the case exclusively on points of law. After the examination of the case, the Plenum of the Supreme Court may decide to quash the lower courts' rulings and remit the case to the relevant lower court, or to vary the decision of the courts of cassation or other courts, or to quash the decision of the courts of cassation or other courts and deliver a new decision (Article 459 of the CCrP).

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

26. By a letter dated 19 January 2010 the Government informed the Court of their unilateral declaration with a view to resolving the issues raised by the application in question.

27. The declaration read as follows:

“The Government wishes to express – by way of a unilateral declaration – its acknowledgement that, in the present case, proceedings before the Supreme Court did not comply with the requirement of fairness.

Consequently, the Government is prepared to pay the applicant in compensation a total sum of AZN 1,000 (one thousand manats). In the Government's view, the aforementioned total sum would constitute adequate redress and sufficient compensation for the impugned proceedings, and thus constitute an acceptable sum as to quantum in the present case.

The total sum will be payable within three months from the date of notification of the decision pursuant to Article 37 § 1 (c) of the Convention. In the event of a failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

In the light of above, the Government would suggest that the circumstances of the present case allow the Court to reach the conclusion that there exists “any other reason”, as referred to in Article 37 § 1 (c) of the Convention, justifying to discontinue the examination of the application, and that, moreover, there are no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the further examination of the case by virtue of that provision. Accordingly, the Government invites the Court to strike the application out of its list of cases.”

28. In a letter of 4 March 2010 the applicant disagreed with the Government's unilateral declaration noting that the Government had not acknowledged the violation of Article 6 § 2 of the Convention. He also

argued that the amount of compensation provided in the Government's unilateral declaration was too low.

29. The Court reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 74-77, ECHR 2003-VI; *Swedish Transport Workers Union v. Sweden* (striking out), no. 53507/99, §§ 24-27, 18 July 2006; and *Van Houten v. the Netherlands* (striking out), no. 25149/03, §§ 34-37, ECHR 2005-IX).

30. The Court notes that the Government acknowledged in their unilateral declaration that the proceedings in the Supreme Court had not complied with the requirement of fairness and proposed to award the applicant 1,000 new Azerbaijani manats (AZN). However, the Court observes that the Government did not undertake to reopen the domestic proceedings and ensure that the reopened proceedings met all the requirements of fairness set out in Article 6 of the Convention (contrast, *Seydiyev v. Azerbaijan* (dec.), no. 13648/06, 20 May 2010). In this regard, the Court notes that the nature of the alleged violation in the present case is such that it would not be possible to eliminate the effects of the infringement of the applicant's right to a fair trial without reopening the domestic proceedings. Moreover, the Court observes that the domestic law allows the reopening of criminal proceedings in the event of a finding of a violation of the Convention by the Court. However, it appears that there is no provision allowing the reopening of domestic proceedings on account of a decision by the Court to strike a case out of the list (see paragraph 25 above).

31. Having regard to the content of the Government's unilateral declaration, the Court finds that the Government have failed to establish a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (compare *Hakimi v. Belgium*, no. 665/08, § 29, 29 June 2010, and *Kessler v. Switzerland*, no. 10577/04, § 24, 26 July 2007).

32. Therefore, the Court refuses the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

33. The applicant complained under Article 6 § 1 of the Convention that he had not been informed of the hearing of his cassation appeal on 19 September 2006 before the Supreme Court and that he had therefore not been able to be present at that hearing. The relevant part of Article 6 § 1 of the Convention reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

34. The Government argued that the applicant had failed to exhaust domestic remedies. In particular, the Government alleged that the applicant could have challenged the Supreme Court's decision of 19 September 2006 before the Plenum of the Supreme Court.

35. The applicant disagreed with the Government and maintained his complaint.

36. The Court reiterates that it has previously found that the additional cassation procedure in the Plenum of the Supreme Court did not constitute a remedy which applicants were normally required to use within the meaning of Article 35 § 1 of the Convention (see *Babayev v. Azerbaijan* (dec.), no. 36454/03, 27 May 2004). Therefore, the Government's objection should be dismissed.

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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

38. The Government submitted that the applicant had been duly informed of the date and place of the Supreme Court's hearing of 19 September 2006. They produced a copy of the summons for the hearing before the Supreme Court signed by a judge of the Supreme Court, addressed to the applicant and his lawyer and dated 28 August 2006. The summons stated that the hearing would be held at 10 a.m. on 19 September 2006.

39. The applicant maintained that he and his lawyer had not received the summons.

2. *The Court's assessment*

40. The Court notes that it was undisputed by the parties that on 19 September 2006 the Supreme Court heard the applicant's cassation appeal in his absence. The parties, however, were in dispute about whether the applicant had been duly informed of that hearing in advance.

41. Although the Government produced a copy of the summons issued on 28 August 2006, the Court notes that this summons was not postmarked and that the Government put forward no other evidence that it had actually been sent to the applicant or his lawyer or otherwise delivered to them. In these circumstances, the Court is not persuaded by the evidence submitted by the Government in support of their contention that the applicant had been duly summoned to the hearing or that the summons had otherwise been delivered to him (compare with *Maksimov*, cited above, § 37; *Abbasov*, cited above, § 29; and *Metelitsa v. Russia*, no. 33132/02, § 33, 22 June 2006).

42. The Court reiterates that the concept of a fair trial includes the principle of equality of arms and the fundamental right that criminal proceedings should be adversarial. This means that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence presented by the other party (see *Brandstetter v. Austria*, 28 August 1991, §§ 66-67, Series A no. 211).

43. Moreover, Article 6 of the Convention, taken as a whole, guarantees that a person charged with a criminal offence should, as a general principle, be entitled to be present and participate effectively in the hearing concerning the determination of the criminal charges against him. This right is implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of paragraph 3 of Article 6 (see *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89, and *Stanford v. the United Kingdom*, 23 February 1994, § 26, Series A no. 282-A). It is difficult to see in the present case how the applicant could have exercised these rights without having prior notice of the hearing.

44. Furthermore, the Court notes that a public prosecutor was present at the cassation appeal hearing and made oral submissions to the court. These submissions were directed at having the applicant's appeal dismissed and his conviction upheld. In such circumstances and having regard to the fact that the applicant was not legally represented, it was incumbent on the Supreme Court to take measures aimed at ensuring the applicant's presence in order to maintain the adversarial character of the proceedings. However, there is no indication that the Supreme Court, while deciding to proceed with the hearing in the applicant's absence, checked whether the summons had indeed been served on the applicant. The decision of the Supreme Court was silent on the issue of the applicant's absence from the hearing.

45. The Court further observes that in certain cases it has found that the presence in person of the accused at a hearing of an appeal where only points of law were considered was not crucial (see, for example, *Kremzow v. Austria*, 21 September 1993, Series A no. 268-B, and *Kamasinski v. Austria*, 19 December 1989, Series A no. 168). The Court considers, however, that the present case is distinguishable from the cases of *Kremzow* and *Kamasinski*, where the accused persons were represented by lawyers and in principle each had the opportunity to present his defence. In the present case, more fundamentally, the applicant was unable to do this because he had had no prior notice of the hearing (compare with *Ziliberberg v. Moldova*, no. 61821/00, § 41, 1 February 2005; *Maksimov*, cited above, § 41; and *Abbasov*, cited above, § 33).

46. It follows that the proceedings before the Supreme Court did not comply with the requirement of fairness. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 5 of the Convention

47. The applicant complained that he had not been brought promptly before a judge within forty-eight hours of his arrest as required by the relevant domestic law, that he had not been informed promptly of the reasons for his arrest and that there had been no sufficient grounds for his pre-trial detention.

48. The Court reiterates that the date of the “final decision” for the purpose of Article 35 § 1 of the Convention in connection with a period of pre-trial detention is the date on which the charge is determined by a court at first instance, not the date on which a conviction becomes effective (see, among many other authorities, *Maltabar and Maltabar v. Russia* (dec.), no. 6954/02, 28 June 2007). In this case, the applicant was convicted at first instance on 3 March 2006 and, consequently, the six-month time-limit concerning this complaint started running on that date. Taking into consideration that the application was lodged with the Court on 29 January 2007, the Court notes that this complaint was lodged out of time and does not comply with the six-month rule.

49. Accordingly, this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Article 6 § 2 of the Convention

50. The applicant complained that the joint statement made by the Prosecutor General's Office and the MNS to the press dated 14 June 2005 amounted to an infringement of his right to the presumption of innocence.

51. The Government submitted that the applicant had not exhausted all available and effective domestic remedies in respect of the impugned joint statement of the law-enforcement authorities and, in any event, had not complied with the six-month rule. In this regard, the Government submitted that the applicant could have made use of the procedure concerning appeals against the actions or decisions of prosecution authorities set out in Articles 449-451 of the CCrP or lodge a criminal action for defamation. As to the domestic proceedings instituted by the applicant under Articles 449-451 of the CCrP, the Government argued that the applicant had failed to appeal to the Court of Appeal in the context of these proceedings and, even if there was an appeal and subsequently a relevant decision of the Court of Appeal in that respect, it would take place in 2005, well before the applicant lodged his application with the Court. For this reason, the complaint was incompatible with the six-month rule. The Government further submitted that the applicant could have complained of a violation of his presumption of innocence by bringing a separate court action for defamation under Article 147 of the Criminal Code.

52. The applicant contested the Government's objections and reiterated his complaints. In particular, he argued that he had exhausted domestic remedies by submitting his appeal to the Court of Appeal within the framework of proceedings instituted under Articles 449-451 of the CCrP; however, he had received no reply to his appeal.

53. The Court holds that it is not necessary to decide whether the applicant can be considered to have exhausted domestic remedies or whether there existed such special circumstances in the present case which would dispense the applicant from the obligation to pursue further remedies in domestic law. Even if there had been no effective remedies, this does not relieve him of the obligation to comply with the six-month rule (see, *mutatis mutandis*, *Aydın v. Turkey* (dec.), no. 71998/01, § 39, 4 March 2008).

54. The Court reiterates that the aim of the six-month time-limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continuously open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see, amongst other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

55. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. However, where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Nor can Article 35 § 1 be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Therefore, where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Paul and Aubrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001).

56. In the present case the Court observes that the event complained of by the applicant, namely the publication of the joint statement, took place on 14 June 2005 and the applicant petitioned the Prosecutor General on 20 and 27 June 2005. He further lodged an action that was dismissed by the Sabayil District Court on 26 July 2005. As to the applicant's appeal of 12 August 2005 against this decision, he has not received any reply.

57. Taking into account the fact that the remedy the applicant attempted to pursue was apparently ineffective, the Court is of the opinion that the applicant must have become aware of the remedy's ineffectiveness at some point in time. If, as the applicant alleged, he tried to avail himself of an apparently existing remedy and only subsequently became aware of circumstances which rendered the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period as the date when the applicant first became or ought to have become aware of those circumstances. In the instant case, the applicant lodged his appeal against the first-instance court's decision on 12 August 2005. However, he did not receive any reply to his appeal. Moreover, it appears that he did not make any further enquires with the Court of Appeal about the status of his appeal and whether or not it had been examined. In other words, it has not been shown that, following the lodging of the appeal, the applicant was diligent in pursuing his complaints before the appellate court. Taking into consideration the fact that the Court of Appeal should have examined this type of appeal within three days of its receipt (see paragraph 24 above), the Court considers that the applicant must be considered to have become aware of the lack of any effective examination of his appeal in the few months directly following the lodging of his appeal, in other words by the end of 2005 at the latest. However, he did not lodge the application with the Court until 29 January 2007, despite the fact that he had not received any reply to

his appeal since 12 August 2005 (compare *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, 29 January 2002, and *Bercaru v. Romania*, no. 8870/02, §§ 33-34, 16 September 2008). Therefore, the Court considers that the applicant ought to have become aware of this situation long before lodging this application with the Court on 29 January 2007. Furthermore, the applicant has failed to substantiate the existence of specific circumstances which might have prevented him from observing the time-limit laid down in Article 35 § 1 of the Convention.

58. It follows that this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Articles 3, 6, 13 and 14 of the Convention

59. The applicant complained that his conditions of detention at the MNS detention facility during his pre-trial detention amounted to ill-treatment. He complained that the domestic courts were not independent or impartial because they were dependent on the executive authority and that the criminal case against him had been fabricated. He also complained that the domestic remedies concerning his criminal conviction had been ineffective and that he had been discriminated against owing to his political opinions.

60. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

1. Pecuniary damage

62. The applicant claimed 11,700 euros (EUR) in respect of pecuniary damage, of which EUR 7,500 was for expenses borne by his family in order

to provide him with food packages while he was in prison and EUR 4,200 for loss of earnings.

63. The Government contested the claim noting that the applicant had failed to substantiate his allegations. In particular, the Government argued that the applicant had been provided with food in prison by the State and that the applicant had failed to submit any documents in support of his claims.

64. The Court points out that under Rule 60 of the Rules of the Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

65. In the present case, as to the applicant's claim for loss of earnings, even assuming that there is a causal link between the damage claimed and the violations found, the Court observes that the applicant did not submit any documentary evidence supporting this claim. In particular, he has not submitted any employment contract or other documents certifying his income.

66. As to the applicant's claim concerning expenses for food packages, the Court does not discern any causal link between the violations found and the pecuniary damage alleged.

67. For the above reasons, the Court rejects the applicant's claims in respect of pecuniary damage.

2. Non-pecuniary damage

68. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

69. The Government contested the amount claimed as unsubstantiated and excessive. They considered that, in any event, a finding of a violation would constitute sufficient just satisfaction.

70. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations and that compensation should thus be awarded. However, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,000 under this head, plus any tax that may be chargeable on this amount.

71. The Court reiterates that when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). As has been found above, the proceedings before the Supreme Court did not comply with the requirements of fairness, as the applicant was deprived of the opportunity to exercise any of his rights under

Article 6. In such circumstances, the most appropriate form of redress would, in principle, be the reopening of the cassation appeal proceedings in order to guarantee the examination of his appeal in accordance with the requirements of Article 6 of the Convention (see, *mutatis mutandis*, *Somogyi v. Italy*, no. 67972/01, § 86, ECHR 2004-IV; *Shulepov v. Russia*, no. 15435/03, § 46, 26 June 2008; *Maksimov*, cited above, § 46; and *Abbasov*, cited above, §§ 41-42). The Court notes in this connection that Articles 455 and 456 of the Code of Criminal Procedure of the Republic of Azerbaijan provide that criminal proceedings may be reopened by the Plenum of the Supreme Court if the Court finds a violation of the Convention.

B. Costs and expenses

72. The applicant claimed EUR 440 for the costs and expenses incurred before the domestic courts and EUR 550 for those incurred before the Court. In support of his claim, he submitted a contract for legal services rendered in the proceedings before the Court. According to this contract, the amounts due were to be paid in the event that the Court found a violation of the applicant's rights.

73. The Government considered that the claim was unsubstantiated and excessive. In particular, the Government submitted that the applicant had failed to produce documents concerning legal fees incurred in the domestic proceedings and that the costs and expenses related to the legal services before the Court had not actually been incurred, because the amount claimed had not been paid by the applicant.

74. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant submitted supporting documents only in respect of the claim for the costs and expenses incurred before the Court. The Court notes that, although the applicant has not yet actually paid the legal fees, he is bound to pay them pursuant to a contractual obligation. Accordingly, in so far as the lawyer is entitled to seek payment of his fees under the contract, those fees were "actually incurred" (see *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 109, 8 April 2010).

75. Regard being had to the above, the Court considers it reasonable to award the sum of EUR 550, plus any tax that may be chargeable to the applicant on that sum.

C. Default interest

76. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 concerning the applicant's absence from the hearing in the Supreme Court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 550 (five hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on those amounts, which are to be converted into new Azerbaijani manats at the rate applicable on the date of settlement;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President