



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

FIRST SECTION

CASE OF HUSEYN AND OTHERS v. AZERBAIJAN

(Applications nos. 35485/05, 45553/05, 35680/05 and 36085/05)

JUDGMENT

STRASBOURG

26 July 2011

FINAL

26/10/2011

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

In the case of Huseyn and Others v. Azerbaijan,

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

Nina Vajić, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

George Nicolaou,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 July 2011,

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

PROCEDURE

1. The case originated in four applications (nos. 35485/05, 45553/05, 35680/05 and 36085/05) against the Republic of Azerbaijan lodged in September 2005 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Azerbaijani nationals, Mr Panah Chodar oglu Huseyn (*Pənah Çodar oğlu Hüseyn* – “the first applicant”), Mr Rauf Arif oglu Abbasov (*Rauf Arif oğlu Abbasov* – “the second applicant”), Mr Arif Mustafa oglu Hajili (*Arif Mustafa oğlu Hacı* – “the third applicant”) and Mr Sardar Jalal oglu Mammadov (*Sərdar Cəlal oğlu Məmmədov* – “the fourth applicant”), together referred to as “the applicants”.

2. The first and fourth applicants were represented by Mr F. Agayev. The second applicant was represented by Mr R. Hajili. The third applicant was represented by Mr I. Aliyev. All representatives were lawyers practising in Azerbaijan. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged, in particular, that there had been numerous defects in the criminal proceedings against them, resulting in a violation of their right to a fair trial, and that their right to presumption of innocence had been infringed.

4. On 12 July 2007 (applications nos. 35485/05, 35680/05 and 36085/05) and 9 October 2007 (application no. 45553/05) the President of the First Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1957, 1966, 1962 and 1957 respectively and live in Baku.

6. The first applicant, Mr Panah Huseyn (also sometimes referred to as Panah Huseynov), was a prominent member of the Popular Front Party of Azerbaijan. The second applicant, Mr Rauf Abbasov (commonly known as Rauf Arifoglu), was a prominent member of the Müsavat Party and the editor-in-chief of the opposition-oriented newspaper *Yeni Müsavat*. The third applicant, Mr Arif Hajili, was a deputy chairman of the Müsavat Party. The fourth applicant, Mr Sardar Mammadov (commonly known as Sardar Jalaloglu), was a deputy chairman of the Democratic Party of Azerbaijan.

7. The respective political forces with which the applicants were affiliated were founders of the election coalition Bizim Azerbaijan, formed with the aim of supporting the main opposition candidate, Mr Isa Gambar, the chairman of the Müsavat Party, in the presidential elections of 15 October 2003.

A. Events of 15 and 16 October 2003

8. Mr Gambar lost the elections of 15 October 2003.

9. On the evening of election day a group of opposition supporters gathered in front of the Müsavat Party's headquarters in the centre of Baku, claiming victory for their candidate in the election. At that time there were some violent altercations between opposition supporters and the security forces.

10. At around 2 p.m. on 16 October a number of opposition supporters started gathering near the State Carpet Museum, in the centre of Baku, to protest against the election results. The crowd then started moving towards Azadliq Square, the main square in the city. It was reported that, on the way, some people in the crowd began damaging cars, buildings, benches and other urban constructions. It was also claimed that the organisers of this unauthorised demonstration and certain leaders of the opposition parties were inciting their followers to violence.

11. It has been claimed that some police officers who had been deployed at Azadliq Square were attacked by some of the demonstrators. Shortly thereafter large numbers of riot police and military personnel, fully equipped with helmets, shields and truncheons, arrived in the square with the aim of dispersing the demonstration. The situation quickly escalated into public disorder and violent clashes occurred between the crowd and the

police. It was widely reported that the authorities used excessive force indiscriminately against anyone who happened to be in the area in question.

12. The applicants, among other persons, were considered by the State authorities to be the organisers of the demonstration. At around 2.30 p.m. all of the applicants, except Mr Mammadov, had appeared on a tribune in Azadliq Square. Mr Hajili gave a speech to the people gathered in the square, while the two other applicants did not. Mr Mammadov was in the headquarters of his political party at that time and, according to his own statements, was unable to go to Azadliq Square (although he wished to do so), because the exits from the headquarters were reportedly blocked by State security forces.

13. At around 6 p.m. the demonstration was completely dispersed. Several hundred people were arrested during the events of 16 October and in their aftermath.

B. Institution of criminal proceedings and pre-trial investigation

1. The applicants' arrests

14. On 16 October 2003 the Prosecutor General's Office instituted criminal proceedings (case no. 80308) concerning the events of 15 and 16 October 2003. More than a hundred persons arrested in connection with those events were eventually prosecuted in the context of those proceedings. The proceedings concerned only the actions of the organisers of the demonstration and those participating in it, and it appears that no criminal or other form of investigation was carried out in connection with the allegations of excessive use of force by the police and military units during the dispersal of the demonstration (see *Muradova v. Azerbaijan*, no. 22684/05, §§ 23 and 114, 2 April 2009).

15. In the context of the above-mentioned criminal proceedings, on the dates specified below all of the applicants were arrested and charged with criminal offences.

16. The first applicant, Mr Panah Huseyn, was arrested at his home on 18 October 2003 by a number of police officers of the Organised Crime Department of the Ministry of Internal Affairs ("the OCD"). He was taken to the OCD's detention facility.

17. According to the second applicant, Mr Rauf Abbasov, on 17 October 2003 several police officers in plain clothes unsuccessfully attempted to arrest him. Thereafter, in order to avoid being arrested, the applicant sought refuge in the Norwegian Embassy until 21 October 2003. He left the Embassy after he received assurances from the police that he would not be arrested. However, on 27 October 2003 he was arrested and taken to Detention Facility no. 1.

18. As for the third applicant, Mr Arif Hajili, on 21 October 2003 the Nasimi District Court remanded him in custody, on the basis of a request by the Prosecutor General's Office. The applicant was not present personally and was not represented at that hearing. On 24 October 2003 he was arrested pursuant to the detention order.

19. The fourth applicant, Mr Sardar Mammadov, was arrested at his home on 18 October 2003 and taken to the OCD (see *Mammadov v. Azerbaijan*, no. 34445/04, §§ 6-14, 11 January 2007, for a more detailed description of the circumstances of the fourth applicant's arrest and detention).

20. Following their arrests, the first, third and fourth applicants were not given immediate access to a lawyer (see section B.4 below).

21. All of the applicants were formally charged with offences of "organising public disorder" and "use of violence against State officials" under Articles 32.2, 220.1 and 315.2 of the Criminal Code. On the basis of relevant requests by the Prosecutor General's Office, all of them were remanded in custody pursuant to a court order, with their detention subsequently being extended until the trial.

2. Alleged ill-treatment of the first, second and fourth applicants

22. The first applicant was kept in the OCD's detention facility until 22 October 2003. Thereafter, he was transferred to another detention facility. According to him, during the five days of his detention in the OCD he was repeatedly ill-treated. He was also informed that several of his relatives, including his brother, had been detained. He was not allowed access to a lawyer until 23 October 2003 (see below). After his transfer to another detention facility, for an unspecified period of time he was kept in solitary confinement and was not allowed to possess writing accessories, books, a radio or newspapers.

23. In February 2004 the first applicant, together with several other detained persons (none of whom are applicants in the present case), lodged a complaint with the Prosecutor General's Office, alleging that they had been ill-treated during the first few days of their detention and seeking to have criminal proceedings opened against the perpetrators. On 14 February 2004 their complaint was rejected as unsubstantiated. In particular, in respect of the first applicant, it was noted that he had not made any allegations of ill-treatment in the immediate aftermath of his initial questioning, that the various allegations he had made at different times had been inconsistent, and that, when given the opportunity to undergo an examination by a forensic expert, he had refused to do so, stating that there were no injuries on his person. It was concluded that no evidence of ill-treatment had been produced.

24. During the trial proceedings (described in section C. below), the first applicant complained before the trial court that he had been tortured in the

OCD. Responding to a number of specific questions put to him in connection with his allegations, he mentioned that he had been handcuffed and punched in his chest and kidneys and that it had been hinted to him that his son would be ill-treated, but he expressly refused to provide any further details of the alleged torture, stating generally that he had “never seen such cruelty”. He also refused to mention any names of the alleged perpetrators because “they were not important people”, and instead accused the President, the Minister of Internal Affairs and the Head of the Presidential Administration of “making orders” to ill-treat him. He also mentioned that, from what he had heard, many other people had also been ill-treated. It appears that the trial court dismissed his complaints of ill-treatment as unsubstantiated.

25. According to the second applicant, during the first thirty-six days of his detention in Detention Facility no. 1, he was held in a single cell and was not given access to writing materials, books, newspapers or a radio.

26. The fourth applicant’s ill-treatment was the subject of an earlier case examined by the Court (see *Mammadov*, cited above).

3. *Pre-trial investigation, severing the applicants’ case from criminal case no. 80308, and completion of the pre-trial investigation*

27. Throughout the period from the beginning of the criminal proceedings until 1 March 2004, the investigation into the accusations against the applicants, as well as other accused persons, was carried out within the framework of criminal case no. 80308.

28. On 1 March 2004 the head of the investigation team issued a decision severing a new criminal case (no. 80365) from criminal case no. 80308. The new case concerned seven accused persons in total, including the four applicants and Mr I. Agazade, Mr I. Ibrahimov and Mr E. Asadov. The following reasons were given for the decision:

“The investigation has gathered sufficient evidence to prove the named persons guilty of having committed the offences with which they are charged. The criminal prosecution in respect of the other accused persons is continuing ...

The especially large volume of material in the case file and the large number of incidents comprising the case would make it necessary to prolong the pre-trial investigation and pre-trial detention. This would create difficulties in ensuring the rights and lawful interests of the accused persons in respect of whom sufficient evidence has been obtained and, at the same time, would result in an unacceptable delay in referring the case to the trial court.

Accordingly ... it is appropriate to sever a new criminal case from criminal case no. 80308 ..., to complete the pre-trial investigation in respect of the severed case and to refer it to the trial court.”

29. It appears that the pre-trial investigation in respect of criminal case no. 80365 was formally declared completed on the same day, 1 March 2004.

4. Legal representation of the applicants throughout the proceedings, and their lawyers' access to the investigation file upon completion of the pre-trial investigation

30. Below is the information on the legal assistance received by the applicants, the lawyers who represented them, and the circumstances in which they were given access to the investigation file after completion of the pre-trial investigation and before the trial proceedings, inasmuch as this can be discerned from the material available in the case file.

(a) The first applicant

31. Following his arrest on 18 October 2003, the first applicant, Mr Huseyn, was not allowed access to a lawyer until 23 October 2003. From that date on, he was represented by Mr M. Hadi.

32. Following the completion of the pre-trial investigation on 1 March 2004, the applicant and his lawyer, Mr Hadi, were given access to the prosecution's case file and on 6 April and 15 April 2004, respectively, they signed a record on familiarisation with the material in the case file. According to the applicant, his lawyer was granted access to the entire case file for only one working day.

33. Subsequently, starting from an unspecified date during the trial, Mr Huseyn was also represented by another lawyer, Mr S. Panahov.

(b) The second applicant

34. After his arrest, the second applicant, Mr Abbasov, was represented by a State-appointed lawyer. The lawyer was subsequently replaced by three lawyers whom the applicant retained in October and November 2003. One of these lawyers was Mr T. Karim.

35. It appears that, following the termination of the pre-trial investigation, Mr Karim was given access to the case file and signed a record on familiarisation with the material in the file, dated 15 April 2004. Mr Abbasov himself was also given access to the case file. According to him, he was given less than 100 hours to study the file, which was insufficient to become fully familiar with all the evidence, consisting of twenty-two volumes of documents (amounting to more than 6,200 pages) and twenty-two video cassettes (each containing about two and a half hours of video material).

36. On 27 May 2004, at one of the preliminary hearings in the Assize Court, which had commenced on 7 May 2004 (see paragraph 44 below), Mr Abbasov lodged an application refusing the services of all three lawyers representing him on the ground that these lawyers had not been able to defend him adequately. He requested leave to defend himself in person but, according to the Government, subsequently asked for a new lawyer. On 4 June 2004 the Assize Court accepted the application and decided that the

applicant should be provided with a new State-appointed lawyer. The lawyer, Mr S. Panahov, was appointed at some date around 8 June 2004. During the trial, another lawyer, Mr E. Guliyev, was retained by the applicant.

(c) The third applicant

37. Following his arrest on 24 October 2003, the third applicant, Mr Hajili, was not allowed access to a lawyer until 27 October 2003. From this date on, it appears that he was represented by a number of lawyers throughout the proceedings.

38. Following the completion of the pre-trial investigation on 1 March 2004, the applicant and several of his lawyers (Mr M. Shahmarov, Mr N. Safarov, Mr M. Hadi and Mr O. Kazimov) were given access to the prosecution's case file. On 6 April the applicant, and on 15, 16 and 17 April 2004 each of the lawyers, signed a separate record on familiarisation with the material in the case file.

(d) The fourth applicant

39. Mr V. Khasayev was appointed as Mr Mammadov's lawyer on 18 October 2003.

40. On 21 October 2003 Mr Khasayev complained to the Prosecutor General's Office, by telegram, that he had not been allowed to meet the applicant. Eventually, he was able to meet the applicant for the first time on 22 October 2003.

41. There is no information in the case file as to whether Mr Khasayev or the applicant were given access to the prosecution's case file following the completion of the pre-trial investigation.

C. Trial

42. As noted above, more than one hundred persons were prosecuted, in the framework of criminal case no. 80308, for their involvement in the events of 15 and 16 October 2003. Subsequently, this case was split, dividing the accused persons into fifteen separate groups (one of which groups comprised the newly severed criminal case no. 80365 concerning the applicants), and each group was tried separately. The first fourteen trials concerned the cases of those who were accused of participating in mass disorder and use of violence against officials. All those trials were conducted by either the Assize Court or the Sabail District Court and were completed in March and April 2004. All the defendants in those trials were found guilty and were sentenced to either imprisonment, suspended periods of imprisonment or restriction of liberty.

43. The fifteenth and last trial in criminal case no. 80365 concerned the persons who were accused of organising the mass disorder, including the

four applicants in the present case. This trial took place after the first fourteen trials.

44. The trial was conducted by the Assize Court. It commenced with several preliminary hearings, the first of which took place on 7 May 2004. The three-judge panel hearing the case was composed of Judges M. Ibayev (presiding), S. Aleskerov and J. Jumaliyev.

1. Applications by the defence during the preliminary hearings and trial hearings

45. During a preliminary hearing on 12 May 2004, the applicants' lawyers complained to the Assize Court about an alleged danger to their personal safety, notifying the court about an incident which had taken place after the preliminary hearing of 7 May 2004. According to the lawyers, six of them had been harassed and assaulted by a number of police officers outside the courthouse when they were giving an interview to a television journalist. To support this allegation, two of the lawyers produced some items of clothing damaged during the altercation and photographs depicting the incident. They characterised the alleged incident as a form of undue pressure put on them by the authorities and asked the court to take measures to ensure their personal safety. The presiding judge replied that the court could not be concerned with any incidents taking place outside its courtroom and that the lawyers should use the relevant avenues of redress if they wished to complain about any alleged harassment outside the court hearings. The court nevertheless decided to notify "the relevant authorities" about the lawyers' allegation. However, from the material available in the case file, it is unclear which specific steps were taken by the court in this regard.

46. Furthermore, the first applicant, Mr Huseyn, lodged an application objecting to the participation in the trial of one of the Assize Court's judges, Judge Ibayev, noting that the judge's son worked at the Prosecutor General's Office and was subordinate to the head of the investigation team dealing with his case. The other defendants joined the application. On 24 June 2004 the Assize Court rejected the application, finding that, although Judge Ibayev's son indeed worked at the Prosecutor General's Office, he had never been personally involved in the applicants' case.

47. Subsequently, the first applicant, joined by other defendants, also objected to the participation in the trial of Judge Aleskerov. They pointed out that Judge Aleskerov was the brother of Mr N. Aleskerov, an investigator from the Prosecutor General's Office who, during the period from 19 October 2003 to 26 January 2004, had been a member of the investigation team dealing with the applicants' case. The first applicant argued that, owing to Judge Aleskerov's brother's direct involvement in the case, he would not be able to hear the case as an impartial judge. On 28 June 2004 the Assize Court rejected that application, noting that Mr N. Aleskerov

had indeed been one of the forty-three members of the investigation team working on criminal case no. 80308. However, he had been removed from the team on 26 January 2004. Subsequently, after the new case no. 80365 (concerning the applicants) had been severed from case no. 80308, Mr N. Aleskerov had not been included in the investigation team dealing with this new case. For these reasons, the Assize Court concluded that claims concerning the lack of impartiality of Judge Aleskerov could not be objectively justified.

48. Throughout the trial in the Assize Court, the applicants lodged a number of other applications. According to them, the court's interim decisions rejecting those applications were either not given to them or were made available to them only after significant delays. Moreover, the applicants requested permission to verify the transcripts of court hearings after each hearing in order to be able to comment on alleged irregularities and "falsifications" contained in them. However, they were given access to the transcripts only at the very end of the trial.

2. Evidence examined during the trial

49. During the course of the trial, the Assize Court examined large volumes of testimonial evidence, as well as video recordings and other materials. Below is a brief summary of the evidence heard and the manner in which it was ultimately assessed in the Assize Court's judgment.

(a) Witnesses for the prosecution

50. The majority of prosecution witnesses were police officers deployed at Azadliq Square on 16 October 2003. The investigation also produced records of pre-trial questioning of some of the persons who had been convicted at earlier trials in connection with the events of 15 and 16 October 2003, and a number of other civilian witnesses.

(i) Evidence concerning the events of 15 and 16 October 2003 in general, which did not directly implicate the applicants

51. It appears that the absolute majority of prosecution witnesses were called to merely provide a general description of the events of 15 and 16 October 2003 in order to establish the fact of public disorder. Their testimonies were aimed at showing that the demonstrators had collected clubs, stones and other objects from the headquarters of the Müsavat Party and other opposition parties, that they had used these objects as weapons against the police and military forces and that they had damaged a variety of public and private property. These witness testimonies did not directly mention the applicants as either organisers of or participants in those violent actions. In addition, the prosecution produced some expert evaluations of various forms of damage to private and public property.

(ii) *Statements by police officers directly implicating the applicants*

52. As to the applicants' specific role in the events of 16 October, in order to establish that they had directed and incited the demonstrators' violent actions, the prosecution produced pre-trial depositions of several police officers who had specifically described, *inter alia*, how they had seen the applicants arriving at Azadliq Square on 16 October 2003, publicly proclaiming the election victory of I. Gambar and inciting the demonstrators to violence from the tribune in the square.

53. Prior to the scheduled examination of these witnesses, on 5 August 2004 the first applicant, joined by all the other defendants, complained that the pre-trial depositions of some of those witnesses had been identical word for word and asked for this evidence to be excluded. He pointed out that, according to the relevant records, some of these depositions had been taken by the same investigator at the same time on the same day. He argued that this was either physically impossible or in breach of Article 230 of the Code of Criminal Procedure, which required that witnesses be questioned separately, and that, in either case, this evidence should not be admitted. It is not clear whether the Assize Court ever gave any decision concerning this objection, but it admitted the relevant depositions as evidence.

54. At the trial hearings, each of the police officers concerned testified separately and was cross-examined by the applicants and their lawyers. In particular, police officer V.N. stated, *inter alia*, that when the public disturbance had started at Azadliq Square, some of the defendants, including the second and third applicants, had been inciting the crowd to violence and making such declarations as "Isa [Gambar] has been elected President, we are now in power, do not be afraid of anyone, soon we will overtake the entire city, resist anyone who confronts you...".

55. From the record of the court hearings, it appears that, during the cross-examination, the defence were able to reveal a number of alleged inconsistencies between the accounts given by V.N. during the hearing and in his pre-trial deposition (concerning such specific details of his testimony as, for example, whether he had actually seen any of the defendants appear on the tribune or not, or whether any of the defendants had actually used any phrases such as "Beat the police!"). The defence read out V.N.'s pre-trial deposition at the hearing with the aim of pointing out these alleged inconsistencies. Likewise, according to the defence, cross-examination of most of the other witnesses of this type revealed alleged inconsistencies between their statements at the trial and in their pre-trial depositions. As appears from the transcript of the trial hearings, when confronted with these alleged inconsistencies, some of the witnesses stated that their pre-trial statements had not been properly recorded, while others reverted back to their pre-trial statements and retracted any inconsistent statements which they had made during the hearing prior to cross-examination.

56. It appears from the transcript of the court hearings that more than ten witnesses of this type were heard. In its judgment of 22 October 2004 the Assize Court separately summarised the testimonies of six of those witnesses and relied on them as proving the applicants' guilt. The judgment addressed neither the objections raised by the applicants as to the admissibility of these witness testimonies, nor any objections concerning the inconsistencies allegedly revealed in their testimonies during cross-examination by the defence.

(iii) Statements by previously convicted participants in the demonstration directly implicating the applicants

57. The prosecution also relied on testimony obtained during pre-trial questioning from a number of other persons convicted in connection with the events of 15 and 16 October. These persons had already been convicted at first-instance trials conducted by the Assize Court in March 2005. Inasmuch as this can be discerned from the Assize Court's judgment of 22 October 2004 in the applicants' case, the court relied on testimonies of five witnesses of this type.

58. According to the records produced by the prosecution, in the course of questioning as accused persons at the pre-trial investigation stage of criminal case no. 80308, these persons had described, in various degrees of detail, that they had witnessed the applicants at Azadliq Square inciting the demonstrators to violent resistance during the events of 16 October 2003.

59. During the trial hearings, these witnesses were called to be questioned about their pre-trial statements. According to the relevant trial transcripts and the Assize Court's judgment of 22 October 2004, having taken to the witness stand at the oral hearings, four of these witnesses openly retracted their pre-trial statements against the applicants, noting that they had been forced to make those statements under torture, ill-treatment and other forms of duress applied to them during their pre-trial detention.

60. In reply to these allegations, the Assize Court noted that the witnesses' complaints of ill-treatment had been addressed at their own respective trials and had been found to be unsubstantiated. The court found that, since these witnesses' statements had already been relied on as sound evidence at those trials, the assessment of this evidence was a "*res judicata* matter". In such circumstances, the court decided to accept these witnesses' pre-trial statements as good evidence, and refused to attach weight to the fact that the witnesses had subsequently retracted them at their own trials and at the applicants' trial.

(iv) Statements by other witnesses directly implicating the applicants

61. The prosecution also submitted depositions of several other civilian witnesses who had not been convicted in connection with the events of 16 October 2003. According to the records produced by the prosecution,

during the pre-trial investigation these witnesses had made statements similar to those made by the witnesses mentioned above. However, again, during the questioning at the public hearing, at least three of those witnesses retracted their earlier statements and claimed that they had been forced to make them under threat of ill-treatment or by means of actual ill-treatment.

62. According to the trial transcript, witness N.N. noted that he had been detained for a period of several days after the events of 16 October 2003 and, during that time, had been coerced into giving false testimony against the defendants (mostly against the second applicant). He noted that he had been threatened with prosecution and imprisonment for participating in the events of 16 October 2003, had been refused any water during his questioning and had otherwise been intimidated with the purpose of making him sign a pre-printed witness statement prepared by an investigator.

63. In order to assess the allegations of ill-treatment made by these witnesses, the Assize Court heard evidence from investigators and police officers who had questioned them. They stated that they had not ill-treated these witnesses during pre-trial questioning. Furthermore, the court noted that the witnesses' pre-trial statements were corroborated by other evidence. On that basis, the court found that the allegations of ill-treatment were unfounded and that, therefore, the statements contained in the pre-trial depositions of these witnesses should be accepted and relied on as evidence incriminating the applicants.

(b) Witnesses for the defence

64. The Assize Court partially granted the applicants' requests to obtain the attendance of witnesses prepared to testify on their behalf. From the judgment, it appears that more than twenty such witnesses testified. Most of these witnesses were the applicants' political companions or other persons affiliated with their political parties.

65. In its judgment, the Assize Court summarised all of these persons' testimonies noting that all of them denied that the applicants had carried out the specific acts attributed to them, such as planning any violent actions in advance, verbally inciting the crowd to violence or organising the distribution of clubs and stones to demonstrators. It further noted that the witnesses had insisted that, on the contrary, the police had used excessive violence against the demonstrators and that, in their speeches, the applicants had called the demonstrators to refrain from attacking the police and responding to any provocation.

66. The Assize Court then went on to dismiss these testimonies as unreliable, using the following reasoning:

“Having examined the testimonies of these witnesses heard at the request of [the defendants], the court established that, as indicated above, these persons were members or employees of the [political] parties headed by the defendants and, as they worked with [the defendants], they were persons subordinate to and associated with

[the defendants]. Some of their statements were even contradictory. In particular, while replying to the questions, [N.H.] stated, on the one hand, that the people speaking from the tribune had not been inciting people to violence and, on the other hand, that he had not heard the speeches as he had been standing 70-100 metres away from the tribune and had not been able to even see who had been speaking. [N.Y.] stated that she had been at the square by herself, while [E.P.] stated that [N.Y.] had been there with him.

Moreover, the circumstances described by them have been refuted by the above-mentioned comprehensive, reliable and mutually corroborative evidence consisting of testimonies of victims and witnesses, video recordings, material evidence and court judgments in force. Therefore, the court considers that [the defence witnesses'] testimonies are groundless."

(c) Other evidence

67. In addition, a number of videos depicting the events of 16 October 2003 were viewed during the court hearings.

68. The videos submitted by the prosecution were intended to show the allegedly violent actions of the demonstrators. Some of the images seen on the videos contradicted the testimonies of certain prosecution witnesses. Some of the defendants' lawyers (for example, Mr Hadi) claimed that they had seen the video evidence for the first time at the court hearings, as it had not been made available to them by the prosecution before the trial, and that they had therefore been unprepared for the examination of this evidence.

69. It appears that, following an application by the defence, the Assize Court also admitted additional video evidence submitted by the defence, which was intended to demonstrate the allegedly excessive use of force by the police and military while suppressing the demonstration.

70. Assessing the video evidence, the Assize Court noted that the video depicted the violent actions of the demonstrators as well as the distribution to them of bludgeons, stones and other "weapons" in an organised manner.

3. The parties' closing addresses

71. On 29 September 2004 the Assize Court announced that the presentation of evidence was complete and that it would proceed to hear the parties' oral submissions, inviting the prosecution to make their closing address first. The prosecution asked for an adjournment until 1 October 2004 to prepare their speech. On 1 October the prosecution asked for another adjournment until 11 October 2004. The prosecution delivered their closing address during two hearings on 11 and 12 October 2004.

72. Following the prosecution's speech, on 12 October 2004 the court invited the defendants to deliver their respective closing addresses. However, in response to this invitation, almost all of the applicants' lawyers, taking the floor one after the other, refused to take part in the oral

submissions and make a closing address for the defence, providing the court with the following explanations for their refusal.

73. The first applicant's lawyer, Mr Hadi, speaking first, noted that, throughout the proceedings, he had not been given adequate time and facilities to prepare his client's defence. He had not been allowed to fully study the investigation file before the trial and had not been given access to some of the prosecution evidence, such as video recordings, in order to be able to adequately plan his defence tactics. He further noted that, during the proceedings, the defence lawyers had come under various forms of pressure and had even been physically assaulted when arriving at one of the preliminary hearings. He claimed that the lawyers had regularly received various threats from unspecified persons aimed at preventing them from adequately defending the applicants. Although the lawyers had repeatedly brought this matter to the Assize Court's attention, and had even specifically complained about the incident involving the physical assault on them, the court had failed to take any action and had ignored the difficulties faced by them. He further argued that, in reality, the outcome of the trial had been predetermined and politically motivated and that the trial itself was being held only as a show, since even before its conclusion the President had publicly declared that the applicants were criminals and would be punished. He stated that, in such circumstances, the lawyers themselves felt vulnerable and frightened. He stated that, for these reasons, he was unable to adequately defend his client and was therefore unable to submit an oral argument. He apologised to his clients, the first applicant and Mr Ibrahimov, and noted that it would be best if the defendants were allowed to prepare and deliver the oral arguments themselves.

74. Mr Panahov, counsel for the first and second applicants, gave a similar explanation. He also noted that he was not able to provide effective assistance to his clients because, *inter alia*, he had never been given access to the investigation file. He claimed that after the completion of the pre-trial investigation the lawyers had been pressured into signing records on familiarisation with the material in the case file so that the case could be sent for trial quickly. Although he had specifically complained about this during the preliminary hearings, the Assize Court had ignored this matter. Like Mr Hadi, Mr Panahov also noted that the lawyers were concerned for their personal safety, and that this affected their ability to provide adequate assistance to their clients.

75. Other lawyers concurred with everything stated by their colleagues and gave similar explanations for their refusal to give a closing address.

76. Following this, the first applicant spoke to the court, on behalf of himself and the other defendants, asking for permission to make their defence speeches in person. He noted that, following their lawyers' refusal to take part in the oral submissions, they were essentially left without any

legal assistance. He requested the court to allow them sufficient time to prepare their closing addresses.

77. In response, Judge Ibayev stated that the defendants would be allowed to exercise a right of reply (*replika*). Judge Aleskerov noted that procedural law allowed a defendant to give a closing address in person only if he or she was unrepresented by counsel. Judge Jumaliyev commented that counsel could not shirk their duty to defend their clients.

78. At the next hearing, on 13 October 2004, the first applicant, on behalf of himself and the other defendants, lodged a formal application in writing, requesting the court to allow them to make their defence speeches themselves.

79. The court rejected the application as groundless. It noted that the defence lawyers had provided effective and adequate legal assistance to their clients. It further noted that the lawyers had been given ample opportunity to consult the investigation file but had themselves failed to do so, that it was the lawyers' duty to participate in oral arguments, that they could not refuse to assist their clients at this stage of the proceedings, and that they had no good reason for shirking their duties.

80. It appears that only the fourth applicant's lawyers delivered a closing address on behalf of their client, despite the fact that the fourth applicant had joined the first applicant's request for permission to give the closing address in person.

81. The Assize Court then proceeded to invite the parties to exercise their right of reply. The prosecution waived that right.

82. Prior to the defendants' speeches in reply, the third applicant asked the court not to place any time-limits on them, taking into account the fact that no closing addresses had been delivered on their behalf during the oral submissions. The presiding judge noted that this would be taken into account.

83. Exercising his right of reply, the first applicant spoke for about two hours. The presiding judge interrupted him three times, reminding him that a reply should be brief (no longer than three to fifteen minutes), and ultimately cut short his speech despite the applicant's protests.

84. Likewise, all the other applicants attempted to deliver long speeches while exercising their right of reply, but were interrupted and ultimately stopped by the presiding judge after about an hour, on the ground that a reply should be brief.

85. Following this, the trial hearings ended after each of the defendants was allowed to speak one more time, in order to make their final plea.

4. Conviction and sentences

86. On 22 October 2004 the Assize Court convicted the applicants of organising public disorder (Articles 32.3 and 220.1 of the Criminal Code)

and organising acts of violence against State officials (Articles 32.2 and 315.2 of the Criminal Code).

87. The first and fourth applicants were each sentenced to four years and six months' imprisonment. The second and third applicants were each sentenced to five years' imprisonment.

D. Appeals and pardons

88. In October and November 2004 the applicants appealed to the Court of Appeal against their conviction. In particular, in his appeal, the first applicant complained of, *inter alia*, breaches of his rights to an impartial tribunal, adequate time and facilities for preparation of his defence, effective representation, equality of arms and presumption of innocence. He also complained of errors by the trial court in the procedure for the admission and assessment of evidence. The second and fourth applicants made similar complaints in their appeals.

89. The third applicant's appeal was shorter than those of the other applicants and was phrased in more general language. Among other things, he complained of the following:

“The conviction should be quashed as being illegal, unsubstantiated and unfair and I should be acquitted. In particular:

1. The judicial examination was carried out in breach of my rights as an accused person.
2. The judicial examination was carried out in breach of my lawyer's rights.
3. The judicial examination was carried out in breach of my right to make a closing statement and in breach of my lawyer's right to make a closing statement.
4. The court has not examined all the relevant factual circumstances necessary for the conclusions reached.
5. The factual findings in the judgment have not been proven. ...

The grounds for my claims concerning the illegality, lack of substantiation and unfairness of the conviction will be presented by me at the [appeal] hearings.”

90. All of the appeals were drafted by the applicants themselves in their own handwriting.

91. By a decision of 8 November 2004, delivered after a preliminary hearing, the Court of Appeal granted the applicants' request to hold a public hearing on the merits of their appeals, but rejected their requests to conduct a fresh “judicial examination” of the case by means of renewed cross-examination of the witnesses and defendants and admission of new evidence. It also decided to provide the applicants with State-appointed lawyers for appeal proceedings, appointing the same lawyers who had

represented the applicants at first instance. The extent of the actual assistance provided by these lawyers during the appellate proceedings is not clear.

92. By a judgment of 19 November 2004 the Court of Appeal upheld the Assize Court's judgment. It reiterated the lower court's findings and rejected, in one sentence, the complaints made by the applicants in their appeals as unsubstantiated.

93. The first applicant lodged a cassation appeal against that judgment. The cassation appeal consisted of 206 pages and was drafted by the applicant himself in his own handwriting. The appeal was very detailed in respect of all the alleged defects in the proceedings before the Assize Court and the Court of Appeal. The other applicants also lodged cassation appeals, drafted by themselves in their own handwriting.

94. On 29 March 2005 the Supreme Court upheld the lower courts' judgments.

95. In March 2005 all of the applicants were released from serving the remainder of their prison sentences pursuant to a presidential pardon decree.

E. Statements by public officials and authorities concerning the applicants made at various times during the proceedings

96. The applicants submitted a number of publications containing statements by high-ranking State officials and public authorities, which allegedly breached their presumption of innocence. Some of those statements are summarised below.

97. On 17 October 2003 the Milli Majlis (Parliament) adopted a resolution "on Unconstitutional Actions of the Müsavat, Ümid and Azerbaijan Democratic Parties, and Certain Political Opposition Groups", denouncing the above-mentioned parties and holding them responsible for "unlawful actions" and mass disturbances resulting in loss of life and injuries inflicted on civilians and members of law-enforcement authorities, as well as for damage to public and private property. Among others, the resolution identified Isa Gambar (the leader of Müsavat), Igbal Agazade (one of the defendants tried together with the applicants) and "a group of other members and supporters of the opposition" as organisers of the above disturbances. The resolution was published in official newspapers.

98. On 23 October 2003 the official newspaper *Xalq Qəzeti* published a report by the State-owned press agency AzerTAG concerning a press conference held by the Ministry of Internal Affairs on 22 October 2003. During this press conference, the Head of the Press Service of the Ministry of Internal Affairs conveyed the Ministry's official position concerning the events of 15 and 16 October 2003 and informed the media that criminal proceedings had been instituted in this connection and that a number of persons had been arrested. Among other things, he stated as follows:

“...on 15 and 16 October 2003 the destructive opposition, at the direct instigation of the leaders of the Mūsavat, Ümid and Azerbaijan Democratic Parties Isa Gambar, Rasul Guliyev, Sardar Jalaloglu [Mammadov], Igbal Agazade and others, began committing pre-planned unlawful actions which resulted in mass disorder.”

99. The same issue of the newspaper contained a declaration by the Head of the Sabail District Police Office, denouncing the opposition. The following was stated:

“On 15 and 16 October 2003 certain riotous anarchist and extreme reactionary groups, following direct orders by Isa Gambar, Igbal Agazade and Sardar Jalaloglu [Mammadov], committed terrible criminal acts in Baku. ...

... we are confident that ... the persons who committed crimes ... and oversaw these extreme reactionary acts will bear criminal responsibility and receive deserved punishment. Moreover, we are assured that the Mūsavat, Ümid and Azerbaijan Democratic Parties, which organised these criminal actions, will be banned and that the leaders of those political entities (I. Gambar, R. Guliyev, S. Jalaloglu, I. Agazade) will be held criminally liable.”

100. On 25 October 2003 *Xalq Qəzeti* published a declaration by the Ombudsperson, in which she criticised the opposition and the actions of the demonstrators during the events of 15 and 16 October 2003 and called upon all compatriots to adhere to civil unity and peaceful behaviour. The declaration was silent about the alleged reports of excessive and repressive use of force by the law-enforcement authorities during or in the aftermath of the events of 15 and 16 October 2003.

101. On 27 October 2003 *Xalq Qəzeti* published an almost full-page-long “Press statement by the Ministry of Internal Affairs and the Prosecutor General’s Office of the Republic of Azerbaijan concerning the events that took place in Baku on 15 and 16 October”. The statement began with praise for the law-enforcement authorities’ success in combating crime in recent years and the Government’s progress in building a democratic State governed by the rule of law. It continued with words of disapproval about the “radical opposition”, which did not “want to accept the positive developments and existing realities” and was attempting to “cast a shadow” on the Government’s successes and to disrupt stability in the country. It further continued:

“The extremist circles of the opposition, having realised in advance that they would lose in the free and fair elections and having become fully assured of this during the voting conducted in a democratic and transparent manner, once again resorted to destructive actions. Leaders of the Mūsavat and Ümid Parties Isa Gambar and Igbal Agazade, their supporters, and leaders of the ADP, including Rasul Guliyev, who is under an international search warrant for the crimes committed by him, and Sardar Jalaloglu [Mammadov], as well as other members of that party, have particularly distinguished themselves in this undertaking.

It must be noted that, starting from 1 October, for the purpose of participating in the mass disturbances planned by the [above-mentioned] persons, active members of

those parties as well as persons predisposed to crime were brought to [Baku], and money was distributed to some of them in exchange [for their participation].

[The narration continues with a description of the opposition demonstration held on 15 October 2003, where claims of election irregularities and unfairness were first voiced.]

The false accusations and lies deliberately disseminated by the above-mentioned party leaders after the election, as well as their call to [demonstrators] to commit illegal actions, provided an impetus for further actions resulting in a grave breach of public order in the capital. ...”

102. The statement continued with a detailed description of the events of 15 and 16 October and with a flat denial of any allegations of excessive and repressive use of force by the police during the dispersal of the demonstration, as well as any allegations of torture and ill-treatment of arrested persons. It also stated that only a small number of arrested persons, consisting of the main organisers and perpetrators of the illegal actions referred to, had eventually been prosecuted.

103. On 30 October 2003 *Xalq Qəzeti* published an article by the Deputy Minister of Internal Affairs, entitled “Stability and tranquility in Azerbaijan will be protected, the rule of law will be firmly respected”. Almost the entire article consisted of condemnation and harsh criticism of the political opposition’s actions during the events of 15 and 16 October. The author repeatedly used such descriptions as “criminal”, “reactionary”, “destructive”, “radical” and “violent” with reference to the opposition in general, and in particular to the Mūsavat Party and its leader I. Gambar. The author expressly stated that the Mūsavat Party, its leaders and other opposition forces supporting them had engaged in “actions of criminal character”, had openly declared their intention to capture State power by unlawful means, had distributed bludgeons to their supporters and had ordered them to engage in violent actions and vandalism and to disrupt the stability of the country. Within the above account, the article contained the following statements:

“... Panah Huseyn[ov] ... threatened bloodshed, and attempted to create a situation of mass psychosis. Not only Panah Huseyn[ov] engaged in such subversive action. While delirious ideas of ‘ripening a revolutionary situation’ came from Isa Gambar and Rasul Guliyev, they were conveyed to society by the likes of Sardar Jalaloglu [Mammadov], Igbal Agazade, Ibrahim Ibrahimli, Arif Haji[li], Rauf Arifoglu [Abbasov] and Flora Kerimova.”

104. On 5 October 2004, before the Assize Court’s judgment in the applicants’ case was delivered, the official newspaper *Azərbaycan* published a long interview given by the President to Reuters. Among a wide range of other issues discussed during the interview, the President also made the following statement:

“The attempt of the opposition to change the election results by means of violence was a criminal act. I stress again that the detained persons who are referred to as the opposition are being tried not for being members of the opposition, but for having committed unlawful acts.”

II. RELEVANT DOMESTIC LAW

105. The relevant provisions of the Code of Criminal Procedure of 2000 (“the CCrP”) provided as follows:

Article 107. General provisions on objections and self-disqualification

“107.2. In the circumstances provided for in Articles 109, 110 and 112-118 of this Code that preclude the participation in criminal proceedings of a judge, juror, prosecutor, investigator, preliminary investigator, defence counsel, victim (private prosecutor), civil claimant, civil defendant, representative of a witness or a witness, court clerk, interpreter, specialist or expert, they shall request to withdraw.”

Article 109. Objection to a judge

“109.1. An objection to a judge (or judicial formation) must state reasons. If an objection is not supported by specific reasons, it shall be left unexamined by the court. An objection to a judge may be considered justified and be granted unconditionally if there exists at least one of the following grounds precluding a person’s participation in the criminal proceedings as a judge:

...

109.1.7. if the judge has any relationship of kinship or other dependence with any participant in the criminal proceedings or with a representative or counsel of such participant;

...

109.2. In any of the cases covered by Article 109.1 of this Code, the judge shall disqualify himself or herself.”

Article 339. Beginning of oral arguments

“339.1. Upon completion of the judicial examination, the presiding judge shall announce the beginning of the oral arguments.

339.2. If any of the participants in the oral arguments requests time for preparation of the arguments, the presiding judge shall announce an adjournment and specify its duration.”

Article 340. The parties' oral arguments

"340.1. The oral arguments shall consist of speeches made successively by the public prosecutor, the victim (or private prosecutor) or his or her representative, the civil claimant or his or her representative, the accused (only if there is no defence counsel participating in the proceedings) or his or her defence counsel, and the civil defendant or his or her representative.

...

340.3. In their oral arguments, the parties may not refer to evidence which has not been examined during the judicial examination of the case. If the party needs new evidence in order to justify a conclusion reached [in its closing address], it shall submit an application to reopen the judicial examination, indicating which facts require additional investigation and on the basis of what evidence. ...

340.4. The court may not set a time-limit on the oral arguments, however the presiding judge may interrupt a party delivering an oral argument if that party's submissions concern circumstances irrelevant to the criminal charge in question."

Article 341. Replies (*Replikalar*)

"After the oral arguments of all participants in the proceedings have been submitted, the public prosecutor, the victim (or private prosecutor), the accused and his or her defence counsel shall have the right to speak one more time each in order to make brief objections or observations in response to the arguments put forward by the parties."

Article 342. The accused's final plea

"342.1. Upon completion of the closing addresses and replies, the accused shall be allowed a final plea. No questions can be put to the accused during the final plea.

342.2. The court may not set a time-limit on the accused's final plea. The presiding judge may interrupt the accused if he or she refers to circumstances clearly irrelevant to the criminal charge in question.

342.3. If the accused, in his or her final plea, discloses new circumstances which are significant for the comprehensive, thorough and objective determination of the criminal charge by the court, the court shall reopen the judicial examination."

106. 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).

III. RELEVANT INTERNATIONAL DOCUMENTS

107. The following are the relevant extracts from the report by the Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the Trial Monitoring Project in Azerbaijan 2003-2004 (“the OSCE Report”):

“2. SUMMARY OF POST-ELECTION DEVELOPMENTS

Post-election violence

... In the immediate aftermath of the elections, demonstrations took place on 15 and 16 October, which resulted in violent clashes between security forces and demonstrators in Baku.

On the evening of 15 October in front of the Musavat Party Headquarters, members of the OSCE/ODIHR Election Observation Mission witnessed police attacking peaceful pro-opposition supporters. On 16 October, several thousand demonstrators and pro-opposition supporters gathered in Azadlig Square in the centre of Baku to protest what they considered to have been a stolen election. On their way to the square demonstrators were witnessed vandalizing buildings and vehicles, and attacking police forces with metal bars and stones. At the square, demonstrators were rapidly surrounded by police and security forces, which used overwhelming force to disperse the crowd. Security forces were witnessed beating demonstrators with truncheons after they had been detained and no longer posed any danger or as they were fleeing the area. Video tape recordings provide evidence of the scale of excessive force and brutality used by government forces to overwhelm the demonstrators.

The violence was followed by a wave of detentions. According to officials, the detainees were persons involved in the violent activities or responsible for organizing the violence. However, the detentions took place in all parts of the country and included many individuals with no clear connection to the violence. The Minister of Interior reported that over 600 persons were detained following the violent clashes. ...

Administrative and criminal charges

The majority of the people detained in connection with the elections were later released without charge. In total, 129 persons were charged with criminal offences in connection with the post-election clashes, of whom 125 had been brought to trial at the time this report was prepared.

...

Among the people charged with criminal offences were several prominent members of the opposition including [among others, Mr Huseyn, Mr Abbasov, Mr Hajili and Mr Mammadov]...

At the time of the writing of this report, the OSCE/ODIHR was unaware of any cases of charges having been brought against police officers or other officials for brutality or excessive use of force against demonstrators.

3. AIM AND METHODOLOGY

The cases of all 125 persons tried in connection with the post-election violence were monitored under the OSCE Trial Monitoring Programme. ...

OSCE-trained trial monitors observed all first instance hearings and two appeals. The OSCE-trained trial monitors participated in two training sessions on national and international fair trial standards and trial monitoring techniques in December 2003 and May 2004. In addition, an international expert, Paul Garlick, Queen's Counsel, Judge (United Kingdom), observed the final set of trials, which began on 7 May. The information contained in this report stems mainly from the direct observations of the trial monitors and the international expert. However, the information on arrest and the pre-trial period is based upon submissions made in court by the defendants and defence counsel and interviews with defendants and defence counsel. In the case of Trial Group 15, a detailed questionnaire was prepared by the international expert and completed by defence counsel.

...

4. BASIC INFORMATION ON THE POST-ELECTION CASES

... The cases of the 125 persons that were brought to trial were heard in 15 groups. For the purpose of this report they are referred to as Trial Groups 1-15. ...

Trials concerning the events of 16 October

The trials in the other Trial Groups all concerned the events that took place on Azadlig Square on 16 October and were all tried before the Court for Serious Crimes. The defendants in Trial Groups 1-6 and 8-14 were charged with participating in mass disturbances, organization of, or active participation in, actions causing a breach of public order and resistance to, or acts of violence against, a State Agent.

The defendants in the final Trial Group, Trial Group 15, included the most prominent members of the opposition parties who were tried in connection with the post-election violence. Whereas the defendants in all the other Trial Groups were charged with participating in mass disturbances, the defendants in Trial Group 15 were charged with organizing mass disturbances. In addition, they were also charged with resistance to, or acts of violence against, a State Agent. ...

5. FINDINGS AND ANALYSIS

...

C. RIGHT TO LEGAL COUNSEL BEFORE TRIAL

... [S]pecific examples exist where defendants claim that they were not provided with access to legal counsel until after having been charged or remanded in custody. ... In Trial Group 15, defendant Panah Huseynov [Huseyn] made a written statement

to the effect that he did not have access to his lawyer from his arrest on 18 October 2003 until 23 October 2003. He complained that he had been forced to renounce his right to legal counsel. In this case the defendant stated in court that during his detention in Gazakh Police Division he was forced to sign a paper rejecting the services of a lawyer and a paper confessing that he had used force against police officers.

In respect of Trial Group 15, whilst it appears that some defendants did have access to legal representation within a short period of time after being taken into custody, in some cases access was denied after the initial meeting.

...

F. RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENCE

...

In Trial Group 15, the evidence comprised 22 volumes of criminal case materials, testimonial evidence, data on the cause of damage, testimonies of the victims, and 22 video cassettes. The material was not made available to the defence lawyers until March 2004. Even then, only one copy of the case materials was made available to the defendants, thus restricting the preparation of their defences, particularly during the trial when the defendants were kept apart from each other in separate cells. On numerous occasions during the hearing of Trial Group 15, the defendants complained to the court about the difficulties that they were encountering in preparing cross-examination of witnesses as a result of being in isolation and having to share the single copy of case materials.

In addition to difficulties created by only one copy of the case materials being made available to the defendants, the defence lawyers complained that they had been denied copies of the rulings which the court had made in the preliminary stages of the trial. The defence advocates reported that of 31 motions that had been lodged by the defence, copies of only 8 decisions were provided by the court.

G. FREEDOM FROM TORTURE AND ILL-TREATMENT, AND THE RIGHT NOT TO BE COMPELLED TO TESTIFY OR CONFESS GUILT

...

Allegations of Torture and Ill-Treatment of Defendants

Allegations of torture and ill-treatment were made in all but two of the 15 Trial Groups. In Trial Groups 1-14 the allegations were made primarily against law enforcement officials in temporary detention, although there were also allegations of mistreatment at the time of detention. The types of ill-treatment described either in court or directly to OSCE trial monitors included threatening to harm close relatives, denying food and water, tying to chairs, interrogating and video recording detainees whilst they were naked, threatening with firearms, hitting, punching, kicking, beating with truncheons, bottles and sticks, forcing detainees to stand outside in the rain for hours, burning with cigarettes, injecting with unknown substances, and threats of rape...

Allegations of Torture and Ill-Treatment of Witnesses

In addition to reported torture and mistreatment of defendants, there were numerous allegations of torture and ill-treatment of witnesses: [summary of alleged first-hand accounts of ill-treatment follows]. ...

As a result of the alleged ill-treatment several witnesses claimed during the trials that their statements were to be considered falsified ...

I. PROHIBITION OF THE USE OF EVIDENCE OBTAINED BY TORTURE OR OTHER ILL-TREATMENT

... Allegations of torture and ill-treatment were made in all the Trial Groups except Trial Group 11 and Trial Group 12. In every instance, the judgments state that the allegations were not proved. The only exception was Trial Group 5 in which the judgment does not even refer to the allegations of torture.

In addition, statements that were alleged to have been made under duress were expressly relied upon as evidence in Trial Groups 2, 3, 4, 7, 8, 10 and 13 and 15. In general, the response of the courts to the numerous motions by the defence that statements made in temporary detention facilities were obtained by torture or other ill-treatment consisted of ordering medical examinations and calling law enforcement officials as witnesses.

...

Witnesses

... The approach of the court in Trial Group 15 to determining whether to admit the evidence of witnesses who alleged that they had been tortured was flawed. On the evidence given to the court by these witnesses, no reasonable tribunal should have come to the conclusion that it was sure, beyond reasonable doubt, that such torture did not take place. The court did not ... carry out any proper investigation into the allegations of torture and placed far too much reliance on the findings of other courts in previous trials. In effect, the court considered itself bound to come to the same conclusions as the other courts, without questioning the reasoning behind those other decisions or examining in detail all the evidence that was available to the other courts when determining the issues and comparing that evidence with the evidence which was available to it in the case of Trial Group 15.

J. RIGHT TO A PUBLIC HEARING

... All court hearings in the post-election related cases were, ostensibly, held in public. However, numerous restrictions and impediments interfered with this right.

In Trial Group 15, for example, access to the court room was strictly monitored and limited by the court security staff. On numerous occasions during the trial the defendants and their lawyers protested to the court that members of the public were being prevented from entering the court room, despite the obvious availability of seats in the court room.

...

Although the trials were held in public, a number of factors contributed detrimentally to public access to the trials:

- The public galleries were far too small to accommodate all those who wished to observe the hearings and, in a number of trials, relatives of the defendants could not gain access. Trying defendants together in groups of seven to ten aggravated this problem.
- People were generally admitted to the public gallery of the Court for Serious Crimes only after they had provided court officials with a copy of their identification cards and their personal details had been written down by court officials.
- The Court for Serious Crimes did not post information about scheduled hearings or otherwise make this information available to the public. As a result, the OSCE had to contact the court by phone in order to obtain information about the date and time of pending hearings. In two instances, court secretaries stated that they were not authorized to provide such information.
- In some instances, members of opposition newspapers, including Yeni Musavat and the Baku News were not admitted to the courtroom by court officials. In some cases, journalists were refused entry without grounds and in other cases lack of space in the public gallery was cited as the reason.

K. RIGHT TO TRIAL BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL

... In respect of Trial Group 15, two members of the court had not disclosed that they were related to people who were, or had been, involved in the preliminary investigation or prosecution of the offences. Whilst no evidence was adduced to show that the judges were biased as a result of this relationship, it was unsatisfactory that the judges concerned had not disclosed their relationships with others involved in the investigation and prosecution of the offences. The failure to make this disclosure, until it was brought to the attention of the court by the defendants and their lawyers, did not engender confidence as to the impartiality of the judges.

...

In respect of Trial Group 15, the judges rarely refused a motion by the prosecutor for an adjournment, when on occasion there seemed no justification for granting one. In particular, the court granted an application made by the prosecution to adjourn the case for ten days, so that he could prepare his closing speech, without calling upon the prosecutor to give reasons for such a long delay. The defendants objected strongly to such a long adjournment, but the court seemed to pay no attention to the concerns of the defendants or to any prejudice that such a long adjournment might cause them.

Again, in respect of Trial Group 15, on many occasions the court declined to give rulings in respect of motions made by the defendants or their advocates, ruling instead that it would postpone consideration of such motions until later in the case. Of particular concern was the decision of the judges to postpone consideration of crucial questions such as the number of witnesses that the court would allow to be called at the request of the defence. This left the defendants in a state of uncertainty as to which evidence they would be allowed to present in their defence. Plainly, this may have

prejudiced the way in which the defendants were able to present their cases. Moreover, the court did limit the number of witnesses called at the request of the defence ...

L. RIGHT TO A FAIR HEARING

... In respect of Trial Group 15, the defendants frequently complained to the court that the fact that they were segregated when taken back to prison at the end of the court hearing, together with the limitation of having only one copy of the court materials among them, made it very difficult for them to prepare their cases, particularly cross-examinations of the witnesses. In the questionnaires completed by the defence lawyers, many complaints were made in relation to the refusal by the court to provide copies of documents and video tape recordings to the defendants and lawyers. The lawyers also complained that they were not given an opportunity of viewing the video tapes together with their clients.

Presumption of Innocence

... In the days following the post-election violence, statements were made to the press by the President-elect and by representatives of the Ministry of Interior, Baku Main Police Department, the Office of the General-Prosecutor and the Ministry of National Security, in which unlawful acts were attributed to the leaders and members of the Musavat, ADP and Umid parties. ...

Disclosure by prosecution of material information

... In respect of Trial Group 15, on numerous occasions the defence lawyers complained to the court that the prosecution had concealed from the court video tape recordings of the events on 16 October which would have assisted the defence. In particular, it was argued that the prosecution had failed to disclose recordings which would have shown that some of the defendants did not make speeches from the tribune and were not responsible for inciting or inflaming the demonstrators. No proper enquiry was made by the court into this issue. The prosecution was not called upon by the court to provide any evidence to rebut the defence suggestion. The matter should have been investigated thoroughly by the court, and the prosecution should have been required to satisfy the court that full disclosure of all material had been made.

...

The right to call and examine witnesses

... In most of the trials observed the judges examined only evidence submitted by the prosecution, including tens of witnesses (mainly soldiers and law enforcement officials) and videotape and photographs of groups of people breaking windows, damaging cars and beating law enforcement officials. At the same time, in breach of the principle of equality of arms and adversarial proceedings, defence lawyers were not given an equal possibility to rebut criminal charges, to bring attention to circumstances releasing the defendant from criminal responsibility or mitigating circumstances. The court dismissed almost all motions of the defence for consideration of additional evidence on behalf of the defendant. ...

In respect of Trial Group 15, the court did allow the defence to adduce tape recordings showing that violence had been used by the police and other government forces towards the demonstrators. However, the court severely restricted the number of witnesses called at the request of the defence. The defendants indicated to the court that they wished for as many as 600 witnesses to be called to give evidence to prove, amongst other things, that the defendants had not been responsible for providing articles to be used as weapons by the demonstrators, that the defendants had not addressed the crowd in the Square except to call upon them not to use violence and not to react to provocation by the police, and, more generally, that the defendants had not planned or orchestrated the civil disorder which broke out on the 16 October. In addition, the defendants requested the court to call a number of senior officials from the police and other government agencies, including the Baku Administration and the Ministry of Internal Affairs. The defendants submitted that these witnesses should be examined by the court with a view to showing that it was the police and government authorities who had initiated the violence and who had, in effect, incited the demonstrators to react in the way that they did. The court refused to call these senior officials ...

M. RIGHT TO A PUBLIC AND REASONED JUDGMENT

...

The right to a reasoned judgment

... In respect of Trial Group 15, OSCE observers assessed that there was not sufficient evidence upon which the court could base a reasoned conclusion that it was certain the defendants organized, orchestrated or were parties to the disorder which took place on the 16 October 2003. The evidence of witnesses who purported to identify the various defendants as being involved in inciting the crowds to violence and other particular acts was so poor and so discredited in the trial that no reasonable tribunal could have relied upon it. More particularly, the evidence of those prosecution witnesses who purportedly saw the defendants participating in the disturbance and carrying out particular acts to incite the crowd was so discredited in the course of cross-examination that it could not possibly be relied upon to found the convictions. In its judgment, the court failed to consider the overwhelming number of previous inconsistent statements that the majority of the prosecution witnesses had made in the course of the investigation. So many of the prosecution witnesses gave evidence which was wholly inconsistent with the accounts that they had previously given, that it became impossible to view the evidence of the witnesses implicating the defendants as credible. Conversely, the court failed to attach sufficient importance to the evidence that was called on behalf of the defendants, dismissing the evidence of many of the defence witnesses on spurious and inadequate grounds.

The approach of the court to the evidence of defence witnesses was flawed and demonstrated a biased and prejudiced attitude against them. The evidence presented by defence witnesses was crucial to the defence case and yet, in its judgment, the court dealt with the evidence in a superficial manner and rejected the evidence of all the witnesses without giving any separate or detailed analysis of the grounds for rejecting the evidence of each witness. ...”

108. Annex 4 of the OSCE Report concerned specific observations relating to Trial Group 15 only. At the beginning, the annex reproduced the allegations of torture and ill-treatment made by the defendants and

witnesses during the trial, including the allegations made by the first applicant, Mr Huseyn, during the trial (see paragraph 24 above). The annex then continued with the observers' direct observations and remarks concerning the trial itself:

"... In respect of Trial Group 15, OSCE observers and the independent expert assessed that there was not sufficient evidence upon which the court could base a reasoned conclusion that it was certain the defendants organized, orchestrated or were parties to the disorder which took place on the 16 October 2003. The evidence of witnesses for the prosecution was so poor and so discredited in the trial that no reasonable tribunal could have relied upon it to found the convictions. In its judgment, the court failed to consider the overwhelming number of previous inconsistent statements given by the majority of the prosecution witnesses, making it impossible to view their evidence against the defendants as credible.

For example, one of the key questions for the court to determine was whether the defendant Igbal Agazade made a speech from the tribune in Azadlig Square on 16 October. If the court could not be satisfied about the veracity and accuracy of the prosecution evidence on this question, then the case against this defendant was fundamentally flawed and no reasonable tribunal could have convicted him. One of the witnesses relied upon by the prosecution to prove that Igbal Agazade made a speech from the tribune gave evidence to the court that Agazade came to the Square from the port side of the Square in a white car. However, a video recording shown to the court made it clear that defendants Agazade and Panah Huseynov came to the Square in a black Mercedes car and that the car came from the side of the Square where the Intourist Hotel was and not from the port side. The court failed to give this matter any proper consideration and failed to take it into account when assessing the probative value, if any, that should be attached to the evidence of the witness. In all the evidence in the case, no reasonable tribunal could have been satisfied that the defendants Agazade or Huseynov acted in the way suggested by the prosecution.

...

Many of the witnesses relied upon by the prosecution made pre-trial statements to investigators which were identically worded, and had identical punctuation and typographical errors. This raises serious concern as a clear indication that the investigators were preparing the statements themselves, rather than recording faithfully the evidence of the witness. Another concern was that according to records of interrogations, investigators seemed to have interrogated more than one witness at the same time on the same date. Accordingly, this meant that either: (1) the records of interrogation were inaccurate or that they had been falsified; or (2) if the records were correct, that witnesses had been interrogated together, in breach of the Criminal Procedure Code. Although no satisfactory explanation was given for this, the court failed to carry out any adequate investigation of this matter and failed to give it any proper consideration when assessing the probative value of the evidence.

At the request of the defendants, the court summoned a great number of witnesses, all of whom gave evidence which, if accepted, materially assisted the defendants and cast a real doubt on the prosecution case. In its judgment, however, having summarised the evidence of the defence witnesses in a wholly inadequate manner, the court dismissed their evidence in its entirety by stating as follows: [a quotation of the text quoted in paragraph 66 above follows.]

This brief judgment failed to attach sufficient importance to the evidence on behalf of the defendants, dismissing it on spurious and inadequate grounds. The approach of the court to the evidence of defence witnesses was flawed and demonstrated a biased and prejudiced attitude against them. The evidence presented by defence witnesses was crucial to the defence case and yet, in its judgment, the court dealt with the evidence in a superficial manner and rejected the evidence of all the witnesses without giving any separate or detailed analysis of the grounds for rejecting the evidence of each witness.”

109. Extracts from a number of reports by international bodies and human rights NGOs, describing the violent clashes between demonstrators and law-enforcement authorities during the events of 15 and 16 October 2003, have previously been quoted in the *Muradova* case (cited above, §§ 71-77).

110. Among other similar reports by international NGOs, the report by Human Rights Watch, entitled *Crushing Dissent: Repression, Violence and Azerbaijan's Elections* (January 2004 Vol. 16, No. 1(D)), contains lengthy summaries of numerous first-hand accounts by persons arrested in connection with the events of 15 and 16 October 2003 concerning the alleged acts of torture and ill-treatment they had been subjected to while in detention. The relevant statements were made by the alleged victims in interviews personally conducted by Human Rights Watch researchers during the organisation's two missions to Azerbaijan from September to November 2003.

THE LAW

I. JOINDER OF THE APPLICATIONS

111. Given that the applications concern issues relating to the same set of criminal proceedings, in which all of the applicants were co-defendants, the Court has decided to join the applications in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

112. The first applicant complained that he had been ill-treated while in custody in the OCD. Furthermore, both the first and second applicants complained about the conditions of their pre-trial detention. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties' submissions

113. As to the first applicant's allegations concerning ill-treatment in custody, the Government maintained that he had not exhausted the available domestic remedies. In particular, they argued that, under the relevant provisions of the CCrP (Articles 122 and 449), he could have lodged an appeal to a superior prosecutor or a court against the decision of 14 February 2004 rejecting his complaint of ill-treatment. The Government accepted that the first applicant had mentioned his allegations of ill-treatment before the first-instance court during his trial. However, they argued that he had subsequently failed to raise the same complaint in substance in his appeals to the higher courts.

114. As to the substance of the first applicant's allegations, the Government noted that they were not precise, but instead were too vague and incomplete, and no evidence had been produced to support them. Even though, in the context of the separate investigation into allegations of ill-treatment conducted at domestic level, he had been questioned about his allegations, he had refused to provide any details and had refused to undergo a medical examination. Similarly, the complaint of ill-treatment that he had made before the trial court had been poorly substantiated as he had failed to specify, with concrete details, what had specifically constituted the alleged ill-treatment. Lastly, the Government maintained that the manner in which the first applicant's allegations had been addressed by the domestic authorities had been effective and adequate, and that the repeated failure by the applicant to identify the alleged perpetrators of the alleged ill-treatment and to specify its nature and duration had impeded the domestic investigation into his allegations.

115. As to both the first and second applicants' complaints concerning the conditions of their pre-trial detention, the Government noted that they had never complained about this to any domestic authority. As to the substance of the second applicant's allegations, the Government noted that the conditions of his detention, while possibly severe at the very beginning, had not amounted to ill-treatment and that the arrangements for his detention had been gradually relaxed and he had been given access to writing accessories, books, newspapers and a radio, and had even been able to publish a book while in pre-trial detention.

116. In connection with his allegations of ill-treatment in custody at the OCD, the first applicant argued that he had been tortured during the initial questioning and had been threatened with persecution and torture of his close relatives. He insisted that he had raised this complaint before the domestic authorities and all the domestic courts, but that no effective domestic investigation had been carried out. He argued that, once he had raised a complaint of ill-treatment, the burden was on the domestic authorities to prove that he had not been tortured. He referred to a large

number of other detainees' accounts of ill-treatment following their arrests in connection with the events of 15 and 16 October 2003 and maintained that, in general, domestic investigations into allegations of ill-treatment were inadequate and ineffective.

117. In connection with the conditions of his detention, the first applicant noted briefly that, after his transfer from the OCD to another detention facility, he had been kept in solitary confinement and had not been allowed to possess writing accessories, books, a radio or newspapers, without specifying the duration for which he had been kept in these conditions.

118. The second applicant alleged that, for thirty-six days, he had been held alone in a cell in "isolation" from the outside world, with no access to writing accessories, books, a radio or newspapers. Although he had raised this complaint before the trial court and appeal courts, no effective examination of his allegations had been carried out.

B. The Court's assessment

119. The Court finds that it is not necessary to examine whether the applicants have exhausted domestic remedies as, even assuming that they had done so, the complaints are in any event inadmissible for the following reasons.

120. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In particular, where an individual, when taken into police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

121. At the outset, the Court notes that it cannot disregard the reports of various NGOs and international organisations concerning the widespread

allegations of ill-treatment in custody of persons arrested in connection with the events of 15 and 16 October 2003, which contained numerous first-hand accounts of ill-treatment given, in various degrees of detail, by the alleged victims. Similarly, the Court notes that, even at the applicants' own trial, not only the first applicant but also a number of witnesses had complained that they had been ill-treated in detention. Moreover, the Court refers to its earlier judgment concerning a similar complaint made in a separate application by the fourth applicant in the present case (see *Mammadov*, cited above), in which it found that the applicant had been tortured in the OCD's detention facility in circumstances similar to those alleged in the present case. All of the above information supports, albeit indirectly, the first applicant's allegations made in the present case.

122. However, this background information, in itself, is not sufficient for finding a violation of Article 3 in the first applicant's particular circumstances. In order for the Court to reach such a finding, the applicant's allegations of ill-treatment must be proved beyond reasonable doubt by appropriate evidence or such evidence should flow from the coexistence of sufficiently strong, clear and concordant inferences or of unrebutted presumptions of fact. However, the Court notes that, unlike, for example, the *Mammadov* case, where similar allegations of ill-treatment were raised (cited above, §§ 18 et seq.), the first applicant had not made a formal complaint of ill-treatment, had not requested a forensic examination as soon as possible after the alleged ill-treatment, and had not provided any explanation as to his failure to do so. It is true that his access to a lawyer was delayed for several days after his arrest, and that this could have prevented him from taking the above steps during that time; however, nothing was done in this connection after the applicant had been able to meet the lawyer. While he lodged a relevant complaint about four months after the alleged ill-treatment, he expressly refused to undergo the forensic examination offered to him. Nor has he submitted to the Court any other evidence confirming the presence of any injuries on his person. No plausible explanation has been offered for his failure to do so. Moreover, despite the first applicant's arguments to the contrary, it does not appear from the documents in the case file that he ever gave the domestic authorities a detailed and consistent description concerning the method, duration or perpetrators of the alleged ill-treatment or the chronology of the events. On the contrary, it appears that, whenever specifically asked about these matters, each time he refused to provide an answer, confining himself to making general or incomplete statements. Nor has he provided a detailed account of these matters in his submissions to the Court. In the absence of such an account and of any evidence concerning any injuries that the applicant might have sustained, the Court considers that there is insufficient evidence either to prove the first applicant's allegations beyond reasonable doubt or at least to establish a *prima facie* case of ill-treatment, in which

event the burden of proof would be shifted to the Government to provide a satisfactory and convincing explanation.

123. Furthermore, having regard to the substance and the level of detail of the first and second applicants' submissions concerning the alleged conditions of their pre-trial detention, the Court considers that they do not disclose an appearance of ill-treatment reaching the minimum level of severity required under Article 3 of the Convention.

124. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

125. Relying on Article 6 §§ 1 and 3 (b), (c) and (d) and Article 13 of the Convention, all of the applicants complained:

- (i) that two of the judges of the Assize Court had lacked impartiality;
- (ii) that they had not been given adequate time and facilities for the preparation of their defence, as neither they nor their lawyers had been given adequate access to the prosecution evidence;
- (iii) that they had not been able to receive effective legal assistance throughout the criminal proceedings, including the initial stages of the proceedings and the trial hearings;
- (iv) that the principle of equality of arms during the trial hearings had not been respected as they had been unable to make their oral arguments under the same conditions as the prosecution; and
- (v) that the accusations against them had been based on false evidence, that they had been unable to properly examine witnesses against them and to obtain the attendance and examination of defence witnesses under the same conditions as witnesses against them, and that the domestic court had failed to reply to their objections concerning the witnesses and to provide adequate reasons for its decisions concerning the admissibility and assessment of evidence.

126. The Court considers that this complaint falls to be examined solely under Article 6 of the Convention, the relevant parts of which read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

A. Admissibility

1. *The parties’ submissions*

127. The Government submitted that the first and third applicants had failed to exhaust domestic remedies in respect of the part of the complaint relating to the alleged lack of impartiality of the Assize Court’s judges. They further submitted that the third applicant had failed to exhaust domestic remedies in respect of the parts of the complaint relating to the examination of witnesses, the provision of adequate time and facilities for the preparation of his defence, and the right to effective legal representation.

128. In particular, the Government acknowledged that the applicants had raised the issue of the judges’ lack of impartiality during the Assize Court’s preliminary hearings. The Government noted, however, that later in the course of the proceedings, on 6 September 2004, the first applicant had expressed an intention to raise a new objection to the composition of the court, but had withdrawn his objection the next day. They further submitted that, although the first applicant had complained of a lack of impartiality on the part of the Assize Court’s judges in his appeal before the Court of Appeal, he had done so in general terms and had not substantiated his complaint with detailed reasoning. Instead, in his oral submissions before the Court of Appeal, he had complained of the Court of Appeal’s lack of impartiality. Lastly, the Government submitted that the third applicant had failed to raise this issue in his appeals before the Court of Appeal and the Supreme Court.

129. Furthermore, the Government argued that the third applicant had failed to raise before the Court of Appeal or the Supreme Court any of the issues relating to the parts of the present complaint falling under Article 6 § 3 (b), (c) and (d).

130. The first applicant submitted that he had duly lodged the requisite applications concerning the judges’ alleged lack of impartiality at the preliminary hearings in the Assize Court. Subsequently, he had submitted properly substantiated complaints in this regard in his written appeals and oral submissions before the Court of Appeal and the Supreme Court. In

particular, in the transcript of his speech before the Court of Appeal, six pages were devoted to this issue.

131. The third applicant noted that, while his appeals had not specifically touched upon the issue of the judges' lack of impartiality, he had complained about this matter in his oral submissions to the appellate courts. As to the alleged non-exhaustion of domestic remedies in respect of other complaints, the third applicant argued, firstly, that he had complained about these matters in his appeals, albeit briefly. Secondly, he noted that he had raised more detailed arguments in his oral submissions before the appeal courts. Thirdly, he noted that he and his co-defendants had always taken a joint and uniform position on all matters relating to their defence. Since his co-defendants had made very detailed complaints regarding every problematic aspect of the trial in their respective appeals, he was dispensed from the requirement to make the same submissions in the same degree of detail in his written appeal, especially in the light of the fact that the domestic courts consistently treated any applications or submissions by any of the defendants as common and applicable to all of the defendants.

2. The Court's assessment

132. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing the States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with this rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The Court notes that the application of this rule must make due allowance for the context of the individual case including, among other things, the personal circumstances of the applicant. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-66 and 69, *Reports of Judgments and Decisions* 1996-IV).

133. As to the Government's objection in respect of the first applicant, the Court observes that he lodged formal applications with the Assize Court objecting to the participation of Judges Ibayev and Aleskerov on the ground of their lack of impartiality. The applications were properly substantiated with relevant reasoning. Moreover, these applications were joined by all the other applicants, including the second and fourth applicants, in respect of whom the Government did not raise a similar objection, thus implicitly accepting that they had properly raised this issue before the relevant domestic authority. Accordingly, the Court sees no reason justifying the Government's assertion that the first applicant had somehow failed to do so.

The Court cannot accept the Government's argument concerning the applicant's alleged failure to lodge a repeated objection in respect of those judges at a later stage of the proceedings. Once the first applicant had raised this objection at the preliminary hearings in accordance with the formal requirements of the domestic law and obtained an unsuccessful outcome, neither the Convention nor the domestic law required him to keep raising the same objection repeatedly before the same court.

134. Furthermore, having regard to the content of the first applicant's appeals and transcripts of his oral submissions before the appellate courts, the Court is satisfied that the applicant has raised before those courts, in sufficient detail and with sufficient substantiation, the essence of his complaint concerning the alleged impartiality of the Assize Court's judges.

135. As to the Government's objection in respect of the third applicant, the Court, having regard to the content of his appeal (see paragraph 89 above), finds that it was indeed very generally worded and did not address any of the specific allegations he made before the Court in his complaint under Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention. Nevertheless, the Court considers that, in the specific context of the present case, the situation of the third applicant calls for the rule of exhaustion of domestic remedies to be applied with a certain degree of flexibility, for the following reasons.

136. The Court notes that the third applicant was in a situation very similar to that of the other applicants. In particular, all of the applicants were defendants in the same criminal proceedings facing the same criminal charges based on the same incriminating evidence. All of the applicants were affected by the same or similar alleged breaches of their defence rights. All of the applicants consistently joined and supported each other's objections, applications, arguments and complaints before the domestic courts. Moreover, as correctly pointed out by the third applicant, even the domestic courts often addressed any objections and complaints lodged by one of the applicants as if they were applicable to all of the defendants.

137. As noted above, the first applicant has, to a sufficient degree, brought all of the matters raised in the present complaint to the attention of the domestic courts in his applications and appeals. Moreover, by not raising a similar objection in respect of the second and fourth applicants, the Government can be considered to have implicitly accepted that they had likewise exhausted domestic remedies. Accordingly, in so far as the third applicant was in the same situation as the other applicants and raised the same complaints before the Court, the domestic appeals lodged by the other applicants sufficiently brought to the domestic authorities' attention all of the alleged defects in the trial that affected all of them, including the third applicant. In view of the above considerations, it cannot be argued that his written appeals would have had any more prospects of success had they been substantiated to the same degree as the other applicants' appeals.

Moreover, the Court takes note of the third applicant's assertion that, in any event, his oral submissions before the appellate courts were more specific and detailed than his written appeals.

138. For these reasons, the Court dismisses the Government's objection in respect of the first and third applicants. It further notes that, in so far as all four applicants are concerned, their complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

139. As to the alleged lack of impartiality of the tribunal, the Government maintained that the applicants' fears about the lack of impartiality of Judges Aleskerov and Ibayev had not been objectively justified. In respect of Judge Aleskerov, the Government submitted that the Assize Court had examined the applicants' complaint about his alleged lack of impartiality and found that the judge's brother had indeed been a member of the investigation team in criminal case no. 80308. However, on 26 January 2004, he had been excluded from that team and, subsequently, had not been included in the investigation team for criminal case no. 80365, in which the applicants had been defendants. Accordingly, Judge Aleskerov's brother had not personally carried out any investigative steps or otherwise been involved with the applicants' specific criminal case.

140. The Government further submitted that the mere fact that Judge Ibayev's son worked at the Prosecutor General's Office was insufficient to justify any fears that his father would not be impartial. Judge Ibayev's son had never been involved with the applicants' case at any stage of the proceedings.

141. As to the applicant's grievances concerning the ineffectiveness of the legal assistance provided to them, the Government submitted that the applicants' lawyers had been appointed in October 2003, had participated in the case from the very beginning and that therefore they had been able to represent their clients effectively. Moreover, during the trial some of the applicants had also been represented by additional lawyers hired by their relatives.

142. The Government maintained that the applicants and their lawyers had been given access to the investigation material for a sufficient period of time necessary for the preparation of their defence. All of them had signed

relevant records on familiarisation with the material in the case file without making any remarks as to the alleged inadequacy of the time and facilities afforded to them in order to prepare their defence.

143. The Government further noted that the preliminary hearings of the Assize Court had been extended for a period of more than a month owing to the applicants' and their lawyers' failures to appear. In view of this, the Government concluded that the defence had been given sufficient time to prepare their defence before the trial hearings. Subsequently, the applicants' lawyers had conducted the defence during the entire trial. Although the lawyers had refused to deliver closing addresses for the defence, they had not refused to continue providing their legal services to the applicants. Under Article 360.1 of the CCrP, the accused could be allowed to make a closing address in person only if no defence lawyer participated in the proceedings. As the applicants had lawyers, the Assize Court had correctly dismissed their request to make oral submissions in person. On the other hand, they had been allowed to make what actually amounted to a defence speech during the exercise of their right of reply and in their final pleas.

144. As to the applicants' claim that the Assize Court had not provided them with copies of its interim decisions in a timely manner (see paragraph 157 below), the Government noted that the applicants had been duly informed of those decisions at the time when they had been publicly announced during the hearings and that copies of the decisions had been given to the applicants afterwards. The time of delivery of the written text of the interim decisions rejecting the applicants' various applications was of no importance, as in any event those decisions could not be challenged at that stage of the proceedings and became open to challenge only at the appellate stage of proceedings in the Court of Appeal.

145. In respect of the examination of witnesses, the Government submitted that the rights of the defence had been adequately secured at the trial. The applicants had been able to cross-examine the prosecution witnesses. Almost all of the applicants' requests to obtain the attendance of defence witnesses had been granted. In particular, by its decisions of 8, 22, 27 and 28 September 2004 the Assize Court had granted the applicants' requests to that effect. In their request of 29 September 2004 to complete the judicial examination of the evidence, the applicants had admitted that the defence had been able to obtain the attendance of about forty witnesses who had testified on their behalf.

146. As to the assessment of evidence produced during the trial, the Government maintained that it was not the Court's task to take the place of the domestic courts. The domestic court was better placed to assess the competing versions of information provided by witnesses and, in doing so, had the advantage of hearing the witnesses and observing their demeanour at the witness stand. The applicants had been convicted following

adversarial proceedings on the basis of the evidence examined at the hearings.

147. The Government maintained that, when dismissing the applicants' objections on various points of contention, the domestic courts had provided detailed reasons for their decisions. The applicants had been given the opportunity to put forward their arguments. Their arguments, even if ultimately rejected by the domestic courts, had nevertheless been duly taken into account and rejected on the basis of reasoning which appeared consistent and devoid of arbitrariness.

148. Lastly, the Government submitted that, even if there had been any defects in the original trial, they had been subsequently corrected by the appeal proceedings before the Court of Appeal and the Supreme Court. Accordingly, if considered as a whole, the criminal proceedings had been conducted in a manner compatible with the requirements of a fair trial.

(b) The applicants

149. As to the alleged impartiality of the Assize Court's judges, the applicants submitted that Article 109.1.7 of the CCrP unconditionally required that a judge should be disqualified from hearing a case if he or she was related to or personally dependent on any participants in the proceedings, including those from the prosecution side. The applicants noted that Judge Aleskerov's brother, as a member of the investigation team in criminal case no. 80308, had been directly involved in the investigative steps taken from 16 October 2003 and had signed a number of procedural documents, and that the evidence relating to their case had been gathered with his active involvement. For a period of more than three months (until his removal from the investigation team), he had personally conducted numerous interviews and had actively worked on the case in other ways. Although on 26 January 2004 Judge Aleskerov's brother had been removed from the criminal case, the majority of the evidence against the defendants had been gathered and the majority of the investigative steps had been carried out prior to that date. The evidence gathered during the time when he had participated in the investigation had eventually been produced during the trial.

150. The applicants disagreed with the Government's contention that Judge Aleskerov's brother had never been involved in the applicants' specific cases, which had been grouped together as criminal case no. 80365. The applicants noted that criminal case no. 80365 had merely been part of the original criminal case no. 80308, which had eventually been divided into fifteen different parts, and that it had not been a new independent case. The applicants noted that case no. 80365 had been severed from the original criminal case on 1 March 2004 and that, shortly thereafter, they had been informed that the investigation had been completed. Accordingly, very little investigative activity had been carried out in respect of this newly created

case, since the vast majority of the evidence serving as the foundation for the applicants' indictment had already been gathered in the context of the original case no. 80308. The mere fact that the applicants had been separated from the other defendants and their criminal case had been assigned a new number did not mean that they had become the subject of a completely different criminal case.

151. Relying on the above considerations, the applicants maintained that Judge Aleskerov's brother had been formally involved in and made a significant contribution to the prosecution's work, that Judge Aleskerov by his own admission had been aware of his brother's role in the proceedings and that, in view of such close family kinship with a member of the prosecution team, he could not have been impartial when hearing their case.

152. As to the alleged lack of impartiality on the part of Judge Ibayev, the applicants noted not only that his son had worked as an investigator at the Prosecutor General's Office, but also that he was directly subordinate to Mr Kazimov, the head of the investigation team in the applicants' case. This fact raised serious doubts as to the impartiality of Judge Ibayev, even though his son had not been personally involved in their criminal case.

153. As to the effectiveness of the legal assistance received, the first, third and fourth applicants noted the delays in their access to a lawyer at the initial stages of the proceedings. Furthermore, all of the applicants maintained that their lawyers had been unable to familiarise themselves to a sufficient extent with the investigation material and had been put under unprecedented physical and moral pressure from outside the courtroom. In such conditions, they had been unable to defend the applicants effectively. In particular, the obstacles faced by the lawyers had prevented them from preparing an adequate closing address on behalf of the defence and they had therefore refused to give an address altogether. The applicants had had no other choice but to request leave to deliver their closing addresses themselves, but their request had been rejected, depriving them of the opportunity to exercise one of the most important defence rights. Although they had been allowed to exercise their right of reply to the prosecution's submissions, this "right of reply" was not tantamount to a comprehensive closing address, as it was defined as a right to make a brief objection to or observation on various specific submissions made by the opposing party during the oral arguments. Moreover, the restriction of the rights of the defence was exacerbated by the fact that the prosecution had been granted two separate extensions of the period to prepare their oral argument.

154. As to the examination of witnesses and other evidence, the applicants maintained that the Assize Court had made manifest errors in its legal reasoning and the assessment of evidence. They submitted that the Convention did not merely require verification of whether certain witnesses had been called and cross-examined by the defence, but that it required that any assessment of evidence be devoid of unfairness and arbitrariness.

155. The applicants pointed out that, although the Assize Court had allowed them to have a number of defence witnesses examined, it had nevertheless rejected their applications to call a number of other witnesses whom they had wished to question.

156. The applicants noted that, when dealing with the witnesses who had retracted their earlier pre-trial statements incriminating the applicants, the Assize Court had often relied on the judgments adopted in previous trials concerning the events of 15 and 16 October 2003 (in which the applicants had not participated), where various evidentiary issues had been assessed, citing those judgments' *res judicata* character, and had thus essentially deprived the applicants of a fair assessment of the evidence at their own trial. The Assize Court had not given due attention to numerous statements by various witnesses to the effect that their pre-trial statements had been extracted from them by means of ill-treatment.

157. The applicants submitted that there had been a number of other procedural shortcomings during the trial. In particular, they claimed that the Assize Court had not provided them with copies of its various interim decisions in a timely manner. They also claimed that the transcripts of court hearings had often been incorrect and incomplete and that they had been unable to request the court to correct them, as the transcripts had not been made available for their review within three days after the record of each hearing had been signed by the presiding judge and the court clerk, as required by law.

2. The Court's assessment

158. As the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the complaint under both provisions taken together (see, among many other authorities, *F.C.B. v. Italy*, 28 August 1991, § 29, Series A no. 208-B; *Poitrinol v. France*, 23 November 1993, § 29, Series A no. 277-A; *Lala v. the Netherlands*, 22 September 1994, § 26, Series A no. 297-A; and *Krombach v. France*, no. 29731/96, § 82, ECHR 2001-II). In doing so, the Court will examine, in turn, each of the various grounds giving rise to the present complaint, in order to determine whether the proceedings, considered as a whole, were fair (compare *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, §§ 68 et seq., Series A no. 146).

(a) Impartiality of the Assize Court's judges

159. The Court reiterates that the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, that is, on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate

doubt in this respect (see *Fey v. Austria*, 24 February 1993, § 28, Series A no. 255-A).

160. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill-will for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86).

161. Under the objective test, it must be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all, in the accused. This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the accused is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Fey*, cited above, § 30).

162. Moreover, the existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public (see *Mežnarić v. Croatia*, no. 71615/01, § 27, 15 July 2005). The Court may take such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether the applicant's fears can be held to be objectively justified (see, *mutatis mutandis*, *Pescador Valero v. Spain*, no. 62435/00, §§ 24-29, ECHR 2003-VII, and *Pfeifer and Plankl v. Austria*, 25 February 1992, § 36, Series A no. 227).

163. Turning to the present case, the Court considers that, under the subjective test, there is insufficient evidence that either of the two challenged judges of the Assize Court displayed personal bias. However, although in many cases it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, it must be remembered that the requirement of objective impartiality provides a further important guarantee. Accordingly, the Court will proceed to examine the complaint under the objective test.

164. As to the alleged lack of objective impartiality on the part of Judge Aleskerov, the Court considers that the applicants reasonably construed the situation as one requiring withdrawal within the meaning of Article 109.1.7

of the CCrP, on the ground that the judge had a family relationship with a representative of one of the parties to the criminal proceedings. Moreover, it notes that Article 109.2 of the CCrP obliges a judge falling within the scope of one of the grounds for withdrawal or challenge set out in Article 109.1 to withdraw from the case without waiting to be challenged.

165. The Court notes that both the prosecution and the judges of the Assize Court, including Judge Aleskerov himself, acknowledged the fact that Judge Aleskerov's brother had been an active member of the investigation team working on the applicants' criminal case until 26 January 2004. However, in the Court's view, the decision to reject the applicants' challenge on the ground that the judge's brother was no longer involved in the investigation of case no. 80308 and had never been formally involved in case no. 80365 was overly formalistic and ignored a number of relevant factors.

166. The Court notes, firstly, that case no. 80365 was not a separate and unrelated criminal case, but merely an offshoot of the original criminal case no. 80308. The applicants had the status of accused persons in criminal case no. 80308 from the very beginning of the proceedings. As appears from the Prosecutor General's decision of 1 March 2004, the only discernible reason offered by the prosecution for severing case no. 80365 from case no. 80308 was to ensure the conclusion of the investigation in respect of those accused whose individual cases were ready for trial and their speedy committal for trial, as it was considered too difficult in practice to hold a single trial for more than one hundred defendants. It was specifically stated in that decision that, by the time case no. 80365 was severed, the prosecution had essentially gathered, in the context of the investigation in criminal case no. 80308, all the evidence necessary to bring the applicants to trial. Accordingly, the Court considers that both Judge Aleskerov and his brother were *de facto* involved in the same criminal case concerning the same defendants and the same criminal charges, notwithstanding any regrouping of defendants into separate sets of proceedings and formal reassignments of case numbers that had taken place in the meantime.

167. Secondly, although the judge's brother was removed from the investigation team on 26 January 2004, it appears from the case file that the majority, if not all, of the main incriminating evidence subsequently used against the applicants at the trial had been collected by the investigation team prior to that date. While it could be argued that, given that at some point the investigation team consisted of as many as forty-three investigators, the involvement of the judge's brother in the case had not been substantial, the Court nevertheless notes that he had contributed a share of the work in collecting evidence that his brother, Judge Aleskerov, would subsequently be called upon to examine at the trial. Moreover, at the trial, the judge would be called upon not only to assess the prosecution's submissions on their merits, but also to examine the defence's numerous

objections and arguments concerning the conduct of the investigation team and the allegedly faulty manner in which the evidence had been collected at the pre-trial stage of the proceedings. In such circumstances, the Court is of the view that the close family ties between a member of a prosecution team and Judge Aleskerov sufficed to objectively justify the applicants' fears that the judge lacked an appearance of objective impartiality (compare, *mutatis mutandis*, *Micallef v. Malta* [GC], no. 17056/06, § 102, ECHR 2009-...).

168. As to the alleged lack of impartiality on the part of Judge Ibayev, the Court observes that the applicants' fears were based on the fact that his son was an employee of the Prosecutor General's Office who was directly subordinate to the prosecutor who had served as a head of the investigation team in the applicants' case. Given that Judge Ibayev's son had never been assigned to work on the applicants' case, the Court considers that this part of the complaint, if viewed separately, concerns a situation where Judge Ibayev's link with one of the parties to the proceedings might be seen as too remote to objectively justify any fears of lack of impartiality on his part. However, taking into account the fact that both Judges Aleskerov and Ibayev were members of the same three-judge panel of the Assize Court that heard the applicants' case, the Court considers it inappropriate to view the applicants' objections in respect of each of these judges independently of each other. The Court considers that, however insignificant and remote the link of Judge Ibayev with the prosecution might have been considered if viewed separately, in the specific context of the present case his situation at least compounded the justified fears mentioned above as to the Assize Court's lack of impartiality arising from the situation of Judge Aleskerov.

169. The foregoing considerations are sufficient to enable the Court to conclude that the composition of the Assize Court was not such as to guarantee the appearance of its impartiality and that it failed to meet the Convention standard under the objective test.

(b) Legal assistance at the initial stage of the proceedings

170. The Court observes that the first, third and fourth applicants were not allowed contact with a lawyer during the first few days of the pre-trial investigation. Specifically, the first applicant was allowed to meet his lawyer for the first time five days after his arrest, the third applicant three days after his arrest, and the fourth applicant four days after his arrest.

171. The Court reiterates that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach*, cited above, § 89). In this regard, Article 6 may also be relevant before a case is sent for trial and in so far as the fairness of the trial is likely to be prejudiced by an initial failure to comply with it (see *Imbrioscia v. Switzerland*, 24 November 1993, § 36, Series A no. 275, and *Öcalan v. Turkey* [GC], no. 46221/99, § 131, ECHR 2005-IV). The manner

in which Article 6 §§ 1 and 3 (c) are applied during the investigation depends on the special features of the proceedings and the facts of the case. Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer from the initial stages of police interrogation (see *John Murray v. the United Kingdom*, 8 February 1996, § 63, *Reports* 1996-I, and *Öcalan*, cited above, § 131). As the Court has further clarified, in order for the right to a fair trial to remain sufficiently “practical and effective”, Article 6 § 1 requires that, as a rule, access to a lawyer should be provided from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008-...). Even in cases where an accused person remained silent and was not questioned in detention, a restriction of his or her right to legal assistance from the time of the arrest may fall short of the requirements of Article 6 §§ 1 and 3 (c) of the Convention (see *Dayanan v. Turkey*, no. 7377/03, §§ 32-33, ECHR 2009-...).

172. In the present case, it appears that, in the first few days of their detention, the first, third and fourth applicants were questioned without the benefit of legal assistance and made certain statements that were included in the criminal case file. It does not appear that any of them had expressly waived their right to a lawyer after their arrest. Having regard to the information available on this matter, the Court cannot speculate on the exact impact which the applicants’ access to a lawyer during that period would have had on the ensuing proceedings and whether the absence of a lawyer during that period irretrievably affected their defence rights. Nevertheless, the Court notes that such a restriction on initial access to legal assistance affected the applicants’ defence rights.

173. Consequently, the Court considers that the restriction on the first, third and fourth applicants’ right of access to a lawyer during the first few days of the pre-trial investigation infringed their defence rights.

(c) Access of the defence to the investigation file

174. The Court notes that all of the applicants complained that their lawyers had not been given sufficient time and facilities to study the investigation file. This eventually resulted in the lawyers’ subsequent inability to effectively defend the applicants and to properly formulate defence arguments during the trial.

175. More specifically, all of the applicants consistently claimed that neither they nor their counsel had been given sufficient access to the prosecution evidence after the pre-trial investigation had been completed and before the trial commenced, nor had they enjoyed such access after the trial had commenced, despite their repeated complaints to that effect. The Court reiterates that the right to an adversarial trial under Article 6 § 1 of the Convention means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may meet this requirement. However, whatever method is chosen, it should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment on them (see *Brandstetter v. Austria*, 28 August 1991, §§ 66-67, Series A no. 211). Article 6 § 3 (b) guarantees the accused “adequate time and facilities for the preparation of his defence” and therefore implies that the substantive defence activity on his behalf may comprise everything which is “necessary” to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility of putting all relevant defence arguments before the trial court and thus of influencing the outcome of the proceedings (see *Can v. Austria*, no. 9300/81, Commission report of 12 July 1984, § 53, Series A no. 96; *Connolly v. the United Kingdom*, no. 27245/95, Commission decision of 26 June 1996; and *Mayzit v. Russia*, no. 63378/00, § 78, 20 January 2005). The facilities which everyone charged with a criminal offence should enjoy include the opportunity to acquaint himself for the purposes of preparing his defence with the results of investigations carried out throughout the proceedings (see *C.G.P. v. the Netherlands*, no. 29835/96, Commission decision of 15 January 1997, and *Foucher v. France*, 18 March 1997, §§ 31-38, *Reports* 1997-II). The issue of the adequacy of the time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case.

176. The Court observes that the prosecution’s case file was rather large, consisting, *inter alia*, of more than 6,200 pages of documents in twenty-two volumes and video evidence recorded on twenty-two video cassettes. Examination of such a large volume of evidence by the defence inevitably required a substantial amount of time (compare *Öcalan*, cited above, §§ 142-47). The Government maintained that the defence had been given sufficient time to examine the case file, relying merely on the fact that each of the defence lawyers and applicants had signed a record on familiarisation with the material in the case file without making any remarks as to the inadequacy of the time and facilities afforded to them for doing so. The Court cannot accept this argument. It notes that signing a record on familiarisation with the material in the case file appears to be a procedural formality of minor legal significance, aimed at documenting the fact that the

persons concerned have indeed been given access to the case file, but it does not necessarily follow from this that the signing of such a record may somehow attest in any way whether the time and facilities for such access were sufficient or may serve as an unequivocal waiver of any substantive or procedural grievances the defence may have had in connection with the process of consulting the investigation file. Moreover, the Court observes that the lawyers repeatedly complained during the criminal trial that they had not been given adequate time to examine the investigation file to a sufficient extent; some of them even complained that they had been pressured into signing records on familiarisation with material in the case file without having ever been given access to the material at all. Although the Court is not obliged to accept these allegations at face value, it nevertheless considers that the allegations should be given a considerable amount of credit because they were serious, repeatedly made and mutually concordant, and because of the apparent fact that the domestic courts avoided addressing them in any reasonable detail.

177. Moreover, apart from the above-mentioned argument, the Government have not submitted any relevant information as to the exact period of time or the manner in which the defence were allowed to consult the investigation file, that is, whether each lawyer or applicant was given a copy of the relevant material or whether they had to consult the file on the premises of the investigation authorities. As a notable exception, the Government submitted information as to the schedule of access to the prosecution evidence by one of the second applicant's lawyers, Mr Karim; however, as the case stands, this information is irrelevant, as Mr Karim was dismissed as the second applicant's lawyer and did not represent him during the trial. Otherwise, the Court notes that neither the exact period of time, nor the exact schedule and manner of the defence's access to the case file is possible to discern from the documents submitted by the parties. The Court takes note of the observations made in the OSCE Report that "only one copy of the case materials was made available to the defendants, thus restricting the preparation of their defense ...".

178. In view of this, and in view of the applicants' and their lawyers' consistent and repeated complaints made before the domestic courts on this matter, and the lack of any relevant or discernible factual information in the Government's submissions, the Court finds that the circumstances of the case disclose serious problems as to the adequacy of the time and facilities afforded to the defense for acquainting themselves with the investigation file in preparation for the applicants' trial.

(d) Effective legal assistance during the trial

179. The Court observes that, starting from the Assize Court's very first preliminary hearings and at various times throughout the trial proceedings, all of the applicants' lawyers repeatedly complained that they had not been

able to provide their clients with adequate legal assistance owing to the limited time and facilities for the preparation of their defence and the alleged pressure applied on them outside the courtroom. These complaints eventually culminated in the refusal by the lawyers for the first three applicants to deliver closing addresses on their behalf. The lawyers did not formally terminate their services and remained as the applicants' formal representatives, but did not actively participate in the trial from that moment.

180. In this connection, the Court reiterates that, under Article 6 § 3 (c) of the Convention, an accused is entitled to legal assistance which is practical and effective and not theoretical or illusory. This Convention provision speaks of "assistance" and not of "nomination": mere nomination does not ensure effective assistance since a lawyer may be prevented from providing such assistance owing to various practical reasons, or shirk his or her duties. A State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. However, if a failure by legal-aid counsel to provide effective representation is manifest or is sufficiently brought to the authorities' attention in some other way, the authorities must take steps to ensure that the accused effectively enjoys the right to legal assistance (see *Artico v. Italy*, 13 May 1980, §§ 33-37, Series A no. 37, and *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168). Moreover, where it is clear that the lawyer representing the accused before the domestic court has not had the time and facilities to organise a proper defence, the court should take measures of a positive nature to ensure that the lawyer is given an opportunity to fulfil his obligations in the best possible conditions (see, *mutatis mutandis*, *Goddi v. Italy*, 9 April 1984, § 31, Series A no. 76).

181. In so far as some of the lawyers representing the applicants were State-appointed, the Court considers that, irrespective of whether any or all of the lawyers' claims about alleged obstacles to the adequate performance of their job had any merit, their eventual refusal to give closing addresses and to actively participate in the trial in other ways from that moment clearly resulted in a situation where the accused were left without any effective legal assistance during a considerable portion of the trial. The applicants' inability to receive effective representation was thus manifest and was brought to the Assize Court's attention in a clear manner, namely by way of repeated complaints and applications in this regard made by both the applicants and their lawyers and by the very fact of the lawyers' refusal to take part in the oral submissions.

182. It could be argued that the Assize Court addressed the matter in its ruling of 13 October 2004, rejecting the applicants' application to make oral submissions in person owing to their lawyers' *de facto* withdrawal (see paragraphs 78-79 above). However, in the Court's opinion, the Assize Court's ruling of 13 October 2004 was superficial and contradictory. Thus,

the Assize Court firstly stated, without any relevant explanation, that the lawyers had provided the applicants with adequate and effective assistance throughout the entire proceedings. However, it immediately followed up that statement with the contradictory remark that the lawyers had allegedly failed to perform their duty to avail themselves of the allegedly ample opportunities allowed to them for consulting the investigation file. This remark obviously contradicted the court's own proclaimed view that the legal assistance provided by the lawyers had been effective. The Court considers that such a perfunctory approach to the matter reveals an apparent lack of concern by the domestic court about the effectiveness of legal representation available to the applicants. There is no indication in the case file that the domestic court attempted to independently and comprehensively assess the alleged problems repeatedly raised by the applicants and their lawyers.

183. In the Court's view, the situation at hand called for at least a certain level of examination by the Assize Court of the specific allegations made by the lawyers; for example, the Assize Court should have requested and had regard to detailed information on the time and facilities afforded to them for consulting the prosecution evidence. Should the Assize Court have concluded that there had indeed been obstacles preventing the lawyers from doing their work properly, it should have attempted to remedy the situation by removing those obstacles. For example, it could have adjourned the hearings for a certain period in order to allow the lawyers to familiarise themselves with the case file to a sufficient extent. Alternatively, having regard to the fact that, at various points during the trial, some of the applicants expressed a wish to defend themselves in person because of the perceived ineffectiveness of the legal representation they were receiving, the domestic court could have at least taken this into account and afforded them time to prepare their defence in person. However, this was not done either (see also section (e) below).

184. In so far as some of the lawyers were hired by the applicants themselves, the Court considers that in the present case the situation is no different from that of legal representation by State-appointed lawyers. While the State cannot be held responsible for the quality of representation by a lawyer of the applicant's own choosing, it should nevertheless ensure that such a lawyer has an opportunity to fulfil his or her obligations in the best possible conditions. Where it is clear that the lawyer is unable to represent his client effectively owing to the lack of time and facilities to organise a proper defence, appropriate positive measures should be taken to remedy the situation.

185. The Court notes that the fourth applicant's lawyers, unlike the other applicants' lawyers, gave closing addresses on behalf of their client. However, these lawyers joined their colleagues in their complaints concerning the alleged obstacles to organising the applicants' proper

defence. The fourth applicant himself joined the other applicants' application for leave to defend themselves in person, arguing that the legal representation he was receiving was ineffective. Accordingly, the domestic court was likewise sufficiently informed of the problems regarding effective representation in the fourth applicant's case and, as in the cases of the other applicants, did not take adequate steps to address the matter.

186. In view of the above considerations, the Court considers that, although the applicants' inability to benefit from effective legal representation was manifest and was sufficiently brought to the domestic courts' attention, no adequate steps were taken to ensure that they effectively enjoyed their right to legal assistance as guaranteed by the Convention.

(e) Deficiencies in ensuring the defendants' rights to give closing addresses at the concluding hearings of the trial

187. The Court notes that, as discussed above, the lawyers for the first, second and third applicants refused to participate in the oral arguments on their clients' behalf and the applicants applied to the court for leave to deliver their closing addresses in person. Their application was not granted, on the ground that the domestic law did not allow defendants to deliver a closing address for the defence if they were formally represented by counsel in the proceedings. As a result, the applicants found themselves in a situation where their lawyers did not give closing addresses on their behalf and they themselves were not allowed to do so in person. The Court is not concerned with the manner in which the domestic law regulated this matter or if it was correctly applied in the applicants' case. Rather, the Court's task is to verify whether the actual situation at hand, namely the applicants' inability to give a closing address before the domestic court, was in breach of their rights under the Convention.

188. The Court reiterates that the principle of equality of arms, as one of the fundamental elements of the broader concept of a fair trial, requires each party to be given a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his opponent (see *Nideröst-Huber v. Switzerland*, 18 February 1997, § 23, *Reports* 1997-I). That right means, *inter alia*, the opportunity for the parties to a trial to present their own legal assessment of the case and to comment on the observations made by the other party, with a view to influencing the court's decision (see, *mutatis mutandis*, *Lobo Machado v. Portugal*, 20 February 1996, § 31, *Reports* 1996-I, with further references). The requirement of equality of arms, in the sense of a "fair balance" between the parties, applies in principle to both criminal and civil cases; in criminal cases a lesser degree of latitude is allowed for any deviations from that requirement (see *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, §§ 32-33, Series A no. 274).

189. The Court further reiterates that one of the most important aspects of hearings in criminal trials is the opportunity for the defence, as well as for the prosecution, to present their closing arguments, this being the only occasion when both parties can orally present their view of the entire case and of all the evidence produced at the trial and submit legal arguments concerning their assessment of its outcome (see, *mutatis mutandis*, *Hanževački v. Croatia*, no. 17182/07, § 25, 16 April 2009).

190. The Court notes that, in the present case, the hearings were adjourned twice in order to allow the prosecution to prepare their closing address, which they subsequently delivered in full during two hearings, without any interruption or objection by the court or the defence. On the other hand, the first, second and third applicants were not able to exercise their right to give a closing address, because their lawyers refused to do so on their behalf. As discussed above, the lawyers' refusal was indicative of their inability to provide effective legal assistance, a matter which was inadequately addressed by the domestic court. As such, the lawyers' *de facto* withdrawal cannot be considered to amount to a waiver by the applicants of the right to a closing address. On the contrary, the applicants insisted on exercising this right in person, but their request was denied. Accordingly, in the absence of any express or implicit waiver of the right to give a closing address, the applicants cannot be held responsible for this defect in the proceedings.

191. The Government argued that, in practice, the applicants were allowed to present all their arguments in person when exercising their right of reply and their right to a final plea. However, the Court cannot accept this argument, for the following reasons.

192. It notes, firstly, that a party's right to give a closing address is clearly distinguishable from the right of reply, both in substance and procedurally. The domestic law clearly regulated these different forms of submissions as separate stages of oral arguments by the parties. Only in the closing address was a party supposed to deliver a full overview of its legal and factual assessment of the entire case, whereas the right of reply was merely an additional opportunity to make brief comments on the closing arguments of another party, thus being essentially a rebuttal rather than a full address. Secondly, in any event, while it is true that in the present case the applicants were actually able to speak for much longer and address a much broader range of issues than usual during the exercise of their right of reply (see paragraphs 82-84 above), the Court notes that they were repeatedly interrupted by the presiding judge, who reminded them that the reply should be brief, and that their speeches were eventually cut short after several such interruptions. This also shows, contrary to the Government's point of view, that even the Assize Court itself did not regard the applicants' speeches in reply as fully equivalent to or a substitute for the closing address for the defence.

193. Furthermore, the Court considers that, likewise, the final plea, a right which the defendant is entitled to exercise in person at the very end of the trial in any event, independently of the closing address made earlier by his or her counsel, does not appear to be equivalent to and mutually interchangeable with the defence's closing address and constitutes a substantially distinct stage of the criminal trial from the stage of the parties' oral submissions.

194. Lastly, the Court notes that, after the lawyers' withdrawal, the applicants requested not only to be allowed to present their closing address in person, but also noted that they needed time to prepare it in view of their lawyers' sudden withdrawal. Even assuming that they were allowed to use the opportunity presented by the right of reply and the right to a final plea in order to deliver a full *de facto* closing address, it appears that, contrary to Article 339.2 of the Code of Criminal Procedure, which requires an adjournment of hearings in such cases, they were not allowed adequate time for the preparation of their defence speeches.

195. In view of the above, the Court considers that the applicants, having been unable to exercise their right to a closing address for the defence, were put at a significant disadvantage *vis-à-vis* the prosecution, who were able to exercise this right to the fullest extent possible. Accordingly, the applicants' defence rights were restricted in that they were not given an opportunity to present their case under the same conditions as the prosecution.

(f) Admission and examination of evidence and the right to a reasoned judgment

196. At the outset, the Court notes that the prosecution's case was based to a large degree on numerous witnesses whose pre-trial statements were produced in court. However, it appears that all of these witnesses were called to testify at the trial and that, in principle, the applicants were given an opportunity to question them. As to the defence witnesses, it is true that the Assize Court allowed the examination of only some of the witnesses requested by the defence, but refused to call all of the persons whom the defence sought to examine. While Article 6 § 3 (d) of the Convention is aimed at ensuring equality in criminal proceedings between the defence and the prosecution as regards the calling and examination of witnesses, it does not give an accused person an unlimited right to obtain the attendance of witnesses in court. The domestic law may thus lay down conditions for the admission and examination of witnesses provided that such conditions are identical for witnesses on both sides. Similarly, the domestic court is free, subject to compliance with the terms of the Convention, to refuse to call witnesses proposed by the defence, for instance on the ground that the court considers their evidence unlikely to assist in ascertaining the truth (see *X v. Austria*, no. 4428/70, Commission decision of 1 June 1972). Having

regard to the available material, the Court finds that it has not been clearly shown how any of the witnesses whom the Assize Court refused to examine would have been able to assist the applicants' defence against the specific accusations put forward against them.

197. Accordingly, in view of the above and having regard to the parties' further submissions in connection with this grievance, the Court considers that the main issue raised by this part of the complaint is not whether the applicants were able to examine prosecution witnesses or to obtain the attendance of defence witnesses, but whether the manner in which the evidence used against the applicants was taken and the manner in which it was ultimately assessed by the Assize Court were compatible with the Convention requirements. In particular, the Court notes that the applicants complained that their conviction was based to a large extent on allegedly false evidence and witness testimonies obtained illegally or under duress, and that the Assize Court made manifest errors in the manner in which it dealt with this evidence.

198. In this connection, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting States in the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Schenk v. Switzerland*, 12 July 1988, § 45, Series A no. 140).

199. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicants were guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the “unlawfulness” in question and, if a violation of another Convention right is concerned, the nature of the violation found (see, among other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX; and *Jalloh v. Germany* [GC], no. 54810/00, § 95, ECHR 2006-IX).

200. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence have been respected. It must be examined in particular whether the applicants were given the opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Khan*, cited above, §§ 35 and 37, and *Allan*, cited above, § 43). Where the reliability of evidence is in dispute the existence of fair procedures to examine the admissibility of the

evidence takes on an even greater importance (see *Allan*, cited above, § 47, and *Bykov v. Russia* [GC], no. 4378/02, § 95, ECHR 2009-...).

201. All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. The use in evidence of statements obtained at the stage of the police inquiry and investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected. As a general rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage (see, among other authorities, *Asch v. Austria*, 26 April 1991, § 27, Series A no. 203; *Lüdi v. Switzerland*, 15 June 1992, § 47, Series A no. 238; and *Saïdi v. France*, 20 September 1993, § 43, Series A no. 261-C).

202. Furthermore, an issue arises under Article 6 § 1 of the Convention where any submissions obtained in violation of Article 3 of the Convention are used as evidence against a defendant in criminal proceedings, as any statement obtained in breach of Article 3 is inherently unreliable (see, *mutatis mutandis*, *Söylemez v. Turkey*, no. 46661/99, § 122, 21 September 2006). This is so even if the admission of such evidence was not decisive in securing the conviction (see, for example, *Özcan Çolak v. Turkey*, no. 30235/03, § 43, 6 October 2009, and *Örs and Others v. Turkey*, no. 46213/99, § 60, 20 June 2006). Moreover, even in the absence of an Article 3 complaint, the Court is not precluded from taking into consideration allegations of ill-treatment for the purposes of deciding on compliance with the guarantees of Article 6 (see, *mutatis mutandis*, *Örs and Others*, cited above, § 58, and *Kolu v. Turkey*, no. 35811/97, § 54, 2 August 2005). While the cases cited above, on the facts, primarily concerned situations involving self-incriminating statements by defendants, the same principles naturally apply in respect of any statements obtained in breach of Article 3, including those made not only by defendants themselves but also by witnesses whose testimony is used as incriminating evidence.

203. Lastly, the Court reiterates that the effect of Article 6 § 1 is, *inter alia*, to place a “tribunal” under a duty to conduct a proper examination of the submissions, arguments and evidence, without prejudice to its assessment or to whether they are relevant for its decision, given that the Court is not called upon to examine whether arguments are adequately addressed. Article 6 § 1 obliges courts to give reasons for their decisions, although this cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, §§ 59 and 61, Series A no. 288, and *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December

1994, § 29, Series A no. 303-A, and *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B).

204. The Court observes that in the present case, the majority of the prosecution witnesses were asked to give a general description of the events of 16 October 2003 with the aim of establishing the existence of mass disturbances and the violent intentions and actions of the demonstrators. These testimonies did not directly implicate the applicants. The evidence directly implicating the applicants, on which their conviction rested to a decisive degree, consisted of the testimonies of a minority of the prosecution witnesses, namely a number of police officers, several demonstrators who had also been convicted, and several other eyewitnesses (see paragraphs 52-63 above).

205. As to the police officers who testified against the applicants, the Court notes that their testimony was first obtained at the pre-trial stage in the form of depositions. The defence raised a fairly strong and substantiated objection as to the manner in which these depositions had been taken and their contents, noting that some of them appeared to have been taken by the same investigator at the same time (which was either impossible or illegal) and were identical, almost word for word. It appears, however, that the Assize Court did not address this objection and did not take it into account when relying on these witnesses' testimonies as a basis for the applicants' conviction. It thus failed to assess both the question of the admissibility of the depositions and the reliability, credibility and personal integrity of those witnesses who had allegedly signed identical statements. Both of these matters raised in the applicants' objection, had the latter been successful, would have been capable of influencing a fair tribunal's overall assessment as to whether there had been sufficiently strong evidence to prove the applicants guilty.

206. When called to testify at the court hearings, most of the police and military officers allegedly made statements inconsistent with their own pre-trial depositions, as well as with the video evidence produced by the prosecution (see paragraphs 54-56 and 68 above; see also the relevant extracts from the OSCE report quoted in paragraphs 107-108 above). As appears from the trial transcript, the defence repeatedly pointed out these inconsistencies to the court and argued that the witnesses were lying. The Court notes that inconsistencies between a witness's own statements given at various times, as well as serious inconsistencies between different types of evidence produced by the prosecution, give rise to a serious ground for challenging the credibility of the witness and the probative value of his or her testimony; as such, this type of challenge constitutes an objection capable of influencing the assessment of the factual circumstances of the case based on that evidence and, ultimately, the outcome of the trial. The Court notes, however, that in its judgment the Assize Court remained silent as to the defence's objections in this regard and, as appears from the

documents in the case file, never attempted to take into account any of the defence's allegations concerning the inconsistencies in the testimonies of those prosecution witnesses. This omission was even more conspicuous in view of the fact that in its judgment the Assize Court actually analysed certain inconsistencies in the testimonies of defence witnesses (see paragraph 66 above), whereas it failed to provide any reasons as to why the defence's objections concerning the prosecution witnesses were left unexamined and why it considered the alleged inconsistencies in the testimonies of prosecution witnesses to be immaterial.

207. In such circumstances, the Court cannot but conclude that, given the nature and substance of the defence's objections raised against the above-mentioned group of witnesses, the domestic court was required to give answers to those objections and that, in the absence of any such answers, the applicants' rights to an adequate opportunity to challenge the witnesses against them and to receive a reasoned judgment were breached.

208. As to the statements of other witnesses directly implicating the applicants (see paragraphs 57-63 above), the Court notes that the majority of the witnesses who had made pre-trial statements to that effect made completely different statements when summoned to testify at the court hearings, retracted their previous incriminating statements as being false and alleged that they had been forced to make those statements by means of ill-treatment or threats of ill-treatment. The Assize Court refused to attach weight to these persons' retraction of the statements made in their pre-trial depositions, relying on the "*res judicata* character" of the existing judgments where the same depositions had been admitted as good evidence and where those persons' complaints of ill-treatment had been found to be unsubstantiated. The Court, however, is not convinced by the approach taken by the domestic court on this matter, for the following reasons.

209. It refers, firstly, to its judgment in the *Mammadov* case (cited above), in which it found that the applicant had been tortured in custody with the aim of extracting information from him and that the domestic authorities had failed to carry out an adequate and effective investigation of his complaints of ill-treatment. The applicant in that case, who is also the fourth applicant in the present case, was in a similar situation to the witnesses in question in the present case, as he was also a person detained in connection with the events of 16 October 2003. While the *Mammadov* case cannot be of direct relevance to the issue examined in the present case, it nevertheless demonstrates that situations similar to those complained of by the witnesses in the present case arose in the context of the whole group of interconnected criminal proceedings concerning the events of 16 October 2003. It also demonstrates that the mere fact that some form of domestic examination of the witnesses' complaints of ill-treatment took place does not necessarily mean that it was effective in establishing the truth. Secondly, having regard to the available material, including the relevant and very

detailed reports of highly reputable international organisations and NGOs such as, among others, the OSCE and Human Rights Watch, the Court notes the existence of numerous, consistent and credible allegations of systematic ill-treatment by the law-enforcement authorities of detainees and witnesses questioned in connection with the events of 15 and 16 October 2003. In particular, those reports contain quotations of first-hand accounts by a large number of detained persons concerning their own alleged ill-treatment and ill-treatment that they had witnessed being used against other detainees. The Court considers that the consistency and level of detail of the information in this regard is so overwhelming that it gives rise to serious concerns in respect of the interrogation methods used by the domestic authorities in the course of the investigations carried out in respect of the events of 15 and 16 October 2003. While the Court is not in a position to accept the information contained in those reports as established proof of ill-treatment of the relevant witnesses in the present case or other persons mentioned in those reports, it nevertheless considers that the credibility of their authors and their consistent and detailed nature give rise to a considerable degree of distrust towards the manner in which the domestic authorities dealt with those allegations of ill-treatment in various proceedings, including the Assize Court proceedings in the present case.

210. In the light of the above information revealing repeated reports of widespread ill-treatment of persons arrested and questioned in connection with criminal case no. 80308, the Court considers that, given the sheer number of witnesses who alleged that they had testified under duress in the present case, the Assize Court should have been especially alert in dealing with those allegations. The mere fact that so many witnesses claimed to have been forced to testify against the applicants under duress obliged the domestic court to deal with the issue of admissibility and credibility of their testimonial evidence in much more detail and with an especially high degree of scrutiny.

211. The Court considers that the notion of a fair and adversarial trial presupposes that, in principle, a tribunal should attach more weight to a witness's testimony given at the trial hearing than to a record of his or her pre-trial questioning produced by the prosecution, unless there are good reasons to find otherwise. Among other reasons, this is because pre-trial questioning is primarily a process by which the prosecution gather information in preparation for the trial in order to support their case in court, whereas the tribunal conducting the trial is called upon to determine a defendant's guilt following a fair assessment of all evidence actually produced at the trial, based on the direct examination of evidence in court. Although it is not the Court's task to verify whether the domestic courts made any substantive errors in that assessment, it is nevertheless required to review whether the courts gave reasons for their decisions in respect of any objections concerning the evidence produced.

212. In the present case, the Court considers that, in accepting the witnesses' pre-trial statements as good evidence and disregarding the retraction of those statements at the trial, solely on the ground of the existence of previous judgments in which the witnesses' complaints of ill-treatment had been rejected as unsubstantiated, the Assize Court deprived the applicants of the opportunity of a full and comprehensive assessment of the evidence used against them. Although the relevant judgments relied on by the Assize Court had acquired legal effect, the Court considers that the decisions reached by other courts in respect of the same or similar submissions by the witnesses could not be said to have a "*res judicata* effect" in respect of the applicants, or to prevent them from raising the same objections again at their own trial. The Court notes that, in the light of the principle of presumption of innocence and a defendant's right to challenge any evidence against him or her, a criminal court must conduct a full, independent and comprehensive examination and assessment of the admissibility and reliability of evidence pertaining to the determination of the defendant's guilt, irrespective of how the same evidence may have been assessed in any other proceedings concerning other defendants. In this connection, it is of particular importance that the applicants in the present case had not been parties to the earlier proceedings referred to by the Assize Court and, thus, had been unable to challenge any decisions reached in them concerning any claim or particular issue. Moreover, the witnesses' submissions in those proceedings were assessed in a context different from that of the applicants' case. Thus, in those proceedings, where the witnesses themselves were defendants, their allegations of having testified under duress appeared to have been examined for the purposes of establishing the existence of ill-treatment and assessing whether the defendants had made self-incriminating statements under duress. On the other hand, in the applicants' case the same or similar submissions by the witnesses were relevant for the purpose of assessing the admissibility and probative value of evidence incriminating a third party (the applicants).

213. In view of the above, the Court concludes that the domestic court failed to address the substantiated objections raised by the applicants in respect of the admissibility and probative value of the evidence against them and to provide adequate reasons for the manner in which it assessed evidence of a contradictory and highly questionable nature. It follows that the applicants' right to the examination of witnesses and their right to a reasoned judgment were infringed.

(g) Appeals

214. The Court notes that proceedings, viewed as a whole, can be considered fair if any defects of the original trial are subsequently remedied by the appeal courts (see, *mutatis mutandis*, *Edwards v. the United Kingdom*, 16 December 1992, § 39, Series A no. 247-B, and *De Cubber*,

cited above, § 33, Series A no. 86, with further reference to *Adolf v. Austria*, 26 March 1982, §§ 38-40, Series A no. 49). However, contrary to the Government's argument in the present case, the Court considers that none of the defects of the original trial were remedied either by the Court of Appeal or the Supreme Court, since those courts either refused (the Court of Appeal) or had no competence (the Supreme Court) to conduct a new hearing on points of both fact and law entailing a fresh judicial examination of the evidence and the parties' legal and factual arguments. Moreover, both courts merely reiterated the trial court's findings and did not address the numerous complaints made by the applicants concerning the various defects in the trial, summarily rejecting those complaints as unsubstantiated without giving any reasoning.

(h) Conclusion

215. The Court notes that although it could be argued that the breaches of defence rights found above did not affect all of the applicants to the same degree, it is nevertheless clear that each of the applicants was affected, if not by all, at least by several of those defects in the trial. In view of the above findings, the Court concludes that the proceedings in question, taken as a whole, did not satisfy the requirements of a fair trial.

216. Accordingly, there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (b), (c) and (d) of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

217. The applicants further complained that the various public statements made by the State authorities and high-ranking State officials prior to their conviction by the competent court had infringed their right to the presumption of innocence secured in Article 6 § 2 of the Convention, which provides as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. Admissibility

218. The Government submitted that the applicants had failed to exhaust available domestic remedies, as they had not taken any proper steps to bring this complaint to the attention of the relevant authorities. In particular, the Government argued that, under domestic law, the applicants could have lodged a criminal complaint alleging defamation under Article 147 of the Criminal Code and Chapter 27 of the CCrP, or a civil action for damages,

against the public officials who had allegedly violated their presumption of innocence.

219. The applicants submitted that no effective remedies existed in practice in respect of their complaint alleging a breach of the presumption of innocence. Even if such remedies existed in theory, they did not offer any reasonable prospects of success in their particular case, as the domestic authorities had “clearly shown their tolerance towards the persistent and blatant violations” by the prosecution authorities of the applicants’ Convention rights. They maintained that the provisions of the Criminal Code and the CCrP mentioned by the Government were irrelevant to this particular type of complaint and noted that there existed no court decisions in domestic judicial practice concerning a violation of the right to presumption of innocence.

220. The Court reiterates that the purpose of the domestic-remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those that relate to the breaches alleged and that, at the same time, are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198).

221. Although the Government argued that the domestic law provided for effective remedies in the form of a criminal complaint alleging defamation or a civil action for damages, which were in theory capable of providing redress in respect of the alleged breach of the presumption of innocence, the Court notes that the Government have not submitted any specific examples of previous successful use of the above-mentioned avenues of redress in connection with complaints alleging a breach of the presumption of innocence. Nor have the Government been able to demonstrate, by means of specific examples, that any complaints concerning this particular substantive subject matter have ever been even accepted for examination by the relevant criminal authorities or civil courts under the procedures they mentioned. As to the possibility of making a complaint concerning an alleged breach of the presumption of innocence directly before the court conducting the complainant’s criminal trial, the Court is aware of one example where such a complaint was summarily rejected without any reasoning (see *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 45 and 153, 22 April 2010), an outcome which cannot be considered to satisfy the requirement of practical effectiveness of remedies. In such circumstances, the Court cannot conclude that any of the remedies mentioned by the Government could be used specifically in relation to the

breaches alleged or that the existence of such remedies, in practice, was sufficiently certain.

222. Accordingly, the Court dismisses the Government's objection and notes further that this complaint is not otherwise manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

223. The Government submitted that Article 6 § 2 of the Convention could not prevent the authorities from informing the public about any criminal investigations in progress. They maintained that the applicants' presumption of innocence had not been breached and that neither any preliminary court decisions nor any public statements pointed to by the applicants had depicted them as criminals or established their guilt prior to their criminal conviction.

224. The applicants reiterated their complaint and insisted that they had been declared as criminals in numerous public statements made by various public authorities and high-ranking officials prior to their conviction by the competent court.

2. The Court's assessment

225. The Court reiterates that Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). It not only prohibits the premature expression by the tribunal itself of the opinion that the person "charged with a criminal offence" is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, 25 March 1983, § 38, Series A no. 62), but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudice the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41, and *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X). The Court stresses that Article 6 § 2 cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38).

226. It has been the Court's consistent approach that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008, with further references). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II).

227. In the present case, the applicants complained of various statements made by numerous authorities and State officials. The Court considers that, for the purposes of the analysis under Article 6 § 2 of the Convention, it will be sufficient to have regard only to the statements made by the law-enforcement authorities, namely the press statements by the Ministry of Internal Affairs and the Prosecutor General's Office (see paragraphs 98 and 101-102 above) and the declarations made by two high-ranking police officials (see paragraphs 99 and 103 above).

228. As to the statements made by the Head of the Press Service of the Ministry of Internal Affairs during the press conference of 22 October 2003 and the joint press release of 27 October 2003 issued by the Ministry of Internal Affairs and the Prosecutor General's Office, the Court notes that they were made in a context independent of the criminal proceedings themselves. It acknowledges that the gravity of the events of 15 and 16 October 2003 may have required the authorities to keep the public informed of any criminal proceedings instituted in connection with those events. However, this circumstance cannot justify a lack of caution in the choice of words used in their statements in reference to the accused persons in those proceedings. The statements at issue were made at a time when the criminal investigation in respect of the applicants had just been started. It was particularly important at this initial stage not to make any public allegations which could have been interpreted as confirming the guilt of the applicants in the opinion of a State law-enforcement authority. The Court notes, in particular, that these statements specifically mentioned, among other things, the fourth applicant's name and also referred to "other" persons unidentified by name, and declared, without any qualification or

reservation, that the persons concerned had instigated, and ordered the demonstrators to commit, unlawful actions resulting in mass disorder.

229. As to the newspaper articles authored by the Head of the Sabail District Police Office (see paragraph 99 above) and the Deputy Minister of Internal Affairs (see paragraph 103 above), it is clear from the content of those articles that neither of them was aimed at informing the public about the criminal investigations in progress. From the content and rhetoric of those statements, it is evident that their primary purpose was to express political criticism and condemnation of the political opposition and the violent actions attributed to it. Seeing that the authors of the statements were high-ranking functionaries of the law-enforcement authorities and not politicians, their statements, which were made in their official capacity, could not be considered part of a legitimate political debate, which might arguably allow a certain degree of exaggeration and liberal use of value judgments with reference to political rivals.

230. In his different statements, the Head of the Sabail District Police Office unequivocally asserted that the demonstrators had “committed terrible criminal acts” under direct orders from the fourth applicant and two other opposition leaders, all of whom were clearly identified by their name. For his part, the Deputy Minister of Internal Affairs clearly mentioned all of the applicants by name as persons who had overseen the “actions of criminal character” committed by the “radical”, “reactionary” and “destructive” opposition and aimed at usurping State power by unlawful means. The entire article authored by the Deputy Minister of Internal Affairs was notable for the repeated and persistent use of the words “crime” and “criminal” in referring to the opposition and its leaders and the specific actions attributed to them.

231. The Court notes that only the Deputy Minister of Internal Affairs clearly named all of the applicants in his statements, whereas the other above-mentioned statements specifically named only the fourth applicant and also referred to some unidentified “other” persons. However, in the context of all the circumstances in which these statements made, the word “others” used in those statements was merely a thinly veiled reference to, *inter alios*, the other three applicants, as it was commonly known to the public from news reports which specific opposition leaders had been arrested in connection with the events of 15 and 16 October 2003.

232. Given that the above statements were made by law-enforcement authorities and their high-ranking officials, particular caution should have been exercised by them in the choice of words to describe the pending criminal proceedings and the events that led to the applicants’ prosecution. The Court considers that those statements, made without necessary qualifications or reservations, contained wording amounting to an express and unequivocal declaration that the applicants had committed criminal offences. As such, they prejudged the assessment of the facts by the

competent judicial authority and could not but have encouraged the public to believe the applicants guilty before they had been proved guilty according to law.

233. In view of the above conclusion, the Court considers it unnecessary to examine the applicants' further arguments concerning other statements made by various State officials and authorities.

234. There has accordingly been a violation of Article 6 § 2 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

235. The first, second and third applicants complained that their unfair criminal conviction had been aimed at suppressing their freedom of peaceful assembly with others, guaranteed by Article 11 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.”

A. The parties' submissions

236. The Government argued that the applicants had not exhausted domestic remedies, as none of them had lodged any formal complaints with the domestic authorities alleging a violation of their rights under Article 11 of the Convention.

237. The Government further noted that there was sufficient eyewitness and video evidence proving the violent intentions and violent actions of the demonstrators, as a result of which a number of police officers and civilians had been injured and a significant amount of public and private property had been damaged. On the basis of the above, the Government argued that the demonstration could not be considered a “peaceful assembly” and, accordingly, could not be afforded the protection of Article 11 of the Convention.

238. Lastly, the Government submitted that, in any event, even if Article 11 applied and the Court were to consider that there had been an interference with the applicants' rights under that Article, the interference had been prescribed by law, had pursued the legitimate aim of protecting

public safety and the rights and freedoms of others, and had been “necessary in a democratic society” because the applicants had received punishment proportionate to their misdeeds, namely organising a mass disorder resulting in injuries to numerous people and damage to property.

239. The applicants did not comment on the Government’s objections as to the admissibility of the complaint.

240. The applicants complained that, in addition to amounting to a violation of Article 6 of the Convention, their conviction for “organising mass disorder” following an unfair trial had also constituted an unjustified interference with their rights under Article 11 of the Convention. They submitted that the main motivation behind their conviction was the fact that they were leaders of the opposition who had called for a public protest against the results of the presidential election.

241. As to the events of 16 October 2003, the applicants noted that, despite the fact that Mr I. Gambar’s electoral representatives had requested prior authorisation to hold a demonstration in accordance with the law, they had been unlawfully refused permission. The applicants argued that they and other demonstrators had a right to assemble peacefully even without formal authorisation by the Government authorities. The applicants disagreed with the Government’s contention that the demonstration had been violent. They argued that only a handful of “saboteurs” had been deployed to create trouble, whereas the law-enforcement authorities had been unnecessarily and excessively violent during the unjustified dispersal of the demonstration by force.

242. In the applicants’ opinion, the authorities’ use of force against the demonstrators, and the arrests and unfair convictions of numerous demonstrators for various offences, including the applicants themselves, constituted an unjustified interference with their right to freedom of peaceful assembly.

B. The Court’s assessment

1. Scope of the complaint raised before the Court

243. The Court cannot overlook the fact that the proceedings instituted against the applicants and all other events related to the present case are directly linked to the mass protests of 15 and 16 October 2003. Thus, at their core, the events would concern the exercise of the freedom of assembly, one of the fundamental freedoms serving as the foundation of a democratic society. The Court reiterates that the freedom to take part in a peaceful assembly is of such importance that a person ought not to be subjected to a sanction for participation in a demonstration which has not been prohibited, so long as this person does not himself commit any reprehensible act on such an occasion (see *Ezelin v. France*, 26 April 1991,

§ 53, Series A no. 202). Furthermore, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 38-42, ECHR 2006-XIII). However, the Court notes that it is primarily called upon to decide on the issues which have been raised before it either expressly or in substance.

244. In this connection, having carefully examined the applicants' original complaints made in their respective applications, the Court considers that they did not complain that their rights under Article 11 of the Convention had been violated as such by the fact that the holding of the demonstration had not been formally permitted, or that the demonstration had been dispersed or the manner in which it had been dispersed. Accordingly, the Court finds that these issues are outside of the scope of the present applications. In any event, it does not appear that any one of the applicants, as participants in the demonstration, ever lodged any complaints with the domestic courts alleging that the authorities' refusal to grant permission for the demonstration had been unlawful, or that their decision to disperse it by force had violated their and other demonstrators' right to freedom of peaceful assembly. Thus, any complaints about the above-mentioned issues, even assuming they had been intended to be raised before the Court, would in any event be inadmissible for non-exhaustion of domestic remedies.

245. However, in their original applications, in addition to their primary complaints under Article 6, the applicants complained that their unfair criminal conviction for "organising mass disorder" also amounted to a violation of their rights under Article 11, relying in this respect on the same arguments as those raised under Article 6. Accordingly, the scope of the present complaint is limited to the question whether the fact that, following the unauthorised demonstration, the applicants were convicted of "organising mass disorder" in breach of the requirements of a fair trial could in itself be regarded as an interference with their right under Article 11 and, if so, whether it was justified.

2. Admissibility

246. Bearing in mind the above scope of this particular complaint, the Court rejects the Government's objection as to the inapplicability of Article 11. Furthermore, the Court considers that the Government's objection as to the non-exhaustion of domestic remedies should also be dismissed. In so far as the applicants alleged that their criminal conviction had been unfair, they duly lodged all the ordinary appeals available to them under domestic law and their submissions were substantively similar to those raised before the Court. The Government have not explained, and the Court cannot see, how any separate domestic appeal by the applicants

raising the same substantive complaints but made specifically under Article 11 of the Convention could have had any prospect of success, after the relevant criminal courts had already found them guilty of organising mass disorder.

247. No other ground for declaring the complaint inadmissible has been established. The Court therefore declares this complaint admissible within the scope defined in paragraph 245 above.

3. *Merits*

248. The Court notes that a careful distinction may be necessary in situations where applicants are not punished for participation in a demonstration as such, but for particular behaviour in the course of the demonstration, such as violence or incitement to violence (compare, *mutatis mutandis*, *G. v. the Federal Republic of Germany*, no. 13079/87, Commission decision of 6 March 1989). Accordingly, the subject matter of this complaint hinges on the determination of whether the applicants indeed engaged in incitement to violence, a question which is normally to be decided by the relevant domestic courts in proceedings offering the guarantees of a fair trial. The Court has already found that the criminal proceedings in the present case did not comply with the required guarantees of fairness. Furthermore, the applicants' submissions in respect of the complaint under Article 11, as declared admissible, are essentially the same as under Article 6.

249. In such circumstances, as the applicants' arguments concerning the unfairness of the trial have already been covered by the finding of a violation of Article 6, the Court considers that there is no need for a separate examination of the same arguments under Article 11.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

250. Relying on Article 8 of the Convention, the first applicant complained that, during his arrest, the police officers had entered his flat without a search warrant and had violated his right to respect for his home. Relying on 14 of the Convention in conjunction with their other complaints, all of the applicants complained that, as members of the political opposition, they had been persecuted based on their political views and that the domestic courts had disregarded the statements of the witnesses for the defence solely on the ground that these witnesses had also been members of the opposition parties.

251. 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 finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto. It follows that this part of the

applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

252. 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*

253. The first applicant claimed a total amount of 670,000 euros (EUR) in respect of pecuniary damage, including expenses he had incurred for medical treatment and food packages brought to him by his family while he had been imprisoned, as well as the damage caused to him by corruption at “all levels of the State system”.

254. The second applicant claimed EUR 45,000, including expenses for food and medication brought to him by his family members while he had been imprisoned, as well as loss of income during his imprisonment.

255. The third applicant claimed EUR 17,000 in respect of pecuniary damage incurred as a result of expenses on food packages delivered to him by his family during his imprisonment.

256. The fourth applicant claimed a total amount of EUR 620,000 including expenses he had incurred for medical treatment and food packages brought to him by his family while he had been imprisoned, as well as the damage caused to him by corruption at “all levels of the State system”.

257. The Government argued that the applicants’ claims were unjustified and unsupported by any documentary evidence.

258. The Court does not discern any causal link between the violations found and the pecuniary damage alleged by each of the applicants. In any event, none of the above claims was supported by any evidence. Therefore, the Court dismisses the applicants’ claims in respect of pecuniary damage.

2. *Non-pecuniary damage*

259. All of the applicants made claims in respect of non-pecuniary damage suffered as a result of the violations of their rights under the Convention. The first applicant claimed EUR 70,000, the second applicant EUR 250,000, the third applicant EUR 50,000, and the fourth applicant EUR 400,000.

260. The Government submitted that the amounts claimed were unjustified and excessive and argued that findings of violations would constitute sufficient reparation in respect of any non-pecuniary damage suffered.

261. The Court considers that the applicants must have endured moral suffering which cannot be compensated solely by the finding of violations. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 10,000 under this head, plus any tax that may be chargeable on this amount.

262. 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 criminal proceedings in the present case did not comply with the requirements of fairness. In such circumstances, the most appropriate form of redress would, in principle, be the reopening of the proceedings in order to guarantee the conduct of the trial 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 v. Azerbaijan*, no. 38228/05, § 46, 8 October 2009; and *Abbasov v. Azerbaijan*, no. 24271/05, §§ 41-42, 17 January 2008). 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

263. The first applicant claimed EUR 12,500 for costs and expenses, including EUR 7,000 for legal fees and other expenses incurred before the domestic courts and EUR 5,500 for those incurred before the Court (consisting of EUR 4,500 for legal fees and EUR 1,000 for postal expenses). In support of his claim for legal fees in the proceedings before the Court, he submitted a contract for legal services concluded with Mr F. Agayev.

264. The second applicant claimed approximately EUR 6,500 for legal fees incurred before both the domestic courts and the Court, including the sum of “approximately” EUR 1,500 that he had paid to Mr R. Hajili for legal services rendered in the proceedings before the Court. In support of the latter part of the claim, he submitted an invoice for 2,000 new Azerbaijani manats paid to his lawyer.

265. The third applicant claimed EUR 7,500 for legal fees, including EUR 3,000 for legal fees incurred in the domestic proceedings and

EUR 4,500 for legal fees incurred in the proceedings before the Court. He also claimed EUR 2,592 for translation expenses and EUR 1,000 for postal expenses. He submitted a contract for legal services to be rendered by Mr I. Aliyev in the proceedings before the Court, a contract for translation services and an invoice certifying payment of additional translation costs.

266. The fourth applicant claimed EUR 15,500 for costs and expenses, including EUR 10,000 for legal fees and other expenses incurred before the domestic courts and EUR 5,500 for those incurred before the Court (consisting of EUR 4,500 for legal fees and EUR 1,000 for postal expenses). In support of his claim for legal fees in the proceedings before the Court, he submitted a contract for legal services concluded with Mr F. Agayev.

267. The Government submitted that the amounts claimed were excessive and unreasonable and had not been actually incurred. They noted that the applicants had either failed to submit relevant evidence in support of their claims or had submitted insufficient evidence.

268. 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 were reasonable as to quantum.

269. As to the claims in respect of the legal fees incurred in the domestic proceedings and claims in respect of postal expenses, the Court notes that none of the applicants has submitted any documents in support of those claims or given convincing reasons for failing to do so. Therefore, the Court dismisses the applicants' claims in respect of postal expenses and the costs and expenses incurred before the domestic courts.

270. As to the remainder of the claims, having regard to the documents in its possession and the criteria mentioned in paragraph 268 above, the Court decides as follows:

(i) The Court notes that the first and the fourth applicants were represented by the same lawyer (Mr F. Agayev) in the proceedings before the Court and each claimed EUR 4,500 for his services. Having regard to the services stipulated in the relevant contracts between the applicants and Mr Agayev and the services actually rendered, the Court considers that the amounts claimed do not correspond to the legal assistance that was actually provided and was necessary in the present case. The Court further notes the similarity of the complaints and legal arguments submitted in both cases and observes that substantial parts of the lawyer's submissions in both cases were either identical or very similar. In view of the above considerations, the Court awards the first and the fourth applicants, jointly, the total amount of EUR 3,200 in respect of the legal services rendered by Mr F. Agayev.

(ii) The Court accepts the second applicant's claim in respect of the legal fees incurred in the proceedings before the Court and awards him EUR 1,500.

(iii) Having regard to the services stipulated in the relevant contract concluded between the third applicant and his lawyer, Mr I. Aliyev, and the services actually rendered, the Court considers that the amounts claimed do not correspond to the legal assistance that was actually provided and was necessary in the present case. Moreover, taking into account the total volume of documents actually translated in the present case, the Court considers that the claim in respect of translation expenses is excessive and that therefore only a partial award can be made under this head. In view of the above considerations, the Court awards the third applicant the sum of EUR 3,000 in respect of the costs and expenses in the proceedings before the Court.

C. Default interest

271. 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. *Decides* to join the applications;
2. *Declares* the applicants' complaints under Article 6 §§ 1, 2 and 3 (b), (c) and (d) of the Convention and the first, second and third applicants' complaint under Article 11 of the Convention admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention taken together with Article 6 § 3 (b), (c) and (d);
4. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
5. *Holds* that there is no need to examine separately the complaint under Article 11 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into new Azerbaijani manats at the rate applicable at the date of settlement:

- (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to each applicant in respect of non-pecuniary damage;
 - (ii) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable to the applicants, to the first and fourth applicants, Mr Huseyn and Mr Mammadov, jointly, in respect of the legal services provided by Mr F. Agayev;
 - (iii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, to the second applicant, Mr Abbasov, in respect of the legal fees incurred in the proceedings before the Court; and
 - (iv) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, to the third applicant, Mr Hajili, in respect of the costs and expenses in the proceedings before the Court;
- (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;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 26 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President