



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

FIRST SECTION

CASE OF NATIG MIRZAYEV v. AZERBAIJAN

(Application no. 36122/06)

JUDGMENT

STRASBOURG

22 November 2011

FINAL

22/02/2012

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

In the case of Natig Mirzayev v. Azerbaijan,

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

Nina Vajić, *President*,
Anatoly Kovler,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 36122/06) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a stateless person, Mr Natig Farhad oglu Mirzayev (“*Natig Fərhad oğlu Mirzəyev* – the applicant”), on 18 August 2006.

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

3. The applicant alleged, in particular, that the conditions of his detention had been harsh and that he had been denied adequate medical assistance in prison. He also argued that the domestic proceedings against the Bayil Prison authorities concerning the alleged lack of medical assistance had been held in his absence.

4. On 26 November 2009 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the conditions of the applicant’s detention, lack of medical assistance and unfairness of the civil proceedings to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 in Baku and is currently serving a life sentence in Gobustan Prison.

A. The applicant's criminal conviction

6. The applicant was sought by the law-enforcement authorities for complicity in a number of criminal offences, including two murders, committed in 1994.

7. On 22 October 1998 the applicant was arrested in Russia and on 11 March 1999 he was extradited to Azerbaijan.

8. On 24 January 2000 the Supreme Court, sitting as the court of first instance, convicted the applicant of complicity in two counts of murder, several counts of theft, illegal possession and sale of weapons, and hooliganism. The sentences for these offences were merged, and the applicant was sentenced to life imprisonment and confiscation of property.

B. The conditions of the applicant's detention

1. The applicant's description of the conditions of detention

9. Following his conviction, in January 2000 the applicant was transferred to the 5th wing of Bayil Prison, formerly designated for convicts sentenced to death.

10. On 5 January 2001 he was transferred to Gobustan Prison, located outside Baku, where he is currently detained. The applicant is held, together with one other inmate, in a cell measuring 2.5 x 3.8 metres and 3.5 metres high. The cell has two beds, a small bedside cupboard, and one small table and two chairs fixed to the cell floor. The toilet area is separated from the rest of the cell. The floor and ceiling are made of stone and concrete respectively. The temperature inside the cell is very high in summer and very low in winter. Central heating is available, but insufficient.

11. The window has metal bars and no pane and, in winter, is closed with a transparent polyethylene film. The air inside is stale and the cell cannot be naturally ventilated. The food served in the prison is often of poor quality and lacks sufficient meat and vitamins, and the menu is unvaried and monotonous. The inmates are allowed only about half an hour's outdoor exercise a day.

2. The Government's description of the conditions of detention

12. After his transfer to Gobustan Prison, the applicant was detained respectively in cell 150 in the 5th unit and in cell 184 in the 6th unit. Since 6 April 2005 he has been detained in cell 188 in the 6th unit. All these cells are intended for two prisoners and their size is 10 sq. m.

13. The conditions of the applicant's detention meet all the national and international requirements and standards. The window of the cell can be opened from the inside. The window is large enough and does not prevent the entrance of natural light and fresh air. The cell is also provided with electric lamps, a ventilator and a radio set.

14. Since June 2008 the prisoners have had the right to watch TV for four hours a day and six hours at weekends and holidays. The prison has a library accessible to the prisoners. The sanitary conditions are normal and the food is of good quality. The applicant has the right to one hour's outdoor exercise a day.

C. The applicant's medical treatment during his imprisonment

1. The applicant's description of his medical treatment

15. When he arrived at Bayil Prison, he was in good health and was not suffering from any illness. In Bayil Prison, the applicant was initially placed in a cell which had previously accommodated inmates who were suffering from contagious conditions, and which had not been disinfected.

16. In February 2000 the applicant was transferred to another cell, which he shared with A., an inmate suffering from tuberculosis. According to the applicant, he contracted tuberculosis from his cellmate. He began to feel the first symptoms of the disease shortly after his transfer to that cell. He had been in the same cell as A. from 15-16 February 2000 to 20 March 2000, from 19-20 May 2000 to the middle of June or July and from the beginning of October to 5 January 2001.

17. During that period inmates of the 5th wing of Bayil Prison who were suffering from tuberculosis were generally not transferred to any specialised medical facilities but received treatment while remaining in their cells. There was a high mortality rate among inmates suffering from tuberculosis.

18. Following his transfer to Gobustan Prison, in June 2001 the applicant was diagnosed with pulmonary tuberculosis. By that time, he had lost a significant amount of weight and was coughing blood. On 9 June 2001 he was transferred for in-patient treatment to the Specialised Medical Establishment for Prisoners with Tuberculosis. He received treatment based on the World Health Organisation's DOTS (Directly Observed Treatment, Short Course) programme.

19. On 16 February 2002 the applicant was transferred back to Gobustan Prison, where he continued to receive outpatient treatment. From 2 to 9 October 2004, from 1 to 8 October 2005, from 26 November to

3 December 2005 and from 24 December 2005 to 10 February 2006 the applicant was sent to various medical facilities for examination and in-patient treatment.

20. According to a statement issued on 16 February 2006 by the Medical Facility of the Ministry of Justice following the applicant's latest examination and in-patient treatment, the applicant was diagnosed with, *inter alia*, focal tuberculosis of the upper lobes of both lungs in the consolidation phase and residual symptoms of tuberculosis.

2. The Government's description of the applicant's medical treatment

21. The Government submitted that it was doubtful that the applicant had contracted tuberculosis in Bayil Prison. When he was sharing a cell with A. in May 2000 the latter had recovered and his disease was not contagious. In this regard, the Government noted that the applicant had been diagnosed with tuberculosis in June 2001, when he was in Gobustan Prison.

22. The applicant was sent to the Specialised Medical Establishment for Prisoners with Tuberculosis, where he received in-patient treatment on the basis of the DOTS programme of the WHO. The applicant's treatment lasted until 16 February 2002 and after his recovery he was transferred back to Gobustan Prison.

23. On 26 March 2002 the applicant received outpatient treatment with vitamins. On 7 April 2002 this treatment was completed and the applicant's health was considered satisfactory. On 12 June and 8 October 2002 and on 12 March 2003 the applicant was examined by a doctor and no deterioration of his health was observed.

24. The applicant was subsequently examined, on 24 February 2002, on 1 May 2003, on 3 June 2004 and on 24 October 2005, by a group of doctors in Gobustan Prison. According to each examination, the applicant was diagnosed with clinically recovered pulmonary tuberculosis and prescribed dispensary supervision.

25. From 2 to 9 October 2004 the applicant was examined in the prison medical unit and, according to the clinic laboratory and X-ray examination results, there was no need for in-patient treatment.

26. In October 2005 the applicant was again instructed to go to the medical unit, however he refused to go there because of his religious fast.

27. Following examinations on 26 November 2005 and 24 December 2005 the applicant's health was pronounced fully improved and it was stated that there was no need for any special treatment under the DOTS programme.

D. The civil proceedings concerning the alleged lack of adequate medical assistance

1. Proceedings against the Bayil Prison authorities

28. On 10 October 2005 the applicant lodged a civil action against the Bayil Prison authorities, seeking compensation for damage caused to his health. He claimed that the prison authorities were directly responsible for his having contracted tuberculosis, taking into account the poor conditions of detention and the fact that he had been held in the same cells as inmates with tuberculosis. In support of his claims he submitted written statements by other inmates who had previously been detained in Bayil Prison. The applicant further asked the court to ensure his presence at the hearings.

29. On 24 January 2006 the Sabail District Court dismissed the applicant's claim, finding that the applicant had failed to prove that he had been deliberately placed in a cell with inmates who were ill and had contracted tuberculosis as a result. The court further held that, in such circumstances, the Bayil Prison authorities could not be considered to have ill-treated the applicant in any way. Concerning the written statements of other inmates detained at that time in Bayil Prison, the court held that these statements were not reliable, because as former inmates of Bayil Prison the authors of these statements could be biased against the administration of Bayil Prison.

30. The applicant was not personally present at the hearings of the first-instance court, but was represented. The judgment of the first-instance court was silent as to the applicant's request on his attendance at the hearing.

31. The applicant lodged an appeal, reiterating his previous complaints and his request for leave to appear at the hearings. On 14 July 2006, having examined the applicant's appeal in the absence of the applicant and his representative, the Court of Appeal rejected the appeal, finding that the applicant's arguments were unsubstantiated. Following the applicant's cassation appeal, on 8 May 2007 the Supreme Court quashed the judgment of 14 July 2006 and remitted the case to the Court of Appeal for a new examination. The Supreme Court found that the Court of Appeal had neither examined the question of the applicant's participation in the appeal hearing nor informed his representative about the time and place of the hearing. The relevant part of the Supreme Court's decision read as follows:

“As a court of full jurisdiction under Article 372.1 of the Code of Civil Procedure, the appellate court which examines the case on its merits on the basis of the evidence in the file or additionally submitted evidence, did not discuss the question of N. Mirzayev's impossibility to exercise his right to attend the hearings because of his imprisonment, thus independent of his will, and did not take any measure or decision in order to ensure his presence at the hearings. N. Mirzayev's representative was not informed of the place and date of the hearing. Therefore, N. Mirzayev was deprived of the possibility to attend the hearing on his case and to benefit from the procedural rights provided for by Article 47.2 of the Code of Civil Procedure”.

32. On 26 September 2007, having examined the case in the absence of the applicant but in the presence of his representative, the Baku Court of Appeal dismissed the applicant's appeal and upheld the Sabail District Court's judgment of 24 January 2006. The appellate court's judgment was silent as to the applicant's request for leave to appear.

33. On 26 February 2008 the Supreme Court dismissed the applicant's cassation appeal and upheld the Baku Court of Appeal judgment. The proceedings before the Supreme Court were held in the applicant's absence, but in the presence of his lawyer. The Supreme Court noted that the absence of the applicant was not a ground for quashing the appellate court's judgment, because the applicant had been represented in those proceedings. The Supreme Court also noted that the applicant's personal presence was not mandatory and his presence should be secured only if the court considered it necessary. The relevant part of the Supreme Court's decision read as follows:

"It appears from the legislation that the right to call a person who is represented before the court by a representative, to attend the hearing in person belong to the court which examines the case, only if this court considers it necessary, and the application of this provision is not mandatory ...

... taking into consideration the fact that N. Mirzayev's presence at the hearing was not necessary, because he was represented by his representative when the appellate court examined the case, the panel of court considers unfounded to quash the judgment for the lack of N. Mirzayev's presence at the hearing."

2. Proceedings against the Gobustan Prison authorities

34. In June 2008, the applicant lodged a civil action against the Gobustan Prison authorities, seeking compensation for damage caused to his health. He complained in particular that adequate medical assistance was not available in Gobustan Prison. The application was drafted in Russian.

35. On 4 July 2008 the Garadagh District Court refused to admit the applicant's complaint. The court held that the application had been drafted in Russian, not in Azerbaijani, which is the official language of the country, and that no justification had been given for drafting the application in Russian.

36. Following an appeal by the applicant against this decision, the Garadagh District Court agreed to hear the applicant's complaint and on 4 September 2008 held a preliminary hearing. At the request of the applicant's representative, the court commissioned an expert report on the applicant's illness and adjourned the proceedings.

37. The proceedings were then adjourned because of the expiration of the power of attorney of the applicant's representative. On 17 March 2009 the court decided to leave the applicant's complaint unexamined due to the failure of both the claimant and the defendant to attend the hearing.

38. The proceedings were subsequently continued and on 15 February 2010 the Garadagh District Court delivered a judgment on the merits. The

court dismissed the applicant's complaint, noting that the applicant had been provided with adequate medical assistance after he was diagnosed with tuberculosis. The court also held that the applicant's allegations had not been confirmed by the expert opinion, according to which it was impossible to establish that the applicant had contracted tuberculosis in prison.

39. On 25 March 2010 the applicant appealed against the first-instance court's judgment and reiterated his previous complaints.

40. The proceedings before the appellate court are still pending.

II. RELEVANT DOMESTIC LAW

41. Parties to civil proceedings may appear before a court in person or act through their representative (Articles 47, 49 and 69 of the Code of Civil Procedure ("the CCP")).

42. The Code on Execution of Punishments ("the CEP") provides that a convicted person may be transferred from a prison to an investigative unit if his participation is required as a witness, suspect or accused in connection with certain investigative measures (Article 69-1). The CEP is silent as to the possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or a defendant.

THE LAW

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

43. The applicant complained under Article 6 of the Convention that the domestic courts had not ensured his attendance at the hearings in the proceedings against the Bayil Prison authorities concerning his complaint of lack of adequate medical assistance. He maintained that his presence would have been particularly important having regard to the fact that the domestic courts had ignored the written statements of former inmates. The relevant part of Article 6 § 1 of the Convention reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

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

B. Merits

1. *The parties' submissions*

45. The Government submitted that the applicant had been represented at the hearings before the domestic courts and that his personal presence at these hearings had not been necessary. The Government further noted that the written statements on behalf of the applicant had been made by other prisoners sentenced to life imprisonment, who could be biased against the prison authorities.

46. The applicant maintained his complaints, noting that despite his request his attendance at the hearings before the domestic courts had not been ensured. He also submitted that the courts' refusal to examine the written witness statements on his behalf proved the necessity of his presence.

2. *The Court's assessment*

47. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). The Court also reiterates that Article 6 of the Convention does not guarantee the right to personal attendance at a civil court, but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II).

48. The Court notes that it has already found a violation of Article 6 in a case where a court refused leave to appear to an imprisoned applicant who had wished to make oral submissions on his claim in the civil proceedings. In that case, despite the fact that the applicant was represented, the Court considered it relevant that his claim concerning ill-treatment had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007). The Court adopted the same approach in other cases, underlining the importance of the applicant's personal experience for his attendance at the hearings when the proceedings concern the conditions of detention in prison, ill-treatment or

unlawful detention of the applicants (see, *inter alia*, *Shilbergs v. Russia*, no. 20075/03, § 111, 17 December 2009).

49. Turning to the circumstances of this case, the Court observes that the Azerbaijani CCP provides for the plaintiff's right to appear in person before a civil court hearing his claim. However, neither the CCP nor the CEP makes special provision for the exercise of that right by individuals who are in custody, whether they are in pre-trial detention or are serving a sentence.

50. In the present case the applicant's request for leave to appear was not satisfied by the domestic courts on the ground that his presence at the hearings was not required and because he was represented by counsel.

51. Given the obvious difficulties involved in transporting convicts from one location to another, the Court can in principle accept that in cases where a claim is not based on the plaintiff's personal experience, representation of the detainee by an advocate would not be in breach of the principle of equality of arms (see *Kozlov v. Russia*, no. 30782/03, §§ 45-46, 17 September 2009). However, given the nature of the applicant's claim in relation to the alleged lack of medical assistance in Bayil Prison, the Court is not convinced that the representative's appearance before the court could have secured the effective, proper and satisfactory presentation of the applicant's case. In this respect, the Court observes that the applicant's claim for compensation resulting from the alleged lack of medical assistance during his detention in prison was, to a large extent, based on his personal experience. The Court considers that his testimony describing the conditions of his detention and his medical treatment, of which only the applicant himself had first-hand knowledge, would have constituted an indispensable part of the plaintiff's presentation of the case. Only the applicant could, by testifying in person, substantiate his claim for compensation and answer the judges' questions, if any (see, *mutatis mutandis*, *Kovalev*, cited above, § 37).

52. Finally, as to the fact that the applicant was serving a prison sentence, the Court is mindful of other possibility which was open to the domestic courts as a way of securing the applicant's participation in the proceedings. They could have secured a hearing in the establishment where the applicant was serving his sentence (see, *mutatis mutandis*, *Shilbergs*, cited above, § 109). However, the domestic courts did not consider this option.

53. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Complaint concerning the applicant's conditions of detention in Gobustan Prison

54. The applicant complained that his conditions of detention in Gobustan Prison were harsh and amounted to ill-treatment. Article 3 of the Convention reads as follows:

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

55. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his complaint concerning the conditions of detention in prison. In particular, he had the possibility to complaint against an act or omission of the penitentiary authorities under the procedure established by the Law On Complaints against Acts and Omissions Infringing Individual Rights and Freedoms, the Civil Code or the Code on Enforcement of Punishments. The Government also rejected the applicant's allegation, noting that the conditions of detention in Gobustan Prison met the standards established by the CPT.

56. The Court recalls at the outset that the part of this complaint which relates to events that occurred prior to 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan, has already been declared inadmissible by the Court by its partial decision of 26 November 2009.

57. As to the period after 15 April 2002, the Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their actions 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 (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-66, *Reports* 1996-IV).

58. The Court observes that in the present case the applicant has never raised the complaint concerning his conditions of detention before any domestic authority. Moreover, the applicant did not make a submission as to whether there were special circumstances in the present case which would dispense him from the obligation to complain about conditions of his detention before the domestic authorities or courts. In this respect, the Court notes that, in similar cases against Azerbaijan, it has already found that the Law on Complaints against Acts and Omissions Infringing Individual

Rights and Freedoms provides for a judicial avenue for challenging any act or omission by a public authority infringing an individual's rights or freedoms. Both Article 46 of the Constitution of the Republic of Azerbaijan and Article 3 of the Convention, which is directly applicable in the domestic legal system, prohibit inhuman and degrading treatment. Therefore, relying on these provisions, the applicant could complain about the conditions of his detention. However, the applicant has not attempted to do so. In this connexion, the Court reiterates that mere doubts about the effectiveness of a remedy are not sufficient to dispense with the requirement to make normal use of the available avenues for redress (see *Mammadov v. Azerbaijan*, no. 34445/04, § 52, 11 January 2007, and *Kunqurova v. Azerbaijan* (dec.), no. 5117/03, 3 June 2005).

59. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Complaint of lack of medical assistance in Gobustan Prison

60. The applicant complained that he had contracted tuberculosis in detention and had not been provided with adequate medical assistance in prison. Article 3 of the Convention reads as follows:

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

61. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his complaint concerning the alleged lack of medical assistance. In particular, the Government submitted that the civil proceedings against Gobustan Prison for failure to provide medical assistance are still pending before the domestic courts. The Government also stated that the applicant's complaint was unsubstantiated, because he had in fact obtained adequate medical treatment during his detention in prison.

62. The Court recalls that the part of the complaint concerning the alleged lack of medical assistance in Gobustan Prison prior to 15 April 2002, was declared incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and rejected in accordance with Article 35 § 4 by the Court's partial decision of 26 November 2009.

63. As to the events concerning the provision of adequate medical assistance to the applicant occurred after 15 April 2002, the Court notes that the domestic proceedings concerning the applicant's complaint against Gobustan Prison for alleged lack of medical assistance are still pending before the domestic courts. It follows that this part of the complaint is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 20,000 euros (EUR) in compensation for non-pecuniary damage.

66. The Government submitted that the applicant’s claim was unsubstantiated and excessive.

67. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the finding of violations, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,500 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

68. The applicant also claimed EUR 2,000 for costs and expenses incurred before the Court. This claim was not itemised or supported by any documents.

69. The Government submitted that the applicant’s claim was unsubstantiated and lacked the documentary evidence.

70. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the fact that the applicant failed to produce any supporting documents, the Court dismisses the claim for costs and expenses.

C. Default interest

71. The Court considers it appropriate that the default interest rate 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

1. *Declares* by a majority the complaint under Article 6 § 1 of the Convention concerning the fairness of the civil proceedings against the Bayil Prison authorities admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention in that the proceedings were conducted in his absence;
3. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount, which is to be converted into new Azerbaijani manats (AZN) at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President

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

N.A.V.
A.M.W.

DISSENTING OPINION OF JUDGE VAJIĆ

1. I cannot agree with the majority's finding that there was a violation of Article 6 of the Convention because the civil proceedings in which the applicant complained of inadequate health care in prison were conducted in his absence.

2. In the proceedings before the first-instance court, the applicant was not personally present at the hearing, but he was represented. The judgment was silent as to the applicant's request for leave to appear.

The Court of Appeal examined the applicant's appeal in the absence of both the applicant and his representative.

Because of this procedural flaw, following the applicant's cassation appeal the Supreme Court quashed the Court of Appeal's judgment and remitted the case to it for fresh examination (paragraph 31 of the judgment).

Subsequently, the Court of Appeal examined the case in the absence of the applicant but in the presence of his representative.

3. In acting thus the domestic courts have, in my opinion, sufficiently remedied the irregularities of the civil proceedings against the applicant. It was not demonstrated that the circumstances were such as to indicate that the documentary evidence of his disease and medical treatment was not complete, i.e. that the applicant's medical records did not suffice for the Court to hear the case. Nor is there any mention in the judgment of a reason why the applicant's personal attendance at the hearing was necessary.

4. In such circumstances, I am of the opinion that the applicant's presence was not essential for the effective presentation of his claim and that there was no violation of Article 6, paragraph 1, in the present case.