



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

FIRST SECTION

CASE OF RIZVANOV v. AZERBAIJAN

(Application no. 31805/06)

JUDGMENT

STRASBOURG

17 April 2012

FINAL

17/07/2012

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

In the case of Rizvanov v. Azerbaijan,

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

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

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 31805/06) 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 an Azerbaijani national, Mr Sarvan Samad oglu Rizvanov (*Sarvan Səməd oğlu Rizvanov* – “the applicant”), on 27 July 2006.

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

3. The applicant alleged, in particular, that he had been the victim of police brutality during a demonstration and that the domestic authorities had failed to investigate the incident effectively.

4. On 7 January 2008 the case was communicated to the Government. It was 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 1966 in Gabala, Azerbaijan and lives in Germany.

A. The alleged ill-treatment

6. At the time of the events in question, the applicant was a journalist working at the Turan Information Agency based in Baku.

7. On 9 November 2005 a group of political parties representing the opposition held an authorised demonstration at Gabala Square in Baku. The applicant, who was covering the demonstration, was wearing a special blue vest identifying him as a journalist.

8. At the edge of the square where the demonstration was held, there was a tall metal construction resembling a staircase. The applicant, who was taking pictures of the demonstration, climbed up this construction to get a better view. During a number of previous demonstrations in the same square, the construction had been used by journalists for the same purpose.

9. While the applicant was taking pictures, the Deputy Head of the Yasamal District Police Office, Colonel C. M., hit him with a truncheon several times. This event was witnessed by a number of journalists and other people standing nearby.

10. Shortly after this incident, C. M. approached a group of journalists and remarked: "I hit him softly, if I hit him hard he would die." One of the journalists managed to record the remark on tape.

11. On 10 November 2005 the applicant went to hospital to seek medical treatment. He was given certain medical advice for outpatient treatment verbally but was not given a written prescription. The doctor who examined him issued a medical certificate which read as follows, in the relevant parts:

"Full diagnosis: contusion (*əzilmə*) of the left leg, contusion (*əzilmə*) of the left upper arm.

According to the patient, at around 3 p.m. on 9 November 2005 he was injured during a demonstration... The patient received treatment and [medical] advice. This certificate was issued on 10 November 2005."

B. The criminal proceedings

12. On 11 November 2005 the applicant lodged a criminal complaint with the Prosecutor General's Office and the Ministry of Internal Affairs. He complained that C. M. had used excessive and unjustified force against him, that several people had witnessed this and that he had a tape recording of C. M.'s admission that he had hit the applicant with a truncheon. Other journalists' organisations, including the Azerbaijani Press Council, also wrote to the Prosecutor General's Office and the Ministry of Internal Affairs asking them to punish the person responsible for the applicant's ill-treatment.

13. According to the Government, the applicant's complaint of 11 November 2005 was received by the Prosecutor General's Office on

14 November 2005 and was subsequently transferred to the Yasamal District Prosecutor's Office, which received it on 28 November 2005.

14. On 1 December 2005, at a prosecutor's request, the applicant was examined by a forensic expert who discovered no injuries which might have been inflicted on 9 November 2005 on the applicant's person. In particular, the forensic report, issued on the same day, read as follows:

“[Examination:] There is a clear-contoured dark blue-violet bruise (*qançır*) of an indefinite shape, measuring 3.5x2.5 cm, on the upper one-third portion of the outward side of the left thigh. No other injuries or traces of injuries were discovered on other parts of the body, including the left upper arm. ...

[Conclusion:] 1. The forensic examination of [the applicant] revealed one bruise on the upper one-third portion of the outward side of his left thigh; the bruise was caused by a blunt object (it is impossible to make more specific observations about the type of the blunt object because the injured area bears no signs of individual characteristics of the object that came into contact with it); the time [of infliction of the injury] is approximately two to four days prior to the examination; [the injury] is not harmful to health...

2. It is impossible to determine whether [the applicant] had sustained any injuries on 9 November 2005 because no injuries or traces of injuries inflicted on that day have been observed during the forensic examination and because the certificate [of 10 November 2005] issued in his name did not specify objective signs of injury (in other words, the observation of “contusions” (*əzilmə*) in that certificate was not supported by description of objective criteria of an injury such as a bruise (*qançır*), abrasion (*stırıq*), wound (*yara*), and so on).”

15. On 3 December 2005 the Deputy Prosecutor of the Yasamal District Prosecutor's Office issued a decision not to institute criminal proceedings. The prosecutor had examined two witness testimonies, submitted by two journalists, in support of the applicant's version of events, and the submissions of C. M., who argued that he had not used excessive force on the applicant, but that he had asked him to climb down from the metal construction due to a risk of it collapsing and injuring people standing in the vicinity. Two police officers had testified in support of C. M.'s version of events. The prosecutor also had regard to the forensic report of 1 December 2005 and concluded that the available evidence did not disclose any appearance of a criminal act.

16. The applicant lodged a complaint against that decision with the Yasamal District Court. He argued that the prosecutor's decision was unsubstantiated. In particular, the prosecutor had not taken into consideration the witness testimonies, the medical certificate of 10 November 2005, the tape recording and the photos submitted on his behalf. He also disputed the impartiality of the forensic report of 1 December 2005, on which the prosecutor had largely relied. In support of his claim, the applicant submitted the medical certificate of 10 November 2005, the tape recording and the photos.

17. On 26 January 2006 the Yasamal District Court dismissed the applicant's complaint and found that the prosecutor's decision of 3 December 2005 had been lawful and properly substantiated. The court noted that C.M. had acted within his competence and performed his duties in bringing the applicant down from the metal construction in order to ensure the safety of the people nearby. The court also relied on the forensic report of 1 December 2005, noting that no injuries which might have been inflicted on 9 November 2005 were discovered on the applicant's body.

18. The decision contained no reference to the evidence submitted by the applicant, the medical certificate of 10 November 2005, the tape recording and the photos. It appears from the transcripts of the hearing that the court did not hear evidence from any witnesses.

19. On 27 January 2006 the applicant appealed against the decision, reiterating his previous complaints.

20. On 8 February 2006 the Court of Appeal upheld the Yasamal District Court's decision of 26 January 2006.

C. The civil proceedings

21. On 22 March 2006 the applicant lodged a civil action against C. M., claiming compensation for damage to his human dignity and professional reputation. He also asked the court to forward the case materials to the prosecution authorities for a new examination of the question of C. M.'s criminal liability.

22. On 10 April 2006 the Yasamal District Court refused to admit the applicant's claim. The court considered that the claim was, in essence, the same as his previous criminal complaint, which had already been rejected by a final decision of the domestic courts.

23. Following a series of appeals by the applicant, on 5 October 2006 the Supreme Court upheld the lower courts' decisions in the part relating to the complaint against the alleged hitting of the applicant. However, the Supreme Court quashed the decision in the part relating to the compensation for the alleged damage to the applicant's human dignity and professional reputation, finding that this claim should be examined by the courts.

24. On 15 July 2007 the Yasamal District Court delivered a judgment on the merits. The court dismissed the applicant's compensation claim, noting that he had failed to prove that C. M. had caused any non-pecuniary damage to him.

25. On 3 October 2007 the Baku Court of Appeal upheld the judgment of 15 July 2007.

26. The applicant lodged an appeal on points of law. On 29 December 2007 the Baku Court of Appeal refused to admit his appeal. The court noted, in particular, that the appeal had not been signed by an

authorised person and that the applicant was not represented by a lawyer as required by the domestic law.

27. On 25 June 2008 the Supreme Court upheld the Baku Court of Appeal's inadmissibility decision of 29 December 2007.

28. In the meantime, in August 2006 the applicant applied to the Judicial Legal Council with a request to institute disciplinary proceedings against a judge of the Yasamal District Court who had originally refused to admit his civil action. The Judicial Legal Council refused to entertain this request. The applicant subsequently applied to the domestic courts complaining about that refusal, but his complaints were unsuccessful.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

29. Article 46 (III) of the Constitution of the Republic of Azerbaijan reads as follows:

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

B. Law on Police of 28 October 1999

30. Police officers may use special equipment when, *inter alia*, there is an assumption that as a result of dangerous activities a person could cause damage to himself or people around him (Article 26.II). “Special equipment” includes truncheons, arm-restraining instruments, tear gas, rubber bullets and water cannons (Article 1). Physical force, special equipment or firearms may be used when absolutely necessary in a manner proportionate to the danger posed. The police authorities must carry out an enquiry into every incident involving the use of physical force, special equipment or firearms and issue an opinion concerning its lawfulness (Article 26.VII). Unlawful use of force by a police officer entails the officer's responsibility under the relevant legislation (Article 26.IX).

31. Police officers may use physical force, special equipment or firearms only in the event of absolute necessity or necessary self-defence, after all other means of coercion have failed to produce the required result, and depending on the gravity of the offence and the conduct of the offender (Article 27.I.1). Persons injured as a result of the use of physical force, special equipment or firearms must be provided with the necessary medical aid (Article 27.I.5). The police officer must inform the relevant police authority, in writing, about the instances in which he or she used physical force, special equipment or firearms (Article 27.I.7). The relevant

prosecutor must also be informed about such use of force within twenty-four hours (Article 27.I.8).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that he had been subjected to an act of police brutality which had caused him serious physical and mental suffering and that the domestic authorities had failed to carry out an effective investigation capable of identifying and punishing the police officer responsible. Article 3 of the Convention reads as follows:

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

A. Admissibility

33. The Government argued that the applicant had failed to exhaust domestic remedies. In particular, the Government noted that the applicant had failed to lodge a proper cassation appeal in the civil proceedings concerning his claim for compensation for alleged non-pecuniary damage caused to him.

34. The applicant disagreed with the Government’s submissions.

35. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports of Judgments and Decisions* 1996-IV).

36. The Court observes that, in the present case, the applicant lodged a criminal complaint with the prosecution authorities and lodged a civil action with the domestic courts.

37. As to the Government’s objection in respect of the civil proceedings concerning the applicant’s claim for compensation, the Court notes that this

remedy cannot be regarded as sufficient in terms of a Contracting State's obligations under Article 3 of the Convention in a case like the present concerning alleged ill-treatment by the police, as it is aimed at awarding damages rather than identifying and punishing those responsible (see *Gladyshev v. Russia*, no. 2807/04, § 49, 30 July 2009, and *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports of Judgments and Decisions* 1998-VI). The Court, therefore, dismisses the Government's objection.

38. In so far as the Government's submissions can also be understood as an objection concerning non-exhaustion of domestic criminal remedies, the Court notes that the issue of the effectiveness of the criminal investigation carried out in the present case is closely linked to the merits of the complaint. Thus, the Court decides to join this issue to the merits and will examine it below under the procedural limb of Article 3.

39. The Court notes that otherwise 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. Alleged ill-treatment of the applicant by the police officer

(a) The parties' submissions

40. The Government submitted that the applicant had not been ill-treated by the police officer. They relied on the forensic report of 1 December 2005, according to which no injuries dating from 9 November 2005 were discovered on the applicant's body. The Government also stated that the medical certificate of 10 November 2005 was not reliable as medical evidence, because it did not properly identify the type of injuries and did not attempt to establish their cause.

41. The Government further submitted that even assuming that the police had used force against the applicant, this force should not be characterised as excessive. In particular, the applicant had failed to comply with the police officer's lawful request to climb down from the metal construction, where he posed a danger to himself and others. In this respect, the Government argued that the police could use truncheons if there was a risk that as a result of his dangerous activities a person could cause damage to himself and others.

42. The applicant submitted that he had been ill-treated and that the police officer had used excessive force against him without any

justification. In this respect, he relied on the witness testimonies, photos, the tape recording and the medical certificate of 10 November 2005.

(b) The Court's assessment

43. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII).

44. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92).

45. In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt”. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nevertheless, where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Muradova v. Azerbaijan*, no. 22684/05, § 99, 2 April 2009, and *Avşar*, cited above, §§ 283-84).

46. Turning to the circumstances of the present case, the Court observes at the outset that the parties are in dispute not only about the question of

whether the force used against the applicant was excessive, but also whether the applicant was subjected to the use of force by the police at all (compare with *Muradova*, cited above, § 107).

47. The Court considers that the applicant has been able to produce sufficiently strong evidence supporting the fact that he was subjected to the use of force by the police. In particular, the applicant produced a medical certificate delivered on 10 November 2005, a day after the incident. Admittedly, this certificate was not issued by a forensic expert and did not provide a detailed forensic description of the injuries or attempt to determine their cause using forensic methods. Nevertheless, it certified that the applicant had contusions of the left leg and left upper arm. Moreover, the day after, the applicant promptly lodged a criminal complaint which required the authorities to seek a proper forensic examination which would confirm the fact of the injuries. However, the official forensic examination was ordered and carried out in a very belated manner, twenty-one days after the alleged incident. Prompt forensic examination is crucial as signs of injury may often disappear rather quickly and certain injuries may heal within weeks or even a few days. It is for this reason that the Court cannot accept the Government's arguments based on the belated forensic report of 1 December 2005, which concluded that it was impossible to determine whether the applicant had been injured on 9 November 2005 (see also paragraphs 58-59 below). In view of the above, the Court considers that the certificate of 10 November 2005, despite certain shortcomings, constitutes more reliable medical evidence than the forensic report of 1 December 2005 and that, for the purposes of the present complaint, its content is sufficient to conclude that the applicant suffered injuries to the left leg and left upper arm.

48. Moreover, the applicant produced witness testimonies which supported his allegation that he had been hit by C.M. The applicant's version of events was also supported by the photos and the tape recording submitted by him. In particular, on the tape recording C.M. himself admitted to other journalists that he had hit the applicant. The submitted photos also confirmed C.M.'s presence at the place of the incident with a truncheon in his hand. In these circumstances, the Court does not see any contradiction or inconsistency in the applicant's submission that the injuries described in the medical certificate of 10 November 2005 were inflicted by the police on 9 November 2005. The concordant evidence produced before the Court is sufficient to establish at least a presumption of the fact that a policeman hit the applicant with a truncheon during the demonstration. In the Court's opinion, neither the Government in their submissions, nor the domestic authorities in their respective decisions, provided a convincing rebuttal of this presumption.

49. The Court will consequently examine whether the use of force against the applicant was excessive. In this respect, the Court attaches

particular importance to the circumstances of the use of force (see *Güzel Şahin and Others v. Turkey*, no. 68263/01, § 50, 21 December 2006, and *Timtik v. Turkey*, no. 12503/06, § 49, 9 November 2010). When a person is confronted by the police or other agent of the State, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Kop v. Turkey*, no. 12728/05, § 27, 20 October 2009, and *Timtik*, cited above, § 47).

50. The Court cannot accept the Government's submission according to which, even assuming that the police had used force against the applicant, this force was justified and not excessive because the applicant failed to comply with the police officer's lawful request. The Court cannot overlook the fact that the applicant was subjected to the use of force by the police during an authorised demonstration which he was covering as a journalist, wearing a special blue vest which marked him out as such. It is undisputed that the applicant did not use violence against the police or pose a threat to them. Moreover, despite the Government's arguments to the contrary, it has not been convincingly established at the outcome of the criminal inquiry and other domestic proceedings that, by using the metal construction as a viewpoint, the applicant was actually creating serious danger for the people in the square and that the police had actually given him a warning in this respect and a reasonable opportunity to comply with it, prior to resorting to the use of force. In this connection, the Court also takes into account the applicant's submissions that the same metal construction had been used by journalists in the same manner and for the same purpose before. In such circumstances, the Court considers that the Government have not shown convincingly that the recourse to physical force against the applicant had been made strictly necessary by his own conduct. Therefore, it cannot but conclude that the use of force was excessive and unnecessary.

51. The Court considers that the relatively minor character of injuries sustained by the applicant that did not require any serious medical interventions suggests that he did not experience any serious or prolonged physical pain or suffering. Nevertheless, the ill-treatment complained of was such as to arouse in the applicant feelings of fear, anguish or inferiority and capable of humiliating and debasing him and, therefore, was sufficiently serious to attain a minimum level of severity to be considered as inhuman and degrading treatment under Article 3.

52. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb.

2. *Alleged failure to carry out an effective investigation*

(a) **The parties' submissions**

53. The Government submitted that the domestic authorities conducted an effective investigation into the applicant's allegations of ill-treatment. They noted that there was some delay in the criminal inquiry owing to the time necessary for the transfer of the applicant's criminal complaint to the Yasamal District Prosecutor's Office (see paragraph 13 above). Nevertheless, the forensic medical examination of the applicant was carried out within a "short term" (three days) after the receipt of the complaint by the Yasamal District Prosecutor's Office and the investigation was effective. The Government further submitted that the domestic authorities had examined the relevant evidence, while some of the evidence (photos, tape recordings, and so on) presented by the applicant had been obtained in a "doubtful manner" not stipulated by law.

54. The applicant submitted that the domestic authorities failed to carry out an effective investigation into his allegations of ill-treatment. He noted that the domestic courts had ignored all the evidence proving the police brutality against him. He also submitted that the forensic report of 1 December 2005 had been drawn up nineteen days after his complaint to the prosecution authorities and, therefore, it could not be considered reliable.

(b) **The Court's assessment**

55. Where an individual raises an arguable claim that he or she has been ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

56. An investigation into allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including,

inter alia, eyewitness testimony and forensic evidence (see, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)).

57. The Court observes that a criminal inquiry was carried out in the present case. It remains to be assessed whether it was effective, as required by Article 3.

58. The Court notes that the investigation authorities refused to give any importance to the medical certificate of 10 November 2005. On the other hand, even though the applicant brought his claim of ill-treatment to the Prosecutor General's Office in a prompt manner, only two days after the incident, the authorities failed to order a forensic examination until twenty-one days after the incident. The Court cannot accept the Government's explanation of the delay by the fact that the applicant's complaint had to be transferred to the Yasamal District Prosecutor's Office, which had taken some time. The Court notes that this delay by the prosecution authorities cannot in any event be attributable to the applicant, but to the domestic authorities. The applicant's complaint was not handled with sufficient diligence, as no relevant procedural steps were taken in this regard until 1 December 2005.

59. In this connection, the Court reiterates that a failure to secure the forensic evidence in a timely manner is one of the most important factors in assessing the overall effectiveness of an investigation into allegations of ill-treatment (see *Mammadov v. Azerbaijan*, no. 34445/04, § 74, 11 January 2007). As stated above, in the present case, prompt forensic examination was crucial as signs of injury might have disappeared rather quickly, resulting in the complete or partial loss of evidence before the forensic examination was carried out. A timely medical examination could have enabled the medical expert to reach a definitive conclusion as to the existence and time of infliction of the injuries. However, in the present case, on the one hand the investigation authorities refused to attach any importance to the medical certificate of 10 November 2005 owing to its "incomplete" nature, while on the other hand they failed to procure a "proper" forensic report in a timely manner. In the Court's opinion, this deficiency alone undermined the overall effectiveness of the investigation.

60. There were also other deficiencies. In particular, the prosecutor heard two witnesses who testified in support of the applicant's claim and two police officers who testified against his claim. However, the reasoning provided for the decision to discontinue the investigation did not contain any assessment of the witness testimonies in favour of the applicant. The prosecutor did not provide any explanation as to why these testimonies were

considered less credible than the police officers' statements against him. Furthermore, the investigation authorities ignored other evidence presented by the applicant, such as the tape recording and the photos, which *prima facie* appeared to be relevant. No credible explanation was given either by the domestic authorities or the Government as to why these submissions were not admitted and assessed.

61. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's claim of ill-treatment fell short of the requirements of Article 3 of the Convention. In these circumstances, the Court dismisses the Government's objection as to the exhaustion of domestic remedies and finds that there has been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

62. The applicant complained that the domestic criminal investigation had been ineffective.

63. Article 13 of the Convention provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

64. The parties' submissions were either the same as, or substantively similar to, their submissions in respect of the procedural limb of Article 3 of the Convention.

65. The Court notes that this complaint is linked to the complaint examined above and must therefore likewise be declared admissible.

66. However, in the light of its finding of a violation of the procedural limb of Article 3, the Court considers that no separate issues arise under Article 13 of the Convention and finds that it is not necessary to examine this complaint separately.

III. ALLEGED VIOLATIONS OF ARTICLES 6 AND 10 OF THE CONVENTION

67. The applicant complained that the domestic civil proceedings had been unfair. He also complained that he had been ill-treated by the police with the aim of preventing him from carrying out his journalistic work.

68. The relevant part of Article 6 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 ..."

69. Article 10 of the Convention provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without

interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

70. The Government submitted that the applicant had failed to exhaust domestic remedies. In particular, his appeal on points of law against the Court of Appeal’s judgment of 3 October 2007 was rejected by the Supreme Court owing to non-compliance with the procedural requirements for lodging such an appeal. The Government also noted that the applicant has never raised a complaint alleging a violation of his freedom of expression before the domestic courts.

71. The applicant maintained his complaints.

72. In respect of the complaint under Article 6, the Court observes that the applicant failed to exhaust domestic remedies in respect of the civil proceedings, as he had failed to lodge a cassation appeal in compliance with the procedural requirements. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies

73. In respect of the complaint under Article 10, even assuming that the applicant has exhausted domestic remedies, the Court in any event considers, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, that this complaint does not disclose any appearance of a violation of this provision. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 3 AND 10

74. The applicant further complained that he had been discriminated against by the police based on his participation, as a journalist, in the opposition demonstration.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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*

77. The applicant claimed 2,000 euros (EUR) in respect of pecuniary damage for expenses for his medical treatment.

78. The Government contested the claim, noting that the applicant had failed to substantiate his allegation.

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

80. In the present case, even assuming that there is a causal link between the damage claimed and the violations found, the Court observes that the applicant did not submit any documentary evidence supporting this claim. In particular, he has not submitted any receipts, prescriptions or any other documents certifying his expenses for medical treatment.

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

2. *Non-pecuniary damage*

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

83. The Government contested the amount claimed as unsubstantiated and excessive.

84. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 4,500 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

85. The applicant claimed EUR 750 for the costs and expenses incurred before the domestic courts in the criminal proceedings, EUR 2,000 in the civil proceedings and EUR 2,000 in the disciplinary proceedings that he instituted against a judge of the domestic court. He also claimed EUR 2,700 for the costs and expenses incurred before the Court. The applicant also claimed EUR 2,550 for translation expenses and EUR 500 for postal expenses. In support of his claims, he submitted several contracts for legal services rendered in the proceedings before the domestic courts and the Court. According to these contracts, the amounts due were to be paid in the event that the Court found a violation of the applicant's rights.

86. The Government considered that the claim was unsubstantiated and excessive. In particular, the Government submitted that the applicant had failed to produce all the necessary documents in support of his claims and that the costs and expenses had not actually been incurred, because the amount claimed had not been paid by the applicant.

87. 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.

88. The Court rejects the applicant's claims in respect of the costs and expenses incurred in the domestic civil proceedings and the disciplinary proceedings against a judge, as those claims are not relevant to the complaints declared admissible in the present case.

89. As to the remainder of the claims, the Court notes at the outset that, although the applicant has not yet actually paid the legal fees, he is bound to pay them pursuant to a contractual obligation. Accordingly, in so far as the lawyer is entitled to seek payment of his fees under the contract, the applicant may claim reimbursement of those fees (see *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 109, 8 April 2010). However, having regard to the legal services stipulated in the contracts for legal services submitted by the applicant and the amount of legal work necessary in the present case, the Court considers that the amounts claimed in respect of legal fees are excessive and should be satisfied only partially. Likewise, as to the claim relating to translation and postal expenses, the Court observes that not all the documents submitted by the applicant were relevant and clear in their substance and it was not shown that the entire amount claimed in respect of these expenses was reasonably and necessarily incurred. In these circumstances, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000, covering costs under all heads.

C. Default interest

90. 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. *Joins* to the merits the Government's objection as to non-exhaustion of domestic criminal remedies and *rejects* it;
2. *Declares* the complaints under Articles 3 and 13 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention as regards the ill-treatment by the police;
4. *Holds* that there has been a violation of Article 3 of the Convention as regards the lack of effective investigation into the applicant's allegations of ill-treatment;
5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
 - (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President