



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

FIFTH SECTION

CASE OF JAFAROV AND OTHERS v. AZERBAIJAN

(Application no. 27309/14)

JUDGMENT

STRASBOURG

25 July 2019

FINAL

25/10/2019

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

In the case of Jafarov and Others v. Azerbaijan,

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

Angelika Nußberger, *President*,

Yonko Grozev,

Ganna Yudkivska,

Síofra O’Leary,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 2 July 2019,

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

PROCEDURE

1. The case originated in an application (no. 27309/14) 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 three Azerbaijani nationals, Mr Rasul Agahasan oglu Jafarov (*Rəsul Ağahəsən oğlu Cəfərov*), Mr Emin Rafiq oglu Huseynov (*Emin Rafik oğlu Hüseynov*) and Mr Sabuhi Nazir oglu Gafarov (*Səbuhi Nazir oğlu Qafarov*), and the Human Rights Club, an association established in Baku in 2010 (“the applicants”), on 18 March 2014.

2. The applicants were represented by Ms R. Remezaite, a lawyer based in London. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Əsgərov.

3. The applicants alleged, in particular, that their right to freedom of association had been breached owing to the authorities’ repeated refusal to register the association founded by them and grant it legal-entity status.

4. On 14 October 2015 notice of the complaint under Article 11 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The individual applicants were born in 1984, 1979 and 1974 respectively. At the time of lodging the application, the first and second applicants lived in Baku and the third applicant lived in Mingachevir. It appears that the second and third applicants have since then left Azerbaijan to reside abroad (see paragraph 50 below).

6. The applicants are human rights defenders. On 10 December 2010 they came together to found the Human Rights Club (HRC), a non-governmental, non-profit, non-political and non-religious human rights organisation. The three founders adopted HRC's charter, elected the first applicant, Mr Jafarov, as the organisation's chairman, and decided to apply to the Ministry of Justice for HRC's State registration as a legal entity in the form of a public association. This is one of the two types of NGOs provided for under domestic law, the other being a foundation. The founding decision stated as follows:

“Decided:

1. To found the public association Human Rights Club.
2. To adopt the charter of the public association Human Rights Club with the proposed changes and additions.
3. To define the purpose (aim) of founding the association in the charter as follows:
‘2.1. The aim of the association is to assist in the protection of human rights and freedoms in Azerbaijan.’
4. To establish the following terms of reorganisation of the association in the charter:
‘...’
5. To elect Rasul Agahasan oglu Jafarov as chairman of the association and adopt his home address as the legal address of the association.
6. To authorise the association's founders to apply to the Ministry of Justice of the Republic of Azerbaijan for its State registration.”
7. According to the adopted charter, the association's chairman had the authority to represent the association, enter into agreements on its behalf, issue powers of attorney, organise general assembly and management board meetings, and carry out other functions assigned to him by the general assembly in accordance with the charter.
8. On 26 July 2011 the applicants submitted an application to the Ministry of Justice for State registration of HRC as a legal entity, as required by domestic law, together with the necessary documents.

9. On 12 September 2011 the Ministry of Justice returned the registration documents to the applicants without taking a decision on State registration, noting that, contrary to the requirements of Article 5.4.4 of the Law on State registration and the State register of legal entities of 12 December 2003, as in force at the material time (“the Law on State Registration”), the founders had failed to submit copies of their personal identification documents. The letter concluded as follows:

“Based on the above and on Article 11.3.1 of the Law [on State Registration], the relevant documents are being returned to you [*müvafiq sənədlər sizə geri qaytarılır*].”

10. On 23 September 2011 the applicants resubmitted their State registration request, enclosing the additional documents requested.

11. On 4 November 2011 the Ministry of Justice returned the registration documents again, stating that, contrary to Article 5.4.1 of the Law on State Registration, the decision of 10 December 2010 founding HRC had not been signed by all three founders. The letter concluded as follows:

“Based on the above and on Article 11.3.1 of the Law [on State Registration], the documents are being returned unexecuted [*sənədlər icra olunmadan geri qaytarılır*].”

12. On 15 November 2011 the applicants resubmitted the State registration request for a third time, enclosing a copy of the decision signed by all three founders.

13. On 28 December 2011 the Ministry of Justice returned the registration documents for a third time, stating that, contrary to Article 5.4.1 of the Law on State Registration, the powers of the association’s “legal representative” (*qanuni təmsilçi*) were not specified in the decision of 10 December 2010 founding HRC. The full text of the letter stated as follows:

“Your request for State registration of the public association Human Rights Club has been examined.

We note that, contrary to Article 5.4.1 of the Law [on State Registration], the powers of the legal representative are not specified in the decision founding the organisation and adopting its charter.

Based on the above and on Article 11.3.1 of the Law [on State Registration], the documents are being returned [*sənədlər geri qaytarılır*].”

14. On 16 January 2012 the applicants lodged an action against the Ministry of Justice with Baku Administrative Economic Court No. 1, arguing that the Ministry had unlawfully refused to register HRC. In particular, they argued that appointment of a legal representative was optional under Article 5.4.1 of the Law on State Registration and, since no such representative had ever been appointed by the founders, the Ministry of Justice’s latest decision of 28 December 2011 had been unlawful and unsubstantiated. Moreover, the applicants relied on Article 8 of the Law on

State Registration, which required that all “deficiencies” (*çatışmazlıqlar*) in registration documents be identified at once and notified to applicants (see paragraph 35 below). The applicants asked the court to recognise that the denial of State registration to HRC had constituted a violation of their rights under Article 58 of the Constitution (right to association) and Article 11 of the Convention, and to order the Ministry of Justice to register HRC.

15. On 14 February 2012 Baku Administrative Economic Court No. 1 declared the complaint inadmissible on the grounds that two of the founders (Mr Huseynov and Mr Gafarov) had failed to submit evidence that they had applied to the Ministry of Justice.

16. On 2 March 2012 the applicants appealed against that decision, arguing that the first-instance court’s finding had been incorrect.

17. On 13 April 2012 the Baku Court of Appeal allowed the applicants’ appeal and remitted the case for examination on the merits.

18. By a decision of 25 September 2012 Baku Administrative Economic Court No. 1 terminated the proceedings, finding that the complaint had to be considered withdrawn because the applicants had failed to appear at the preliminary hearings of 19 July and 25 September 2012.

19. On 7 November 2012 the applicants submitted an information request to the court, requesting proof that they had been duly informed of the preliminary hearings.

20. By a decision of 6 December 2012 Baku Administrative Economic Court No. 1 resumed the proceedings, finding that the applicants had not received notice of the time and place of the aforementioned preliminary hearings and that therefore their complaint could not be considered withdrawn.

21. In written submissions to the court (as summarised in the first-instance court’s judgment described in paragraph 23 below), the Ministry of Justice reiterated the content of its letters of 12 September, 4 November and 28 December 2011 and noted that its decisions to return the registration documents had been properly substantiated in those letters by reference to the relevant statutory provisions. The Ministry further argued that there had been no breach of the applicants’ right to freedom of association, because it had been open to them to rectify the deficiency mentioned in the Ministry’s latest letter and resubmit the corrected documents for registration.

22. No representatives of the Ministry of Justice appeared at the oral hearing before the first-instance court, or at any of the oral hearings before the higher courts during the appeals subsequently brought by the applicants (described below). All the courts examined the case in the defendant’s absence.

23. By a judgment of 19 February 2013 Baku Administrative Economic Court No. 1 dismissed the applicants’ complaint, finding summarily that their claim was unfounded and that the Ministry of Justice’s actions had

been lawful because its letters returning the registration documents made reference to the relevant statutory provisions. The judgment did not specifically address the applicants' arguments concerning the unlawfulness of the Ministry's actions under the relevant provisions of the Law on State Registration.

24. On 5 April 2013 the applicants appealed against the first-instance judgment, reiterating their arguments. In particular, they pointed out that Article 5.4.1 of the Law on State Registration had not required them to appoint a legal representative and that therefore the Ministry of Justice's refusal to register HRC had been groundless. They further noted that, pursuant to Article 8 of the above-mentioned Law, when examining the registration documents, the Ministry of Justice had been required to identify all non-substantial deficiencies and notify the founders of them at once. Instead, each time it had returned the registration documents, the Ministry had incorrectly relied on Article 11.3.1 of the Law, which was not applicable to their situation.

25. By a judgment of 15 May 2013 the Baku Court of Appeal dismissed the appeal and upheld the first-instance court's judgment. It gave the following legal assessment:

"As can be seen from the decision of the assembly of the founders of the public association Human Rights Club, dated 10 December 2010, [R.A.] Jafarov, [E.R.] Huseynov and [S.N.] Gafarov founded the public association Human Rights Club, adopted its charter, elected Rasul Jafarov as the association's chairman and appointed the founders of the association as legal representatives representing its interests in connection with State registration.

...

The first-instance court concluded in its judgment that the defendant's decisions to return the association's State registration documents had been substantiated by the relevant provisions of the Law [on State Registration], that the refusal by the defendant to adopt an administrative act had not been unlawful and that it had not resulted in a violation of the applicants' rights.

The court considers the conclusion reached by the first-instance court lawful and reasoned.

The court notes that the [State registration] of legal entities on the territory of the Republic of Azerbaijan is regulated by the Law [on State Registration]. Under the provisions of [that] Law (Article 11.3.1), State registration of an organisation wishing to obtain legal-entity status may be refused if the documents submitted to [the Ministry of Justice] are in contradiction to the Constitution of the Republic of Azerbaijan, [that] Law or other legislation.

As can be seen from the defendant's letter, contrary to Article 5.1.1 [*sic* – 5.4.1] of the above-mentioned Law, the powers of the legal representative were not specified in the decision founding the organisation and adopting its charter."

26. The appellate court then noted that the return by the defendant of the registration documents for rectification and the failure of the applicants to rectify the documents and reapply for State registration could not be

considered a breach of their rights under Article 58 of the Constitution or Article 11 of the Convention.

27. On 12 June 2013 the applicants appealed to the Supreme Court, reiterating their legal arguments.

28. By a decision of 18 September 2013, served on the applicants on 14 October 2013, the Supreme Court dismissed the appeal and upheld the Baku Court of Appeal's judgment. Without addressing any of the applicants' legal arguments in detail, the Supreme Court found that the appellate court's conclusion had been correct.

29. In the meantime, HRC conducted its activities as an unregistered NGO and carried out a number of projects which, according to the applicants, received wide attention and support both at national and international level.

30. In August 2014 Mr Rasul Jafarov was arrested and in April 2015 convicted on charges of illegal entrepreneurship, large-scale tax evasion and abuse of power, for receiving allegedly unregistered grants and donations, including those received for various HRC projects. The circumstances relating to his arrest and detention were examined in *Rasul Jafarov v. Azerbaijan* (no. 69981/14, 17 March 2016), where the Court found violations of Article 5 §§ 1 and 4 of the Convention and Article 18 in conjunction with Article 5 of the Convention.

II. RELEVANT DOMESTIC LAW

A. 1995 Constitution

31. Article 58 of the Constitution provides:

Article 58 – Right to association

“I. Everyone is free to associate with others.

II. Everyone has the right to establish any association, including political party, trade union and other public association or to join an already existing association. Freedom of activity of all associations is guaranteed. ...”

B. 2000 Civil Code

32. Articles 47, 48 and 49 of the Civil Code, as applicable at the material time, provided as follows:

Article 47 – Charter of a legal entity

“47.1. The charter of a legal entity, approved by its founders, is the founding document of the legal entity. A legal entity established by one founder operates on the basis of a charter approved by the founder.

47.2. The charter of a legal entity shall specify the name of the legal entity, its address, the procedure for the management of its activities, and the procedure for its liquidation. The charter of a non-commercial legal entity shall specify the scope and purposes of its activities. ...”

Article 48 – State registration of a legal entity

“48.1. A legal entity shall be subject to State registration with the relevant executive authority. Data on State registration, including the company name for a commercial legal entity, shall be entered into the State register of legal entities generally available to the public.

48.2. State registration of a legal entity may be refused only in the cases stipulated by the Law [on State Registration]. A refusal or an avoidance of State registration may be appealed against to a court. ...”

Article 49 – Bodies of a legal entity

“49.1. A legal entity shall acquire civil rights and undertake civil obligations through its bodies, which shall act in accordance with the law and the charter. The procedure for the election or appointment of a legal entity’s bodies shall be specified by the charter.

49.2. A legal entity may acquire civil rights and undertake obligations through its participants and representatives [*təmsilçi*].

49.3. A person acting on behalf of a legal entity, including any person represented in the legal entity’s governing bodies (board of directors and executive body), shall have a duty to act conscientiously, in a professional manner and logically for the benefit of the legal entity he or she represents, be loyal to the interests of the legal entity and all of its participants, hold the interests of the legal entity above his or her own interests and be prudent. ...”

33. The Civil Code did not contain a specific separate definition of the term “legal representative” (*qanuni təmsilçi*) in the context of a legal entity. Article 49.2 (cited above) referred to a “representative” (*təmsilçi*) of a legal entity, without defining the term. Likewise, the Civil Code used both terms (“legal representative” and “representative”), without specifically defining them, in various other contexts relating to various civil relationships: for example, a legal representative of an incapacitated person (Article 379.1.4), a legal representative of a debtor (Article 443.9 and 448.3), and representatives of owners of parts of residential buildings acting on their behalf in owners’ general assemblies (Article 236.4).

34. The Civil Code contained more detailed provisions and definitions concerning “representatives in transactions” (*əqdlərdə təmsilçi*) and “commercial representatives” (*kommersiya təmsilçisi*), as well as the procedure for their authorisation, in the following Articles:

Article 359 – Definition of representation in transactions

“359.1. A transaction may also be concluded through a representative. A transaction concluded by one person (representative [*təmsilçi*]) on behalf of another person (represented) in accordance with authority based on a power of attorney, a

legal provision or an act of an authorised State or municipal body, shall directly create, change or terminate the civil rights and obligations of the represented person. Authority may also be evident from the conditions of a representative's activities (retail salesman, cashier, etc.).

..."

Article 361 – Commercial representation

"361.1. A person representing businesspersons on a permanent and independent basis when concluding agreements in a business context shall be considered a commercial representative [*kommersiya təmsilçisi*] ..."

Article 362 – Power of attorney

"362.1. A power of attorney is an authority given by one person to another for the purpose of representation before third parties. ...

362.2. A power of attorney for concluding agreements requiring notarisation shall be notarised.

...

362.5. A power of attorney on behalf of a legal entity shall be deemed issued when it is signed by its chief officer or another person authorised to do so by its charter, and sealed with the organisation's seal."

C. Law on State Registration

35. Article 5 of the Law on State Registration (including Article 5.4.1, before it was amended on 24 January 2012), provided as follows:

Article 5 – Request for State registration of an organisation wishing to obtain legal-entity status

"5.1. An organisation wishing to obtain legal-entity status shall submit an application to the relevant executive authority [the Ministry of Justice];

5.2. The application shall be signed by the founder (or, if there are several, by all the founders) or by persons authorised to represent [him, her or them] in the relevant manner and shall be approved by a notary;

...

5.4. The following documents shall be attached to the application:

5.4.1. Founding documents – the charter of the organisation wishing to obtain legal-entity status approved by its founder (founders) or his or her (their) authorised representative [*onun (onların) səlahiyyətli nümayəndəsi*], and the decision founding the organisation and adopting its charter (the decision shall include the intention by its founders to establish the organisation wishing to obtain legal-entity status; the terms of reorganisation of a new legal entity established by way of a merger, separation or division; adoption of the charter; if appointed, [information on] the legal representative [*qanuni təmsilçi*] and his or her powers; as well as other issues considered necessary by the founders; and this decision shall be signed by all the founders);

...

5.4.6. if a legal representative is appointed [*qanuni təmsilçinin təyin edildiyi halda*], a copy of his or her identification documents; ...”

36. The relevant part of Article 8 of the Law on State Registration provided as follows:

Article 8 – Procedure for State registration of a non-commercial organisation wishing to obtain legal-entity status

“8.1. State registration of a non-commercial organisation wishing to obtain legal-entity status, as well as a branch of representation of a foreign non-commercial legal entity, shall, as a general rule, be carried out within forty days.

8.2. The relevant executive authority [the Ministry of Justice] accepts for examination the application for State registration and the required accompanying documents and, within thirty days, verifies their compliance with the Constitution of the Republic of Azerbaijan, this Law and other legislative acts of the Republic of Azerbaijan. If during the examination there arises a need for an additional review in exceptional cases, this period can be extended for another thirty days.

8.3. If the submitted documents are found to contain deficiencies [*çatışmazlıqlar*] that cannot serve as a basis for the refusal of State registration, the relevant executive authority [the Ministry of Justice] shall return the documents to the applicant and fix an additional twenty-day period for rectification of those deficiencies. Any deficiencies [in the registration documents] that cannot serve as a basis for the refusal [of State registration] shall be identified and notified to the applicant for rectification at once.

8.4. No later than ten days after the submitted documents have been examined or after the deficiencies identified in those documents have been rectified, the relevant executive authority [the Ministry of Justice] shall issue to the applicant a certificate on State registration or give a written notice of refusal of State registration (specifying and explaining the legal provisions which serve as a basis for the refusal).

8.5. If no response refusing State registration is given within the period specified in this Article, the organisation shall be considered to have been granted State registration. In such cases, the relevant executive authority [the Ministry of Justice] shall issue a State registration certificate to the applicant within ten days.”

37. The relevant part of Article 11.3 of the Law on State Registration, as in force at the relevant time, provided as follows:

Article 11 – Ensuring legality in the application of the law

“...

11.3. State registration of an organisation ... wishing to obtain legal-entity status ... may be refused only in the following cases:

11.3.1. if the documents submitted to the relevant executive authority [the Ministry of Justice] are in contradiction to the Constitution of the Republic of Azerbaijan, this Law or other legislation;

11.3.2. if the purposes, tasks or activity forms of the organisation wishing to obtain legal-entity status are in contradiction to the legislation;

11.3.2-1. if the charter of a non-governmental organisation provides for usurpation of the competences of the State or local self-administration authorities or functions relating to State supervision or inspection;

11.3.3. if there is a breach of the legal requirements concerning the protection of company names or if there is a non-commercial organisation registered under the same name, or if the name of a non-governmental organisation contains names of State authorities of the Republic of Azerbaijan or names of prominent Azerbaijani public figures (in the absence of permission by their close relatives or heirs);

11.3.4. if the deficiencies identified by the relevant executive authority [the Ministry of Justice] in the founding documents have not been rectified within the time period specified in Article 8.3 of this Law.”

D. Amendments to the Law on State Registration made after the events of the present case

38. Under the new version of Article 5.4.1, as amended on 24 January 2012, there was no requirement to include information on the legal representative and his or her powers in the founding decision.

39. By an amendment of 23 May 2017, the following definition of a “legal representative” was added to Article 2 of the Law on State Registration:

“2.0.14. legal representative [*qanuni təmsilçi*] – a person or persons having powers to represent an organisation in accordance with its charter or regulations; ...”

40. By a further amendment of 6 December 2018, the words “if appointed” were deleted from Article 5.4.6, while Article 5.2 was amended to read as follows:

“5.2. The application shall be signed by the founder (or, if there are several, by all the founders), legal representative (legal representatives) or by persons authorised to represent them in the relevant manner and shall be approved by a notary; ...”

E. Law on non-governmental organisations (public associations and foundations) of 13 June 2000 (“the Law on NGOs”)

41. The relevant provisions of the Law on NGOs, as in force at the material time, provided as follows:

Article 12 – Establishment of a non-governmental organisation

“12.1. A non-governmental organisation may be established through foundation or reorganisation of an existing non-governmental organisation.

12.1-1. ...

12.2. Establishment of a non-governmental organisation through foundation shall be carried out by a decision of the founder (founders). In such cases, a founding assembly shall be held and the charter of the organisation adopted.

...”

Article 16 – State registration of non-governmental organisations

“16.1. State registration of non-governmental organisations shall be carried out by the relevant executive authority [the Ministry of Justice] in accordance with the Law [on State Registration].

16.2. A non-governmental organisation shall obtain legal-entity status only after its State registration.

...”

Article 25 – Principles of governing a public association

“25.1. The structure and composition of a public association, powers, procedure for formation and term of office of its governing bodies, and rules for decision-making and representing the public association shall be determined by the public association’s charter in accordance with this Law and other laws. ...”

Article 26 – Executive body of a public association

“26.1. A public association’s executive body may be a collegial or sole body. It (he or she) shall carry out ongoing management of the public association’s activities and report to the public association’s supreme governing body.

26.2. A public association’s executive body shall open branches and representative offices.

26.3. The powers of a public association’s executive body shall include dealing with all issues which do not form part of the exclusive competence of the public association’s other governing bodies in accordance with this Law, other laws and the public association’s charter.”

F. Law on Grants of 17 April 1998 (“the Law on Grants”)

42. The relevant provision of the Law on Grants, as in force at the material time, provided as follows:

Article 3 – Recipient

“1. A grant beneficiary is a recipient in respect of a donor.

2. The following may be a recipient:

- The Azerbaijani State as the relevant executive authority;

- Municipal authorities;

- Resident and non-resident legal entities, their branches, representative offices and departments carrying out activities in the Republic of Azerbaijan, whose main objective, according to their articles of association, is charitable activities or implementation of projects and programs that may be the subject of a grant, and which are not aimed at direct generation of profit resulting from the grant; and

- Individuals in the Republic of Azerbaijan. ...”

III. RELEVANT INTERNATIONAL DOCUMENTS

43. The following are extracts from the European Commission for Democracy through Law (Venice Commission) Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011):

“A. Registration of NGOs

a) The need for registration

54. Under the Azerbaijani legislation, NGOs must be registered to acquire legal personality. The Venice Commission reiterates that to make it mandatory for an association to register need not in itself be a breach of the right to freedom of association.

55. The importance of the acquisition of a legal personality for NGOs has been stressed by the ECtHR, according to which “the most important aspect of the right to freedom of association is that citizens should be able to create a legal entity in order to act collectively in a field of mutual interest. Without this, that right would have no practical meaning”.

56. As the Venice Commission already holds in another context, domestic law may require some kind of registration of associations, and failure to register may have certain consequences for the legal status and legal capacity of the association involved.

57. However, the Venice Commission recalls that such a legal requirement may not be an essential condition for the existence of an association, as that might enable the domestic authorities to control the essence of the exercise of the freedom of association.

58. While NGOs can operate without legal personality, on an informal basis, the acquisition of the personality is the precondition for various benefits. It is important to underline that only registered NGOs can be recipients of grants under the 1998 Law on Grants, and only they can enjoy tax preferences under the 2000 Tax Code. Since grants are the main source of revenues for many NGOs, the act of registration is far from being a mere formality devoid of any practical importance.

59. The Azerbaijani registration system has been over the past years repeatedly criticised by international organisations, NGOs and scholars.

a.a) A lengthy and complicated procedure

60. The main deficiencies relate to the fact that the registration of NGOs is a lengthy and complicated procedure, whose outcomes are somewhat difficult to predict. Recorded practice shows that some of the NGOs which applied for registration have never got formal decision, and those that have got it, often needed to wait for an extensive period of time.

61. The registration is currently ensured by the Ministry of Justice under a rather complicated procedure which is regulated by the 2000 Law on NGOs and the 2003 Law on State Registration and the State Registry of Legal Entities ... State registration of NGOs is also dealt with in the Civil Code (Articles 47 and 48).

62. Registration as a rule shall be carried out by the relevant executive power within 30 days. In exceptional cases, when there is necessity for further investigation during the check, the period can be prolonged for additional 30 days (Art. 8 of the Law on State Registration). While the time-limit is rather long compared to the regulation in other countries of the Council of Europe, it could be accepted, were it meticulously respected and were the extension of the period truly reserved for “exceptional cases”. Yet, several studies realised by the OSCE show that this is not always the case and that the applications of many NGOs, especially human rights NGOs, are for some reasons or even without any reasons treated as “exceptional”.

63. The Azerbaijani authorities should strive to reduce the number of cases treated in this way and they should also, ideally in an amendment to the 2003 law, define the features of an “exceptional case”.

64. The European Court of Human Rights has found delays in the registration process in cases against Azerbaijan to amount to a *de facto* refusal to register an association. The significant delays in the registration procedure, when attributable to the Ministry of Justice amounted to an interference with the exercise of the right of the association’s founders to freedom of association.”

44. The following are extracts from the Venice Commission Opinion on the Law on NGOs, as amended, adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014):

“III. Legal framework

A. National Legal Framework

...

2. The Law on Non-Governmental Organisations

20. The *Law on Non-Governmental Organisations*, adopted in 2000 and as amended, regulates the establishment, operation, management and termination of non-governmental organizations (NGOs) as well as the relations between these organizations and state bodies.

...

26. There is no special law regulating human rights NGOs such as associations of human rights defenders; they therefore fall into the ambit of the Law on NGOs.

3. Other Domestic Acts

27. The Law on NGOs has been implemented or complemented by other laws and executive decrees. In 2003, a *Law on State Registration and the State Registry of Legal Entities* was adopted. This law contains details on the registration of various legal entities, including NGOs, and provides a list of reasons on the basis of which registration could be denied. The Law has been amended several times since its adoption, usually in parallel with the Law on Non-Governmental Organisations.

...

IV. Analysis of the Law on Non-Governmental Organisations, as Amended

...

Specific comments

A. Establishment/Registration of NGOs

43. According to Article 12, par. 1, of the Law on NGOs, “an NGO may be formed as a result of its foundation as well as reorganization of an existing NGO”. In order to acquire legal personality, NGOs have to register under the procedure regulated by the 2003 *Law on State Registration and the State Registry of Legal Entities*. While public associations may operate without legal personality, on an informal basis, branches and representations of foreign NGOs may not. Moreover, the acquisition of legal personality is a precondition for various benefits. Most importantly, only registered NGOs can, on behalf of the legal personality, open a bank account, buy property, receive grants under the 1998 Law on Grants, and enjoy tax preferences under the 2000 Tax Code.

44. Mandatory registration for associations in order to acquire legal personality is not as such in breach of the right to freedom of association, as the Commission has observed in its 2011 Opinion. However, registration should not be an essential condition for the existence of an association, as that might enable domestic authorities to control the essence of the exercise the right to freedom of association. Moreover, the procedure of registration of NGOs in Azerbaijan has been criticised for its lengthy and cumbersome nature.

45. In the cases of *Ramazanova and Others* (2007) and *Ismaylov* [sic – *Ismayilov*] (2008), the ECtHR found Azerbaijan in violation of Article 11 ECHR (freedom of association) due to unlawful delays in State registration of an NGO. The Court considered in *Ramazanova and Others* that the significant delays in the state registration of the applicant association, which resulted in its prolonged inability to acquire the status of a legal entity, amounted to interference by the authorities with the applicants’ exercise of their right to freedom of association. ...

...

46. The recent amendments have failed to address most of these shortcomings. The registration is still a lengthy and cumbersome process, though this is linked more to the implementation of the legislation than to its content. According to the recent expert reports, the applicants are often required by the registering department to submit additional documentation not required under the national legislation; they often receive repeated requests for corrections of the documents, although such requests must be submitted at once (Article 8(3) of the Law on Registration); the deadline for issuing the decision on the registration is not always respected (as was found in the above-mentioned judgments in *Ramazanova and Others* and *Ismaylov* [sic – *Ismayilov*] of the ECtHR); and the automatic registration, in case the Ministry of Justice does not respond to the applications within the statutory time-limit (Art. 8(5) of the Law on Registration), does not seem to be respected. Moreover, the registration is still possible only in Baku, be it that the documents may be sent by mail and plans to introduce computer-based registration and establish a single information network of registry authorities are reportedly being considered.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

45. The applicants complained under Article 11 of the Convention that the repeated refusals to register their association and grant it legal-entity

status had amounted to a violation of their right to freedom of association. Article 11 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. Admissibility

46. The Court notes that the application 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

47. The applicants submitted that the repeated returns of their applications for State registration of HRC, resulting in a significant delay of a definitive decision to register or refuse to register, had amounted to an interference with their right to freedom of association. Although the law applicable at the material time had not explicitly prevented the operation of unregistered NGOs, possession of legal-entity status enabled an NGO to function effectively by allowing it to open a bank account, seek and receive funding as an organisation, hire employees as a legal entity, acquire an official stamp and other prerequisites essential for the proper and effective functioning of the NGO. The registration of an NGO allowed it to render its work more professional and sustainable. By failing to register HRC the respondent State had prevented the applicants from running it effectively.

48. The interference had not been prescribed by law. Under the relevant provisions of the Law on State Registration, the appointment of a legal representative was optional. In response to the Government's argument concerning the lawfulness of the interference (see paragraph 52 below), the applicants maintained that Mr Rasul Jafarov had been elected as chairman of HRC and that his powers in that capacity had been stipulated in the association's charter. Within the meaning of the relevant law, a chairman was not a “legal representative”. A legal representative was an external person authorised by power of attorney to act on behalf of an association. In

the present case, the founders had not appointed a legal representative upon founding HRC. Since appointment of a legal representative was optional and one had not been appointed, there was no basis in domestic law for the Ministry of Justice to return the registration documents on the grounds that they lacked information on the legal representative and his or her powers.

49. Moreover, the Ministry of Justice had breached the provisions of Article 8.3 of the Law on State Registration by failing to identify all alleged deficiencies in the documents at once, instead repeatedly returning the documents, each time demanding a different type of rectification.

50. The applicants further argued that, in the present case, the interference had not pursued any legitimate aims, because the actual purpose behind the authorities' avoidance of registering HRC had been to prevent them from carrying out their human rights work. They supported this argument by pointing to the fact that one of the co-founders of HRC, Mr Rasul Jafarov, had been arrested in August 2014 and subsequently convicted and sentenced to six and a half years' imprisonment on charges of illegal entrepreneurship, tax evasion and abuse of power, for, *inter alia*, allegedly illegally receiving funding for his human rights work in the absence of HRC's State registration (for more details, see *Rasul Jafarov v. Azerbaijan*, no. 69981/14, 17 March 2016). His arrest and conviction had been part of a series of arrests and convictions of a number of NGO activists and human rights defenders that had taken place at around the same time. The applicants further noted that the other two co-founders, Mr Emin Huseynov and Mr Sabuhi Gafarov, had been forced to leave the country, fearing the same persecution. The former is the subject of a separate complaint in *Huseynov v. Azerbaijan* (no. 1/16, communicated on 16 April 2018).

51. Lastly, the applicants argued that, in any event, the interference in the present case had not been necessary in a democratic society.

52. The Government submitted that Article 5.4.1 of the Law on State Registration provided that, if appointed, the powers of the legal representative had to be indicated in the decision founding the association. In the decision of 10 December 2010 founding the association, the applicants had appointed Mr Rasul Jafarov as the association's legal representative but they had failed to stipulate his powers. The Government argued that the applicants had in fact refused to bring HRC's constituent documents in line with the statutory requirements and had sought to obtain registration on the basis of documents contradicting those requirements. The Government maintained that the Ministry of Justice had given lawful reasons for its decisions to return the documents for rectification.

53. They also pointed out that the law had not prevented NGOs from functioning without State registration. Therefore, HRC could engage in its activities and even enter into various contracts, such as rent premises, open

a bank account, and so on, in the absence of registration and without obtaining legal-entity status.

2. *The Court's assessment*

(a) General principles

54. The right to form an association is an inherent part of the right set forth in Article 11 of the Convention. The ability to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see, among other authorities, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 88, ECHR 2004-I; *The United Macedonian Organisation Ilinden and Others v. Bulgaria* (no. 2), no. 34960/04, § 33, 18 October 2011; and "*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*" v. *the former Yugoslav Republic of Macedonia*, no. 3532/07, § 94, 16 November 2017).

(b) Whether there was interference

55. A refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association (see, among other authorities, *Sidiropoulos and Others v. Greece*, 10 July 1998, § 31, *Reports of Judgments and Decisions* 1998-IV; *Gorzelik and Others*, cited above, § 52; and *Koretskyy and Others v. Ukraine*, no. 40269/02, § 39, 3 April 2008).

56. In previous cases concerning Article 11 in relation to Azerbaijan, the Court found that significant delays in the State registration procedure, if attributable to the registering authority, and repeated failures by the registering authority to issue a definitive decision on the State registration of associations amounted to an interference with the applicants' exercise of their right to freedom of association (see *Ramazanova and Others v. Azerbaijan*, no. 44363/02, §§ 57-60, 1 February 2007; *Nasibova v. Azerbaijan*, no. 4307/04, § 28, 18 October 2007; and *Ismayilov v. Azerbaijan*, no. 4439/04, § 48, 17 January 2008).

57. In the present case, relying on Article 11.3.1 of the Law on State Registration, the Ministry of Justice rejected several requests by the applicants for State registration of HRC (see paragraphs 8-13 above).

58. In the absence of State registration, HRC was not formally recognised as a legal entity under domestic law (see Article 16.2. of the Law on NGOs, cited in paragraph 41 above).

59. The Government argued that NGOs could function without State registration. They also submitted that unregistered NGOs could open a bank account and rent premises (see paragraph 53 above), without, however, supporting this assertion with reference to any relevant provisions of domestic law or other evidence.

60. The Court notes that, although domestic law did not prevent associations from functioning without State registration, in practical terms, according to the information available to the Court, domestic law effectively restricted an association's ability to function properly without legal-entity status. An association could not, *inter alia*, open a bank account, hire employees, or receive in its name any grants or financial donations which constituted one of the main sources of financing of non-governmental organisations (see Article 3 of the Law on Grants in paragraph 42 above; see also *Ramazanova*, cited above, § 59, and third-party submissions and the Court's assessment in *Rasul Jafarov*, cited above, §§ 101-02, 108-10 and 123; see also the extracts from the Venice Commission Opinions cited in paragraphs 43-44 above). If unable to properly secure financing, an association would not be able to engage fully in the activities for which it was founded. It follows that the legal and professional capacity of an association lacking legal-entity status did not match that of State-registered associations.

61. Having regard to the above circumstances, the Court considers that the Ministry of Justice's repeated rejection of requests to register HRC, resulting in its *de facto* inability to obtain legal-entity status, constituted an interference with the right of HRC and the individual applicants, as its founders, to freedom of association.

(c) Whether the interference was justified

62. Such an interference will not be justified under the terms of Article 11 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims set out in paragraph 2 of that Article and is "necessary in a democratic society" for the achievement of that aim or aims.

63. The Court reiterates that the expression "prescribed by law" requires that the impugned measure should have some basis in domestic law and refers to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I; *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 108-09, ECHR 2015; and *Satakunnan Markkinapörssi Oy and Satamedia*

Oy v. Finland [GC], no. 931/13, § 143, 27 June 2017). For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (see *Maestri*, cited above, § 30, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 115, 15 November 2018).

64. The Court notes that, at the material time, the founding and State registration of NGOs in Azerbaijan was regulated by three legal acts: the Civil Code, the Law on State Registration and the Law on NGOs. The relevant provisions of the Civil Code and the Law on State Registration applied to State registration of all types and forms of legal entities. The Law on NGOs regulated the particularities of the establishment and functioning of NGOs, as non-commercial organisations that could take the form of a public association or a foundation.

65. The Court is aware that the applicable domestic legislation and, in particular, the Law on State Registration have been subject to a number of amendments following the events giving rise to the present case. However, in this case it must have regard to the domestic law as applicable at the material time (see *Aliyev and Others v. Azerbaijan*, no. 28736/05, §§ 36-39, 18 December 2008).

66. The applicants submitted that the interference with their right to freedom of association had been unlawful for two reasons. Firstly, they argued that the reason advanced by the Ministry of Justice for the refusal dated 28 December 2011, concerning the applicants' alleged failure to comply with the requirement to include information on the legal representative and his or her powers in the founding document, had had no basis in law. Secondly, they argued that the manner in which the Ministry had repeatedly rejected their registration requests had been in breach of its procedural obligation under the Law on State Registration to notify the founders of all alleged errors or omissions in the registration documents at once, resulting in an unlawful delay in the registration process.

67. The Court will examine the lawfulness of the interference with reference to each of the above issues separately.

(i) Reasons advanced by the Ministry of Justice for rejecting the requests to register

68. The Court notes that the applicants did not dispute that the reasons given by the Ministry of Justice for the first two refusals on 12 September and 4 November 2011 had a basis in law.

69. The Court reiterates that States are entitled – subject to the condition of proportionality – to require organisations seeking official registration to comply with reasonable legal formalities (see *Hayvan Yetiştiricileri Sendikası v. Turkey* (dec.), no. 27798/08, 11 January 2011; *Republican Party of Russia v. Russia*, no. 12976/07, § 87, 12 April 2011; and *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria* (no. 2), nos. 41561/07 and 20972/08, § 83, 18 October 2011; see also, *mutatis mutandis*, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 72, ECHR 2009). Moreover, the Court’s power to review compliance with domestic law is limited and it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. Unless the interpretation is arbitrary or manifestly unreasonable, the Court’s role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018).

70. In assessing the lawfulness of the interference in the present case, and in particular the foreseeability of the domestic law in question (see the principles set out in paragraph 63 above), the Court must have regard to the text of the law itself and the manner in which it was applied and interpreted by the Ministry of Justice and the domestic courts.

71. The Court notes that the Law on State Registration, as applicable at the material time, did not contain a definition of an organisation’s “legal representative”. The Government have not claimed that such a definition existed in any other legislation applicable to NGOs at that time. It is true that the definition of this term was added to the Law on State Registration several years after HRC’s applications for State registration (see paragraph 39 above). According to the newly added definition, it appears that the chairman of an organisation would be among those who fall within the definition of a “legal representative” of a legal entity. The Court reiterates, however, that in the present case it must have regard to the domestic law as it stood at the material time.

72. In their submissions to the Court the Government argued that Mr Rasul Jafarov had been appointed as HRC’s legal representative and that therefore the founding decision of 10 December 2010 should have specified his powers as legal representative. However, the Government did not substantiate or explain this statement with reference to the requirements of domestic law at the relevant time. Moreover, their submissions were either unsupported by or contradicted the position previously taken by the domestic authorities when considering the registration requests.

73. In particular, neither the Ministry of Justice’s letter of 28 December 2011 nor the domestic courts’ judgments contained any information showing that they specifically considered the association’s chairman to be

its “legal representative” within the meaning of Article 5.4.1 of the Law on State Registration. The Ministry of Justice’s letter of 28 December 2011 and its written submissions to the first-instance court were brief and cryptic and lacked any detailed explanation in this regard (see paragraphs 13 and 21 above). Moreover, the Ministry did not appear at any of the court hearings and made no oral submissions. Consequently, it never provided any express clarifications as to its interpretation of the term “legal representative” as it applied at that time to HRC’s situation specifically or to legal entities in general.

74. Of the domestic courts, only the Baku Court of Appeal made an attempt to determine who should be considered HRC’s “legal representative” in this particular case. Specifically, it noted that the founders of the association had been “appointed ... as legal representatives representing its interests in connection with State registration” (see paragraph 25 above). However, this statement was not substantiated. Firstly, as to the facts, there was no express provision in the founding decision of 10 December 2010 appointing the founders as “legal representatives”. That decision merely instructed the founders to deal with the State registration issues. Secondly, the domestic court did not refer to any legal provisions or provide any legal reasoning in support of its assessment. Lastly, the Court notes that the appellate court’s statement was not expressly endorsed by the Supreme Court, which remained silent in its decision of 18 September 2013 as to who, if anyone, should have been considered the “legal representative” in HRC’s case.

75. The Court further notes that Mr Rasul Jafarov, as the association’s chairman, fulfilled the role of the sole executive body of the association in accordance with Article 49 of the Civil Code and Article 26 of the Law on NGOs (see paragraphs 32 and 41 above). The association’s charter, submitted to the Ministry of Justice, provided a list of his powers (see paragraph 7 above, and Articles 25 and 26 of the Law on NGOs in paragraph 41 above). Accordingly, the registration documents submitted to the Ministry of Justice already provided it with information concerning the person authorised to act on behalf of the association by virtue of his official capacity and in accordance with domestic law and the association’s charter, as well as his powers.

76. Furthermore, the Court notes that Article 5.4.1 of the Law on State Registration, as applicable at the relevant time, stated, in plain language, that the founding decision had to specify the powers of the legal representative, “if appointed”. Likewise, Article 5.4.6 of the same Law required submission of the legal representative’s identification documents only if one had been appointed (see paragraph 35 above). It follows that, as it stood at the material time, the text of the Law on State Registration, in its ordinary sense, did not appear to require the appointment of a “legal representative”; it required the founders to mention the “legal

representative” in the founding decision and specify his or her powers only if they had chosen to appoint one. In this connection, the Court also notes that the amendment of 24 January 2012 to Article 5.4.1 of the Law on State Registration, adopted very shortly after the Ministry of Justice’s refusal letter of 28 December 2011, removed any requirement to indicate a “legal representative” or his or her powers in the founding decision (see paragraph 38 above).

77. Having regard to the above, the Court considers as plausible the applicants’ interpretation that an appointed “legal representative” referred to in Article 5.4.1 of the Law on State Registration, as in force at the material time, could only reasonably mean a person other than an association’s official or officials already authorised to represent it by virtue of their position and powers as defined by its charter, and that the appointment of one was optional under that provision.

78. To summarise the above, the Court notes that the case before it presents a combination of the following elements: (i) the Law on State Registration, as interpreted and applied by the domestic authorities at the material time, did not provide a precise definition of the term “legal representative” used in the specific context relating to a legal entity; nor has it been demonstrated that such a definition existed in any other legislation applicable at the relevant time; (ii) the Ministry of Justice never officially clarified its position as to who it specifically considered to be the “legal representative” in HRC’s case; (iii) there is a discrepancy between the Government’s position before the Court and the Baku Court of Appeal’s finding as to whether the “legal representative” in HRC’s case was its chairman or all three founders collectively; (iv) the other domestic courts, notably the Supreme Court, refrained from making any specific statements or conclusions in this regard; and (v) a textual interpretation of Article 5.4.1 of the Law on State Registration points to the fact that it did not appear to require the appointment of a “legal representative”, and therefore did not require the founding decision to specify his or her powers if one had not been appointed.

79. In such circumstances, the Court notes that Article 5.4.1 of the Law on State Registration, as interpreted and applied by the domestic authorities at the material time, was not sufficiently foreseeable to the persons concerned. It lacked sufficient precision regarding who was considered a legal entity’s “legal representative” whose powers should be specified in the decision founding a legal entity, and in what circumstances he or she could be considered to have been appointed.

80. The Court recognises that it is not possible to attain absolute certainty in the framing of laws, and that many of them are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 143). The level of

precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Kudrevičius and Others*, cited above, § 110).

81. Moreover, however clearly drafted a legal provision may be, its application involves an inevitable element of judicial interpretation, since there will always be a need for clarification of doubtful points and for adaptation to particular circumstances. A margin of doubt in relation to borderline facts does not by itself make a legal provision unforeseeable in its application. Nor does the mere fact that a provision is capable of more than one construction mean that it fails to meet the requirement of “foreseeability” for the purposes of the Convention. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice (see *Gorzelik and Others*, cited above, § 65, and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 91, ECHR 2005-XI).

82. The provision of domestic law in question in the present case concerned formal requirements relating to the content of founding documents used for the purposes of State registration as a legal entity. Therefore, because of the very specific field that the law was designed to cover and the content of the provision in question, a reasonably high degree of precision was necessary.

83. The applicants consistently put forward a reasoned argument before the domestic courts that, in a situation where they had not chosen to appoint a legal representative, lack of specification of a representative’s powers could not constitute an omission in the founding document and therefore could not be grounds for refusing their registration request. They maintained that the Ministry of Justice had incorrectly interpreted the law. Given that the relevant legal provision lacked sufficient precision and was open to various plausible interpretations, the arguments put before the domestic courts required them to approach the assessment of the lawfulness of the Ministry of Justice’s actions by attempting, as a first step, to put forward a reasonable interpretation of that provision.

84. However, the domestic courts made no attempt to interpret the term “legal representative” as used in Article 5.4.1 of the Law on State Registration and the situations where the law required his or her powers to be specified in the founding decision. Instead, by and large, they limited themselves to upholding the Ministry’s actions as lawful without any detailed reasoning, avoiding the examination of the crux of the applicant’s arguments. Moreover, the Government has not demonstrated that there existed, at the relevant time, settled domestic case-law on Article 5.4.1 of the Law on State Registration.

85. For the above reasons, the Court finds that that provision, as interpreted and applied at the material time, did not comply with the requirement of foreseeability. It failed, as the circumstances of the present case demonstrate, to afford the necessary measure of legal protection against arbitrary application by the public authorities. It therefore did not meet the “quality of law” requirement of the Convention.

(ii) Compliance with statutory requirements relating to the registration procedure

86. As indicated previously, the applicants also argued that the omissions identified in the registration documents had been minor and that, in accordance with Article 8 of the Law on State Registration, the Ministry of Justice had been obliged to detect them all at once, instead of repeatedly returning the documents, each time demanding a different type of rectification. They also argued that the Ministry of Justice had incorrectly referred to Article 11.3.1 of the Law on State Registration in its letters returning the registration documents.

87. The Court notes that Article 8 of the Law on State Registration, which was applicable specifically to non-commercial organisations, provided that the procedure for State registration should take, as a general rule, no longer than forty days. Where the Ministry of Justice identified “deficiencies” in the documents that could not serve as a basis for a definitive refusal to register an association, it could return the registration documents for rectification. In such a case, it had to give the founders a twenty-day period for rectification of the deficiencies. Moreover, it required the Ministry of Justice to identify any deficiencies in the registration documents in one review (see Article 8.3 of the Law on State Registration in paragraph 36 above). Once documents were resubmitted following the rectification of any deficiencies, the Ministry of Justice had to either register the association or issue a formal notice of definitive refusal to register (see Articles 8.4 and 11.3.4 of the Law on State Registration in paragraphs 36-37 above).

88. At the same time, Article 11.3 of the Law on State Registration contained a list of grounds on which the Ministry could definitively refuse registration of a legal entity. In particular, Article 11.3.1 provided that registration could be refused if the documents submitted to the relevant executive authority were “in contradiction to the Constitution, [that] Law or other legislation”. Also, as noted above, Article 11.3.4 provided that registration could also be refused if the deficiencies identified by the registering authority had not been rectified within the time period specified in Article 8.3 of the Law on State Registration (see paragraph 37 above).

89. It therefore appears that the “return [of the registration] documents for rectification” under Article 8.3 of the Law on State Registration did not constitute a definitive formal refusal to register an association. Articles 8.4,

11.3.1 and 11.3.4 concerned, in contrast, grounds for a formal refusal to register.

90. In previous Article 11 cases concerning Azerbaijan the Court has found that the old Law on the State registration of legal entities of 6 February 1996 lacked any safeguards against arbitrary prolongations of the whole registration procedure which happened in situations where the Ministry of Justice continuously found new deficiencies in the same registration documents and returned them to the founders for rectification, without respecting the time-limits provided for by law and without taking a definitive decision to register or refuse to register (see *Ramazanova*, cited above, § 66). Seen in relation to this context, it would appear that the purpose of the safeguards provided in Article 8 of the Law on State Registration, which replaced the old law, was to prevent delays in the State registration procedure, by placing a time-limit on the overall examination period, requiring the Ministry of Justice to identify all “deficiencies that could not serve as a basis for the refusal [of registration]” in one review, and allowing the return of documents for rectification only once.

91. In the present case, the Court notes that, according to the wording of the Ministry of Justice letters of 12 September, 4 November and 28 December 2011, on all three occasions, the Ministry decided to “return the documents” (or “return the documents unexecuted”), citing a particular omission in HRC founding documents, and relying on Article 11.3.1 of the Law on State Registration. However, while, as noted above, that provision provided grounds for a definitive formal refusal to register, the relevant letters of the Ministry of Justice did not state that registration had been formally “refused”, but merely that the documents were being “returned” (the term used in Article 8.3 of the Law). In addition, the letters did not expressly provide for a twenty-day rectification period.

92. Moreover, the alleged omissions identified by the Ministry after the applicants’ second and third requests would already have been present in the registration documents submitted with the first request. Thus, the Ministry did not notify the applicants of all those omissions after the first review, instead sequentially addressing a new omission in the same registration documents after each successive registration request by the applicants was made.

93. Having regard to the above, the Court considers that the actions of the Ministry of Justice and the content of its responses to the applicants’ registration requests give rise to serious questions as to their procedural correctness and consistency. These questions were adequately raised and argued by the applicants in their submissions before the domestic courts, which failed to give any legal assessment of the statutory procedural requirements, of the registering authority’s exercise of its functions and of whether the Ministry had complied with those requirements.

94. The Court concludes that the provision which required deficiencies to be identified in one review was applied incorrectly in the applicant's case, resulting in an unlawful delay and the *de facto* inability of the applicants' association to obtain legal-entity status.

(iii) Conclusion

95. The Court finds that the provision of the Law on State Registration cited by the Ministry of Justice as the ground for the third refusal, as in force at the material time and as applied in the present case, did not meet the "quality of law" requirement of the Convention. It also finds that the Ministry did not comply with the requirements of domestic law concerning the registration procedure. Both resulted in an unlawful refusal by the national authorities to register the association. Accordingly, the interference in the present case cannot be considered to have been "prescribed by law" within the meaning of Article 11 § 2 of the Convention.

96. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 11 § 2 (legitimate aim and necessity of the interference) have been complied with.

97. There has accordingly been a violation of Article 11 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The individual applicants claimed the following amounts in respect of non-pecuniary damage: Mr Jafarov claimed 20,000 euros (EUR), and Mr Huseynov and Mr Gafarov claimed EUR 10,000 each. They argued that they had suffered considerable distress owing to the inability to register HRC. Furthermore, the alleged failure by Mr Jafarov to register grants owing to the inability to obtain them through HRC had led to his criminal prosecution and conviction for illegal entrepreneurship, tax evasion and embezzlement.

100. The Government noted that the claims were unsubstantiated and that there was no causal link between Mr Jafarov's criminal prosecution and the alleged violation in the present case. Moreover, they argued that the finding of a violation would in itself constitute sufficient reparation for any non-pecuniary damage suffered in the present case.

101. The Court notes that the complaints relating to Mr Jafarov's arrest and detention have been the subject of a separate application (see *Rasul Jafarov*, cited above). As to the present case, ruling on an equitable basis, the Court awards all the applicants jointly EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

102. In respect of the costs and expenses incurred before the domestic authorities and courts, the applicants claimed EUR 1,200 for the legal fees paid to their lawyer in the domestic proceedings, Ms Ismayilova, and 16,70 Azerbaijani manats (AZN) for various administrative and postal expenses incurred in connection with HRC's registration procedure and the domestic proceedings. To support this part of the claim, they submitted a copy of their agreement with their lawyer and an invoice, as well as copies of documents confirming payment of the fees and postal expenses.

103. In respect of the costs and expenses incurred before the Court, the applicants claimed 3,000 British pounds sterling (GBP) for the legal fees of Ms Remezaite and EUR 832 for translation costs. In respect of the legal fees, the applicants submitted a time-sheet detailing the number of hours spent by Ms Remezaite working on the case. The time-sheet made no reference to any payment arrangements between her and the applicants and did not refer to any contract for legal services signed by them, and no copy of such a contract was submitted to the Court. In respect of the translation costs, the applicants submitted a copy of the agreement with the translator and a copy of the relevant invoice.

104. The Government requested the Court to adopt a strict approach to the applicants' claims. They also noted that Ms Remezaite had not submitted a power of attorney authorising her to represent the applicants, and that the applicants had not submitted a contract for her legal services or any invoices proving that the amount claimed in respect of her legal fees had actually been incurred.

105. 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.

106. The Court notes that Ms Remezaite was authorised to represent the applicants before the Court by an authority form signed by Mr Jafarov, the chairman of HRC. However, the applicants did not submit any documents, such as contracts signed by them and the lawyer or invoices, showing that they had paid or were under a legal obligation to pay the fees charged by Ms Remezaite (compare *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 364-65 and 371-73, 28 November 2017). In these circumstances, the Court has no choice but to reject this part of the claim.

107. As to the remainder of the claims, including the costs and expenses in the domestic proceedings and the translation expenses incurred before the Court, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,040, covering costs under all heads.

C. Default interest

108. 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, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay all the applicants jointly, 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 2,040 (two thousand and forty euros), plus any tax that may be chargeable to the applicants, 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;
4. *Dismisses* the remainder of the applicants claim for just satisfaction.

Done in English, and notified in writing on 25 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President