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

FIFTH SECTION

CASE OF ZAYIDOV v. AZERBAIJAN (No. 2)

(Application no. 5386/10)

JUDGMENT

Art 10 • Freedom of expression • Prescribed by law • Legal basis for seizure and destruction of book manuscript, written by journalist in detention, insufficiently foreseeable and absent safeguards against arbitrary decisions Art 6 § 1 (civil) • Unfair proceedings for damages, given domestic courts' failure to consider necessity of and arrangements for applicant's presence at hearings, unreasoned refusal to call additional witnesses and inadequately reasoned decisions

STRASBOURG

24 March 2022

FINAL

24/06/2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Zayidov v. Azerbaijan (no. 2),

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

Síofra O'Leary, *President,*
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Lado Chanturia,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 5386/10) 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 Ganimat Salim oglu Zayidov (*Qənimət Səlim oğlu Zayidov* – "the applicant"), on 16 December 2009;

the decision to give notice of the application to the Azerbaijani Government ("the Government");

the parties' observations;

Having deliberated in private on 1 March 2022,

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

INTRODUCTION

1. The application, lodged under Articles 6 § 1, 8, 10, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention, mainly concerns an allegedly unlawful seizure and destruction of a book manuscript written by the applicant in detention and the alleged unfairness of the ensuing civil proceedings concerning a claim for damages lodged by the applicant.

THE FACTS

2. The applicant was born in 1963 and currently lives in Strasbourg. The applicant was represented by Mr R. Hajili, a lawyer based in Strasbourg, and Mr E. Sadigov and Mr F. Namazli, lawyers based in Baku.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. The applicant is a journalist. During various time periods, he was the chief editor of the opposition-oriented *Azadlıq* newspaper. In November 2007 he was arrested and charged with the criminal offence of hooliganism.

Following a trial, in March 2008 he was convicted and sentenced to four years' imprisonment. By a presidential pardon given on 17 March 2010 he was released from serving the remainder of his sentence (for more details, see *Zayidov v. Azerbaijan*, no. 11948/08, §§ 7-34, 20 February 2014). Some months after his release, the applicant moved to France, where he was granted political asylum.

II. SEIZURE AND DESTRUCTION OF THE APPLICANT'S MANUSCRIPT

6. Pending the above-mentioned trial and for some time after he had been convicted, the applicant was detained in Baku Detention Facility No. 1 from 12 November 2007 to 22 May 2008. While in detention, he wrote a manuscript which, according to him, was a book written in a "journalistic genre" and reflected his experiences and thoughts on his ongoing detention, as well as on political developments in the country and his memories of certain events and personalities over the past twenty years of his life. In particular, according to the applicant, the first chapter of the book was dedicated to his cellmates' stories about the criminal offences committed by them, the penalties they expected to receive, and their experiences of the treatment they had faced from the law-enforcement authorities and courts; the second chapter was dedicated to the "rules of the criminal world", prisoners' way of life and the "general facts" about the criminal world since Soviet times; and the third chapter dealt with "crimes" of the "current political regime", including corruption generally and corruption in the army. The sources for the last chapter were, according to the applicant, various publications that had been published in the Azerbaijani newspapers throughout the years.

7. The manuscript was in one copy consisting of 278 pages in total. By the end of April 2008, the applicant had written 203 pages, and the remaining pages were written in May 2008 before his transfer to a prison following his criminal conviction.

8. According to the applicant, on 27 April 2008 he informed the detention facility officials about the existence of the manuscript and about his intention to give it to his family for further publication. The facility officials took the first 203 pages of the manuscript from him, and the head of the facility orally assured the applicant that it would be given to his family or his lawyer. The applicant was not informed, at that time, that the manuscript was being seized, and he continued to write its remaining pages. These remaining seventy-five pages were also taken from him in May 2008, before his transfer to the prison, with the same promise. According to the applicant, no seizure records were drawn up or presented to him.

9. According to copies of two records drawn up by the detention facility officials on 27 April 2008, available in the case file, the applicant requested

an official of the detention facility, A.I., to "secretly send" 203 pages of the manuscript to the editorial office of the *Azadlıq* newspaper for publication. A.I. and two other officials drew up a record with regard to this request. The applicant's request was not satisfied, and the manuscript was then seized in the presence of the deputy head and two other officials of the detention facility, all of whom signed a separate seizure record in this regard. It was also noted in this seizure record that the applicant had refused to become familiar with it, to provide a "written explanation" or to sign it.

10. On 8 May 2008 the deputy head of the detention facility drew up a handwritten report concerning the contents of the first 203 pages of the manuscript, which was submitted to the head of the detention facility. According to the report, the confiscated manuscript contained "indecent (*nalayiq*) and insulting statements about the republic's leadership" and "information about the detention facility which was prohibited from being disclosed". The report did not quote any passages from the manuscript. The report proposed that the manuscript be destroyed in accordance with Rule 110 of the Internal Disciplinary Rules of Penal Facilities, approved by the order of the Ministry of Justice of 24 March 2004 ("the Internal Disciplinary Rules").

11. According to a search record drawn up on 22 May 2008, the day of the applicant's transfer from the detention facility to the prison, his belongings were searched, and seventy-five more pages of the manuscript were found hidden in his clothes bag. According to a seizure record drawn up on the same day, those seventy-five pages were seized for examination in the presence of the deputy head and two other officials of the detention facility. According to this seizure record, the applicant refused to become familiar with it or to provide a "written explanation" in connection with it.

12. On 30 May 2008 the deputy head of the detention facility drew up a handwritten report concerning the content of these seventy-five pages, making findings which were similar to those in the report of 8 May 2008 mentioned in paragraph 10 above. In particular, he noted that the seventy-five pages in question contained "indecent (*nalayiq*) and insulting statements about the republic's leadership and current government officials, insulting words directed at the detention facility staff, and expressions about the detention facility which were prohibited from being disclosed". The report did not quote any passages from the manuscript. As in the report of 8 May 2008, it was proposed that the manuscript be destroyed in accordance with Rule 110 of the Internal Disciplinary Rules.

13. On 3 June 2008 the applicant's lawyer wrote two separate letters, to the Penal Service of the Ministry of Justice and to Baku Detention Facility No. 1, asking for the return of the manuscript to the applicant. By a letter of 10 June 2008, the head of the detention facility informed the applicant's lawyer that, to have the manuscript returned, he should apply to the Operations Department of the Penal Service of the Ministry of Justice. By a

letter of 2 July 2008, the Penal Service of the Ministry of Justice informed the applicant that it was within the detention facility's competence to return the manuscript and recommended that the lawyer apply to the detention facility.

14. According to the applicant, on an unspecified date in mid-June 2008, his wife orally asked the head of the detention facility about the manuscript. In reply, she was told that the manuscript could not be returned because it contained sharply critical statements concerning high-ranking political figures, and that a decision would be taken to destroy it.

15. On 14 July 2008, pursuant to a handwritten decision (*akt*) drawn up on the same day by the deputy head and two other officials of the detention facility, the 278 pages of the manuscript were destroyed by being burned. The decision stated, in particular, that the manuscript contained "indecent, insulting, and abusive expressions about the republic's leadership, current government officials and the detention facility's staff, and information about the detention facility's activities which [was] prohibited from being disclosed". The decision did not quote any passages from the manuscript and contained no information as to whether a copy of the decision was presented to the applicant.

16. According to the applicant, he and his lawyers learned of the existence of the seizure records, reports and the decision mentioned in paragraphs 9-12 and 15 above only during the civil proceedings instituted by him, when the representative of the Penal Service of the Ministry of Justice submitted copies to the first-instance court at the hearing of 27 August 2008.

III. CIVIL PROCEEDINGS INITIATED BY THE APPLICANT

17. It appears that on 11 July 2008, before the manuscript was destroyed, one of the applicant's lawyers had lodged a civil claim with the Sabail District Court against the Penal Service of the Ministry of Justice and Baku Detention Facility No. 1. He noted that the applicant's book manuscript had been taken from him by the detention facility's administration with a promise that it would be given to his family or lawyers, but that subsequently the applicant's wife had been told that it would be destroyed. He sought a finding that the seizure of the manuscript had been unlawful, and an order that it be returned to the applicant. He argued that the defendants had breached the applicant's right to freedom of expression.

18. Pending the examination of the claim, on 14 July 2008, that is the day on which the manuscript was destroyed, the applicant's second lawyer wrote to both of the defendant authorities directly, stating that the applicant's relatives had been told that the manuscript would be burned, requesting that no such action be taken pending a court decision, and noting that the manuscript constituted the applicant's intellectual property. The lawyer would eventually receive a response from Baku Detention Facility No. 1 on

27 July 2008, informing him that the manuscript had been destroyed in accordance with Rule 110 of the Internal Disciplinary Rules.

19. On the same day, 14 July 2008, one of the applicant's lawyers lodged a request with the Sabail District Court, asking it to prohibit the defendant authorities, by way of an injunction, from destroying the manuscript pending the examination of the civil claim. By an interim decision of 22 July 2008, that request was refused, with the judge noting that there was no evidence enclosed with the applicant's claim showing that any manuscript existed or that it had been seized.

20. On 3 August 2008 the applicant's lawyers lodged an addendum to the civil claim, noting that the applicant was forced to amend the claim's subject matter owing to the fact that the manuscript had now been destroyed. Relying on various provisions of the Constitution, domestic civil law, domestic legislation on copyright and intellectual property, Article 10 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant argued that the defendant authorities had breached his intellectual property rights and his right to freedom of expression, including his freedom of political speech. In particular, he reiterated the circumstances in which, according to the applicant, the manuscript had been taken from him. He further argued that the manuscript was a book intended to be published and could not be considered as correspondence. Moreover, all statements made in the book were within the permitted limits of freedom of expression. Nothing in its content was "indecent" and, when making such a finding, the defendants had not referred to any specific expressions or statements. It was therefore unlawfully seized and destroyed. He claimed 100,000 Azerbaijani manats (AZN) in respect of pecuniary and non-pecuniary damage, which claim was subsequently raised, on an unspecified date, to AZN 100,000 in respect of pecuniary damage and AZN 1,000,000 in respect of non-pecuniary damage.

21. The first hearing of the Sabail District Court was held on 3 August 2008. While it appears that the applicant's lawyers were notified of the time and place of this and other first-instance hearings, it is not clear from the material in the case file whether any summons to any hearings were sent personally to the applicant, who at that time was imprisoned in Penal Facility No. 17.

22. At the hearing of 3 August 2008 the applicant's lawyers requested that the personal presence of the applicant be ensured at the court hearings. The court rejected that request without providing any reasons. It also rejected, without providing any reasons, the defence's requests to call the head of Baku Detention Facility No. 1 and the applicant's cellmates at the detention facility to be questioned as witnesses. In those requests, the applicant's lawyers argued that it was necessary to question and confront the head of the detention facility in order to clarify the contested factual circumstances of how the manuscript had been taken from the applicant, and to question the applicant's

cellmates who had witnessed the applicant in the process of writing his book and were aware of its contents, and could testify in support of his claim.

23. However, the court granted some of the applicant's other requests to call witnesses (see paragraphs 26-27 below).

24. During the hearing of 27 August 2008, the court examined copies of the records, reports and the decision mentioned in paragraphs 9-12 and 15 above, submitted by the representative of the Penal Service of the Ministry of Justice.

25. The court also questioned the deputy head of Baku Detention Facility No. 1, who reiterated the assessments made in the reports of 8 and 30 May 2008, mentioned in paragraphs 10 and 12 above. He also said that, in addition to the statements in those documents, the manuscript contained "illegal expressions" inciting the public to war in Nagorno-Karabakh and asserting that the Government's then policy, which was aimed at "restoring control over the territories peacefully and by way of negotiations", would prove to be ineffective. However, according to the applicant, when questioned, the deputy head of the detention facility was unable to quote any particular statements from the manuscript during the first-instance hearing. According to the applicant, this was because, despite the fact that the deputy head of the detention facility was ostensibly the author of the reports of 8 and 30 May 2008, the head of the detention facility, who had personally taken the manuscript from the applicant, was in reality the only person who had read the manuscript at first hand.

26. According to the first-instance court's judgment, at the claimant's request, four officials of the detention facility who had participated in drawing up the relevant records and reports were also questioned and made statements which were essentially the same as those contained in the reports of 8 and 30 May 2008.

27. The court questioned the applicant's wife and the then chief editor of the *Azadlıq* newspaper, A.A., as witnesses for the claimant. The applicant's wife stated that she had provided blank paper to the applicant who had told her that he was writing a book in detention, that subsequently he had told her that the manuscript had been taken from him, and that thereafter the head of the detention facility had first told her that the manuscript would be returned, but had later told her that it would be destroyed. A.A. stated that the applicant had told him of his intention to write a book about political events.

28. According to the applicant, during the hearing, the court rejected his lawyers' repeated requests to hear the applicant in person and to call and hear the head of the detention facility and his former cellmates as witnesses.

29. By a judgment of 6 October 2008, the Sabail District Court dismissed the applicant's claim. It considered that the applicant's wife's and A.A.'s statements were unreliable because they had not been direct witnesses of the "information" that the applicant had been writing a book, but had heard it from the applicant himself. It did not accept the applicant's arguments that

the manuscript was a "book" to which intellectual property rights applied and considered that it was correctly deemed to be a letter, since the applicant wished to "send" it to the editorial office of the newspaper. The court relied on the assessments made in the documents provided by the defendant authorities and accepted them at face value, finding that the manuscript was correspondence by an inmate which contained information prohibited by law. It further found that the seizure and destruction of the manuscript had been lawful in accordance with Rules 110 and 182 of the Internal Disciplinary Rules and that there had been no unjustified interference with the applicant's right to freedom of expression, or with his property or other rights.

30. The applicant appealed, reiterating his complaints. He also submitted that he had learned of the existence of the seizure records and other documents presented by the defendant authorities only during the first-instance proceedings. Accordingly, he had not signed them because he had not been informed of them, and not because he had refused to sign them. He further submitted that he had also been unaware of the manuscript's destruction on 14 July 2008 and had learned about it only in late July 2008 after his lawyers' formal inquiries. The applicant argued that, therefore, it was necessary to call as a witness the head of the detention facility, who according to the applicant had taken the manuscript from him with false promises, so that he could be heard and confronted as to the circumstances in which the alleged seizure had taken place.

31. The applicant also complained that the first-instance hearings had been held in his absence. He argued that, as the defendants had not been able to specify which specific passages in the manuscript had been inappropriate, and as the applicant was its author, it was indispensable that he be heard by the court in person in order to contest the defendants' submissions, as his lawyers did not have first-hand information about the actual contents of the manuscript. The applicant argued that, not having been allowed to attend the hearings, he had also been deprived of an opportunity to directly question and confront any witnesses. In this connection, he noted, in particular, that the four officials of the detention facility heard by the first-instance court (see paragraph 26 above) had only signed the seizure records, but had not actually read the manuscript. According to the applicant, during the first-instance hearing those four officials had admitted to not having read the manuscript but to only having signed the relevant records, although this was not reflected in the first-instance court's judgment.

32. The applicant also argued that, in general, the first-instance court had failed to give an adequate assessment to the defendant authorities' overall inability, during the court hearings and otherwise, to substantiate their findings as to the manuscript's inappropriate content with any concrete and pertinent examples of the allegedly indecent statements or prohibited information which it had contained. In addition to previously raised legal

grounds for his complaints, the applicant also relied on other provisions of the Convention, including Article 6 of the Convention.

33. During the appeal hearing, the applicant's lawyer made repeated requests that the applicant's presence at the hearing be ensured and that the additional witnesses be called. Those requests were rejected without any reasons being provided.

34. The appellate hearing was held in the applicant's absence, but in the presence of his lawyers. According to the applicant, during the hearing the deputy head of the detention facility was questioned about what concrete types of "information about the detention facility which was prohibited from being disclosed" had been contained in the manuscript, but he was not able to adequately explain it. In particular, he stated that the applicant had described the fact that inmates of the detention facility used certain jargon words when referring to detention facility employees and that inmates could "send information" through those employees. The appellate judgment was silent as to whether this witness was heard during the appellate hearing.

35. By a judgment of 14 January 2009, the Baku Court of Appeal dismissed the applicant's appeal, essentially reiterating the first-instance court's reasoning. It did not explicitly address any of the arguments raised by the applicant in his appeal.

36. The applicant lodged a cassation appeal. In addition to reiterating his previous complaints, he also complained that his presence at the appellate hearing had not been ensured either. Moreover, he complained of the lower courts' rejections of his requests to call additional witnesses. He further argued that the lower courts had delivered unreasoned judgments, had not adequately assessed the circumstances of the case and had failed to address any of the arguments raised by him in this claim and appeal.

37. The Supreme Court examined the appeal on 19 June 2009, without the participation of the applicant or his lawyers or the defendant authorities' representatives, noting that both parties had failed to appear without a good reason despite being informed of the time of the hearing. By a final decision of the same date, the Supreme Court upheld the lower courts' judgments, briefly reiterating the reasoning of the lower courts. It did not address the applicant's complaints concerning the first-instance and appellate courts' refusal to grant him leave to appear at the hearings or to call additional witnesses or any other arguments made in his cassation appeal. The Supreme Court's decision was sent to the applicant and to one of his lawyers on 20 July 2009.

RELEVANT LEGAL FRAMEWORK

I. THE 2000 CODE OF CIVIL PROCEDURE ("THE CCP"), AS IN FORCE AT THE MATERIAL TIME

38. Parties to civil proceedings had a general right to appear before a court in person and/or act through a representative (*inter alia*, Articles 9.2, 14.4, 47.2, 50, 66, 68, 69.1, 72-74, 185 and 379). At the material time, the CCP did not expressly provide for any modalities for personal appearance at civil hearings of persons deprived of liberty.

39. Civil courts examined cases at oral hearings (Article 173). The parties to the case had a right to, *inter alia*, make various procedural requests, including requests to have additional evidence produced (Articles 47.2 and 68.2). Types of evidence included, *inter alia*, witness statements (Article 76.2).

40. Where a party was not in a position to independently procure evidence from persons or authorities who were or were not parties to the case, it had a right to request the court for an order to have that evidence produced. Such a request was to specify the relevance of that evidence for any specific circumstances of the case and the features and location of the evidence (Article 78.2). A first-instance or appellate court made a decision concerning any request made by a party after hearing other parties' views (Articles 184.4 and 377). In the proceedings before the appellate court, a party had a right to request the court to call additional witnesses or to examine other evidence which the first-instance court had refused to examine (Article 380.2).

41. A court could examine material or written evidence outside the courthouse if such evidence could not or was difficult to be brought to the courthouse (Articles 79 and 202).

42. The court of cassation informed the parties and their representatives of the time and place of an oral hearing. Failure, without a good reason, by a person who had been so informed to appear at the hearing did not prevent the court of cassation from examining the case in his or her absence (Articles 415.2 and 415.3).

43. The court of cassation had competence to examine the case on points of law, but not on points of fact. In particular, the court of cassation instance verified whether the appellate court has applied the material and procedural law correctly (Article 416). The violation or misapplication of the material and procedural law were grounds for quashing the appellate court's judgment or decision. The material law was considered to be violated or misapplied in circumstances specified in Article 386 of the CCP. According to that Article, the material law was considered violated or misapplied if a court made a mistake upon application of law, failed to apply the relevant applicable law or other normative legal act, or misinterpreted the law. The violation or misapplication of the procedural law was a ground for quashing of the

judgment or decision if this had resulted or might have resulted in adoption of a wrongful judgment (Article 418). The court of cassation had the competence to quash the impugned judgment or decision and either to take a decision itself, or to decide to remit the case to an appellate court (Article 417). Instructions made by the court of cassation in its decision were mandatory for a court re-examining the case (Article 420).

II. THE 2000 CODE ON EXECUTION OF PUNISHMENTS

44. Article 69-1 of the Code, as in force at the material time, provided that, pursuant to a relevant court decision, a convicted person could be transferred from a penal facility to a temporary detention facility if his or her participation was required for carrying out investigative measures or for participation in court hearings in criminal cases against other persons, or if his or her participation was required as a suspect or accused in connection with a different criminal case against him or her. The Code did not mention the possibility for a convicted person to take part in civil court hearings, whether as a claimant or a defendant, nor did it provide for any procedures for a convicted person to request the penal facility's administration to have him or her escorted to civil court hearings or for the latter to take any decisions in this respect.

III. LEGAL PROVISIONS ON INMATES' CORRESPONDENCE

A. The Internal Disciplinary Rules of Penal Facilities, approved by the order of the Ministry of Justice of 24 Match 2004 ("The Internal Disciplinary Rules")

45. Rule 1 provided that the Internal Disciplinary Rules (as in force at the material time) defined the mechanism for the implementation of rules for the executing and serving of punishments of persons sentenced to deprivation of liberty for a fixed term or for life. The Internal Disciplinary Rules were of mandatory application with regard to the staff of penal facilities, convicted prisoners (*məhkumlar*) incarcerated in them, and persons visiting those facilities.

46. The relevant rules concerning the prisoners' correspondence (*məhkumların yazışması qaydası*) provided as follows:

> "105. There are no restrictions on the receipt and sending of letters and telegrams by prisoners, except in the cases provided for in Rule 110 of these Rules. Correspondence received and sent by prisoners shall be censored.
>
> ...
>
> 110. Letters written using secret and prearranged (*gizli və şərti*) symbols or with indecent content (*nalayiq məzmunlu*), as well as letters containing information relating

to activities of the penal facility which are not allowed to be disclosed, shall not be sent, the convicted prisoner shall be notified thereof, and the letter shall be destroyed ...”

47. Rule 182 provided that a penal facility’s administration had a right to inspect the belongings and vehicles of persons entering and leaving the penal facility, except persons having a right to immunity, and to confiscate prohibited items and documents listed in Annex 30 to the Rules. Annex 30 provided that, among other items, “all types of documents” (except for documents relating to the performance of official duties) were prohibited from being carried on their person by persons entering or leaving penal facilities.

48. Annex 9 to the Internal Disciplinary Rules listed items prohibited from being in prisoners’ possession, which included, *inter alia*, publications propagating war, violence and cruelty, and inciting ethnic and religious hatred.

B. Other legal acts and further legislative developments

49. The Temporary Regulations on Holding of Persons in Places of Detention, approved by an order of the Minister of Justice of 29 December 2002 (repealed in 2012), provided that detainees’ correspondence was “checked” by the detention facility’s administration (Rules 2.6 and 4.4). The regulations did not provide any further elaboration on the procedures for checking the correspondence or for any detailed rules on censorship of correspondence.

50. The Law on Ensuring the Rights and Freedoms of Persons held in Detention Facilities of 22 May 2012, adopted after the events of the present case, concerned the rights and freedoms of persons held in police custody and in pre-trial detention. Pursuant to Article 11 of that Law and the presidential decree on its implementation, by a decision of 26 February 2014 the Cabinet of Ministers adopted the Internal Disciplinary Rules of Detention Facilities, applicable to facilities designated for pre-trial detainees. Rule 12 of those Rules regulated detainees’ correspondence.

THE LAW

I. THE GOVERNMENT’S OBJECTION CONCERNING THE SIX-MONTH TIME-LIMIT

51. The Government argued that the application was lodged with the Court outside the six-month time-limit and was therefore inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention. They noted that the final domestic decision in the present case had been delivered on 19 June 2009 and had been sent to the applicant’s lawyer on 20 July 2009. However, the applicant had lodged his duly completed application with the Court on

25 March 2010. Although the applicant had submitted an initial letter to the Court on 16 December 2009, it could not be considered as a duly completed application to the Court as required by Rule 47 of the Rules of Court and the Practice Direction on the Institution of Proceedings.

52. The applicant did not comment on the Government's objection.

53. The Court reiterates that the six-month period is interrupted on the date of introduction of an application. It notes that the Government's objection appears to be based on Rule 47 as worded following its amendment, with effect from 1 January 2014, when its paragraph 6 (a) was introduced, according to which "[t]he date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court". However, in accordance with Rule 47 § 5 of the Rules of Court, as in force at the relevant time and until 1 January 2014, "[t]he date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the subject matter of the application, provided that a duly completed application form has been submitted within the time-limits laid down by the Court". The same provision also included a possibility for the Court, "for good cause" to decide "that a different date shall be considered to be the date of introduction". The first communication, which at the time could take the form of a letter sent by fax, would in principle interrupt the running of the six-month period (see *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, § 89, 21 July 2015, with further references).

54. In the instant case the first letter indicating the wish to lodge a case with the Court under Articles 6 § 1, 8, 10, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention, providing a summary statement on the subject matter of the application, and enclosing authority forms in respect of the applicant's three representatives, was sent to the Court on 16 December 2009. Accordingly, this letter was sent inside the six-month period as provided for by Article 35 § 1 of the Convention, which had started running on 20 July 2009. On 28 January 2010 the Registry of the Court replied to the applicant's initial letter and instructed the applicant to fill in an application form and send it together with copies of all relevant documents by 25 March 2010. The completed application form was sent to the Court on 25 March 2010. The Court therefore concludes that the applicant followed the instructions of the Court and that there is no reason to consider a different date as the date of introduction. It follows that the application was lodged in time in accordance with the rule applicable at the relevant time (compare, among other authorities, *Oliari and Others*, cited above, § 90, and *Dzidzava v. Russia*, no. 16363/07, § 43, 20 December 2016).

55. For these reasons, the Court rejects the Government's objection regarding the six-month time-limit.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

56. Relying on Articles 8 and 10 of the Convention, the applicant complained that the seizure and destruction of the manuscript had constituted an unjustified interference with his right to respect for his correspondence and his right to freedom of expression.

57. The Court, being the master of the characterisation to be given in law to the facts of the case, and also in view of its findings in paragraphs 62-65 below, considers that the applicant's complaint is to be examined under Article 10 of the Convention only. Article 10 provides as follows:

> "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."

A. Admissibility

58. In addition to its findings in paragraphs 54-55 above in respect of the Government's objection as to the six-month time-limit, the Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

59. The applicant submitted that the seizure and destruction of his book manuscript could not be considered lawful and that the relevant provision of the Internal Disciplinary Rules had not complied with the "quality of law" requirement. Nor could these measures be considered as pursuing any legitimate aim or as being necessary in a democratic society. The assessment of the manuscript's content by the administration of the detention facility had been arbitrary and incorrect, as the manuscript did not contain any inappropriate information or statements. It did contain political speech which was not prohibited but was, on the contrary, protected by the Convention. The applicant had not been informed of the manuscript's destruction in a timely manner and he had had no legal or practical opportunities to challenge the

authorities' decision or to have it reviewed before the only copy of the manuscript was destroyed.

60. The Government addressed the applicant's grievances under this complaint from the standpoint of Article 8 of the Convention, accepting that there had been an interference with his right to respect for his correspondence. As to the applicant's arguments under Article 10, the Government submitted that, in the context of correspondence, the right to freedom of expression was guaranteed by Article 8 of the Convention and that, therefore, there had been no interference with the applicant's Article 10 rights.

61. The Government submitted that the seizure and destruction of the manuscript had been lawful measures taken in accordance with Rule 110 of the Internal Disciplinary Rules, and also in accordance with Rules 105 and 182 and Annexes 9 and 30 of the same Rules. Those provisions were compliant with the requirements of accessibility and foreseeability under the Convention. Lastly, without specifying what legitimate aim had been pursued by the interference with the applicant's rights, the Government argued that the interference had been proportionate and necessary in a democratic society, as it had not concerned the applicant's correspondence with his family or his counsel and had not deprived him of his contact with the outside world to a significant extent.

2. *The Court's assessment*

(a) Whether there was interference

62. The Court notes that in certain previous cases it has held that, in the context of correspondence, the right to freedom of expression was guaranteed by Article 8 of the Convention (see, for example, *Silver and Others v. the United Kingdom*, 25 March 1983, § 107, Series A no. 61, and *Tur v. Turkey*, no. 13692/03, § 14, 11 June 2013, with further references). However, in cases concerning seizures from inmates of book manuscripts intended for publication, it has found that there had been interferences with the applicants' right to freedom of expression under Article 10 of the Convention (see *Nilsen v. the United Kingdom* (dec.), no. 36882/05, § 44, 9 March 2010, and *Sarıgül v. Turkey*, no. 28691/05, §§ 31-32, 23 May 2017; see also *Yankov v. Bulgaria*, no. 39084/97, §§ 126 et seq., ECHR 2003-XII (extracts), in which the Court examined under Article 10 the complaint by the applicant, a prisoner, who was punished for statements made in a confiscated book manuscript written by him in prison).

63. The Court recalls that freedom of expression as protected by Article 10 of the Convention does not stop at the prison gate. There is no question that a person forfeits his or her right to freedom of expression under Article 10 of the Convention merely because of his or her status as a prisoner. Prisoners continue to enjoy the right to freedom of expression regardless of their detention (see *Yankov*, cited above, §§ 126 et seq., and *Donaldson*

v. the United Kingdom (dec.), no. 56975/09, §§ 18-19, 25 January 2011). Any restrictions must therefore be justified under Article 10 § 2 of the Convention, although such justification may well be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment.

64. The Court notes that the present case concerns the seizure and destruction of 278 pages of the manuscript which the applicant, both before the domestic authorities and courts and the Court, repeatedly insisted was a book intended for publication. In this connection, he provided a summary of its contents from his memory (see paragraph 6 above). It appears that the manuscript was not written in the form of a letter addressed to a particular person or persons. Having regard to the circumstances of the case as described by the parties and to the material in the case file, the Court accepts the applicant's submission that the manuscript in question was a book that he intended to publish. Although the domestic authorities and courts classified it as "correspondence" within the meaning of the domestic provisions applied in the present case, that classification by the domestic authorities is not binding for the Court in it its determination that the applicant's Article 10 rights were engaged.

65. The Court considers that in the circumstances of the present case the seizure and destruction of the applicant's manuscript, based on the findings by the administration of the detention facility that it contained statements and information prohibited by law, constituted an interference with the applicant's right to freedom of expression.

(b) Whether the interference was justified

66. The interference will not be justified under the terms of Article 10 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.

67. The principles relevant to an assessment of whether an interference with freedom of expression was "prescribed by law" have been summarised in detail in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* ([GC], no. 931/13, §§ 142-44, 27 June 2017); *Magyar Kétfarkú Kutya Párt v. Hungary* ([GC], no. 201/17, §§ 93-98, 20 January 2020); and *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, §§ 249-54, 22 December 2020). In particular, the Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see *Magyar Kétfarkú Kutya Párt*, cited above, § 93). As regards the requirement of foreseeability, the Court has repeatedly held that a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable a

person to regulate his or her conduct. That person must be able – 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 (ibid., § 94).

68. Moreover, for domestic law to meet the qualitative 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 *Selahattin Demirtaş*, cited above, §§ 249-50, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 115, 15 November 2018).

69. At the outset, the Court notes that, in the present case, the applicant's manuscript was seized by the administration of Baku Detention Facility No. 1, which was a facility designated for pre-trial detainees, where he was held during his pre-trial detention and for some time after his conviction. The manuscript was destroyed by the detention facility administration on 14 July 2008 after the applicant had already been transferred to a prison to serve his sentence. The legal basis for seizing and destroying the manuscript relied on by the authorities was the provisions of the Internal Disciplinary Rules. In this connection, the Court notes that Rule 1 of the Internal Disciplinary Rules expressly provided that those Rules applied to "penal facilities" designated for convicted prisoners (see paragraph 45 above). Furthermore, it appears that the separate internal disciplinary rules specifically applicable to pre-trial detention facilities were adopted on 26 February 2014, after the events of the present case (see paragraph 50 above), and that no such separate rules existed prior to that date. While the Temporary Regulations on Holding of Persons in Places of Detention of 29 December 2002, which were applicable to pre-trial detention facilities at the relevant time, stated, in brief and general terms, that detainees' correspondence was to be "checked", those regulations did not provide for any detailed, specific procedures on "checking" and censorship of detainees' correspondence (see paragraph 49 above). A question therefore arises whether the Internal Disciplinary Rules were applicable at all in respect of Baku Detention Facility No. 1, as it was not a "penal facility" designated for convicted prisoners. The domestic courts' judgments did not address this issue. Moreover, neither the Government, nor the applicant (either in his submissions before the domestic courts or the Court) commented on the applicability of those rules to pre-trial detention facilities. In such circumstances, for the purposes of the present complaint, the Court will proceed on the basis that the Internal Disciplinary Rules were applicable and constituted the legal basis for the interference in the present

case. It will also proceed on the basis that the Rules were "accessible" to the persons concerned.

70. The Court further notes that the applicant's manuscript was destroyed following the findings by the deputy head of the detention facility that it contained "indecent and insulting statements about the republic's leadership and current government officials, [and] insulting words directed at the detention facility staff", as well as information about the detention facility which was prohibited from being disclosed (see paragraphs 10, 12 and 15 above). The relevant reports neither quoted any specific statements or passages which were considered to be "indecent", nor described the exact nature of the information about the detention facility contained in the manuscript. Contrary to the Government's submissions, those reports made no references to Annexes 9 and 30 of the Internal Disciplinary Rules. The Court also takes note of the applicant's submission – which was not disputed by the Government – that, during the domestic court proceedings, the deputy head of the detention facility was not able to adequately explain what constituted information about the detention facility which was prohibited from being disclosed (see paragraphs 23 and 30 above).

71. The Court notes that the text of Rule 110 of the Internal Disciplinary Rules was general and vague, and that it did not define or provide any clarification as to what should be understood by "indecent content *(nalayiq məzmunlu*)" or what was meant by "information relating to activities of the penal facility which are not allowed to be disclosed". Although this is not in itself necessarily incompatible with the requirement of foreseeability, such language calls for caution, all the more so since it has not been demonstrated that there existed any case-law of the domestic courts clarifying the meaning of the terms used in Rule 110 of the Internal Disciplinary Rules that would ensure its application in a foreseeable manner (compare *Tan v. Turkey*, no. 9460/03, § 23, 3 July 2007). Accordingly, the provision in question was susceptible to a wide range of various interpretations as to what could be considered by the detention facility officials as "indecent content" or prohibited "information relating to the activities of the penal facility".

72. The Court further notes that the Internal Disciplinary Rules did not appear to provide for sufficient procedural safeguards against arbitrary decisions by the prison administration (or, in this case, the detention facility administration) in respect of prisoner correspondence and did not indicate with sufficient clarity the scope and the manner of exercise of the discretion afforded to it. Firstly, the Court notes that, while Rule 110 provided for a requirement to notify a prisoner of the decision to destroy correspondence, this in itself cannot be considered to have been a sufficient procedural safeguard, as the decision could apparently be implemented immediately and there were no procedures available to the prisoner guaranteeing a right to challenge the decision or to have it otherwise reviewed, either by a court or by another authority, before the letter (or, in this case, the only copy of the

book manuscript) was destroyed. Moreover, as argued by the applicant, even the notification requirement was not complied with in practice in the present case, depriving him of the opportunity to seek an injunction from a civil court in a timely and substantiated manner (see paragraphs 16 and 19 above).

73. Secondly, the Court notes that in the present case, a book manuscript was treated as a "letter", implying that Rule 110 of the Internal Disciplinary Rules was in practice applied beyond what would arguably appear as a natural reading of that provision. Moreover, and more importantly, the Rules did not require the administration of a prison or detention facility to provide any reasoning or any minimum level of substantiation for their decisions to destroy correspondence (compare, *mutatis mutandis*, *Niedbała v. Poland*, no. 27915/95, § 81, 4 July 2000). This was evidenced in practice by the relevant reports and decisions drawn up by the detention facility administration in the present case, which contained only brief conclusions without any supporting reasoning. This, in effect, allowed unlimited room for unchecked arbitrariness in the administration's assessment of the manuscript's content. Moreover, coupled with the fact that the only copy of the manuscript could be, and was, immediately destroyed, it hampered the applicant's ability to effectively argue his position when seeking even *post factum* redress in the form of damages, as he was unaware which specific statements or expressions were considered to be "indecent" or otherwise contrary to Rule 110 of the Internal Disciplinary Rules.

74. Having had regard to the above, the Court finds that Rule 110 of the Internal Disciplinary Rules, in conjunction with other provisions of those Rules, which was the legal basis relied on for the interference in the present case, was not foreseeable as to its effects and did not indicate with sufficient clarity the scope and the manner of exercise of the discretion afforded to the authorities in the field it regulated. In the absence of safeguards against arbitrary decisions, the discretion afforded was essentially expressed in terms of unfettered power. The provision in question did not therefore meet the "quality of law" requirement of the Convention and, for this reason, the interference in the present case cannot be considered to have been "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

75. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 10 § 2 (legitimate aim and necessity of the interference) have been complied with.

76. There has accordingly been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

77. The applicant complained that the civil proceedings had been unfair, as the principle of adversarial proceedings and equality of arms had not been respected, some of his requests to call witnesses were refused and the

domestic courts had delivered unreasoned decisions. Article 6 § 1 of the Convention reads as follows:

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

A. Admissibility

78. In addition to its findings in paragraphs 54-55 above in respect of the Government's objection as to the six-month time limit, the Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

79. The applicant submitted that his absence from all of the court hearings was in breach of the principle of adversarial proceedings and equality of arms. Several reasoned requests by the defence to ensure the applicant's presence at the first-instance and appellate hearings had been rejected by the courts without providing any reasons. Although the applicant had been represented by his lawyers before the first-instance and appellate courts, his own testimony was indispensable in order to clarify the content of the manuscript and to address the "false accusations" in this respect by the defendant authorities, which were central issues under the courts' examination. He would also have been able to testify in person concerning his submission that, contrary to the statements in the documents submitted by the defendant authorities, he had never been informed of any records and decisions concerning the seizure and destruction of the manuscript and he and his lawyers had become aware of their existence only when their copies had been produced during the court hearing of 27 August 2008.

80. Moreover, the applicant noted that the Supreme Court had held its hearing in the absence of both the applicant and his lawyers. He submitted that, contrary to the statements in the decision of the Supreme Court about his lawyers having been duly summoned to the hearing (see paragraph 37 above), his lawyers had not received any summons and had not been aware of the time and place of the hearing.

81. The applicant also submitted that the unreasoned rejections of his requests to call witnesses, namely his cellmates and the head of the detention facility, had further undermined his ability to argue his case effectively. Lastly, he argued that, in general, as well as due to the above shortcomings, his substantive arguments had not been adequately assessed and the domestic courts' decisions were not adequately reasoned.

82. The Government submitted that the applicant had been represented by two lawyers at the hearings held by the first-instance and appellate courts. The matter under the courts' examination was civil in nature, and given the circumstances of the case the applicant's representation by two lawyers had secured the effective, proper and satisfactory presentation of his case. The applicant's presence at those hearings had therefore not been strictly necessary.

83. As to the absence of the applicant's lawyers from the Supreme Court hearing, the Government submitted, without providing copies of any relevant supporting documents (such as summonses) contained in the Supreme Court's file, that both parties had been notified of the hearing in advance but had not appeared. In such circumstances, in accordance with the rules of civil procedure the court could proceed to examine the case in the parties' absence. Moreover, the Government argued in this connection that, as a court of cassation, the Supreme Court had competence to deal only with questions of law. In such circumstances, the claimant party's absence at the hearing did not put them at a disadvantage *vis-à-vis* the other party.

84. Lastly, the Government argued that the applicant had been afforded an adequate opportunity to adduce evidence in support of his position, and all evidence presented by him had been thoroughly examined by the courts. The applicant had been able to obtain the attendance of several witnesses, including his wife, A.A. and several officials of the detention facility, and his lawyers had been able to question them.

2. The Court's assessment

85. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party, and to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

86. Article 6 of the Convention does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The Court's task is to ascertain whether the proceedings in their entirety, including the way in which evidence and procedural decisions were taken, were fair (see *Tamminen v. Finland*, no. 40847/98, § 38, 15 June 2004; *Mala v. Ukraine*, no. 4436/07, § 47, 3 July 2014; and *Evers v. Germany*, no. 17895/14, § 80, 28 May 2020).

87. Article 6 of the Convention does not guarantee the right to personal presence before a civil court, but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II, and *Vardanyan and Nanushyan v. Armenia*, no. 8001/07, § 86, 27 October 2016).

88. However, in cases where the applicants were in custody, the Court has previously held that the personal participation of the litigant was necessary from the standpoint of Article 6 in cases where the character and way of life of the person concerned was directly relevant to the subject matter of the civil case or where the decision involved the person's conduct or experience. The Court has thus found a violation of Article 6 in cases in which the nature of the civil dispute, including claims concerning, *inter alia*, ill-treatment by the police, bad conditions of detention and defamation, was such as to justify the claimant's personal presence before the court, irrespective of whether or not he or she had been represented at the hearing (see, among other authorities, *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007; *Sokur v. Russia*, no. 23243/03, § 35, 15 October 2009; *Shilbergs v. Russia*, no. 20075/03, § 111, 17 December 2009; *Mokhov v. Russia*, no. 28245/04, §§ 46-47, 4 March 2010; *Insanov v. Azerbaijan*, no. 16133/08, § 145, 14 March 2013; *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, § 52, 16 February 2016; and *Igranov and Others v. Russia*, nos. 42399/13 and 8 others, §§ 35-36, 20 March 2018).

89. It is incumbent on the domestic courts, once they have become aware of the fact that one of the litigants is in custody and unable to attend the hearings independently of his or her wishes, to verify, prior to embarking on the examination of the merits, whether the nature of the case is such as to require the incarcerated litigant's personal testimony and whether he or she has expressed a wish to attend. If the domestic courts contemplate dispensing with the litigant's presence, they must provide specific reasons why they believe that the absence of the party from the hearing will not be prejudicial to the fairness of the proceedings as a whole (see *Yevdokimov and Others*, cited above, § 36). Moreover, the domestic courts need to consider appropriate procedural arrangements (or "counterbalancing measures") enabling a claimant to be heard, particularly in cases where oral submissions to the court would be an important part of his or her presentation of the case and virtually the only way to ensure adversarial proceedings. In addition to transporting a prisoner to the courtroom, such arrangements may include holding a hearing at the place where the claimant is being detained, using a videolink, the taking of evidence on commission, and so on (ibid., §§ 39-45).

90. Moreover, the Court reiterates that Article 6 of the Convention does not explicitly guarantee the right to have witnesses called or other evidence admitted by a court in civil proceedings. Nevertheless, any restriction

imposed on the right of a party to civil proceedings to call witnesses and to adduce other evidence in support of his or her case must be consistent with the requirements of a fair trial within the meaning of paragraph 1 of that Article, including the principle of equality of arms (see *Gryaznov v. Russia*, no. 19673/03, § 57, 12 June 2012, and *Gillissen v. the Netherlands*, no. 39966/09, § 50, 15 March 2016).

91. Lastly, the Court refers to its case-law principles concerning the right to a reasoned decision, which have been summarised in detail in, among many other authorities, *Mazahir Jafarov v. Azerbaijan*, (no. 39331/09, §§ 33-36, 2 April 2020) and *Farzaliyev v. Azerbaijan* (no. 29620/07, § 34-36, 28 May 2020). In this connection, it reiterates that, in view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal. Judgments of courts and tribunals should adequately state the reasons on which they are based. Without requiring a detailed answer to every argument advanced by the complainant, this obligation to give reasons presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Mazahir Jafarov*, cited above, §§ 34-35, with further references).

92. Turning to the present case, the Court notes that the subject matter of the applicant's claim for damages was that the actions of the detention facility administration had been unlawful and in breach of his various Convention rights, and the claim was based on several grounds. In particular, he argued that it was unlawful and incorrect to classify his book manuscript as prisoner correspondence, that the assessment of its content by the detention facility officials had been flawed and arbitrary, that he had not been formally notified of the seizure and destruction of the manuscript in a timely manner, and that the detention facility administration had taken it from him with misleading promises that it would be given to his relatives or lawyers. It is also important to point out again in this context that, by the time the civil claim was examined, the manuscript's only copy had been destroyed and that, moreover, the relevant reports by the detention facility officials did not contain any quotes from it which had been found to be in contravention to the Internal Disciplinary Rules. This not only deprived the applicant of the opportunity to support his arguments concerning the manuscript's content by referencing the manuscript itself as documentary evidence, but also put the domestic courts in a position whereby they could not independently review its content.

93. It follows that, as regards the manuscript's content and the circumstances in which it was seized, the courts were in a position to assess

the merits of the applicant's claim only on the basis of statements in this regard by a few persons who had first-hand knowledge of the manuscript's content and who had been present during the seizures. Given that the applicant was the actual author of the manuscript and that it had been taken from him personally, the Court considers that the applicant's claims in the impugned civil proceedings can be considered to have been based entirely on his personal experience.

94. In such specific circumstances, the mere fact that the applicant's lawyers attended the hearings could not have secured the effective, proper and satisfactory presentation of the applicant's case. The Court finds that the applicant's submissions concerning the content of the manuscript and his account of the circumstances in which it had been taken from him, of which he had first-hand knowledge, may therefore have constituted an indispensable part of the presentation of the case for the claimant. With regard to the claimant's side of the case, the applicant himself appears to have been in a position to make the most accurate submissions about the issues in question, to contest more effectively the defendant's submissions to the contrary, and to answer the judges' questions, if any.

95. However, the Court notes that the applicant repeatedly requested to be present at both the first-instance and the appellate hearings, but the domestic courts refused to guarantee his attendance in person. No reasons were provided by the courts as to why they considered that the applicant's absence from the hearings would not be prejudicial to the overall fairness of the civil proceedings, and no domestic legal provisions were cited as a basis for the refusals (compare *Insanov*, cited above, § 144). In this respect, the Court notes that apparently, at the material time, the domestic law did not contain any provisions specifically dealing with ensuring inmates' personal attendance of hearings in civil proceedings. However, the domestic law provided, in more general terms, for the right of all parties to civil proceedings to participate in court hearings in person, if they wished so (see paragraphs 38 and 44 above). The Court considers that, in view of the above considerations concerning the importance of the applicant's personal submissions for the effective presentation of his case, which must have been evident to the domestic courts, the applicant's requests to be heard in person should have been given more thorough attention and, even in the absence of specific legal provisions addressing the matter, they should have been examined with due regard to the right to be heard in person guaranteed by law to all participants in civil proceedings. Even if, for some practical or other reason, escorting the applicant to the courtroom was not an option, the Court finds it inexplicable that the domestic courts did not even attempt to consider any other options for hearing the applicant in person that may have been available to them, for example by applying by analogy the rules on examination of evidence outside the courthouse (see paragraph 41 above; compare also *Gryaznov*, cited above, § 50, with further references).

96. Moreover, the Court notes that, as appears from the material in the case file, no reasons were given by the domestic courts for rejecting the applicant's requests to call additional witnesses (see paragraphs 22, 28 and 29 above). In this connection, the Court notes that the applicant substantiated his relevant requests before the domestic courts, arguing that it was necessary to question the head of the detention facility in order to clarify the contested factual circumstances of how the manuscript had been taken from him, and that it was necessary to question his cellmates who were aware of the manuscript's contents and who could testify in support of his claim (see paragraph 22 above).

97. The Court considers that, in the particular situation that had obtained, namely the fact that the manuscript had already been destroyed and that therefore its content could not be independently reviewed by the courts (see paragraphs 92-93 above) and that, according to the applicant's version of the events, in reality there had been no seizures and the head of the detention facility had personally taken the manuscript from him with false promises (see paragraphs 8, 17 and 30 above), it was of central importance for the applicant to seek the testimony of the witnesses he named. In such circumstances and having regard to the applicant's arguments concerning the necessity of calling the mentioned witnesses, the Court considers that it has been demonstrated that the questioning of those witnesses could have brought more clarity to certain contested factual matters concerning the circumstances in which the manuscript had been seized, and concerning its nature and contents. In so far as some of those witnesses were the applicant's cellmates who might have still been in custody when the applicant's claim was heard, alternative procedural arrangements could have been considered to obtain their statements, such as the taking of evidence on commission. In the Court's view, in the circumstances of the case, it was incumbent on the domestic courts either to hear the witnesses requested by the applicant or to give clear reasons for their decisions not to do so (compare *Gryaznov*, cited above, §§ 58-62, and *Ivan Stoyanov Vasilev v. Bulgaria*, no. 7963/05, § 34, 4 June 2013).

98. Furthermore, the Court considers that failure to hear the applicant in person and the unreasoned refusals to hear additional witnesses were factors contributing to the overall lack of adequate reasoning in the first-instance and appellate judgments in the present case. In this connection, the Court reiterates that, where an applicant's pleas relate to the "rights and freedoms" guaranteed by the Convention (and in this case they related to the applicant's right to freedom of expression) the courts are required to examine them with particular rigour and care and that this is a corollary of the principle of subsidiarity (see *Fabris v. France* [GC], no. 16574/08, § 72, ECHR 2013 (extracts), and *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 96, 28 June 2007). The Court notes that the first-instance court's reasoning was mostly confined to whether the manuscript should have been considered as a

book or prisoner correspondence in order to fall within the ambit of the Internal Disciplinary Rules. However, in establishing the factual circumstances of the case, the lower domestic courts essentially accepted the defendant authorities' submissions and findings at face value, without providing any adequate reasoning for dismissing the applicant's arguments challenging them. No reasons were provided either by the first-instance or the appellate court for dismissing most of the essential points of the applicant's claim concerning the allegedly unlawful and arbitrary circumstances in which the manuscript was seized, including his submissions that, until the court hearings, he had not been informed of any of the documents concerning its seizure and destruction, or concerning the content of the manuscript and the defendant authorities' initial failure and subsequent inability to substantiate their findings that its contents had been inappropriate. No reasoned answers were given to the applicant's objections that, despite the fact that some of the detention facility's officials admitted during the first-instance court hearing that they had not actually read the manuscript, the first-instance judgment nevertheless presented their submissions as supporting the defendant authorities' position (see paragraph 26 and 31 above). The appellate court did not expressly address in its judgment any of the points raised by the applicant in his appeal (see paragraphs 30-32 and 35 above). In view of the above, the Court considers that the courts' judgments were not adequately reasoned.

99. Lastly, the Court notes that, in his cassation appeal to the Supreme Court, the applicant complained about the above-mentioned shortcomings at the first-instance and appellate courts' hearings and in their judgments. The Court notes that those shortcomings could have been remedied if the Supreme Court had quashed the appellate court's judgment and remitted the case, with appropriate instructions, for a full re-hearing and a new judgment on the merits, which it was competent to do (see paragraph 43 above). However, that was not done in the present case. The Supreme Court did not address at all the applicant's complaints concerning the above-mentioned shortcomings (see paragraph 37 above).

100. In view of the above considerations, which are sufficient to find that the applicant's right to a fair hearing was breached in the circumstances of the present case, the Court considers that it is not necessary to further examine whether the applicant and his lawyers were duly informed of the Supreme Court hearing (see paragraphs 37, 80 and 83 above).

101. In conclusion, the Court finds that the domestic civil courts failed to properly assess whether the applicant's presence was indispensable and to consider appropriate procedural arrangements enabling him to be heard in person and that they also refused, in an unreasoned manner, to call additional witnesses that he had requested be heard, depriving the applicant of the opportunity to present his case effectively and placing him at a substantial disadvantage *vis-à-vis* the opposing party. In addition, the domestic courts' decisions lacked adequate reasoning in respect of their dismissal of the

applicant's relevant submissions and objections, in breach of his right to a reasoned decision.

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

103. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the destruction of the manuscript had constituted an unlawful breach of his property rights, arguing that the manuscript was his intellectual property under domestic law. He also complained under Article 13 of the Convention that he had not been afforded any effective remedies in respect of his complaints under other Convention provisions at the domestic level. Lastly, he complained under Article 14 of the Convention that the destruction of his manuscript amounted to discrimination on the ground of his political opinions.

104. Having regard to the conclusions reached above under Articles 10 and 6 § 1 of the Convention (see paragraphs 74-76 and 101-102 above) and the parties' submissions, the Court considers that there is no need to give a separate ruling on the admissibility and merits of these complaints in the present case (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage, arguing that, if published, the book would probably be a success and sell many copies. He also claimed EUR 20,000 in respect of non-pecuniary damage.

107. The Government submitted that the applicant's claim in respect of pecuniary damage was unsubstantiated and that his claim in respect of non-pecuniary damage was excessive.

108. The Court reiterates 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 Chamber may reject the claim in whole or in part. The Court notes that the applicant's claim in respect of pecuniary damage is not substantiated with any

material and is based on speculative arguments which cannot serve as a basis for a precise determination of pecuniary damage suffered, if any. It must therefore be rejected.

109. On the other hand, the Court considers that the applicant must have suffered non-pecuniary damage as a result of the violations found and awards him EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

110. The applicant also claimed EUR 4,400 for the costs and expenses incurred before the domestic courts and the Court. In support of his claim, he submitted a contract for legal services concluded with two of his representatives, Mr R. Hajili and Mr E. Sadigov. It has been requested that the award for the costs and expenses be paid directly to Mr R. Hajili.

111. The Government argued that the claim was excessive and that there was no necessity for the applicant to engage more than one representative. Moreover, the Government argued that, apart from the contract, the applicant had not submitted any itemised particulars of the claim, such as the lawyers' time sheets, invoices showing that the amounts had been paid, and so on.

112. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid directly into the bank account of the applicant's representative, Mr R. Hajili.

C. Default interest

113. 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. *Rejects* the Government's objection regarding the six-month time-limit;

2. *Declares* the complaints under Articles 10 and 6 § 1 of the Convention admissible;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds* that it is not necessary to examine the admissibility and merits of the complaints under Articles 13 and 14 of the Convention and Article 1 of Protocol No. 1 to 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:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred 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 24 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President