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

FIRST SECTION

CASE OF DURSUN ALIYEV v. AZERBAIJAN

(Application no. 20216/14)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Applicant deprived of an effective opportunity to challenge reliability of key evidence against him, oppose its use and adduce evidence in his favour • Inadequate review of applicant's objections on reliability and probative value of prosecution evidence • Failure to provide adequate reasons for procedural decisions depriving applicant of an effective opportunity to challenge them before higher courts

STRASBOURG

27 April 2023

FINAL

27/07/2023

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 Dursun Aliyev v. Azerbaijan,

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

Marko Bošnjak, *President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Ivana Jelić,
Gilberto Felici,
Raffaele Sabato, *judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 20216/14) 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 an Azerbaijani national, Mr Dursun Israfil oglu Aliyev (*Dursun İsrafil oğlu Əliyev* – "the applicant"), on 21 February 2014;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaint concerning Article 6 §§ 1 and 3 (c) of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 21 March 2023,

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

INTRODUCTION

1. The applicant complained that the criminal proceedings against him on charges of drug dealing had been in breach of Article 6 §§ 1 and 3 (c) of the Convention because, among other things, he had been convicted on the basis of fabricated or otherwise unreliable evidence; he had not been given an opportunity to effectively challenge that evidence and to adduce evidence in his favour; and during his initial questionings at the pre-trial stage of the criminal proceedings against him he had been deprived of access to effective legal assistance.

THE FACTS

2. The applicant was born in 1961 and lives in Baku. He was represented by Mr J. Suleymanov, a lawyer 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 INFORMATION

5. The applicant had originally worked as an operations officer in the criminal investigations department of the Binagadi District Police Office ("the police office").

6. According to the applicant, he was in conflict with the chief of the criminal investigations department of that police office, H.H. In 2010 a new chief of the police office, A.M., was appointed. Immediately after that, A.M. started forcing the old staff to resign in order to employ people closer to him. H.H. also pressured the applicant to resign. When the applicant refused to do so, the conflict worsened and both H.H. and A.M. started to harass him. Consequently, in 2011 he was demoted and started to work as an operations officer at police station no. 6 of the same police office.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. Search of the applicant's office and seizure of drugs

7. According to a record of 5 July 2011 prepared by K.A., an officer of the Organised Crime Department of the Ministry of Internal Affairs (*Baş Mütəşəkkil Cinayətkarlıqla Mübarizə İdarəsi* – "the OCD"), F.G., who worked as a driver and had a previous conviction, had made a statement (*şifahi ərizə*) on the same day reporting that the applicant had told him that he (the applicant) would sell him drugs; that in the past the applicant had regularly engaged in selling drugs; and that he (F.G.) was ready to participate as a "buyer" acting under police instructions in order to expose the applicant's illegal actions.

8. On the same day, K.A. decided to conduct "an operation" (*əməliyyat axtarış tədbirləri*) and a search of the applicant's office (*xidməti otağa baxış*) based on F.G.'s above-mentioned statement.

9. According to another record prepared by K.A., he gave F.G. two banknotes to the value of 10 Azerbaijani manats (AZN) each and bearing serial numbers B41 ... and A86 ..., in the presence of two attesting witnesses, D.G. and M.A. F.G. was to use those banknotes in the operation, for the purpose of purchasing drugs from the applicant in order to expose his illegal actions.

10. On the same day, 5 July 2011, F.G. called the applicant by phone and later, at around 2 p.m., he entered the applicant's office while the applicant was there. B.B. (a retired police officer who was informally assisting with the work of the police office) was also present, working in the same room.

11. According to a search and seizure record of 5 July 2011, some time after F.G. had entered the applicant's office three OCD officers, K.A., I.A. and E.S., together with the deputy chief of police station no. 6, A.Z., and a police officer from the same police station, M.B., knocked on the door of the

applicant's office and asked for it to be opened. However, as no one opened the door, the police officers kicked it open and entered. They were accompanied by the above-mentioned attesting witnesses, D.G. and M.A. F.G. then handed over a package wrapped in notebook paper containing a substance that looked like dried marijuana and had a characteristic smell. He also handed over a "Winston" cigarette which likewise contained a substance that looked like dried marijuana and had a characteristic smell. F.G. stated that he had bought these from the applicant for AZN 20. Then, in the presence of the attesting witnesses, the police officers searched the applicant's office and seized a white paper package containing a substance that looked like dried marijuana and had a characteristic smell which they had found in one of the drawers of his desk. The applicant admitted that he had sold F.G. dried marijuana for AZN 20 and had thrown two AZN 10 banknotes which he had received from F.G. out of the office window. The two AZN 10 banknotes, bearing the serial numbers B41... and A86..., were found by the police officers in the backyard of the office, under the applicant's office window, in the presence of the attesting witnesses.

12. The applicant did not sign the above-mentioned search and seizure record.

13. According to the applicant, he knew F.G. as a so-called paid police "agent", that is to say, a person who cooperates with the police by passing on information about people suspected of a crime or otherwise helps to expose those people. F.G.'s services had usually been used in drug-related cases. Before coming to the applicant's office, F.G. had told him on the phone that he wanted to meet and provide information about a drug dealer. When F.G. entered the applicant's office, he had closed the door behind him, approached the applicant and sat near him. In the middle of a conversation with the applicant, F.G. had asked him for some drugs. The applicant had understood that that was a scheme against him when F.G. took out some marijuana from his pocket and asked whether he could smoke it. The applicant had demanded that F.G. leave the room and moved towards the door to open it. At that moment three people had broken the door open and entered the room. One of them had said that they were officers of the OCD and alleged that the applicant had sold F.G. drugs for AZN 30. They had handcuffed the applicant. F.G. had said that he had bought drugs for AZN 20 and handed over a package to the officers. Then the applicant had been placed in a car and taken to the OCD and forced to make partially self-incriminating statements (see paragraph 20 below).

B. Expert examination of the seized drugs

14. It appears that on the same day, 5 July 2011, the Forensic Expert Examination Centre examined the substance seized in the applicant's office and concluded that it was dried marijuana, and that the marijuana found in

the applicant's desk weighed 0.7 grams, whereas the marijuana in the package and the cigarette handed over by F.G. weighed 1.3 grams.

15. The substance in question was also examined later by the same Forensic Expert Examination Centre. An expert report issued on 18 August 2011 essentially confirmed the conclusions of the above-mentioned initial report, but concluded that the "Winston" cigarette contained only tobacco.

C. Narcology expert examination of F.G.

16. It appears that F.G. was examined by the Narcology Centre of the Ministry of Healthcare, which concluded in a report dated 6 October 2011 that F.G. was a drug addict.

D. The applicant's arrest and questioning

17. After the operation of 5 July 2011 ("the operation") K.A. prepared a report on the applicant's arrest as a suspect. The report stated, among other things, that the applicant "declared that his rights had been explained to him [and] he did not want a lawyer".

18. The applicant refused to sign that report.

19. The applicant was taken to the OCD. Then he was questioned three times and gave partially self-incriminating statements (see paragraphs 21-24, 27-28 and 31 below).

20. According to the applicant, during his detention at the OCD on 5 July 2011 he was ill-treated by officers of the OCD. He was severely beaten and had a paroxysmal tachycardia attack. During that attack he was told that he would be given his medication only if he signed the above-mentioned search and seizure record and confessed to drug dealing. He made his partly self-incriminating statements because of that ill-treatment and for fear of being subjected to ill-treatment again on the days that followed.

1. Questioning by K.A.

21. When questioned by K.A., the applicant stated that he had become acquainted with F.G. because of his (the applicant's) work as a police officer; that he had got to know F.G. not only in a work-related context but also personally; that F.G. was a drug addict and had pleaded with him for drugs in exchange for help in exposing drug dealers; and that on three occasions in the past he (the applicant) had given F.G. enough marijuana for a single use, free of charge, in exchange for his help in police operations.

22. As regards the events of 5 July 2011, the applicant stated that on that day F.G. had called him and again pleaded for drugs and, despite his refusal, had insisted on coming to his office; that he (the applicant) had given F.G. enough marijuana for a single use, free of charge; that he had then closed the door of his office at F.G.'s request and immediately afterwards the door had

been kicked open by police officers; and that F.G. had handed over the marijuana he had given him to the officers. The applicant denied receiving AZN 20 from F.G. and throwing the banknotes out of his office window.

23. As regards the origins of the marijuana he had given to F.G., the applicant stated that he had obtained it by keeping to himself some of the drugs that had been found on detained people; that his purpose in obtaining drugs that way was to use them as a reward for people who helped the police; and that unlawful methods of that kind were the most effective methods used by the police in combating drug-related crimes.

24. As regards the origins of the marijuana seized from his desk, the applicant stated that he had found a small amount of marijuana in a "Kazbek" cigarette dropped by N.G., a person brought to the police station at around midnight the same day.

25. The applicant signed a record of his questioning that was prepared by K.A.

2. Questioning by the OCD investigator, J.D.

26. It appears that after the applicant had been questioned by K.A., a State-funded lawyer, Sh.A., had been appointed for him. The applicant signed a record which contained a statement that he had not objected to being represented by Sh.A.

27. Later on the same day, 5 July 2011, the applicant was questioned as a suspect by the OCD investigator in charge of the case, J.D. The applicant gave essentially the same statement as summarised in paragraphs 21-24 above. In addition, he stated that he had not drawn up any official record about the marijuana he had allegedly found in the cigarette dropped by N.G. because it would have been difficult in any event to prove that it belonged to N.G.

28. The applicant also stated that he had kept the marijuana which belonged to N.G. in his desk in order to use it in his police operations.

29. A record of the applicant's questioning was signed by him and the State-funded lawyer.

3. Questioning by an investigator from the Binagadi district prosecutor's office, E.M.

30. On 6 July 2011 the case was transferred to the Binagadi district prosecutor's office for further investigation. The next day it was assigned to an investigator from that office, E.M.

31. On 7 July 2011, the applicant was questioned as an accused person by the investigator E.M. The applicant essentially repeated his earlier statements as summarised in paragraphs 21-24 and 27 above. However, as regards the purpose of keeping the marijuana which allegedly belonged to N.G. in his

desk, the applicant stated that he had intended to continue his investigation the next day but had failed to do so because he had been busy.

32. In addition, the applicant stated that he had been beaten at the OCD to force him to incriminate himself. The applicant asked the investigator to order an expert medical examination as he had injuries on his body as a result of the ill-treatment.

33. The applicant and a lawyer of his own choosing, S.S., who became involved in the proceedings on the same day, signed a record of the applicant's questioning by E.M.

E. Charges against the applicant

34. On 7 July 2011 the investigator, E.M., charged the applicant under Article 234.2 of the Criminal Code with the illegal acquisition and possession of a narcotic substance with intent to sell and the illegal sale of a narcotic substance ("drug dealing").

35. On 13 October 2011 the applicant was additionally charged under Article 309.1 of the Criminal Code with abuse of official authority.

F. The applicant's transfer to a Ministry of Justice pre-trial detention facility and his complaint of ill-treatment

36. On 7 July 2011 the Binagadi District Court ordered the applicant's detention for two months pending trial.

37. On 9 July 2011 the applicant was transferred from the OCD to a Ministry of Justice pre-trial detention facility. On admission to the detention facility, he was examined by a doctor, A.Sh. During this examination, several bruises were found on his body – namely bruises behind both of his ears, in the right kidney area, on his right side below his ribs and on his right shoulder. The bruises were documented in a record (*akt*) drawn up on the same day and signed by the doctor and three other staff members of the detention facility, V.H., Z.N. and I.N.

38. On an unknown date a lawyer chosen by the applicant, A.H., who became involved in the proceedings on 16 August 2011, lodged a complaint with the Binagadi District Court, alleging that the applicant had been subjected to torture by the police at the OCD. He alleged that the applicant had been severely beaten and threatened in order to force him to sign the search and seizure record and to give self-incriminating statements. On 30 September 2011 the Binagadi District Court sent that complaint to the General Prosecutor's Office for examination.

39. It appears that the prosecutor who was put in charge of the applicant's ill-treatment complaint, T.I., questioned J.D., K.A., E.S. and other police officers involved in the criminal case against the applicant, as well as F.G.,

D.G., M.A. and B.B., who all stated that the applicant had not been subjected to any ill-treatment.

40. The applicant was subjected to an expert medical examination. The above-mentioned record of 9 July 2011 concerning the applicant's injuries was apparently also submitted to an expert (or experts) for examination. A medical expert report of 19 October 2011 stated that at the time of the examination there were no injuries on the applicant's body; that the injuries documented in the record of 9 July 2011 were not injuries that would cause damage to health; and that the record of 9 July 2011 did not contain clear information as to the character, form and shape of the injuries, and therefore it was impossible to give any opinion about when they had been inflicted.

41. On 20 October 2011 the prosecutor, T.I., concluded that the available evidence did not confirm that the applicant had been tortured or subjected to any other unlawful treatment. Consequently, he refused to open a criminal case in respect of the applicant's alleged ill-treatment. He based his decision on the above-mentioned statements (see paragraph 39 above) and on the medical expert report of 19 October 2011.

42. The applicant did not challenge the prosecutor's decision of 20 October 2011 in the domestic courts. Later, during proceedings in the trial court, the defence explained that failure as being the result of their receiving that decision too late (see paragraph 83 below).

G. The applicant's requests lodged with the investigator, E.M.

43. On 11 July 2011 the applicant asked the investigator, E.M., to conduct a fingerprint examination of the two banknotes which he had allegedly received from F.G. as a payment for the drugs. He argued that he had never touched the banknotes and that if it was true that he had received the banknotes from F.G. and then thrown them out of his window, then his fingerprints would remain on them.

44. On 12 July 2011 the investigator rejected that request on the ground that the banknotes had been picked up from the ground by the participants in the operation and touched by several people.

45. The applicant also asked the investigator to examine the background of F.G., D.G. and M.A., in particular whether they had previous convictions and whether they had previously participated as attesting witnesses in other criminal proceedings.

46. On 29 July 2011 the investigator rejected that request, on the ground that it had no relevance to the examination of the criminal case against the applicant.

H. Questioning of the witnesses and face-to-face confrontations

47. The investigator, E.M., questioned several witnesses and held face-to-face confrontations.

48. During his confrontations with F.G., D.G. and M.A., the applicant retracted his earlier partially self-incriminating statements and said that he had made those statements because he had been ill-treated at the OCD and feared being subjected to ill-treatment again. He gave an account of the events of 5 July 2011 similar to the one summarised in paragraphs 13 and 20 above. Furthermore, the applicant alleged that he knew F.G. and M.A. as paid police "agents" under the code names "Fedya" and "Yashar" respectively.

1. Statements given by F.G.

49. During his questioning on 4 September 2011 F.G. stated that he was a driver in the jewellery trade. He also stated that he was a drug user and had a previous conviction, and that on several occasions before the events of 5 July 2011 he had bought drugs from the applicant in the latter's office or car, or near the police office. At the OCD two AZN 10 banknotes bearing the serial numbers B41... and A86... had been given to him in the presence of attesting witnesses. After that he (F.G.) had called the applicant's mobile phone three or four times and asked for drugs "in code", and the applicant had said that F.G. could come to his office. He had bought marijuana from the applicant wrapped in notebook paper and in a "Winston" cigarette box, using the money he had received. He (F.G.) had emptied one of his "Winston" cigarettes. Then, when the police officers had entered the room, the applicant had thrown the two banknotes out of his office window. In one of the drawers of the applicant's desk the police officers had found a package containing a substance that looked like dried marijuana and seized it. They also had found and seized two AZN 10 banknotes in the backyard. F.G. also stated that the applicant had claimed that he had given the marijuana to F.G. in exchange for his participation in a police operation.

50. When confronted with the applicant on 24 September 2011 F.G. stated, among other things, that he had received three banknotes of AZN 10 each for the operation to expose the applicant. After he had bought the marijuana from the applicant, he had filled one of his emptied "Winston" cigarettes with some of it in order to smoke it. When the police officers had entered, the applicant had been standing near the office door. The officers had seized the marijuana and the cigarette filled with marijuana from him, and also seized more marijuana which had been on the applicant's desk and in one of the drawers of the same desk. F.G. had not been present at the scene when the banknotes had been found. Both the applicant and F.G. had been removed from the office in handcuffs. In response to a question from the applicant's lawyer, F.G. stated that his nickname was indeed "Fedya", but that he was not an "agent" and did not belong to any police network.

2. Statements given by D.G. and M.A.

51. During his questioning on 15 August 2011 D.G. stated that on 5 July 2011 he had been approached in the street by police officers and invited to attend an operation as an attesting witness and he had agreed. Subsequently, at the OCD two AZN 10 banknotes bearing the serial numbers B41... and A86... had been given to F.G. in his presence. D.G. gave a description of the operation identical to the description given in the search and seizure record summarised in paragraph 11 above.

52. M.A., when he was questioned on 24 August 2011, gave the same statement as D.G.

53. When confronted with the applicant on 24 September 2011 D.G. stated, among other things, that when he and the police officers had entered the applicant's office on 5 July 2011, the applicant had been sitting at his desk. On the applicant's desk he (D.G.) had seen a package containing marijuana. Two AZN 10 banknotes and another package containing marijuana had been found in the backyard of the police station.

54. M.A., who was also confronted with the applicant on 24 September 2011, stated, among other things, that he was a paid "agent" under the code name "Yashar", that he belonged to the police network of the Binagadi district police office, that he had cooperated with police station no. 4 of the same police office, and that he had known the applicant before the events of 5 July 2011 from their encounters at the Binagadi district police office. M.A. mentioned in particular that the applicant himself had once paid him his monthly payment as an "agent". On 5 July 2011 he had come to pick up his payment at the police office, where he had been invited by police officers to attend an operation as an attesting witness. He had been told that F.G. was already with the applicant inside the latter's office. When he and the police officers had entered the office, the applicant had been standing near the door. He had seen a small package on the applicant's desk, and F.G. had said that the package contained drugs which he had bought from the applicant for AZN 20. In response to a question from the applicant's lawyer as to whether, as a paid police "agent", he had ever been questioned as a witness, M.A. confirmed that he had on two previous occasions been questioned as a witness and that he was going to be questioned at the Assize Court on that very day.

3. Statements given by B.B.

55. During his questioning on 8 August 2011 B.B. stated that on 5 July 2011 he had witnessed the applicant selling drugs to F.G. in his office and accepting AZN 20 in return. When the police officers broke in, the applicant had tried to throw two AZN 10 banknotes out of the office window, but because of the wind they had fallen onto his (B.B.'s) computer keyboard and he had pushed them aside. Then on his second attempt the applicant had managed to throw the banknotes out of the window.

4. Statements given by officers K.A., E.S. and M.B.

56. It appears that the officers K.A. and E.S. and M.B. gave a description of the operation identical to the one given in the search and seizure record summarised in paragraph 11 above. They also referred to the results of the first expert examination of the seized drugs (see paragraph 14 above).

I. Removal of the State-funded lawyer

57. After signing the record of the applicant's questioning on 5 July 2011, the State-funded lawyer Sh.A. did not attend any part of the investigation for two months and did not meet with the applicant. For that reason, and considering that the applicant had two lawyers of his own choosing, the investigator E.M. removed Sh.A. from the proceedings by a decision of 6 October 2011.

J. The Binagadi district prosecutor's request for information about the banknotes

58. It appears that the Binagadi district prosecutor's office responsible for investigating the case did not have in its possession the originals of the two banknotes which the applicant had allegedly received from F.G., and therefore on 17 October 2011 the Binagadi district prosecutor requested information about their whereabouts from the relevant authority. In reply to that request the OCD, on behalf of the Ministry of Internal Affairs, informed the district prosecutor that the banknotes were being kept at the OCD.

III. THE APPLICANT'S TRIAL

59. On 27 October 2011 the investigator prepared an indictment against the applicant which was then filed with the Binagadi District Court, following which the applicant's trial began in November 2011.

A. Witnesses questioned by the trial court

60. The Binagadi District Court heard a number of prosecution witnesses during the examination of the case. Most of them gave testimony differing from their pre-trial statements and the official records drawn up by the police. Consequently, those pre-trial statements were also read out in the presence of those witnesses.

61. Thus, in contrast to his 4 September 2011 statement, F.G. stated, among other things, that he was a driver transporting stationery products; that for the operation to expose the applicant he had received three banknotes of the value of AZN 10 each; that the applicant had sold him marijuana in two forms, dried and powdered, and it had been in two different packages, one

wrapped in white paper and one in gold paper; that he had wanted to consume immediately the marijuana he had purchased from the applicant, but had no time to do so because the police officers had entered the room; and that when the door had been kicked open by the police the applicant had stood up and moved towards the window holding the money, but he (F.G.) had not seen either the applicant throwing the money out of the window or how it had been found. F.G. also stated that he had been visiting the police office regularly. In response to a question from the applicant's lawyer, F.G. said that he had been able to enter the police office freely because he sold his stationery products there. After his pre-trial statement was read out, F.G. said that he had given contradictory statements because he had forgotten some of the details as a lot of time had passed since the events in question.

62. D.G. stated, among other things, that F.G. had produced drugs from his pocket, and that one package with drugs had been found in the applicant's desk and another one had been on his desk. In response to a question from the applicant's lawyer, D.G. said that once or twice in the past he had participated as an attesting witness in some investigative measures.

63. M.A. declared that he wanted to confirm the statement he had given at the pre-trial stage and that he did not remember anything of the events of 5 July 2011, except for the fact that he had participated in an operation concerning drugs. In response to a question from the applicant's lawyer, M.A. stated that he was not a police "agent", that the matter in question was secret, and that he could not say anything on the subject.

64. M.A. also addressed the applicant by saying "it was always you who were imprisoning people and now for once you go to prison; the prisoners there are waiting for you impatiently".

65. B.B. stated, among other things, that after the police officers entered the applicant's office F.G. had handed over some drugs to them saying that he had bought those drugs from the applicant. B.B. also said that he had not seen the applicant either giving drugs to F.G. or receiving any money from him.

66. B.B. furthermore stated that the applicant had declared that the operation was a set-up to frame him.

67. In contrast to his pre-trial statement, officer E.S. stated, among other things, that F.G. had handed over "something" in a package and said that he had bought it for AZN 20; and that he (E.S.) had not participated in the finding of the banknotes. After his pre-trial statement was read out, E.S. said that he was wrong, that he had in fact participated in the finding of the banknotes, and that he had forgotten some of the details because of the elapse of time.

68. Officer M.B. declared that he wanted to confirm what he had said when the official records had been drawn up since he did not have a clear recollection of the events of 5 July 2011. M.B. also stated that he had not participated directly in the operation against the applicant; that he had been shown two banknotes and two packages later on and had been told that the

matter concerned drugs; and that the applicant had not been in the room when he (M.B.) had arrived but had been in a car. After his pre-trial statement was read out, M.B. said that he had not previously read his statement and that he had difficulties explaining the contradictions in his pre-trial and courtroom statements. After a confrontation with officer K.A. before the trial court, where K.A. stated that M.B. had participated in the operation from the beginning, M.B. said that he confirmed K.A.'s statement; that the applicant had been in the room when he (M.B.) had arrived; and that he had given contradictory statements because he had misunderstood the questions addressed to him and because he had remembered the events vaguely but hearing his own pre-trial statements had helped him to remember the events better.

69. Officer K.A. gave a statement similar to his pre-trial statement (see paragraph 56 above) and also stated that he had not known that F.G. was a drug addict with a previous conviction; and that before sending him to participate as a "buyer" in the operation the officers had not searched F.G.'s person.

70. At the applicant's request, the Binagadi District Court also summoned and heard the investigator E.M. and the chairman of the Anti-Torture Committee of Azerbaijan, E.B.

71. The investigator E.M. questioned as a witness, stated that when confronted with the applicant, M.A. had indeed said that he was a police "agent" and complained that his payment as an "agent" had been delayed for several months; and that later the relevant authorities had denied that M.A. was an "agent". E.M. also stated that he had been told that the originals of the two banknotes had been kept at the OCD.

72. The chairman of the Anti-Torture Committee of Azerbaijan, E.B., questioned as a specialist, stated that when the applicant had been admitted to the pre-trial detention facility of the Ministry of Justice he had injuries on his body which had been confirmed by a record of 9 July 2011 signed by four people, including a doctor; and that in his opinion the applicant had been subjected to ill-treatment.

B. Arguments and requests submitted by the defence to the trial court

73. At a preliminary hearing of the Binagadi District Court, and during the examination of the case on the merits the applicant alleged that the events of 5 July 2011 had been set up by the chief officers of the Binagadi District Police Office because he had a conflict with them and had resisted their pressuring him to resign, and that the ensuing criminal proceedings against him had been fabricated. He also gave an account of his alleged conflict with the chief police officers as summarised in paragraph 6 above and of the events of 5 July 2011 as summarised in paragraphs 13 and 20 above.

74. In addition, the applicant repeated his pre-trial statement about the marijuana found in his desk (see paragraphs 24, 27 and 31 above).

1. Arguments and requests relating to the reliability and personal integrity of F.G., D.G. and M.A.

75. The applicant argued in particular that there were several elements demonstrating that F.G., D.G. and M.A. had cooperated with the police in order to frame him. He argued that, contrary to the assertions they had made in the trial court, F.G., D.G. and M.A. were paid police "agents". He knew F.G. and M.A. personally. Both F.G. and M.A. belonged to the network of the Binagadi District Police Office, were cooperating respectively with police stations nos. 6 and 4 of the same police office and were known under the code names "Fedya" and "Yashar" respectively. F.G. was an "agent" who reported to officer H.H. and he had his personal dossier number (which the applicant mentioned). F.G.'s services were used in "in-cell" operations. The applicant also mentioned the amounts the two were allegedly receiving monthly for their services as "agents". Furthermore, the applicant drew the court's attention to M.A.'s statement that he was an "agent" belonging to the network of the Binagadi District Police Office (see paragraph 54 above), to M.A.'s and D.G.'s statements in which they had admitted to participating as witnesses or attesting witnesses in a number of other criminal proceedings (see paragraphs 54 and 62 above), and to F.G.'s statement that he had been visiting the Binagadi District Police Office regularly and freely (see paragraph 61 above).

76. The applicant asked the trial court to examine the backgrounds of F.G., D.G. and M.A. and remove their witness testimony as unreliable (inadmissible) evidence on the basis that it had not been given in good faith and had no value.

77. On 4 May 2012 the trial court requested information from the Ministry of Internal Affairs on whether F.G., D.G. and M.A. were on the Ministry's list of secret collaborators (*məxfi əməkdaşlar*). That request was transferred to the OCD, which replied that F.G., D.G. and M.A. were not registered in the list of secret collaborators of the OCD network.

2. Arguments and requests relating to the reliability of the testimonies given by the prosecution witnesses

78. The applicant also noted extensive inconsistencies and contradictions in statements given by key witnesses at the pre-trial stage of the proceedings and during the trial and argued that those flaws showed that the case had been fabricated. The applicant asked the court to read those inconsistencies and contradictions in his favour.

3. Arguments and requests relating to the reliability of the physical evidence used against the applicant

79. The applicant argued that during the operation F.G. had brought with him the marijuana which he had then handed over to the police officers. To support his argument the applicant referred to his above-mentioned arguments about F.G.'s personal integrity and the inconsistencies and contradictions in key witness statements, the fact that before sending F.G. to participate as a "buyer" in the operation the police had not searched his person (see paragraph 69 above), and the fact that B.B. – the only person who had been present in the applicant's office together with the applicant and F.G. on 5 July 2011 – had testified in the trial court that he had not seen the applicant selling drugs to F.G. (see paragraph 65 above).

80. Furthermore, the applicant argued that the criminal case file contained only a photocopy of the two banknotes which he had allegedly received from F.G. as a payment for the marijuana allegedly sold to him. He asked the court to make an order for the originals to be produced for examination in the court proceedings. The applicant emphasised that as he had been accused of selling drugs (drug dealing), the banknotes in question constituted crucial evidence against him.

81. The trial court formally granted the defence's request and ordered the production of the originals of the two banknotes. However, the court's order was ignored and several reminders to the prosecution to produce the banknotes in question for examination in court were unsuccessful.

4. Arguments and requests relating to the reliability of the applicant's own initial partially self-incriminating statements given at the pre-trial stage

82. The applicant also asked the trial court for an order excluding his own initial partially self-incriminating statements given at the pre-trial stage of the criminal proceedings against him as unreliable (inadmissible) evidence. He argued that he had given those statements under duress as he had been ill-treated at the OCD and had feared for his life. In support of his argument the applicant referred to the record of 9 July 2011 documenting his injuries (see paragraph 37 above) and to the evidence given by E.B. (see paragraph 72 above).

83. The defence explained the failure to challenge in the relevant domestic courts the prosecutor T.I.'s decision of 20 October 2011 declining to open a criminal case in respect of the applicant's alleged ill-treatment by arguing that they had received that decision too late.

84. The court held that by failing to challenge the decision of 20 October 2011 the applicant had demonstrated that he had accepted that decision. It also held that, in accordance with Article 65.1 of the Code of Criminal Procedure, no new decision could be taken on a matter on which a prosecuting

authority's decision was still in effect. Consequently, the court rejected the applicant's request for the exclusion of the partially self-incriminating statements that he had made at the pre-trial stage.

5. Arguments concerning the applicant's access to effective legal assistance at the pre-trial stage of the proceedings

85. The applicant complained that he had not been allowed to access the services of a lawyer of his own choosing at the initial sessions of questioning by the police. A State-funded lawyer, Sh.A., had been appointed for him without his consent and had not been present during the questioning, but had merely signed the record of it prepared by the OCD investigator, J.D. The applicant also referred to the fact that Sh.A. had subsequently been removed by a decision of the investigator E.M., for failure to carry out his duties.

C. The applicant's conviction and his appeals

86. On 5 June 2012 the Binagadi District Court convicted the applicant of drug dealing under Article 234.2 of the Criminal Code and sentenced him to three years' imprisonment. The court found that the applicant had sold marijuana to F.G. in exchange for a payment of AZN 20. In finding the applicant guilty the trial court relied on the above-mentioned expert report (see paragraph 15 above), some of the testimony given by B.B. in court (see paragraph 65 above), the statements given by F.G., D.G., M.A., and officers E.S. and M.B. at the pre-trial stage as read out in the courtroom and then confirmed by those witnesses (see paragraphs 49, 51-52 and 56 above), the statements given by officer K.A. in court which were similar to his pre-trial testimony (see paragraph 56 above), and the initial partly self-incriminating statements given by the applicant at the pre-trial stage (see paragraphs 21-24, 27-28 and 31 above).

87. The trial court found the applicant not guilty of abuse of official authority under Article 309.1 of the Criminal Code.

88. The applicant appealed against the judgment. He reiterated his earlier arguments and complained about the Binagadi District Court's refusal to grant his requests. He also lodged his requests again, in particular his request for the production and examination of the originals of the two banknotes used as physical evidence against him (see, in particular, paragraphs 76, 78, 80 and 82 above).

89. Furthermore, in support of his allegation that F.G., D.G. and M.A. were paid "agents" cooperating with the police in fabricating the case against him, the applicant submitted new information that on 27 April 2012 D.G. had participated as an "attesting witness" in some other criminal case before the Binagadi District Court, with Judge T.A. presiding. The applicant also argued that M.A. had been brought before the trial court in handcuffs as he had been under arrest for illegally possessing a gun. The applicant also referred to a

remark M.A. had addressed to the applicant during the trial court proceedings and argued that the aggressive and vengeful character of that remark had revealed his true face and exposed the fact that M.A. was not simply a neutral attesting witness (see paragraph 64 above). He also referred to the fact that F.G. had admitted that his nickname was indeed "Fedya", and that it had been established that he was a drug addict.

90. The applicant complained that the trial court had ignored the inconsistencies and contradictions in the prosecution witnesses' statements. He referred in particular to the inconsistent and contradictory statements given by F.G. about the form of the marijuana allegedly bought from the applicant and about the package in which that marijuana had allegedly been wrapped (see paragraphs 11 and 61 above). He also referred to the inconsistent and contradictory accounts of whether F.G. had been present at the place and time when the banknotes had allegedly been found and seized (see paragraphs 49-50 and 61 above) and whether drugs had also been found in the backyard of police station no. 6 (see paragraphs 11 and 53 above). The applicant also complained that the trial court had disregarded statements that were favourable to his defence. In that regard he emphasised in particular B.B.'s and M.B.'s statements (see paragraphs 65-66 and 68 above).

91. Furthermore, the applicant argued that if he had indeed been suspected of drug dealing, the two investigators who had been in charge of the case would also have investigated to which other persons, apart from F.G., he might have sold drugs; moreover, drugs would have been found in such places as his car or home.

92. The prosecution also appealed against the trial court's judgment, asking the appellate court, among other things, to decide on the fate of the physical evidence in the case, namely the two AZN 10 banknotes.

93. The Baku Court of Appeal decided to consider the applicant's appeal "without judicial investigation" (*məhkəmə istintaqını aparmadan*; see paragraphs 104-105 below) and without seeking additional evidence: that is, to consider the case on the basis of the material in the case file, and without taking such steps as rehearing the witnesses or summoning new ones. Consequently, the appellate court did not grant the applicant's requests or address his arguments concerning the reliability of the evidence (see paragraphs 88-91 above).

94. On 11 February 2013 the Baku Court of Appeal dismissed the applicant's appeal and partially granted the prosecution's appeal. The appellate court upheld the first-instance court's judgment in substance and ordered that the physical evidence – namely the two AZN 10 banknotes – be destroyed.

95. However, by an additional decision of 28 February 2013, the Court of Appeal amended its judgment of 11 February 2013 and ordered that the two banknotes be transferred to the Finance Department of the Ministry of Internal Affairs instead of being destroyed.

96. It appears that in August or October 2012 a new criminal case was initiated against the applicant under Article 284.1 (disclosure of State secrets) of the Criminal Code for disseminating confidential information about people with whom the applicant had cooperated in the course of his service as a police officer – namely about F.G. and M.A., known under the nicknames "Fedya" and "Yashar" respectively. However, on 1 February 2013 those criminal proceedings were discontinued.

97. In April 2013 the applicant lodged a cassation appeal, reiterating his earlier complaints. In addition, the applicant argued that the initiation of the above-mentioned new criminal case against him also supported his allegation that F.G. and M.A. were "agents" cooperating with the police in framing him.

98. On 4 September 2013 the Supreme Court dismissed the appeal as unfounded and upheld the judgments of the lower courts. With respect to the applicant's argument concerning the above-mentioned new criminal case against him, the Supreme Court held that the fact that those new criminal proceedings had eventually been discontinued because no crime appeared to have occurred demonstrated the opposite: that no police "agent" had been involved in the criminal case against the applicant.

RELEVANT LEGAL FRAMEWORK

99. The relevant part of Article 234 of the Criminal Code, as in force at the material time, provided as follows:

> **Article 234. Illegal manufacture, acquisition, possession, transport, dispatch or sale of narcotics and psychotropic substances and precursors**
>
> "234.2. The illegal sale of narcotics and psychotropic substances or the illegal acquisition, possession, manufacture, preparation, processing, transport or dispatch of narcotics and psychotropic substances with intent to sell -
>
> shall be punishable by imprisonment for a period of three to seven years."

100. The relevant parts of Article 1 of the Law on circulation of narcotics, psychotropic substances and their precursors of 28 June 2005, as in force at the material time, provided as follows:

> **Article 1. Main terms**
>
> "1.0.11. The illegal sale of narcotics and psychotropic substances [means] actions aimed at disseminating narcotics and psychotropic substances, regardless of quantity, for compensation or profit, or with the purpose [of achieving] some other personal interest, in violation of the rules established by the legislation of ... Azerbaijan."

101. The relevant part of Article 65 of the Code of Criminal Procedure, as in force at the material time, provided as follows:

Article 65. Prejudicial significance of procedural decisions

"65.1. No new decision may be taken on a matter on which a decision of an authority conducting criminal proceedings is still in effect. A decision of an authority conducting criminal proceedings, except for a decision not to prosecute, shall not be binding in respect of a judgment or other final decision adopted by a court."

102. The relevant part of Article 94 of the Code of Criminal Procedure, as in force at the material time, provided as follows:

Article 94. Attesting witness

"94.1. A person who does not have a personal interest in [the outcome of] criminal proceedings can be an attesting witness, who, ... is invited to participate in an investigative measure ... in order to confirm detected facts, [its] content, progress, and outcome. Employees of an initial inquiry [authority], preliminary investigation [authority, or] prosecutor's office ... may not be attesting witnesses in a criminal case.

...

94.2. An attesting witness shall perform the following duties, in cases provided by and in accordance with the procedure set out in the present Code:

...

94.2.4. to observe carefully what happens during an investigative measure in which he or she participates, [and] not to leave the location where [that] investigative measure is conducted;

94.2.5. to sign a record concerning a relevant investigative measure, [and] to refuse to sign [that] record if his or her observations are not included in it;

...

94.2.7. to perform other duties provided by the present Code.

...

94.4. An attesting witness shall [enjoy] the following rights, in cases provided by and in accordance with the procedure set out in the present Code:

...

94.4.1. to participate in a relevant investigative measure from its beginning to its end;

94.4.2. to familiarise himself or herself with a record of an investigative measure in which he or she participates, [and] to demand that [observations], which he or she considers necessary, be included in the relevant record;

94.4.3. to express his or her objections against what happens, [when] a relevant investigative measure is conducted and when he or she familiarises himself or herself with the record [concerning that investigative measure];

...

94.4.6. to use other rights provided by the present Code."

103. The relevant part of Article 115 of the Code of Criminal Procedure, as in force at the material time, provided as follows:

Article 115. Objections against an attesting witness

"115.1. If any of the circumstances described in Articles 109.1.3–109.1.8 of this Code are present [(including, among other things, a situation of a personal dependency on any other participant in the criminal proceedings)], or if the person concerned does not meet the requirements of Article 94.1 of this Code, he or she may not participate in the criminal proceedings as an attesting witness.

115.2. Previous participation of an attesting witness in the conduct of an investigative measure shall not preclude his or her further participation in [carrying out] another investigative measure relating to the same criminal proceedings, except for situations where his or her participation as an attesting witness is of a regular character.

...

115.4. Participation of a person as an attesting witness in carrying out an investigative measure, in breach of the requirements of Articles 115.1 and 115.2 of this Code, may be grounds for invalidation of that investigative measure."

104. The relevant part of Article 392 of the Code of Criminal Procedure, as in force at the material time, provided as follows:

Article 392. Scheduling of an appellate court hearing

"392.3. If there are grounds to believe that the first-instance court did not examine all the factual circumstances which were important for the accuracy of the conclusions reached by it, the appellate court may consider it necessary to conduct a full or partial judicial investigation. Where a full or partial [judicial] investigation is conducted, the appellate court must examine all the arguments on which the appeal [complaint] is based."

105. According to the Code of Criminal Procedure as in force at the material time, in particular Articles 324-338, a judicial investigation consisted of various actions taken by a court in order to obtain or examine evidence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

106. The applicant complained that the criminal proceedings against him had been in breach of Article 6 of the Convention because, among other things, he had been convicted on the basis of fabricated or otherwise unreliable evidence, he had not been given an opportunity either to challenge that evidence against him in an effective manner or to adduce evidence in his favour, and at the pre-trial stage of the criminal proceedings against him he had been deprived of access to effective legal assistance. The relevant parts of Article 6 of the Convention read:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

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

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ...”

A. Admissibility

107. The Court 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

108. The applicant argued in particular that there were several elements demonstrating that the prosecution witnesses F.G., D.G. and M.A. were paid “agents” who had cooperated with the police in fabricating the criminal case against him. Those elements included, among other things, the witnesses' own statements and documentary evidence. The domestic courts had also ignored inconsistencies and contradiction in the statements of F.G., D.G., M.A. and other key prosecution witnesses, and had disregarded statements that were favourable to the applicant's defence. There were several elements demonstrating that the physical evidence against the applicant was also unreliable, in particular the fact that the originals of the two banknotes allegedly received by the applicant as a payment for the marijuana had never been produced either to the defence or to the courts, or even to the investigator in charge of the case, and consequently the applicant had been convicted on the basis of a photocopy of the two banknotes. Furthermore, the domestic courts had used the applicant's own initial partially self-incriminating statements, given under duress at the pre-trial stage of the criminal proceedings, as evidence against him. Nevertheless, the applicant had not been given an effective opportunity to challenge the personal integrity of F.G., D.G. and M.A. or the reliability of the witness statements, the physical evidence, or his own self-incriminating statements, or to adduce evidence in his favour. The domestic courts had ignored the evidence and the applicant's requests in that regard.

109. In support of his above-mentioned arguments, the applicant submitted copies of several documents (official records and court decisions) dated between 2009 and 2016 and concerning criminal cases against other individuals. D.G. had participated as a witness or an attesting witness in all those cases, and most of them concerned drug-related crimes. The applicant also submitted copies of two articles (entitled “Faraj Karimli: A person who testified against me had been a false witness against around 180 other people”

and "Those who frame honoured children of our nation will answer for that") which had been published in *Yeni Musavat* on 9 April 2015 and in *Azadlig* on 23 June 2016 respectively. The articles alleged that D.G. had participated as a false witness or false attesting witness in a number of criminal cases, including allegedly politically motivated cases.

110. The applicant also argued that during the initial sessions of questioning by the police he had not been allowed to defend himself through legal assistance of his own choosing. Sh.A. had been appointed for him without his consent and had not provided him with any legal assistance.

111. Lastly, the applicant argued that the search and seizure operation in his office had been carried out without a search warrant issued by a court and before any criminal case had been opened against him.

112. The Government submitted that the criminal proceedings against the applicant had been fair. They argued in particular that the judgments and decisions of the domestic courts had included reasons and been based on lawful, impartial and comprehensively assessed evidence. The applicant had been given the opportunity to consider and comment on the submissions made and the evidence adduced by the prosecution. He had been able to make various requests and call his own witnesses.

113. As to the applicant's allegations that the witnesses F.G., D.G. and M.A. were police "agents", the Government argued that the applicant had failed to submit any evidence in that regard and that in response to the trial court's questions the Ministry of Internal Affairs had denied the allegations. Furthermore, the Government emphasised that by the judgment of 11 February 2013 the Court of Appeal had ordered that the two AZN 10 banknotes be destroyed. Consequently, that judgment of the appellate court showed that in the domestic proceedings the originals of those two banknotes had been used.

114. The Government also submitted that the applicant had been provided with legal assistance from the initial stages of the proceedings against him, and in particular he had been questioned as a suspect in the presence of a State-funded lawyer, Sh.A. The applicant had not made any complaint about Sh.A.'s actions at that time. On 7 July 2011 and 16 August 2011 two lawyers of the applicant's own choosing had been brought into the proceedings and had been able to represent him.

2. The Court's assessment

(a) Applicable principles

115. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see Schenk v. Switzerland, 12 July 1988, § 46, Series A no. 140; *Jalloh v. Germany* [GC], no. 54810/00,

§§ 94-96, ECHR 2006-IX; and *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017).

116. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (see *Bykov v. Russia* [GC], no. 4378/02, § 89, 10 March 2009; *Lee Davies v. Belgium*, no. 18704/05, § 41, 28 July 2009; and *Prade v. Germany*, no. 7215/10, § 33, 3 March 2016).

117. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be established, in particular, whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Szilagyi v. Romania* (dec.), no. 30164/04, 17 December 2013). In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see, among other authorities, *Bykov*, cited above, § 90; *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010; and *Ayetullah Ay v. Turkey*, nos. 29084/07 and 1191/08, § 126, 27 October 2020). While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see *Lee Davies*, cited above, § 42; *Bykov*, cited above, § 90; and *Bašić v. Croatia*, no. 22251/13, § 48, 25 October 2016). In this connection, it may also be reiterated that the burden of proof is on the prosecution, and any doubt should benefit the accused (see *Ayetullah Ay*, cited above, § 126).

118. The Court also attaches weight to whether the evidence in question was or was not decisive for the outcome of the criminal proceedings (see, among many other authorities, *Vukota-Bojić v. Switzerland*, no. 61838/10, § 95, 18 October 2016). Where the reliability of evidence is in dispute, the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see *Layijov v. Azerbaijan*, no. 22062/07, § 64, 10 April 2014).

119. The Court also reiterates that inconsistencies between a witness's own statements given at various times, as well as serious inconsistencies among different types of evidence produced by the prosecution, give rise to serious grounds for challenging the credibility of the witness and the probative value of his or her testimony; as such, this type of challenge constitutes an objection capable of influencing the assessment of the factual

circumstances of the case based on that evidence and, ultimately, the outcome of the trial (see *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 206, 26 July 2011).

120. Particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. The use of such evidence, secured as a result of a violation of one of the core and absolute rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see *Jalloh v. Germany* [GC], no. 54810/00, §§ 99 and 105, ECHR 2006-IX; *Göçmen v. Turkey*, no. 72000/01, §§ 73-74, 17 October 2006; and *Gäfgen v. Germany* [GC], no. 22978/05, § 165, ECHR 2010). The use in criminal proceedings of statements obtained as a result of a violation of Article 3 – irrespective of the classification of the treatment as torture, inhuman or degrading treatment – renders the proceedings as a whole automatically unfair, in breach of Article 6 (see *Gäfgen*, cited above, §§ 166-167 and 173, and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 254, 13 September 2016).

121. Moreover, even in the absence of an admissible Article 3 complaint, the Court is not precluded from taking into consideration allegations of ill-treatment for the purposes of deciding on compliance with the guarantees of Article 6 (see *Kolu v. Turkey*, no. 35811/97, § 54, 2 August 2005; *Huseyn and Others*, cited above, § 202; and *Aydın Çetinkaya v. Turkey*, no. 2082/05, § 104, 2 February 2016). When dealing with allegations that evidence was obtained as a result of ill-treatment, a trial court may be required to assess the same facts and elements which had previously been examined by the investigative authorities. However, its task is not to examine the individual criminal responsibility of the alleged perpetrators but to address through a full, independent and comprehensive review the issue of admissibility and reliability of evidence. The admission in evidence of testimony notwithstanding credible allegations that it was obtained as a result of the ill-treatment raises serious issues as to the fairness of the proceedings (see *Belugin v. Russia*, no. 2991/06, § 74, 26 November 2019).

122. The Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. 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 *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation 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 (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A; *Higgins and Others v. France*, 19 February 1998,

§§ 42-43, *Reports of Judgments and Decisions* 1998-I). Moreover, in cases relating to interference with rights secured under the Convention, the Court seeks to establish whether the reasons provided for decisions given by the domestic courts are automatic or stereotypical (see *Moreira Ferreira*, cited above, § 84, with further references).

123. An issue with regard to a lack of reasoning in judicial decisions under Article 6 § 1 of the Convention will normally arise when the domestic courts have ignored a specific, pertinent and important point raised by the applicant (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011; *Rostomashvili v. Georgia*, no. 13185/07, § 59, 8 November 2018; and *Zhang v. Ukraine*, no. 6970/15, § 73, 13 November 2018).

(b) Application of the above-mentioned principles in the present case

(i) The main issues to be examined

124. The Court notes at the outset that the applicant did not dispute, either in the domestic proceedings or before the Court, the fact that he had possessed, without following the requisite procedures and without documentation, the drugs which had been found in his desk during the operation of 5 July 2011. His main line of defence was the argument that he had never engaged in drug dealing and had not sold drugs to F.G. or given them to him free of charge on 5 July 2011. The applicant alleged that the criminal proceedings against him for the alleged drug dealing had been fabricated because of his conflict with two chief officers of the Binagadi District Police Office, in which he had been working (see paragraph 73 above).

125. The Court also notes that several pieces of evidence played a crucial role in the applicant's conviction for drug dealing. Firstly, the statements by F.G. that the applicant had sold him marijuana for AZN 20 constituted primary witness evidence against the applicant. There was no other witness testifying that he or she had seen the alleged transaction (the sale and purchase of the drugs) taking place. B.B., the only person who had been present in the room during the applicant's meeting with F.G., stated in the trial court that he had not seen the applicant either giving the drugs to F.G. or receiving any money from him. Secondly, the package containing marijuana which F.G. had allegedly bought from the applicant and the two AZN 10 banknotes, bearing specified serial numbers, which were allegedly found in the backyard of the police station under the applicant's office windows, constituted a key piece of physical evidence against the applicant. Thirdly, the witness statements of D.G., M.A., B.B. and of the police officers involved in the operation constituted another important piece of evidence against the applicant, as they concerned important elements of the operation and the applicant's actions during and after it.

126. Furthermore, the applicant's own initial partially self-incriminating statements given during his questioning at the pre-trial stage were also among the evidence used against him.

127. All the other supporting evidence against the applicant was of secondary importance because it concerned circumstances not disputed by the defence (namely the fact that the applicant had been keeping undocumented marijuana in his desk) or constituted evidence that did not relate directly to the drug-dealing charges (namely how the applicant had come about that undocumented marijuana in the first place).

128. Consequently, the Court will examine whether there were any circumstances that cast doubt on the reliability of the above-mentioned key pieces of evidence or of the applicant's partially self-incriminating statements, whether the applicant was given an effective opportunity to challenge their reliability and oppose their use in the domestic proceedings, whether he was given an effective opportunity to adduce evidence to support his arguments, and whether the domestic courts gave adequate reasons for their decisions in respect of the applicant's arguments and requests.

(ii) The manner in which the domestic authorities dealt with the reliability and personal integrity of F.G., D.G. and M.A.

129. The applicant attempted to contest the reliability and personal integrity of F.G., D.G. and M.A. He argued that they had cooperated with the police in fabricating the criminal case against him and that the reason for that was his conflict with two chief officers of the Binagadi District Police Office and his resistance to the pressure those officers had put on him to resign. The applicant asked the domestic courts to exclude the testimonies of the above-mentioned witness and attesting witnesses on the basis that they had not been given in good faith and had no value (see paragraph 76 above).

130. To support his argument, the applicant provided verifiable information that F.G., D.G. and M.A. were paid police "agents" and as such helped the police in their work. He provided in particular the alleged code names of F.G. and M.A., their affiliation to particular police stations of the Binagadi District Police Office, F.G.'s alleged dossier number and information that D.G. had participated as an "attesting witness" in a criminal case before the Binagadi District Court presided over by Judge T.A. (see paragraphs 75 and 89 above). Furthermore, to support his argument the applicant drew the courts' attention to M.A.'s own statement that he was an "agent" in the Binagadi District Police Office network, M.A.'s and D.G.'s statements in which they had admitted to participating as witnesses or attesting witnesses in a number of other criminal proceedings, F.G.'s statement that he had been visiting the Binagadi District Police Office regularly and freely, and M.A.'s aggressive and vengeful remark against the applicant (ibid.). Despite the seriousness of the applicant's allegations, the courts ignored or refused to consider this and other evidence in favour of the

applicant's argument. The trial court satisfied itself solely by information received from the OCD that F.G., D.G. and M.A. had not been registered in the list of secret collaborators of the OCD's network. It is not clear why the courts did not try to obtain the relevant records directly from the Binagadi District Police Office or request and examine official records relating to other criminal proceedings in which D.G. and M.A. had participated as attesting witnesses or witnesses.

131. The Court notes that domestic law did not provide for investigating authorities to have a list of individuals who could be invited as attesting witnesses on a regular basis. On the contrary, the Code of Criminal Procedure expressly prohibited the regular participation of a person as an attesting witness (see paragraph 103 above). The fact that D.G. and M.A. had on many occasions participated as attesting witnesses or as witnesses in several different sets of criminal proceedings over an extended period of time, as confirmed by their own statements (see paragraphs 54 and 62 above) and by the evidence submitted by the applicant to the Court (see paragraph 109 above) – evidence about which the Government made no observations – therefore raises serious concerns as to possible links between D.G. and M.A. and the police, as was alleged by the applicant. Considering that any such link could lead to abuse of the procedure of procuring evidence, the domestic courts were expected to be particularly alert and take steps to dissipate such concerns. Furthermore, an attesting witness is supposed to be a neutral observer invited to make sure, among other things, that a particular investigative measure has been conducted in accordance with the relevant procedure (see paragraphs 102-103 above). Therefore, the fact that in the trial court M.A. had made an aggressive and vengeful remark against the applicant demonstrated that M.A.'s behaviour was not consonant with his role as an attesting witness. Furthermore, according to the statements given by F.G., before the operation he had been visiting the police office regularly and freely because he had been selling stationery products (see paragraphs 61 above), and during the operation he had wanted to immediately consume the marijuana he had purchased from the applicant but had not had time to do so because the police officers had entered the room and he had been taken away handcuffed (see paragraphs 50 and 61 above). Those statements were dubious and odd as they suggested that an ordinary person not linked to the police would regularly visit a police office without any restriction, and that someone who had taken an initiative of his or her own free will to expose a drug dealer and agreed to participate as a "buyer" in a police operation would then try to hastily destroy important physical evidence obtained as a result of that operation.

132. In view of the above, the Court considers that in the present case there were grounds indicating that the witness and attesting witnesses in question might not have been reliable or might have lacked personal integrity. In the absence of any proper judicial review in that regard, the weight given

to their testimony therefore raises serious issues as to the fairness of the proceedings.

(iii) The manner in which the domestic authorities dealt with the reliability of the testimonies given by the prosecution witnesses

133. When called to testify at the court hearings, most of the key prosecution witnesses made statements inconsistent with their own pre-trial statements or with the official records drawn up by the police. Thus, there were inconsistencies and contradictions in respect of, among other things:

(i) the amount of money allegedly given to F.G. to use as the "buyer" in the operation (namely whether F.G. had received two or three AZN 10 banknotes) and whether M.A. had been present at that scene;

(ii) the form of the marijuana allegedly sold by the applicant (namely whether it had only been dried marijuana or had also included powder);

(iii) the package or other receptacle in which the marijuana allegedly sold had been found (namely whether the drug had been wrapped in white paper, notebook paper or gold paper, had been in a "Winston" cigarette box or had been rolled up into a cigarette itself);

(iv) the number of places where other packages containing drugs had allegedly been found during the search of the applicant's office (namely whether a package had been found only in the applicant's desk, or packages had been found also on that desk and in the backyard under his office window);

(v) the exact place where the applicant had been when the police officers broke into his office (namely whether he had been near the office window, standing near the door, or sitting at his desk);

(vi) the people who had allegedly witnessed the finding of the two banknotes (namely whether F.G., E.S. and M.B. had been present when the banknotes had allegedly been found);

(vii) F.G.'s actions before he had handed over the marijuana allegedly bought from the applicant to the police officers (namely whether he had produced the drug from his pocket, or been holding it in his hands and attempting to consume it by filling his cigarette with it);

(viii) the applicant's reaction after the police officers had entered his office (namely whether he had confessed to selling the drugs and throwing the banknotes out of his window, or declared that he had given them to F.G. free of charge, or declared that the operation was a set-up to frame him); and

(ix) whether the applicant had been present until the end of the search conducted in his office or had been taken away in a police car before that investigative measure ended.

134. The Court notes that the inconsistencies between the prosecution witnesses' own statements given at various times, as well as the inconsistencies between the statements given by the different prosecution witnesses, gave rise to serious grounds for challenging the reliability and

credibility of those witnesses and the reliability and probative value of their testimony. The defence raised fairly strong and substantiated objections as to the contents of the witness testimony and complained that the trial court had ignored the inconsistencies and contradictions in the prosecution witnesses' statements and disregarded the statements that were favourable for his defence (see paragraphs 77 and 89 above). However, the courts did not address those objections and did not take them into account when relying on the witness statements as a basis for the applicant's conviction.

(iv) The manner in which the domestic authorities dealt with the reliability of the physical evidence

135. The applicant also attempted to challenge before the domestic authorities the reliability of the physical evidence used against him, namely the drugs which the applicant had allegedly sold to F.G. and the two banknotes which he had allegedly received as a payment and then thrown out of his office window. He argued in particular that during the operation F.G. had brought with him the marijuana which he had then handed over to the police officers and that he had never taken any banknotes from F.G. or thrown them out of his window.

136. The Court notes in that connection that before sending F.G. to participate as a "buyer" in the operation the police had not searched F.G.'s person to establish whether he had any drugs on him. The originals of the two banknotes were never examined for fingerprints, although the applicant had submitted a request for such examination during the pre-trial investigation. In the Court's view, the fact that "the banknotes had been picked up from the ground by the participants in the operation and touched by several people" (see paragraph 44 above) could not justify the failure to carry out a fingerprint examination. The Court also notes that the originals of the banknotes were never produced to the defence or to the domestic courts, despite the applicant's request for them to be produced and examined in the court proceedings. Indeed, although the trial court formally granted his request for an order for the production of the originals of the two banknotes (see paragraph 84 above), it failed to take any action to ensure that they were produced before it. Instead, the trial court appears to have settled for the existence of a photocopy of the banknotes in the criminal case file without questioning the failure of the prosecution to adhere to the order or by drawing inference from their lack of cooperation. Neither did the trial court give any reasons for their conduct in this respect. In addition, it appears that the investigator E.M., who was in charge of the case, also did not see the originals of the banknotes (see paragraphs 58 and 71 above). Those facts cast doubt on the reliability of the physical evidence in question.

137. The objections and requests relating to that physical evidence which the applicant had made to the domestic courts were supported by important arguments pertinent to his line of defence (see paragraphs 79-80 above).

Nevertheless, the courts did neither address those objections nor did they provide any adequate or clear reasons for accepting the prosecution's lack of cooperation.

(v) The manner in which the domestic authorities dealt with the reliability of the applicant's own initial partially self-incriminating statements given at the pre-trial stage of the proceedings

138. The Court notes that, during his confrontations with the prosecution witnesses at the pre-trial stage of the proceedings and when he appeared before the trial court, the applicant retracted his initial partially self-incriminating statements and made completely different statements. The applicant argued that those initial statements were false and that he had made them because he had been ill-treated at the OCD and feared being subjected to ill-treatment again.

139. The trial court refused to attach any weight to the applicant's retraction of his initial pre-trial statements, finding that the decision of 20 October 2011 adopted by the prosecutor T.I., by which the applicant's complaint of ill-treatment had been found to be unsubstantiated, was *res judicata* under Article 65.1 of the Code of Criminal Procedure and had in any event not been challenged by the defence (see paragraph 84 above).

140. The Court, however, is not convinced by the trial court's reasoning on this matter.

141. In view of its case law summarised in paragraphs 120-121 above, the Court cannot accept that the prosecutor T.I.'s above-mentioned decision not to open a criminal case precluded the domestic courts from examining the applicant's objection against the use as evidence of his own initial partially self-incriminating statements allegedly given under duress. The mere fact that some form of domestic examination of the applicant's complaint of ill-treatment took place does not necessarily mean that it was effective in establishing the truth. Furthermore, even though in the criminal proceedings against the applicant the domestic courts were not expected to examine the individual criminal responsibility of the perpetrators of the alleged ill-treatment, they (the domestic courts) were under an obligation to conduct a full, independent, and comprehensive examination and assessment of the admissibility and reliability of evidence pertaining to the determination of the applicant's guilt. That obligation stemmed from the principle of presumption of innocence and a defendant's right to challenge any evidence against him or her.

142. The applicant had submitted both to the prosecutor and to the trial court *prima facie* evidence demonstrating that, when he had been transferred from the OCD to the pre-trial detention facility of the Ministry of Justice, he had had several injuries on his body (see paragraphs 82 above). Furthermore, the chairman of the Anti-Torture Committee of Azerbaijan, E.B., was heard as a specialist by the trial court and expressed the opinion that the applicant

had been subjected to ill-treatment (see paragraph 72 above). That evidence and E.B.'s testimony gave credibility to the applicant's allegation that his partially self-incriminating statements were the result of police violence. In the light of that evidence the trial court should have been especially alert in dealing with the applicant's allegations and should have examined the admissibility of the statements in question with a high degree of scrutiny, even if those statements were not decisive in securing the applicant's conviction. The court nevertheless rejected the applicant's allegations on formal grounds and failed to conduct an independent and comprehensive examination of them on their merits. It failed to investigate, among other things, whether the injuries documented in the record of 9 July 2011 had been present on the applicant's body before he was arrested and taken to the OCD.

(vi) The manner in which the courts dealt with the applicant's appeals

143. The Court notes that the higher courts in their turn failed to examine the applicant's complaints about the way the trial court had treated his objections, arguments and requests. Furthermore, the Court of Appeal failed to test the new information provided by the applicant in respect of his allegation that D.G. was an "agent" cooperating with the police in fabricating the criminal case against him, since that court decided to consider the applicant's appeal "without judicial investigation" and without seeking additional evidence (see paragraphs 93 and 104-105 above).

(c) Conclusion

144. In view of the above, the Court finds that despite the consistency and seriousness of the allegations made by the applicant, the domestic courts did not investigate them. It considers that the applicant's conviction for drug dealing was based on evidence of questionable reliability and, since the domestic courts failed to carry out an adequate review of the applicant's objections relating to the reliability and probative value of the prosecution evidence, he was deprived of an effective opportunity to challenge the reliability of the key pieces of evidence against him, to effectively oppose their use in the domestic proceedings and to effectively adduce evidence in his favour. Moreover, the domestic courts failed to provide adequate reasons for refusing to grant the applicant's requests and objections or reply to his specific and pertinent arguments, thereby depriving him of an effective opportunity to challenge them before the higher courts.

145. There has accordingly been a violation of the applicant's right to a fair trial as protected by Article 6 § 1 of the Convention.

146. In view of the above findings, the Court considers that there is no need to examine (i) whether the applicant's right to a fair trial was also breached on account of the fact that the operation had been organised without a court order, and (ii) whether at the pre-trial stage of the criminal proceedings

against him the applicant had been deprived of access to effective legal assistance.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. The applicant claimed 18,120 euros (EUR) in total in respect of pecuniary damage. He argued in that connection that because of his conviction he had lost EUR 8,120 as a reduction of his social benefits for 2011 to 2016, and that he had spent EUR 10,000 to treat illnesses which he had suffered as a result of being deprived of his liberty. In support of his claim the applicant submitted a certificate issued by a polyclinic in 2016 stating that since 2008 he had suffered from paroxysmal tachycardia, hypertonia and thyroid disease. The applicant also claimed EUR 150,000 in respect of non-pecuniary damage.

149. The Government argued that the applicant's claims in respect of pecuniary damage were unsubstantiated as he had failed to submit any relevant supporting evidence. They also argued that the applicant's claim in respect of non-pecuniary damage was excessive. The Government asked the Court to adopt a strict approach in respect of the claims and considered that the sum of 2,000 Azerbaijani manats (AZN) would constitute sufficient reparation in respect of any pecuniary and non-pecuniary damage.

150. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, ruling on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

151. The applicant also claimed EUR 3,743 for the costs and expenses incurred before the domestic courts and the Court. He argued that he had spent EUR 1,733 on legal assistance and EUR 2,010 on postal, banking, notary, communication and translation services. In support of his claim, the applicant submitted two receipts according to which he had paid AZN 820 (at the material time equivalent to approximately EUR 750) to his representative; a written note by a translator, L.K., asserting that for her translation services she had received from the applicant AZN 6 per sheet of translated texts or

AZN 1,476 in total (at the material time equivalent to approximately EUR 850); and receipts according to which the applicant's sister and his representative had paid AZN 212.40 in total (at the material time equivalent to approximately EUR 200) for postal services.

152. The Government submitted that the applicant's claims for costs and expenses were unsubstantiated, in particular because he had failed to submit contracts signed with his lawyers or his translator, and that the alleged costs and expenses had not been itemised. Furthermore, the total number of translated pages was unclear. The Government asked the Court to adopt a strict approach in respect of the claims and considered that AZN 1,500 would constitute sufficient award in respect of any costs and expenses.

153. 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, the Court notes that the applicant failed to submit any documents in support of his claims in respect of the legal assistance provided by his lawyers before the domestic courts, or in respect of banking, notary, and communication services. Furthermore, the text to be translated for the purposes of the present case did not exceed forty pages. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of the applicant's right to fair trial under Article 6 § 1 of the Convention;

3. *Holds* there is no need to examine on the merits the applicant's complaints under Article 6 §§ 1 and 3 (c) of the Convention that the search and seizure operation in his office was organised without a court order and that he was deprived of access to a lawyer at the pre-trial stage of criminal proceedings;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Marko Bošnjak
Registrar	President