



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

FIRST SECTION

CASE OF HAJIYEV v. AZERBAIJAN

(Application no. 5548/03)

JUDGMENT

STRASBOURG

16 November 2006

FINAL

16/02/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hajiye v. Azerbaijan,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 5548/03) 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 Fehmin Ahmedpasha oglu Hajiye v (*Fəhmin Əhmədpaşa oğlu Hacıyev*; “the applicant”), on 21 January 2003.

2. The applicant was represented by Mrs G. Iskenderova, a lawyer practising in Baku. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr C. Asgarov.

3. The applicant alleged, in particular, that he had been deprived of the right of access to court and to have a fair and public hearing of his criminal case under Article 6 § 1 of the Convention. Furthermore, he complained that he had suffered discrimination contrary to Article 14 of the Convention, because the Court of Appeal had examined the appeals of three other persons who had been in a situation similar to his.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 16 June 2005 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1959 and lives in Baku.

8. The applicant was an activist of the National Front, an organisation which played one of the key roles in the country's struggle for independence from the Soviet Union. In 1992, when the National Front came into power in the country, he was appointed to a number of high military posts and in 1993 he became the Commander of the Special Police Force.

9. After the National Front lost political power in 1993, on 24 May 1994 the applicant was arrested and detained on remand. Upon arrest, allegedly, he was not informed of the charges against him and was refused access to a lawyer. On 7 August 1995 the Military Chamber of the Supreme Court, acting as a court of first instance, convicted the applicant for attempted murder (ten years' imprisonment), abuse of authority at wartime (eight years), intentional abuse of authority (four years), misuse of weapons (two years), negligent approach to military service (two years) and humiliation of a subordinate person (one year and six months), and sentenced him to a total of ten years' imprisonment by merging the sentences.

10. On 26 June 1996 the same court, again sitting in first instance, convicted the applicant for “failure to use authority to resist the Armenian occupation of the town of Khojaly and prevent the subsequent mass killing of the civilians fleeing the town”. The court sentenced the applicant to fifteen years' imprisonment, merging his previous ten-year sentence into this new sentence. The imprisonment period was to be calculated from the first day of the applicant's arrest on 24 May 1994. Pursuant to the old criminal procedure law applicable at that time, both Supreme Court judgments were final and not subject to appeal.

11. At the time of Azerbaijan's admission to the Council of Europe, the applicant's name appeared in the lists of “alleged political prisoners” in Azerbaijan submitted to the experts of the Secretary General. Azerbaijan had made a commitment to either release or give a re-trial to all persons identified as “political prisoners” by these experts. However, ultimately, the applicant was not regarded as a political prisoner by the experts of the Secretary General (see *Cases of alleged political prisoners in Armenia and Azerbaijan*, SG/Inf (2001) 34, Addendum I, 24 October 2001, Chapter 2 (III), Case No. 10 (the applicant's name is transliterated as “Fahmin Hadjiyev” in this document)).

12. In 2000 a new Code of Criminal Procedure (hereinafter “CCrP”) was adopted. Before its entry into force on 1 September 2000, on 14 July 2000 Parliament passed the Law *On the Adoption and Entry into Force of the Code of Criminal Procedure of the Republic of Azerbaijan* (hereinafter the

“Transitional Law”), which allowed lodging an appeal under the new CCrP against final judgments delivered in accordance with the old criminal procedure.

13. On 29 January 2002 the applicant lodged an appeal with the Court of Appeal against the Supreme Court's judgments of 7 August 1995 and 26 June 1996. By a letter of 13 February 2002, the Court of Appeal informed the applicant that, in addition to the appellate complaint, he also had to file a petition in order to restore the appeal period.

14. According to the applicant, he filed such a petition on 7 March 2002. Having not received an answer, he appealed again on 7 June 2002 and yet again on 7 October 2002. In reply to these applications, in its identical letters of 24 October 2002 and 27 November 2002 signed by a court clerk (the Head of the Correspondence Department of the Court of Appeal), the Court of Appeal informed the applicant that his case would be examined shortly by the Court of Appeal's Chamber on Military Courts' Cases and that he would be informed of any further developments in due course.

15. However, during the following period of over a year, despite the applicant's continuous inquiries, no examination of the case took place and no information in this regard was given to the applicant.

16. Finally, more than two years after lodging his appeal, by a letter of 31 March 2004 signed by the same court clerk, the applicant was informed that:

“... in accordance with Article 72.2 of the Code of Criminal Procedure currently in force, the Court of Appeal may only examine criminal cases ... based on appeals or protests against first-instance courts' judgments and other decisions which have not entered into force [i.e. have not become final]... For re-consideration of the first-instance judgments of the Supreme Court's Military Chamber of 7 August 1995 and 26 June 1996 you are advised to apply to the Supreme Court.”

17. Although, during the same period, the applicant was actively engaged in correspondence with the Supreme Court with regard to unrelated proceedings concerning the reduction of his sentence, the applicant did not file a formal appeal with the Supreme Court concerning the present case.

18. On 10 May 2004 the applicant was pardoned and released from prison pursuant to a presidential pardon decree.

II. RELEVANT DOMESTIC LAW

19. *Law of 14 July 2000 on the adoption and entry into force of the Code of Criminal Procedure of the Republic of Azerbaijan (the “Transitional Law”)*

Article 7: “Judgments and other final decisions delivered by first-instance courts under the [old] Code of Criminal Procedure ... before the entry into force of this [new] Code, may be reconsidered by an appellate court or the Supreme Court of the

Republic of Azerbaijan in accordance with Articles 383-407, 409-427 or 461-467 of the [new] Code of Criminal Procedure.”

20. Code of Criminal Procedure of the Republic of Azerbaijan of 1 September 2000

Article 72.1 provides that the Court of Appeal of the Republic of Azerbaijan is a court of appellate instance concerning criminal cases and other matters related to criminal prosecution.

Article 72.2 provides that the Court of Appeal of the Republic of Azerbaijan has a competence to examine criminal cases and other matters related to criminal prosecution based on appellate complaints or protests against judgments and other decisions of first-instance courts that have not entered into legal force.

Article 73.1 provides that the Supreme Court of the Republic of Azerbaijan is a court of cassation instance concerning criminal cases and other matters related to criminal prosecution.

Article 73.2 provides that the relevant chambers of the Supreme Court of the Republic of Azerbaijan have a competence to examine criminal cases and other matters related to criminal prosecution based on cassation complaints or protests against judgments and other decisions of the appellate courts or jury courts.

Article 391.1 provides that the appellate court must hold a preliminary hearing of the case within 15 days after the receipt of an appellate complaint. The parties to the case and the state prosecutor have a right to attend this hearing. These persons must be informed in advance of the time and place of the hearing.

Article 391.2 provides that, during the initial hearing, the appellate court must determine, inter alia, whether it has competence to examine the appellate complaint and whether the appellate complaint was submitted in accordance with the relevant procedural requirements.

Article 391.3 provides that, upon the initial hearing, the appellate court may decide, inter alia, to leave the appellate complaint without examination, to forward the appellate complaint to a court having appropriate competence, to reinstate or refuse to reinstate the expired period for filing the appellate complaint, to appoint a judicial hearing for examination of the merits of the appellate complaint, or to refuse to admit the appellate complaint for examination.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

21. The Government, by way of preliminary objection, argued that the application should be rejected for failure to exhaust domestic remedies, because the applicant failed to apply to the Supreme Court and, instead,

only applied to the Court of Appeal which had no competence to deal with his appeal.

22. In its admissibility decision of 16 June 2005, the Court noted that this question was inextricably linked to the merits of the complaint under Article 6 § 1 of the Convention and that it could not be detached from it. Specifically, the Court finds that the question whether the applicant had a right to re-examination of his case and, if so, whether such re-examination should have been carried out by the Court of Appeal or by the Supreme Court is the same in substance as the complaint submitted to the Court. Accordingly, the Court will examine the Government's preliminary objection in the context of the applicant's complaint under Article 6 § 1 and will address that complaint first.

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

23. The applicant submitted that he had been deprived of his right of access to court because the Court of Appeal had failed to examine his appellate complaint. Article 6 § 1 of the Convention provides:

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

A. Arguments of the parties

24. The Government submitted that the Court of Appeal had no competence to reconsider the final judgments of 7 August 1995 and 26 June 1996 in accordance with the new rules of criminal procedure. Instead, the applicant should have filed his appeal with the Supreme Court. In this regard, the Government appeared to endorse the position expressed in the letter of the Court of Appeal's court clerk of 31 March 2004 (see paragraph 16 above).

25. As to the applicant's counter-argument that the Court of Appeal had actually examined the cases of certain other convicted persons who were in a position similar to the applicant's, notably those of Mr I. Gamidov, Mr A. Hummatov (alternatively spelled as “Gumbatov”) and Mr R. Gaziyeu, the Government maintained that the applicant's case was distinguishable from the cases of these convicted persons. Specifically, the Government stressed that all of the latter had been recognised as “political prisoners” by the experts of the Secretary General of the Council of Europe and therefore had been granted a “new trial” following Azerbaijan's commitments undertaken upon its admission to the Council of Europe. On the other hand, the applicant was not ultimately recognised as a “political prisoner” and therefore the Azerbaijani authorities were not under a commitment to give him the same type of “new trial” as the

above-mentioned three persons. Furthermore, the Government also noted that the Court of Appeal had examined the cases of Mr Gamidov, Mr Hummatov and Mr Gaziyeu based on a *protest* by the Prosecutor General of the Republic of Azerbaijan, whereas in the applicant's case no such *protest* had been filed.

26. The applicant noted, at the outset, that the letter of the Court of Appeal's clerk, on which the Government relied, was issued only on 31 March 2004, i.e. after the respondent Government had been informed about the present application on 10 February 2004. The applicant stressed that he had not received any replies rejecting his appeal before that date and that this letter of 31 March 2004 was sent to him in an attempt to "disguise" the Court of Appeal's failure to deal with his appeal.

27. The applicant disagreed with the Government's assertion that he had to apply to the Supreme Court for re-consideration of his case and claimed that this assertion was based on a deliberate misinterpretation of the domestic law. He argued that Article 72.2 of the CCrP, referred to in the letter of the Court of Appeal's clerk dated 31 March 2004, applied only to appeals from first-instance judgments delivered after the CCrP's entry into force on 1 September 2000. Therefore, this provision could not serve as a basis to deny him access to the Court of Appeal for examination of his appeal.

28. The applicant further maintained that Article 7 of the Transitional Law expressly provided for the right to a re-examination "by an appellate court or the Supreme Court" of the final first-instance judgments delivered before the entry into force of the new CCrP on 1 September 2000. The same Law further prescribed that such a re-examination must be carried out in accordance with the provisions of the new CCrP concerning appellate and cassation proceedings. In accordance with the new CCrP, any appeals against first-instance judgments must be filed with the appellate court (in this case, the Court of Appeal) and must be examined on the points of fact and law. The Supreme Court, being a court of cassation, may only examine cassation appeals on points of law against the judgments of appellate courts.

29. Accordingly, the applicant contended that, in accordance with the domestic procedural rules, the examination of his appeal was within the competence of the Court of Appeal. The Supreme Court, in its turn, only had the competence to deal with a further cassation complaint (if such a complaint were to be filed) against the Court of Appeal's judgment delivered after the appellate proceedings.

30. The applicant also submitted that, according to Article 391 of the CCrP, the Court of Appeal was required to institute the appellate proceedings and hold an initial hearing of his criminal case within 15 days from the receipt of his complete appellate complaint. However, despite this requirement and despite his repeated requests, no formal proceedings have been instituted.

31. Finally, in support of his position, the applicant maintained that the Court of Appeal had actually examined the appeals of Mr I. Gamidov, Mr A. Hummatov and Mr R. Gaziyeu, all of whom were in a situation identical to the applicant's. Specifically, they had been similarly convicted by the Supreme Court sitting in first instance before the entry into force of the new CCrP. Their cases, however, had been admitted and examined by the Court of Appeal on points of fact and law based on the right of appeal granted by the Transitional Law, after the entry into force of the new CCrP.

B. The Court's assessment

32. The Court notes that the present case involves a very specific situation stemming from the recent reforms in the Azerbaijani criminal procedure law. In particular, the Court observes that the applicant's original trial was outside the Court's temporal jurisdiction (see the admissibility decision of 16 June 2005) and that, at the time of his conviction, there was no appeal available to him under the old rules of criminal procedure. However, the new CCrP, adopted after the applicant's conviction, introduced a new court system which is currently in effect and which comprises the courts of first, appellate and cassation instance. At the same time, the Transitional Law afforded the applicant the possibility to file an appeal under this new system. The Court considers that the applicant's right to have his case re-examined on appeal under these new rules of criminal procedure was protected by the fundamental guarantees contained in Article 6 of the Convention (see, *mutatis mutandis*, *Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, p. 14, § 25; and *Monnell and Morris v. the United Kingdom*, judgment of 2 March 1987, Series A no. 115, p. 21, § 54).

33. The Court recalls that the right to court, of which the right of access constitutes one aspect, is an element which is inherent in the right stated by Article 6 § 1 of the Convention (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36). This right is not absolute but may be subject to limitations permitted by implication, particularly regarding the conditions of admissibility of an appeal (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, p. 24-25, § 57). Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Khalfaoui v. France*, no. 34791/97, § 35, ECHR 1999-IX; *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, § 65; and *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 41, § 31).

34. The Court observes that the main question disputed by the parties is at which level of jurisdiction the applicant's appeal should have been examined. Specifically, the Transitional Law stated that such an appeal may be examined "by an appellate court or the Supreme Court of the Republic of Azerbaijan in accordance with Articles 383-407, 409-427 or 461-467 of the [new] Code of Criminal Procedure". Arguably, this wording of the Transitional Law is open to different interpretations and does not seem to specify exactly which court – the Court of Appeal or the Supreme Court – had the competence to examine the applicant's appeal.

35. In this connection, the Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This applies in particular to the interpretation by courts of rules of a procedural nature such as the prescribed manner and prescribed time for lodging appeals. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Platakou v. Greece*, no. 38460/97, § 37, ECHR 2001-I).

36. In the present case, however, there was no formal judicial decision in the applicant's case that would interpret the relevant provision of the Transitional Law. The letter of 31 March 2004 signed by a clerk working in the Court of Appeal does not constitute a formal and binding judicial decision of that court. Under the Azerbaijani law, it was not for the court clerk to assess the appeal's prospects of success; it was for the Court of Appeal itself to determine the issue of the appeal's admissibility (see Article 391.2 of the CCrP). In any event, the letter of 31 March 2004 does not even contain any references to the Transitional Law and, therefore, cannot be considered as a source of its interpretation. The Court also cannot but notice that the legal reasoning contained in the letter of 31 March 2004 manifestly contradicts the Transitional Law which specifically granted the right of appeal from first-instance judgments which had already become final before the entry into force of the new CCrP.

37. Furthermore, the Government have not submitted any other publicly available domestic judicial interpretation of the relevant provision of the Transitional Law concerning the domestic courts' competence to hear the applicant's appeal, which would make the applicant aware of the fact that he had possibly made a procedural error in filing his appeal with the wrong judicial organ. It therefore follows that the Government have failed to support their claim that the applicant's appeal was within the competence of the Supreme Court with any legally binding domestic judicial interpretation of the criminal procedure law.

38. In the absence of a ruling by the domestic courts on this subject, the Court will not attempt to substitute its own interpretation of the domestic law for that of the domestic courts. Instead, the Court will proceed by determining whether, at the time of lodging his appellate complaint, the

applicant was afforded sufficient safeguards to prevent a misunderstanding as to the procedures for making use of the available remedy under the Transitional Law (see, *mutatis mutandis*, *F.E. v. France*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3350, § 47; and *Bellet*, cited above, p. 42, § 37).

39. The Court considers that the applicant's understanding of the system must be assessed at the time when he tried to make use of the remedy in question. As mentioned above, the Transitional Law provided for a right to have his case re-examined by "the appellate court or the Supreme Court". This wording of the Transitional Law, in itself, could not reasonably give the applicant a clear understanding that his appeal was within the competence of the Supreme Court as a cassation instance, thus bypassing the appellate instance which was ordinarily available to other convicted persons under the new criminal procedure introduced by the new CCrP.

40. The applicant lodged his full appellate complaint on 7 March 2002. Despite the fact that he re-submitted his appeal several times thereafter, it has neither been examined on the merits nor rejected by a formal court decision due to lack of the Court of Appeal's competence to hear the appeal. Moreover, following the applicant's continuous inquiries, he was twice reassured by letters from the Court of Appeal's clerk of 24 October and 27 November 2002 that his case would be examined shortly. Until 31 March 2004, more than two years after the time of lodging his appeal, the applicant had not been specifically informed by the Court of Appeal of the fact that the appeal was within the competence of the Supreme Court, and not the Court of Appeal. On the contrary, he was led to believe that his case was actually pending examination in the Court of Appeal, albeit with a significant delay.

41. The Court further notes that, during the same period, the cases of three other persons, who appeared to be in a comparable position from a procedural standpoint, were actually examined under the appellate procedure by the Court of Appeal pursuant to the same provision of the Transitional Law. This fact is undisputed by the Government.

42. The Court is not convinced by the Government's argument that these three cases were distinguishable from the applicant's case to any significant degree. Although, unlike the applicant, Messrs Gamidov, Hummatov and Gaziyeu had been recognised as "political prisoners" to whom the Azerbaijani authorities were under the commitment to grant a "new trial", such new trial was carried out in the form of ordinary appellate proceedings in accordance with the procedure prescribed by the Transitional Law and Articles 383-407 of the new CCrP. The domestic law, including the relevant provisions of the Transitional Law and the new CCrP, provides for the same procedure for all appeals and does not differentiate between cases of persons recognised as "political prisoners" and persons who have not been recognised as such.

Moreover, the Government's argument that in those cases the appellate proceedings were instituted based on an initial *protest* by the Chief Prosecutor, and not an appellate complaint by the defendant, is irrelevant and cannot lead the Court to a different conclusion. Article 72.2 of the CCrP specifies that the appellate proceedings may be instituted based either on an appellate complaint (by the defendant) or a *protest* (by the relevant official on behalf of the prosecution). Accordingly, the competence of the Court of Appeal to hear a specific case on appeal does not depend on whose motion the appellate proceedings are instituted, as long as such motion is of the type allowed by law (in the present case, either an appellate complaint or *protest*).

43. In such circumstances, the Court concludes that, given the ambiguity of the Transitional Law and the absence of a clear domestic judicial interpretation of its relevant provisions, as well as the existence of at least three domestic precedents where the re-consideration of cases based on the Transitional Law had been carried out by the Court of Appeal, it was reasonable for the applicant to believe that it was for the Court of Appeal to examine his appellate complaint.

44. Moreover, the Court notes that, according to Articles 391.1 and 391.2 of the CCrP, even if the appeal does not fall under the Court of Appeal's competence or is inadmissible for any other reason (e.g. the expiry of an appeal period), the Court of Appeal must hold a preliminary hearing within 15 days after the receipt of an appellate complaint and determine whether it has competence under the domestic law to examine the appeal. Furthermore, in accordance with Article 391.3 of the CCrP, if the Court of Appeal finds that it has no such competence, it must issue a decision on refusal to admit the appeal for examination and/or refer it to a competent court. Accordingly, even if the Court of Appeal were to find that it had no competence to hear the applicant's appeal on the merits, it was still obliged under the domestic law to hold a preliminary hearing and adopt a decision on the inadmissibility of the appeal within 15 days of receipt of the applicant's appellate complaint.

45. However, for more than two years, the Court of Appeal failed to either deal with the applicant's appeal and institute appellate proceedings or formally reject the appeal due to lack of competence. As noted above, the letter of 31 March 2004 signed by a clerk working in the Court of Appeal does not constitute, under the domestic law, a formal judicial decision of that court.

46. The Court reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 12-13, § 24). At the time of lodging his appeal and during the following

period of at least two years, the applicant was not afforded sufficient safeguards to prevent a misunderstanding of the procedure made available to him under the Transitional Law and was led to believe that his case would be examined by the Court of Appeal. In view of the peculiarities of this case, the Court finds that it was for the Court of Appeal to take steps to ensure that the applicant enjoyed effectively the right to which he was entitled under the Transitional Law. However, the Court of Appeal has failed to do so. The Court also finds that, in such circumstances, the applicant could not be required to apply to the Supreme Court.

47. In the light of the foregoing considerations, the Court concludes that the applicant suffered a restriction in his right of access to a court and, therefore, in his right to a fair trial.

Accordingly, the Court dismisses the Government's preliminary objection and holds on the merits that there has been a violation of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 § 1

48. The applicant complained that, because the Court of Appeal had actually heard the cases of other persons in a similar situation, he had been discriminated against in the exercise of his right of access to a court guaranteed by Article 6 § 1 of the Convention, in breach of Article 14 of the Convention, which provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

49. The Court finds that the present complaint raises issues which are essentially the same as those already examined above in relation to Article 6 § 1 of the Convention. Having regard to its findings in respect of that Article, the Court considers it unnecessary to examine the complaint that the applicant had suffered discrimination contrary to Article 14 of the Convention (see, *mutatis mutandis*, *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, p. 24, § 66; and *Platakou*, cited above, § 51).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 17,000,000 euros (EUR) in respect of non-pecuniary damage, on the ground that he had been unfairly convicted and was not given an opportunity to have the first-instance judgments reconsidered on appeal. He alleged that, after he had been convicted, he was widely perceived in Azerbaijani society as one of the parties responsible for the Khojaly events. Thus, he and his family suffered significant moral damage. Moreover, the fact that his appeal remained unexamined by the Court of Appeal aggravated the moral suffering inflicted upon him.

52. The Government pointed out that the damage claimed by the applicant did not arise directly from the alleged violations which constituted the subject of examination by the Court in the present case. Therefore, the Government noted that the applicant could not claim any compensation for the damage allegedly inflicted by the Supreme Court judgments of 7 August 1995 and 26 June 1996.

53. The Court notes that the applicant's complaint relating to his allegedly unfair conviction by the Supreme Court judgments of 7 August 1995 and 26 June 1996 was declared inadmissible by the Court in its decision of 16 June 2005 due to its incompatibility *ratione temporis* with the provisions of the Convention. Therefore, there is no ground for awarding compensation for any moral damage suffered by the applicant as a result of these judgments.

54. In respect of the violation found in the present judgment, given the fact that the applicant suffered a restriction in his right of access to court, the Court considers that the applicant must have suffered feelings of frustration, uncertainty and anxiety which cannot be compensated solely by the finding of a violation. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,000 in respect of moral damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

55. The applicant claimed EUR 6,400 for costs and expenses, including legal fees, transport costs incurred by the lawyer while visiting the applicant in the Gobustan prison (which is located outside of Baku), translation costs and postal expenses. In support of his claims, the applicant submitted a number of receipts for payments made to his lawyer through the period from 28 January 2003 to 13 February 2004, receipts for postal expenses relating to his correspondence with the Court, and a receipt from a translation company for the translation of the correspondence and documents submitted to the Court. The applicant claimed that he was not able to obtain documentary evidence of all of his costs and expenses, such as transportation and other expenses.

56. The Government argued that the amount claimed was excessive and not fully supported by documentary evidence.

57. According to the Court's established case-law, costs and expenses would not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see *Sunday Times v. the United Kingdom (no. 1)* (Article 50), judgment of 6 November 1980, Series A no. 38,, p. 13, § 23). The Court notes that the documentary evidence produced by the applicant only partially covers the total amount claimed. Specifically, the applicant has submitted the proof of payment of legal fees in the amount of 1,650,000 Azerbaijani manats (AZM) (approximately EUR 290), postal expenses in the amount of AZM 617,155 and 211,37 United States dollars (USD) (approximately EUR 271), and translation costs in the amount of AZM 10,050,000 (approximately EUR 1,175). Thus, a total amount of approximately EUR 2,276 in costs and expenses is supported by the relevant evidence. However, having regard to the applicant's claim that it was not possible to obtain documentary evidence for certain expenses, and ruling on an equitable basis as required by Article 41 of the Convention, the Court awards the sum of EUR 2,500 plus any tax that may be chargeable, less the sum of EUR 850 received in legal aid from the Council of Europe.

C. Default interest

58. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection concerning Article 6 § 1 of the Convention;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that no separate examination is necessary of the applicant's complaint under Article 14 of the Convention, taken together with Article 6 § 1 of the Convention;
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 sums to be converted into New Azerbaijani manats at the rate applicable at the date of settlement:
 - i. EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable; and
 - ii. EUR 2,500 (two thousand five hundred euros) in respect of the costs and expenses, less EUR 850 (eight hundred and fifty euros) granted by way of legal aid, plus any tax that may be chargeable;
 - (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 16 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President