



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

FIRST SECTION

CASE OF MURADOVA v. AZERBAIJAN

(Application no. 22684/05)

JUDGMENT

STRASBOURG

2 April 2009

FINAL

02/07/2009

This judgment may be subject to editorial revision.

In the case of Muradova v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyev,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 22684/05) 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, Ms Mahira Sadraddin qizi Muradova (*Mahirə Sədrəddin qızı Muradova* – “the applicant”), on 7 June 2005.

2. The applicant was represented by Mr I. Ashurov, 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 she had been subjected to an act of police brutality and that the authorities had failed to carry out an adequate investigation into the incident.

4. On 2 October 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Baku.

A. Events of 15 and 16 October 2003

6. On 15 October 2003 presidential elections were held in Azerbaijan. The candidate of the opposition Musavat Party lost the election.

7. On the evening of the election day a group of opposition supporters gathered in front of the Musavat Party's headquarters in the centre of Baku, claiming their candidate's victory in the election. At this time there were some violent altercations between opposition supporters and the security forces.

8. At around 2 p.m. on 16 October a number of opposition supporters started gathering near the State Carpet Museum, in the centre of Baku, to protest the election results. The crowd then started moving towards Azadliq Square, the main square in the city. It was reported that, on their way, some people in the crowd began damaging cars, buildings, benches and other urban constructions. It was also claimed that the organisers of this unauthorised demonstration and certain leaders of the opposition parties were inciting their followers to violence.

9. Police officers who had been deployed at Azadliq Square were attacked by some of the demonstrators. Shortly thereafter large numbers of riot police and military personnel, fully equipped with helmets, shields and truncheons, arrived in the square. The situation quickly escalated into public disorder and violent clashes occurred between the crowd and the police.

10. At around 6 p.m. the demonstration was dispersed. Hundreds of people were arrested during the events of 16 October and in their aftermath.

11. The applicant was at Azadliq Square when the demonstration was being dispersed and suffered a serious injury to her right eye. The parties disagreed as to what exactly happened to the applicant on that day.

1. The applicant's version of the facts

12. According to the applicant, the number of police and military personnel deployed at Azadliq Square far exceeded the number of demonstrators. The police and military forces attacked the demonstrators suddenly, without any demands to disperse peacefully or any other prior warning. They used excessive force and clubbed anyone who happened to be in their way. A number of people were injured and at least one man died as a result of police brutality.

13. As the police and military forces started to gain ground, people panicked as they attempted to run from the square. The applicant also tried to escape, but someone in the crowd pushed her from behind and she fell to the ground. She lifted her head and saw several policemen in helmets standing in front of her. She extended her arm in their direction, asking them to help her stand up. At this moment one of the policemen struck her forcefully in the right eye with a truncheon. The applicant immediately lost

the sight in her right eye. The policeman attempted to hit her again, but she managed to evade the second blow.

14. A number of unknown individuals took her to Pharmacy no. 259, which was located nearby. The pharmacy's employees were trying to provide first aid to a number of other injured people who were already there.

15. At some point a number of soldiers attempted to enter the pharmacy, apparently with the intention of attacking the people inside, but were prevented from doing so by a person named I.G. and a pharmacy employee. A little later an ambulance arrived and took the applicant and four other injured people to an emergency clinic.

2. The Government's version of the facts

16. The Government stated that, during the disorder, more than twenty peaceful civilians were injured and serious damage was inflicted on various public and private property.

17. However, the Government disputed the applicant's version of the incident when she had suffered her injury. With reference to the investigation carried out by the domestic authorities (see sections C. and D. below), they maintained that the applicant's injury was not caused by the police and that the injury was suffered as a result of her falling down on a blunt object.

B. Initial medical treatment received by the applicant

18. On 16 October 2003 the applicant was taken to an emergency clinic. The medical record indicated that she was diagnosed with "haemophthalmia [bleeding into the eyeball] and contusion of the right eye; a bruised wound of the right supraorbital ridge". It was noted that the applicant "suffered the injury during the well-known events which took place in the city on 16 October 2003".

19. After receiving initial treatment, on 17 October the applicant was transferred to the Institute of Eye Diseases, a hospital specialising in ophthalmology. She was admitted with a diagnosis of "severe rupture of the OD [right eye] sclera, ... hyphema [blood in the anterior chamber of the eye], haemophthalmia, stitched injury of the supraorbital ridge". The applicant told the doctors that she had suffered the injury as a result of a blow by a police truncheon.

20. On 17 October 2003 urgent surgery was performed on the applicant. Despite the surgery, she became permanently blind in her right eye.

21. On 4 November 2003 the applicant was discharged from the hospital. She claimed that a few weeks later the sight in her left eye also started to deteriorate rapidly.

C. Criminal investigation

1. Criminal complaint and interrogation of the applicant

22. On 24 February 2004 the applicant filed a criminal complaint with the Chief Prosecutor's Office, asking that the policeman who had hit her with the truncheon be identified and incriminated. On an unspecified date she also lodged a petition asking to be granted the formal status of a "victim of crime" (*zərər çəkmiş şəxs*).

23. By that time the Chief Prosecutor's Office had already instituted criminal proceedings concerning the public disorder which took place on 16 October 2003. It appears that this criminal case concerned the offences against public order allegedly committed by the demonstrators, and did not concern any violations allegedly committed by the police during the events in question. No separate criminal proceedings were instituted on the basis of the applicant's complaint and her letter was admitted to the case file of the above-mentioned criminal case.

24. On 13 and 16 March 2004 the applicant was interrogated by an investigator as a witness (not as a "victim of crime"). According to the applicant's testimony, on 16 October 2003 she went to the seaside park (located across the road from both the State Carpet Museum and Azadliq Square) and sat on a bench to read a newspaper. At around 1.30 p.m. she saw about 200 people in the park, shouting slogans and protesting the election results. She joined this group because she too was discontent with the election. The group headed in the direction of the State Carpet Museum and, from there, to Azadliq Square. About 15-20 young people in the crowd were destroying things on their way, while some also attacked a group of policemen standing near the museum. The applicant and others in the crowd admonished these young people for their actions. When she arrived in Azadliq Square she saw that more people had already gathered there, including some opposition leaders. She also saw that riot police and military personnel were arriving and grouping in one corner of the square. She did not hear the police or the military issue any demands to the crowd to disperse and leave the square. Suddenly the crowd and the police forces clashed. The demonstrators were throwing stones and pieces of wood and metal at the police, while the latter advanced upon the crowd, beating the demonstrators with rubber truncheons. When the police started gaining the upper hand, people started panicking and running away.

25. The applicant continued as follows:

"... I wanted to go home. When I was walking between the trees [in one corner of Azadliq Square] I was pushed from behind by people who were running past me and fell to the ground. ... I asked an approaching policeman, who was dressed in a helmet and black uniform and was holding a truncheon and a shield, to help me stand up. Instead of helping me, the policeman hit me over my right eye with the truncheon. I

held my eye crying, and when I said to him: “What have I done to you that you hit me?”, I saw him raising his arm to hit me again. At this point I felt that some other policemen standing nearby said something to him, and then all of them went away from me. I could not see any rank insignia on their shoulders. I would not be able to recognise the policeman who hit me and the policemen who were near him. It is possible that some of the civilians who were nearby saw [this incident], but I do not know specifically who witnessed it. I stood up by myself and while I was hobbling in the direction of Pharmacy no. 259, an unknown old man took me by the arm and accompanied me to the pharmacy so that I could get medical aid. That man left after we arrived at the pharmacy. The pharmacy was all covered with blood, [and] there were several injured civilians inside. At this point some soldiers approached the pharmacy and started knocking on the window, and a grey-haired old woman who was an employee of the pharmacy [admonished them]. At the same time, when I.G., whom I recognised because he used to be a television journalist, tried to open the door of the pharmacy [from inside], one of the soldiers [who was standing outside] tried to hit him with a truncheon but missed. The reason [I.G. wanted to open the door and go outside] was that he wanted to call an ambulance for the injured... After a while an ambulance took us to a hospital... In the hospital, I received stitches on my wounded eyebrow, and the next day I was transferred to the Institute of Eye Diseases... There I underwent an operation which lasted about 3 hours... However, the surgery did not help and my right eye became completely blind...”

2. First Forensic Report

26. On 21 March 2004 the investigator requested a forensic expert’s opinion on the applicant’s injuries. According to the forensic report of 28 July 2004 (“the First Forensic Report”), issued by an expert of the Forensic Medicine and Pathological Anatomy Department of the Ministry of Health, the forensic examination started on 24 March 2004 and ended on 28 July 2004.

27. The First Forensic Report was eight pages long and mostly consisted of copied extracts from the applicant’s medical records. *Inter alia*, the report contained the following description of the injury:

“The size of the right eyeball has shrunk, and [the eyeball] has sunk into the eye socket. The symmetry of the right eye and the left eye has been disrupted and remains in a deformed state. The circumference of the right eye’s cornea is [diminished] in comparison with the left eye’s cornea. Its anterior spherical shape is deformed. A [scar] is observable on the upper side of the cornea. The round shape of the right eye’s iris is deformed and contains a whitish substance. There is a slanted whitish scar measuring 3x0.5 cm on the right supraorbital ridge.”

28. The report concluded, on the basis of previous medical records and diagnoses, that the applicant had indeed suffered injuries to her right eye, resulting in irreversible deformation of her face, which were not life-threatening but nevertheless qualified as severely harmful to health. It was noted that “[based on the available materials] it cannot be excluded that these injuries ... were caused on 16 October 2003 by a blow (blows) from a narrowly-shaped hard blunt object ... in the circumstances described by the applicant ... or other circumstances”. However, the expert was unable to

reach a definitive conclusion as to the cause of the injury, noting that such a conclusion could be made by a medical board comprised of experts specialised in ophthalmology.

29. In the meantime, prior to the delivery of this forensic report, on 25 May 2004 the applicant wrote a letter to the Chief Prosecutor, complaining, *inter alia*, that, instead of taking a formal procedural decision ordering a forensic examination, the investigator had simply informed her about the request for a forensic examination by a letter. She also complained that the appointed forensic expert had delayed the examination and avoided examining her in person under various pretexts. On 21 July 2004 she wrote another letter to the Chief Prosecutor, reiterating the above complaints. It appears that none of these letters were answered.

30. According to the applicant, she had not seen the First Forensic Report prior to the receipt of the Government's observations in the present proceedings before the Court.

3. *Second Forensic Report*

31. On 13 September 2004 the investigator ordered another forensic examination. The experts were asked, *inter alia*, the following specific questions:

“4. To determine whether the loss by M. Muradova of the vision in her right eye was the direct result of the initial injury or of any errors committed during the subsequent medical treatment.

5. To determine whether the injury sustained by M. Muradova was caused in the circumstances described by her, i.e. as a result of falling down during the incident or as a result of being struck with a truncheon by a policeman.”

32. According to the forensic report of 25 October 2004 (“the Second Forensic Report”), this examination was carried out from 13 September 2004 to 22 October 2004 by a board of four experts of the Forensic Medicine and Pathological Anatomy Department of the Ministry of Health, including one expert specialised in ophthalmology.

33. The Second Forensic Report was seven pages long. The report consisted almost entirely of copied extracts from the First Forensic Report and the applicant's medical records. It was noted that she had received adequate medical treatment both in the emergency clinic and the Institute of Eye Diseases and that the medical personnel had committed no errors.

34. The body of the report did not contain any analysis as to possible causes of the injuries sustained by the applicant.

35. In the conclusion part of the report, the following answers were given to the questions asked (see paragraph 31 above):

“4. The full loss by M. Muradova of the vision in her right eye was caused by the trauma suffered by her.

5. No damage typically attributable to a police truncheon have been discovered on M. Muradova's person."

36. According to the applicant, she had not seen the Second Forensic Report prior to the receipt of the Government's observations in the present proceedings before the Court.

4. Discontinuation of the criminal investigation

37. On 26 November 2004 the investigator issued a decision to discontinue the criminal investigation.

38. According to this decision, in addition to the applicant, a total of eight witnesses had been questioned in connection with the applicant's complaint. All of these witnesses were shown a photo of the applicant and none of them recognised her.

39. Six of the witnesses were policemen who had been present at or near Azadliq Square during the dispersal of the unauthorised demonstration of 16 October 2003. All of them testified that they had not known the applicant, that they themselves had not hit the applicant with a truncheon, and that they had not seen any woman being hit by a policeman during the events of 16 October 2003. They also surmised that the applicant had suffered her injury as a result of her own actions, i.e. falling down while running away from Azadliq Square, or being pushed by people in the crowd.

40. The remaining two witnesses, A.V. and R.G., were employees of Pharmacy no. 259. They were both male. Both of them testified that they had been at work on 16 October 2003, that they had not seen any injured woman brought to the pharmacy on that day, had not known the applicant and had not seen how she had sustained her injury.

41. The decision further stated that none of the police or military personnel present at Azadliq Square during the events of 16 October 2003 had been presented to the applicant for identification, because in her testimony she had stated that she would not be able to recognise the person who had allegedly caused her injury.

42. Further, according to the investigator, the Second Forensic Report "stated that ... [the applicant's injuries] were a result of her falling down and her head striking an outstanding blunt object located on the ground, and that there were no damage on her person typically attributable to a blow from a police truncheon".

43. The investigator concluded that it could not be established that the applicant had been struck by a policeman and determined that the applicant had received the injuries as a result of her own actions. Accordingly, it was found that no crime had been committed (*cinayət hadisəsinin olmaması*) and that the applicant's petition to be recognised as a "victim of crime" should be rejected. For these reasons, the investigator decided to discontinue the investigation into the applicant's allegations.

44. According to the Government, the applicant was sent a copy of this decision by a letter of 26 November 2004. According to the applicant, she was never informed of this decision.

D. Civil action

45. In the meantime, in March 2004 the applicant lodged a civil action with the Sabail District Court against the Ministry of Internal Affairs, claiming monetary compensation for her injury. On 15 March 2004 the Sabail District Court refused to examine the case, noting that compensation claims against the State should indicate the Ministry of Finance as a co-defendant and should be lodged with the Nasimi District Court.

46. On an unspecified date the applicant lodged her civil claim with the Nasimi District Court, indicating the Ministry of Internal Affairs and the Ministry of Finance as co-defendants and claiming compensation for her injury.

47. By a letter of 18 May 2004, the Chief Prosecutor's Office informed the Nasimi District Court that a criminal investigation in respect of the applicant's allegations was in progress.

48. On 7 June 2004 the Nasimi District Court held its first hearing and heard the submissions of the applicant and co-defendants. The applicant gave her account of the incident leading to her injury and reiterated her claim. The counsel for the first defendant, the Ministry of Internal Affairs, submitted that the applicant had filed a criminal complaint which was pending before the investigation authorities. He further argued that the police had been entitled to use force against the crowd during the events of 16 October 2003 because the manifestation had been unauthorised and its participants had been causing public disorder. In any event, he maintained that the police had not inflicted any injuries on the applicant and that her claims were unsubstantiated. The counsel for the Ministry of Finance submitted that he was in accord with the submissions of the first defendant.

49. On 18 June 2004 the Nasimi District Court heard oral testimonies by three witnesses who testified on behalf of the applicant.

50. Mr I.G. (the man whom the applicant mentioned in her testimony, cited in paragraph 25 above) testified as follows (the trial transcript omitted the questions asked by the parties' counsels during cross-interrogation, but contained the record of the witness's answers to them):

"On 16 October 2003 I saw M. Muradova, who was wounded in her eye, in Pharmacy no. 259. At that time, some policemen tried to enter the pharmacy and, when I wanted to open the entrance door, they tried to kick me. I did not see who had hit M. Muradova and cannot say anything in this respect.

[Answers to cross-interrogation by the applicant's counsel:]

- No, I did not see the claimant M. Muradova being hit by a policeman.

- Yes, as M. Muradova was injured, I called an ambulance on that day.
- Yes, when I saw M. Muradova at Azadliq Square, her eye had already been put out and her face was covered with blood.
- Yes, when I opened the door of the pharmacy, [they] wanted to kick me, but I evaded the kick by quickly closing the door.

[Answer to cross-interrogation by the defendant's counsel:]

- No, I did not see the claimant M. Muradova being hit by a policeman.”

51. Ms A.A. testified as follows:

“[People] were gathering at Azadliq Square at around 2 p.m. on 16 October 2003. At that time I was near the Government House [located on Azadliq Square], and I saw the police and special forces attack the people who had gathered at Azadliq Square without any warning and start to beat them with truncheons. I was there on that day and I saw the claimant, whose name I learnt thereafter, falling to the ground as a result of being pushed [in the crowd] and [I saw] police officers in black uniforms, wearing protective helmets on their heads and holding truncheons in their hands. She [the applicant] extended her arm towards those police officers and asked them to help her stand up, but one of the police officers struck her forcefully in her right eye with his truncheon. When the police officer attempted to hit her again, she evaded the blow by moving away her head. Then some civilians took her to Pharmacy no. 259 which was located nearby. She was given some first aid in the pharmacy and thereafter she and other injured people in the pharmacy were taken to hospital by ambulance.

[Answers to cross-interrogation by the applicant's counsel:]

- Yes, I was among those who gathered at Azadliq Square on 16 October 2003.
- Yes, M. Muradova, whom I had not known before, was there on that day.
- Yes, on 16 October 2003 I saw that M. Muradova fell to the ground and that one of the police officers hit her with the truncheon that he was holding.
- Yes, M. Muradova's eye was injured as a result of the blow inflicted by the police officer.
- Yes, she was given medical aid in the 'Green Pharmacy' located nearby and was then taken to a hospital by an ambulance.

[Answer to cross-interrogation by the defendant's counsel:]

- No, I would not be able to recognise the police officer who hit M. Muradova.
- Yes, I had known [G.G.] before, but I saw M. Muradova for the first time at [Azadliq Square].”

52. Ms G.G. testified as follows:

“I had not known the claimant before. I was an observer in Polling Station no. 246 during the presidential election of 15 October 2003. At around 2-3 p.m. on 16 October

2003, near Azadliq Square, I saw M. Muradova fall to the ground and ask some masked police officers with truncheons in their hands not to hit her, but one of the police officers hit M. Muradova with his truncheon and, as a result, her eye was injured. I bought medication for [the applicant] from the 'Green Pharmacy'.

[Answers to cross-interrogation by the applicant's counsel:]

- Yes, on 16 October 2003 I saw M. Muradova, whose name I learnt later, falling to the ground at Azadliq Square.

- Yes, on 16 October 2003 one of the police officers who were at Azadliq Square hit M. Muradova in the eye area with his truncheon.

- No, I had not known M. Muradova before.

- Yes, one man brought M. Muradova, I saw that her eye was bleeding.

[Answer to cross-interrogation by the defendant's counsel:]

- Yes, I was told that the medication necessary for M. Muradova was available at the 'Green Pharmacy', located nearby."

53. On the same day, 18 June 2004, the Nasimi District Court delivered its judgment, dismissing the applicant's claim. Having regard to the medical records, the court noted that the applicant had suffered an injury to her eye. However, it considered that she failed to substantiate her allegation that the injury had been inflicted by a police officer. In particular, the court assessed the witness testimonies as follows:

"During the hearing Ms G.G., heard by the court as a witness, testified that she had not personally known M. Muradova previously. ... At around 2-3 p.m. on 16 October 2003 she saw that M. Muradova fell to the ground and that she asked the masked policemen, holding truncheons in their hands, not to hit her. However, one of the policemen hit M. Muradova with his truncheon. As a result, M. Muradova suffered an injury to her eye. [The witness] bought some medication for M. Muradova from the 'Green Pharmacy'.

Ms A.A., a witness, gave a similar testimony.

Mr I.G., a witness, testified that on 16 October 2003 he saw M. Muradova with an injured eye in Pharmacy no. 259. ... He did not see who had beaten the applicant.

In accordance with Article 77.1 of the Code of Criminal Procedure of the Republic of Azerbaijan, each party must prove any allegations which it makes in support of its claims and objections.

During the hearing, M. Muradova has failed to prove the allegations she made in her judicial claim.

The court finds that the testimonies of witnesses heard during the trial cannot serve as a ground for upholding the applicant's claim.

Having assessed the above, the court concludes that the claim must be rejected as unsubstantiated.”

54. On 17 September 2004 the Court of Appeal upheld the first-instance court’s judgment, noting, without any further elaboration, that the applicant had been unable to prove her allegations.

55. On 2 February 2005 the Supreme Court upheld the lower courts’ judgments.

II. RELEVANT DOMESTIC LAW

A. Use of force

1. *Law on Police of 8 October 1999*

56. Police officers may use special equipment in respect of offenders in the event of, *inter alia*, a mutiny or mass unrest (Article 26.II). “Special equipment” is defined as truncheons, arm-restraining instruments, tear gas, rubber bullets, water cannons and other means (Articles 1). Physical force, special equipment or firearms may be used when absolutely necessary in a manner proportionate to the danger posed. Loss of life caused by such absolutely necessary use of physical force, special equipment or firearms cannot be considered as a violation of the right to life (Article 26.VI). The police authorities must perform an enquiry into every incident involving the use of physical force, special equipment or firearms and issue a relevant opinion concerning its lawfulness (Article 26.VII). Unlawful use of force by a police officer entails the officer’s responsibility under the relevant legislation (Article 26.IX).

57. Police officers may use physical force, special equipment or firearms only in the event of absolute necessity or necessary self-defence, after all other means of coercion have failed to produce the required result, and depending on the gravity of the offence and the personality of the offender (Article 27.I.1). Persons injured as a result of the use of physical force, special equipment or firearms must be provided with necessary medical aid (Article 27.I.5). The police officer must inform the relevant police authority, in writing, about the instances in which he or she used physical force, special equipment or firearms (Article 27.I.7). The relevant prosecutor must also be informed about such use of force within 24 hours (Article 27.I.8).

2. *Law on Status of Internal Troops of 8 February 1994*

58. Military servicemen must issue a prior warning about their intention to use physical force, special equipment, firearms or combat equipment, and allow sufficient time for compliance with their demands prior to resorting to

such use of force. However, exceptions are made in cases where issuance of such prior warning would be untimely or impossible, or where a delay in the use of force would create danger to human health or life or other serious consequences. Military servicemen are required to provide first aid to injured persons and to inform the relevant prosecutor about any cases of injuries or death resulting from the use of force. Use of force by military servicemen in excess of their competence entails their responsibility under the relevant legislation (Article 19).

59. If necessary, the following special equipment may be used in cases of mass unrest: rubber truncheons, tear gas, light- and noise-emitting distracting devices, water cannons, armoured vehicles and service dogs (Article 21).

B. Criminal procedure

60. Under Articles 39.1.1 and 41.1 of the Code of Criminal Procedure of 2000 (“the CCrP”), criminal proceedings may not be instituted and, if instituted, must be discontinued at any stage of the pre-trial proceedings if it is found that no crime has been committed (*cinayət hadisəsi olmadiqda*).

61. If there are sufficient grounds to consider that a person has sustained direct moral, physical or material damage as a result of an act proscribed by criminal law, this person shall be recognised as a “victim of crime” (*zərər çəkmiş şəxs*) (Article 87.1). If there are not sufficient grounds for recognising a person as a “victim of crime” at the time of institution of criminal proceedings, a decision to grant “victim of crime” status shall be taken (either by a preliminary investigator, investigator, prosecutor or court) as soon as the existence of such grounds is established (Article 87.4).

62. A person recognised as a “victim of crime” has, *inter alia*, the following procedural rights: to submit materials to the criminal case file; to request the status of a private prosecutor at any pre-trial stage; to make objections to the actions of the criminal prosecution authority; to lodge petitions; to have access to transcripts and documents in the case file; to be informed about and to obtain copies of the procedural decisions of the criminal prosecution authority (including a decision to discontinue the criminal proceedings); to lodge appeals against procedural actions or decisions, etc. (Article 87.6). In contrast, a person participating in the proceedings as a witness is entitled to have access only to those transcripts and documents which are related to him or her (Article 95.6.8).

63. Parties to criminal proceedings (and other persons involved in such proceedings in cases specified in the CCrP) are entitled to complain about procedural actions or decisions by the criminal prosecution authority. Procedural actions or decisions by the preliminary investigator or the investigator may be appealed to the supervising prosecutor and the procedural actions or decisions of the latter may be appealed to the

hierarchically superior prosecutor (Articles 122.2.1 and 122.2.2). Certain types of procedural actions or decisions (of the preliminary investigator, investigator or supervising prosecutor) stipulated in Article 449.3 of the CCrP may be appealed directly to the supervising court (Article 122.2.3).

64. The following persons may lodge complaints against the procedural actions or decisions of the criminal prosecution authority directly with the supervising court: (1) the accused person (or a suspect) and his or her representative; (2) the aggrieved party (victim of the crime) and his or her representative; and (3) other persons whose rights have been violated by the impugned action or decision (Article 449.2). A decision to discontinue the criminal proceedings may be appealed, *inter alia*, to a supervising court (Article 449.3.5).

65. Articles 264-272 of the CCrP provide for a procedure of carrying out expert examinations. In particular, Article 268.1.4 provides that a person suspected or accused of committing a criminal offence has a right, *inter alia*, to procure an “alternative expert examination” and request that the results of such examination be admitted to the criminal file.

C. Civil procedure

66. Under Article 77.1 of the Code of Civil Procedure of 2000 (“the CCP”), each party in civil proceedings bears the burden of proving the grounds for their respective claims and objections.

67. Under Article 254.1.4 of the CCP, a judge must suspend the civil proceedings if it is impossible to examine the claim prior to the completion of another set of constitutional, civil, criminal or administrative proceedings precluding such examination.

68. Under Article 265.4 of the CCP, if upon examination of a civil claim a court discloses an appearance of criminal elements in the actions of the parties to the case or other persons, it must deliver a special ruling (*xüsusi qərar*) informing a public prosecutor thereof.

III. RELEVANT INTERNATIONAL REPORTS AND DOCUMENTS

A. Basic principles on the use of force adopted by the UN

69. The relevant extracts from the Code of Conduct for Law Enforcement Officials (adopted by the UN General Assembly Resolution 34/169 of 17 November 1979) reads:

Article 3

“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

Article 5

“No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.”

70. The relevant extracts from the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990) read:

“... 2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; ...

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles. ...

... 22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.”

B. Reports by international bodies and human rights NGOs

71. The relevant extracts from *Functioning of democratic institutions in Azerbaijan*, Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), by co-rapporteurs Mr Gross and Mr Martínez Casañ (12 January 2004, Doc. 10030), read:

“D. Post-election events

34. Security forces maintained a heavy presence around Musavat headquarters since early afternoon on polling day. In the evening supporters of the Musavat party gathered in front of the party’s office and this meeting, although not authorized by the authorities, was described as rather peaceful. Shortly after the closing of the polling stations, Musavat supporters announced the victory of the leaders of the party. Some turmoil started and the demonstration was strongly repressed by policemen. Alleging they had to enter the party office to arrest party officials, security forces started to use force against the protesters and violent fights followed.

35. Once the preliminary final results had been announced on the following day, the Musavat party denounced them as unrealistic and falsified and called for a demonstration in the main square of the capital. During the demonstration, the demonstrators stole a police vehicle and charged against the police forces killing a policeman. In the clashes which followed, several persons, both demonstrators and policemen, were seriously wounded. Several other sources indicated that four persons died during the clashes.”

72. The relevant extracts from The Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Report from the Trial Monitoring Project in Azerbaijan 2003-2004 (4 February 2005) read:

“In the immediate aftermath of the elections, demonstrations took place on 15 and 16 October, which resulted in violent clashes between security forces and demonstrators in Baku.

On the evening of 15 October in front of the Musavat Party Headquarters, members of the OSCE/ODIHR Election Observation Mission witnessed police attacking peaceful pro-opposition supporters. On 16 October, several thousand demonstrators and pro-opposition supporters gathered in Azadliq Square in the centre of Baku to protest what they considered to have been a stolen election.

On their way to the square demonstrators were witnessed vandalizing buildings and vehicles, and attacking police forces with metal bars and stones. At the square, demonstrators were rapidly surrounded by police and security forces, which used overwhelming force to disperse the crowd. Security forces were witnessed beating demonstrators with truncheons after they had been detained and no longer posed any danger or as they were fleeing the area. Video tape recordings provide evidence of the scale of excessive force and brutality used by government forces to overwhelm the demonstrators.

The violence was followed by a wave of detentions. According to officials, the detainees were persons involved in the violent activities or responsible for organizing the violence. ... The Minister of Interior reported that over 600 persons were detained following the violent clashes. ...

The majority of the people detained in connection with the elections were later released without charge. In total, 129 persons were charged with criminal offences in connection with the post-election clashes, of whom 125 had been brought to trial at the time this report was prepared. ...

At the time of the writing of this report, the OSCE/ODIHR was unaware of any cases of charges having been brought against police officers or other officials for brutality or excessive use of force against demonstrators.”

73. The relevant extract from the 2003 Report of the International Helsinki Federation for Human Rights reads:

“On the evening of 15 October and the following day, clashes between the police (and the military) and protesters grew into a massively violent confrontation as the opposition protested the flawed elections. The police and the military surrounded the Azadliq (Liberty) Square using tear gas, rubber bullets, police dogs and truncheons on protesters. They brutally beat protesters, even after they had fallen to the ground, injuring scores of people, as well as members of the press. Many police officers were also injured. At the time of this writing the number of casualties was not clear: depending on sources, two to four deaths were reported, along with dozens of injuries, including a five-year old child. Azerbaijani authorities maintained that the mass unrest was instigated by the opposition leaders in order to destabilize Azerbaijan, but according to numerous accounts, the police actions were unprovoked.”

74. The relevant extract from the 2004 Report of the International Helsinki Federation for Human Rights reads:

“On 16 October, opposition activists tried to conduct an unapproved meeting at Azadliq, the central plaza in Baku. They were beaten by the police. One of the activists, 52-year old Hamidaga Zakhidov, was beaten to death by police, while hundreds of others were injured. The protesters resisted by throwing stones and injuring dozens of policemen. In the ensuing criminal investigation, police cruelty was not investigated at all. Moreover, in a joint statement by the Ministry of Internal Affairs and the Prosecutor’s Office, the opposition was accused for being responsible for the death of a protester.”

75. The relevant extract from the 2003 Country Report on Human Rights and Practices of the US Department of State, released by the Bureau of Democracy, Human Rights, and Labor on 25 February 2004, reads:

“On October 16, a large crowd gathered for an unsanctioned demonstration in downtown Baku that turned violent. Protestors marched from Musavat headquarters to Azadliq Square and along the way beat dozens of security officers, destroyed security forces’ vehicles, and damaged government buildings. As several thousand security forces surrounded the square, a group of protestors attacked the security forces, who stormed the demonstrators with tear gas and truncheons, while unknown demonstrators drove a stolen military truck into police lines. Security forces responded with excessive force, beating many demonstrators, sometimes to the point of unconsciousness and even after they were trying to leave the area or were detained, killing one and reportedly injuring at least 300 persons.”

76. The relevant extracts from the Human Rights Watch press release of 17 October 2003 (*Azerbaijan: Post-Election Clashes Turn Deadly*) read:

“Thousands of opposition protesters took to the streets of Baku, the capital, at 2:00 p.m. yesterday. The demonstration quickly grew violent, in part because once the protesters began to congregate, police and military forces immediately surrounded them. The protesters drove away members of the security forces there and marched to Baku’s Azadliq (Freedom) Square. During their march, protesters severely beat some police officers and soldiers, who remain hospitalized. The protesters also destroyed a number of police and military vehicles, and damaged government buildings along the way.

Soon after the opposition protesters arrived at Azadliq Square, several thousand riot police and military troops surrounded the entire plaza. Riot police and military stormed the opposition protest, using tear gas, rubber bullets, police dogs and truncheons. From the roof of a nearby building, a Human Rights Watch researcher saw police and military troops chase down protesters, surround them and viciously beat them. Many of the protesters continued to be beaten after they had fallen to the ground. Human Rights Watch observed a number of civilian pro-governmental supporters participating in the beatings with the security forces.

Police beat to death at least one person, Hamidagha Zakhidov, 52, whose body Human Rights Watch viewed after the protests. His body was completely black and blue, and his head smashed and bloody...

So far, an estimated 300 persons have sustained serious injuries during the clashes, according to local hospital officials and other sources. Many of the wounded were

unable to walk and had to be carried away from the square. Human Rights Watch has conducted interviews with more than a dozen of the wounded, all of who describe being surrounded by groups of riot police and military troops who beat them severely, leaving many unconscious. ... Also among the injured are several dozen police and army personnel.”

77. The relevant extract from the Human Rights Watch World Report 2005 (Events of 2004, Country Summary: Azerbaijan) reads:

“Post-Election Trials

Over one hundred opposition party members and supporters were tried on charges relating to the post-election violence. Only four were released on bail, the rest remained in pre-trial detention for up to six months. Azerbaijani courts convicted all of the defendants, sentencing forty-six people to custodial sentences ranging from two to six years. The remainder were released on three- to five-year suspended prison sentences. On October 22, the Court of Grave Crimes sentenced seven opposition leaders to between two-and-a-half and five years in prison for their role in the post-election violence.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

78. The applicant complained that she had been subjected to an act of police brutality which had caused her serious physical and mental suffering and that the domestic authorities, including the investigative authorities and courts, had failed to carry out an effective investigation into the incident capable of identifying and punishing the police officer responsible, despite the fact that her allegations had been clearly corroborated by the testimony of several eyewitnesses. The substance of this complaint falls to be examined under Article 3 of the Convention, which provides:

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

A. Admissibility

1. The parties' submissions

79. The Government submitted that the applicant had not exhausted all available domestic remedies.

80. Firstly, the Government argued that the applicant had failed to submit a constitutional complaint against the Supreme Court's final decision of 2 February 2005.

81. Secondly, the Government noted that the applicant had not appealed against the investigator's decision of 26 November 2004 in accordance with the procedure established by Articles 122 and 449 of the CCrP. The Government maintained that the applicant had been duly informed about this decision and, in support of this assertion, produced a copy of the letter signed by the investigator, addressed to the applicant and dated 26 November 2004.

82. The applicant submitted that a complaint to the Constitutional Court was an extraordinary remedy which she was not required to exhaust prior to applying to Strasbourg.

83. The applicant further submitted that she had never been informed about the investigator's decision of 26 November 2004. She claimed that she became aware of the existence of this decision only when the Government's observations in the present case had been forwarded to her. Therefore, she could not have been expected to appeal against it.

2. *The Court's assessment*

84. The Court reiterates that the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available both in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

85. Moreover, the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. This rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed, it is essential to have regard not only to the existence of formal remedies in the legal system of the State concerned, but also to the general legal and political context in which they operate, as well as the particular circumstances of the individual case. This means, *inter alia*, that the Court must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust available domestic remedies (see *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006, and

Hummatov v. Azerbaijan, nos. 9852/03 and 13413/04, § 91, 29 November 2007).

86. As regards the applicant's failure to lodge a complaint with the Constitutional Court, the Court reiterates its previous finding to the effect that lodging such a complaint was not one of the remedies to be exhausted prior to lodging an application with the Court. The Constitutional Court lacked adequate accessibility because, in order to exercise a right of individual petition before the Constitutional Court, individuals were required on a domestic level to have had recourse to another remedy (additional cassation procedure before the Plenum of the Supreme Court) which was ineffective within the meaning of Article 35 § 1 of the Convention (see *Ismayilov v. Azerbaijan*, no. 4439/04, §§ 39-40, 17 January 2008). The Court finds no reason to depart from that finding in the present case and, therefore, rejects this part of the Government's objection.

87. As to the applicant's alleged failure to challenge the investigator's decision on discontinuation of the criminal investigation under the procedure provided by Articles 122 and 449 of the CCrP, the Court considers that this part of the Government's objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the complaint. Thus, it considers that these issues should be joined to the merits and fall to be examined below under the substantive provision of the Convention.

88. The Court further notes that this complaint is not otherwise manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

89. The Government did not contest that the applicant had suffered an injury, but maintained that she had not been subjected to ill-treatment. The Government concurred with the findings of the domestic investigation, namely that it could not be established that the applicant suffered her injury as a result of actions by the police.

90. The Government argued that the applicant was unable to substantiate her allegations. In particular, she was unable to identify the police officer who had allegedly hit her. When interrogated by the investigator in connection with her criminal complaint, she noted that she did not know whether there were any people who had witnessed the incident.

91. Subsequently, however, upon examination of her civil claim by the domestic courts, she was "suddenly" able to present two eyewitnesses (A.A. and G.G.) who had allegedly seen the entire incident. According to the

Government, there were inconsistencies between the testimonies of A.A. and G.G., and between those testimonies and the applicant's version of events. In particular, the applicant's and the two witnesses' respective testimonies differed as to what had happened after the police officer had allegedly hit the applicant for the first time and as to how the applicant was accompanied to the pharmacy. While, according to some testimonies, the applicant evaded the second blow herself, according to others the police officer was allegedly told by other police officers to abstain from hitting her. Also, the testimonies differed as to whether the applicant went to the pharmacy accompanied by "an old man" or accompanied by a group of people including A.A. or G.G. The Government therefore maintained that the witness testimonies in favour of the applicant were unreliable, and such was also the conclusion of the domestic civil courts who were "better placed in evaluation of evidence". The Government also noted that, in accordance with Article 77.1 of the CCP, the burden rested on the applicant to prove the grounds of her civil claim and that she had failed to do so.

92. The Government further submitted that an effective criminal investigation had been carried out at the domestic level and that the investigator of the Chief Prosecutor's Office had taken all necessary steps to investigate the applicant's allegations. The investigator questioned "possible witnesses to the act", including police officers who had been "on duty" at Azadliq Square on 16 October 2003 and employees of the pharmacy where the applicant had been allegedly taken immediately after the incident. All these witnesses had testified that they had not seen the applicant.

93. Moreover, the investigator ordered two forensic examinations of the applicant, of which she had been duly informed and which she had personally attended. The forensic experts had concluded that the injuries to the applicant's face could not have been inflicted by a truncheon. It was open to the applicant to challenge the conclusions of the State forensic experts by requesting an "alternative expert examination" in accordance with Article 268.1.4 of CCrP, which she had not done.

94. The Government concluded that the investigation had been correctly discontinued because it was not established that there had been a criminal act. For the same reasons, the applicant had not been recognised as a "victim of crime" during the investigation.

95. The applicant submitted that she had been subjected to an act of police brutality which had been completely unprovoked by her. The clubbing she received amounted to inhuman and degrading treatment under Article 3 of the Convention. She further submitted that the domestic authorities failed to proceed with a prompt, comprehensive and effective official investigation capable of leading to the identification and punishment of the police officers responsible.

96. The applicant submitted statements by three witnesses (A.A., G.G. and I.G.) in which the latter essentially repeated their testimonies given in

the domestic proceedings, which corroborated the applicant's version of the incident (see paragraphs 50-52 above). The applicant denied that there had been any contradictions between the testimonies of these witnesses. On the other hand, the investigation authorities had failed to question the relevant witnesses and did not make a genuine attempt to identify the police officer who had ill-treated her. Furthermore, the applicant denied ever seeing the two forensic reports produced by the Government prior to the proceedings in the Court. She maintained that she had been completely prevented from effectively participating in the investigation and, despite repeated attempts to meet the investigator in person after the initial interrogation, had not been allowed to do so. As noted above, she also insisted that, prior to the proceedings before the Court, she had never been informed about the existence of the decision of 26 November 2004 on discontinuation of the criminal investigation and questioned the authenticity of the copy of this decision submitted by the Government to the Court.

2. The Court's assessment

(a) General principles

(i) As to the substantive limb of Article 3

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

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

feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudla*, cited above, § 92).

99. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nevertheless, where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar v. Turkey*, no. 25657/94, §§ 283-84, ECHR 2001-VII (extracts)).

(ii) *As to the procedural limb of Article 3*

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

101. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

(b) Application of these principles in the present case

102. The Court notes that the applicant suffered serious injuries to her right eye and right supraorbital ridge on 16 October 2003. The materials available in the file are sufficient to establish that the applicant was at

Azadliq Square on that day at the time when the unauthorised demonstration took place and when it deteriorated into a riot, leading to a clash between the law-enforcement authorities and the protesters. This finding is supported, in particular, by the applicant's statements, her medical records of 16 October 2003 and witness testimonies (see paragraph 108 below), and is undisputed by the Government and domestic authorities, who never expressly cast doubt on the fact of the applicant's presence at Azadliq Square during the events of 16 October 2003.

103. Moreover, it is not disputed in the present case that the authorities resorted to the use of force, by using truncheons, tear gas and other means in order to disperse the protesters and quell the disorder. It is likewise undisputed that a number of protesters and law-enforcement officers were injured in the course of these events. However, in so far as the applicant is concerned, the Government disputes that her injury resulted from such use of force.

104. It is therefore necessary to determine whether the authorities are responsible for the applicant's injuries and, if so, whether this amounted to ill-treatment under Article 3 of the Convention. The Court will first have regard to the standard of proof applicable in the present case.

(i) Distribution of burden of proof

105. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing this evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161).

106. The Court observes that the applicant was not detained during or after the events of 16 October 2003. As such, the situation in the present case differs from those cases where injuries are sustained while in detention or otherwise under the control of the police, in which cases the burden of proof clearly rests on the authorities to provide a satisfactory and convincing explanation as to the cause of the injuries (see, among many authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; *Pruneanu v. Moldova*, no. 6888/03, § 44, 16 January 2007; and *Mammadov v. Azerbaijan*, no. 34445/04, § 60, 11 January 2007).

107. Furthermore, the present case should also be distinguished from those cases where it was not disputed that applicants' injuries resulted from the use of force by agents of the State in the course of a specific security operation involving either persons resisting arrest, disobedient prison inmates or unauthorised demonstrators. In those cases, the Court has held that the burden rested on the Government to demonstrate solely that such

use of force was not excessive (see, for example, *Zelilof v. Greece*, no. 17060/03, §§ 46-47, 24 May 2007; *Kurnaz and Others v. Turkey*, no. 36672/97, §§ 53-55, 24 July 2007; *Vladimir Romanov v. Russia*, no. 41461/02, §§ 60-61, 24 July 2008; *Saya and Others v. Turkey*, no. 4327/02, § 20, 7 October 2008; *Balçık and Others v. Turkey*, no. 25/02, §§ 30-31, 29 November 2007; and *Matko v. Slovenia*, no. 43393/98, §§ 101-104, 2 November 2006). In the present case, the very fact that the injuries resulted from the use of force by the police is in dispute (compare with *Stoica v. Romania*, no. 42722/02, §§ 48 and 66, 4 March 2008).

108. However, the Court considers that the applicant has been able to produce sufficiently strong evidence supporting her version of the incident and giving rise to a *prima facie* case of ill-treatment at the hands of the police. In particular, her medical records of 16 and 17 October 2003 confirm the allegation that she sustained serious injuries on 16 October 2003 in the course of the disorder at Azadliq Square. She also produced two witness statements which directly corroborated her allegation that the injury had resulted from a blow by a police truncheon (see paragraphs 51-52 above), and another statement which indirectly corroborated her allegation and was consistent with her version of the incident (see paragraph 50 above). The Court is not convinced by the Government's argument that the statements of A.A. and G.G. were inconsistent with each other and with the applicant's allegations. Specifically, both of these witnesses clearly and repeatedly stated that they had seen a police officer hit the applicant in her face with a truncheon. In this respect, the Court does not see any contradiction or inconsistency with the main thrust of the applicant's allegation – namely, that the injury was inflicted by the police. Even if there are some variations in the witnesses' recollection of the part of the events that followed the alleged blow by the truncheon, they are not mutually exclusive and are so insignificant that, on their own, they are incapable of rendering these testimonies unreliable and should not affect the overall assessment of evidence. Taking into account the fact that these witnesses testified before the domestic authorities several months after the incident, the Court notes that the passage of time inevitably takes a toll on a witness's capacity to recall events with great detail and accuracy (compare with *İpek v. Turkey*, no. 25760/94, § 116, ECHR 2004-II (extracts)). In any event, at no time have these witnesses' independence and credibility been questioned at the domestic level and it has never been established that any of these witnesses committed perjury in court (see also paragraph 122 below). In such circumstances, the Court finds no reasons why their testimonies should not have been accepted.

109. Moreover, in the particular circumstances of the present case, special importance should be attached to the fact that the injury was sustained while the applicant was within the area in which the law-enforcement authorities were conducting an operation during which

they resorted to the use of force for the purpose of quelling mass unrest. In this connection, the Court notes that Article 3 does not prohibit the use of force in certain well-defined circumstances. However, such force may be used only if indispensable and must not be excessive (see *Kurnaz and Others*, cited above, § 52, and *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). Recourse to physical force which has not been made strictly necessary by a person's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.

110. Having regard to the materials in the case file and publicly available sources describing the events of 16 October 2003 (see paragraphs 71-77 above), the Court notes, first of all, that the information available is rather scant and lacks great detail, as a result of which it is difficult to reconstruct an exact and detailed sequence of events. However, certain facts can be discerned to the extent sufficient for the purposes of the analysis in the present case. In particular, it appears that a number of protesters had indeed vandalised public and private property and attacked those police units which had already been deployed in the area. The Court accepts that such behaviour may well quickly degenerate into a riot, necessitating an intervention by the security forces. Nevertheless, it also appears that a number of protesters were uninvolved in the hostilities and did not resist the authorities or engage in other acts of violence. The latter observation is supported by the reports that, out of the estimated thousands of protesters, around 600 were arrested and ultimately around 125 were brought to trial on criminal charges in connection with the violence (see paragraphs 72 and 76-77 above).

111. It also appears that the authorities brought in reinforcements and allowed the protesters to gather at Azadliq Square before surrounding them and commencing the operation to quell the disorder. Thus, when the authorities resorted to the use of force, their operation was essentially confined to this limited area of the city. The Court also observes that the operation involved not only riot police, but also military forces. All of them were fully equipped with helmets, shields, truncheons and other special equipment. The authorities were able to deploy them in large numbers (several thousands, according to various reports) within a fairly short period of time. The Court considers that the authorities' ability to intervene in such a manner required a certain degree of preparation. Moreover, having regard to the fact that some protests and skirmishes between the protesters and the police had already begun on the night before the events of 16 October, the authorities must have had some prior warning of impending difficulties and a possible escalation of violence. It therefore does not appear that the authorities were called upon to react in a completely random and unprepared manner (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII) and should have been able to anticipate any developments and

take at least some measures to evaluate and avoid unnecessary risks and to refrain from applying force in an indiscriminate and disorderly manner.

112. Against this background, and given that the applicant suffered a particularly serious injury while she was within the area where force was used by the authorities, and emphasising in particular that she has supported her allegations with sufficiently strong and concordant evidence, the Court considers that the applicant has made a *prima facie* case of ill-treatment by the police which called for an effective official investigation into her allegations. The burden therefore rests on the Government to provide a satisfactory and convincing explanation as to the cause of the applicant's injuries.

(ii) *Establishment of the cause of the applicant's injuries and assessment of the severity of ill-treatment*

113. The Court reiterates that when the authorities resort to the use of force, there should exist some form of independent monitoring of the action taken in order to ensure accountability for the force used, including the issue of its proportionality (see, *mutatis mutandis*, *Satık and Others v. Turkey*, no. 31866/96, § 58, 10 October 2000). In ensuring such accountability, it must be verified whether the operation was properly regulated and organised in such a way as to minimise to the greatest extent possible any risk of serious bodily harm to individuals (see *Kurnaz and Others*, cited above, § 56).

114. Judging by the sheer numbers of people involved and injured, it is undeniable that on 16 October 2003 there occurred a particularly large-scale confrontation between a large number of protesters and law-enforcement officers, which involved a high degree of violence on both sides. Therefore, the situation called for a particularly thorough scrutiny of the actions of not only those protesters who acted violently, but also of the law-enforcement authorities. However, in their observations the Government merely stated that force had to be used against the protesters, without providing any explanation or documentation which could shed light on the exact nature and scale of the force used. They have not submitted any evidence to show that any monitoring of the authorities' actions was ever carried out at the domestic level. They have not produced any official reports on the incident, setting out in detail the sequence of events, assessing the necessity and proportionality of the force used, and analysing the possibility (or impossibility) of utilising less violent or non-violent means. While a criminal investigation was formally instituted to investigate the violent actions of the protesters, it is unclear from the materials submitted by the parties whether any such formal inquiry was made into the actions of the law-enforcement authorities. In connection with the present case, the Court considers that such an inquiry would have enhanced the effectiveness of the

investigation into the applicant's individual complaint and enabled the investigation authorities to view her allegations in a proper context.

115. The Court further observes that the Government's explanation as to the cause of the applicant's injuries was essentially limited to reiterating the findings of the domestic authorities. In particular, they argued that the applicant's allegations had been effectively discredited in the course of the domestic investigation.

116. With regard to the cause of the applicant's injury, the Government argued that the domestic forensic experts had concluded that this injury had not been caused by a police truncheon. The Court notes that the parties were in disagreement as to whether the applicant had actually been examined in person by the forensic experts appointed by the authorities. While the documents available in the case file indicate that the applicant was at least informed of the investigator's decision to request the first forensic examination, it is not clear from the copies of both the First and Second Forensic Reports whether, in both cases, the experts had actually examined the applicant in person or whether they simply relied on the applicant's earlier medical records. However, the determination of this issue is not necessary in the light of the following.

117. The Court reiterates that the fact of the applicant's injury and its seriousness are confirmed by the applicant's medical records of 16 and 17 October 2003. The only ostensible purpose of requesting subsequent forensic examinations was to obtain an expert opinion as to whether the injury could have been caused by a police truncheon. The Court observes that the First Forensic Report was issued more than nine months, and the Second Forensic Report more than one year, after the injury had been suffered, and five months and eight months, respectively, after the applicant had lodged her criminal complaint. No explanation was offered to justify these delays. The Court reiterates, in this respect, that a failure to secure the forensic evidence in a timely manner is one of the important factors in assessing the overall effectiveness of an investigation into allegations of ill-treatment (see *Mammadov*, cited above, § 74).

118. The Court further notes that the First Forensic Report did not exclude the possibility that the injury had been caused by a "narrowly-shaped hard blunt object ... in the circumstances described by the applicant". Noting that a police truncheon quite obviously fits the definition of a "narrowly-shaped hard blunt object", the Court interprets the above conclusion as implying that the injury could possibly have been caused by such a truncheon. However, the expert was reportedly unable to give a more definitive assessment as to the cause of the injury, so another forensic examination was requested.

119. According to the Government and the domestic investigation authorities, the Second Forensic Report definitively excluded the possibility of the injury being caused by a police truncheon. The Court, however, does

not share this view. It observes that the Second Forensic Report provided terse and, at the same time, vague and imprecise answers to the specific questions asked. In particular, as to the cause of injury, the report stated that it was due to a “trauma suffered by her”, without explaining the cause of such trauma. Furthermore, in reply to the specific question as to whether the specific injury to her eye could have been caused by a police truncheon, it offered the rather vague answer that “no damage typically attributable to a police truncheon [had] been discovered on [the applicant’s] person”. However, the report offered no substantiation for such an answer and left it unsupported by any analysis or argumentation based on forensic science. In the Court’s opinion, such lack of substantiation defeated the very purpose of the forensic examination and rendered its conclusions arbitrary. For these reasons, the Court considers that the Second Forensic Report cannot be regarded as reliable evidence providing a convincing explanation for the applicant’s injuries.

120. Moreover, as to the Government’s argument that the applicant could have requested an “alternative expert examination”, the Court observes that Article 268.1.4 of the CCrP granted the right to make such a request only to suspected and accused persons in criminal proceedings (see paragraph 65 above). In the present case, the applicant was neither a suspect nor an accused, so the argument appears to be misplaced. The Court also notes that, in support of this argument, the Government has not submitted any evidence or documents showing the practical availability at the relevant time of the necessary facilities for such “alternative expert examination” and, more importantly, any examples where conclusions of such an examination had been admitted by the prosecution authorities to the criminal file as valid forensic evidence. In any event, the Court reiterates that, in cases of alleged ill-treatment, it is the responsibility of the investigation authorities, and not the applicant, to secure independent and reliable forensic evidence (see paragraph 101 above).

121. The Court stresses again that, according to the available medical records, the applicant suffered extensive damage to the right eye and the right supraorbital ridge, caused by a hard blunt object. It cannot be argued that such injuries could not have been caused by a truncheon unless an expert is able to present convincing arguments to the contrary, substantiated by his or her specific knowledge of the forensic science. As mentioned above, this has not been done in the present case. The Court therefore considers that the injuries sustained by the applicant could well have been caused by a truncheon.

122. Furthermore, the applicant was able to present two witnesses in the domestic civil proceedings, who made statements directly supporting her allegations. As noted above, the Court does not find any major discrepancies in those testimonies (see paragraph 108 above). The Court notes further that none of the witnesses testifying in the applicant’s favour

had ever been accused of committing perjury in court. Their statements had not been proven to be false or misleading and their personal integrity and credibility had not been called into question in the domestic proceedings. Bearing this in mind, and having further regard to the domestic court's assessment of this evidence, the Court is astonished by the lack of legal reasoning in the domestic court's judgment and its inability to provide any assessment of these statements in the present case. The civil court dismissed these statements as groundless in a single sentence, without offering a hint of analysis or any other insight as to why it considered that they could not "serve as a ground" for upholding the applicant's claim (see paragraph 53 above). The Government's argument that a different standard of proof applies in civil cases is an irrelevant explanation for the lack of effort by the civil court in the present case to assess the factual circumstances of the case and to provide legal reasoning for its decisions.

123. As to the Government's argument that the applicant had failed to inform the criminal investigation authorities about the existence of these witnesses (in particular, A.A. and G.G.), the Court notes that the examination of the civil claim took place about three months after the applicant's interrogation by the investigator on 16 March 2004, during which period the applicant might have become aware of the existence of this evidence. Moreover, following the initial interrogation by the investigator, the applicant was allegedly unable to participate effectively in the criminal investigation and to submit additional evidence (see also paragraphs 130-31 below). The Court also notes that, as in cases under Article 2 of the Convention, whatever mode or form of investigation is employed at the domestic level in respect of Article 3 complaints, once the matter has come to the attention of the authorities, they must act of their own motion and cannot leave it to the applicant to take responsibility for the conduct of investigatory procedure (see, *mutatis mutatis*, *Gongadze v. Ukraine*, no. 34056/02, § 175, ECHR 2005-XI). In the particular circumstances of the present case, the Court considers that, once the applicant was able to produce additional evidence during the civil proceedings, she brought this matter to the attention of the State. The Court observes that, as admitted by the Government, Article 254.1.4 of the CCP required that a civil court must suspend the proceedings if it was impossible to examine the claim prior to completion of the criminal proceedings precluding such examination. Nevertheless, in the present case, the court in fact proceeded with the examination of the claim and delivered a judgment on the merits. Under Article 265.4 of the CCP, if on examination of a civil claim a court disclosed an appearance of criminal elements in the actions of the parties to the case or other persons, it was to deliver a special ruling (*xüsusi qərar*) informing a public prosecutor thereof. Yet, although the applicant's civil claim clearly implied that she had been a victim of a criminal offence and whereas the civil court was actually informed that a criminal investigation

was pending in connection with the same incident, it failed to comply with its obligations under Articles 254.1.4 and 265.4 of the CCP. No explanation was offered by the Government as to why the civil court had not issued a special ruling in the present case, by means of which the investigation authorities could have been informed, *inter alia*, about the existence of new witnesses in the case.

124. Moreover, the Court observes that, by a letter of 18 May 2004, the Chief Prosecutor's Office informed the Nasimi District Court of the fact that criminal proceedings were pending in respect of the same allegations as the applicant had made in the civil proceedings. Accordingly, both the civil court and the criminal investigation authorities were informed that each of them was conducting separate proceedings in respect of the same allegations of ill-treatment, yet each failed to inquire about the outcome of the other proceedings. Such lack of diligence is especially startling on the part of the investigation authorities, who are under an obligation to take whatever reasonable steps they can to secure all available evidence concerning the allegations of ill-treatment (see *Mammadov*, cited above, § 74). Had the investigator inquired about the outcome of the civil proceedings, he would have been aware of the fact that the applicant had presented new evidence in support of her allegations.

125. In the light of such lack of diligence on the part of the domestic investigation authorities, the applicant's failure to inform the investigator about A.A.'s and G.G.'s statements cannot be held against her, as what she had done was sufficient to bring this evidence to the authorities' attention. The authorities' failure to take due account of these witnesses' statements in the framework of the criminal investigation largely contributed to the ineffectiveness of the investigation.

126. Furthermore, the investigation authorities have not made any attempts to seek and hear testimony of those persons whom the applicant expressly identified, either by name or description, in her testimony of 13 and 16 March 2004 (see paragraph 25 above), namely I.G. (who also later testified during the civil hearing) and a grey-haired woman who was an employee of Pharmacy no. 259. Moreover, although the applicant specifically stated that she had been taken to the emergency clinic from the pharmacy, the investigation authorities have sought neither the emergency clinic's records as to ambulance calls on 16 October 2003, nor the testimonies of the doctors, paramedics and the driver of the ambulance which took the applicant to the clinic. No explanation was provided by the Government for the authorities' failure to do so. Statements by these witnesses might very well have helped in determining the veracity of the applicant's allegations.

127. Instead, the investigation authorities limited themselves to questioning eight other witnesses who were, in the Court's opinion, very remotely, if at all, connected to the alleged incident. Based on the available

documents, it appears that these witnesses were questioned about one year after the alleged incident and were simply shown a single photograph of the applicant for identification purposes.

128. Six of those witnesses were police officers present at Azadliq Square or nearby areas on 16 October 2003. In the absence of any other explanation, it appears that they were chosen at random from among the scores of police officers who were there on that day. It has not been shown in what possible way the testimonies of these random police officers might have been helpful in establishing the facts of the case. In any event, the Court considers that these police officers' denials should not be taken at face value, given the fact that a finding of the applicant's ill-treatment could render them or their colleagues liable criminally or otherwise (compare with *Mammadov*, cited above, § 75; *Afanasyev v. Ukraine*, no. 38722/02, § 76, 5 April 2005; and *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 89, ECHR 2000-X).

129. The investigator also relied on statements by A.V. and R.G., who claimed to be employees of Pharmacy no. 259. Having been shown a photograph of the applicant, these witnesses did not recognise her and denied having seen her in their pharmacy on 16 October 2003. Their statements contradicted the applicant's version of events and the statements by A.A., G.G. and I.G. The Court notes, however, that the applicant was never given an opportunity to confront A.V. and R.G. personally in order to challenge their credibility and the veracity of their statements. Moreover, due to the investigator's failure to obtain statements from A.A., G.G. and I.G. and to attempt to identify and interrogate other relevant witnesses (see paragraph 126 above), the investigation was deprived of the benefit of evaluating the statements of A.V. and R.G. in the light of more numerous witness statements which corroborated the applicant's allegations. For these reasons, the Court has serious doubts as to the reliability of A.V.'s and R.G.'s statements and considers that they also fail to stand up to scrutiny.

130. Moreover, the Court considers that there were a number of other factors which contributed to the ineffectiveness of the domestic investigation and, as such, undermine the plausibility of the explanations provided by the Government in the present case. In particular, despite serious allegations of ill-treatment, the applicant was not recognised as a "victim of crime", which significantly restricted her ability to participate in the investigation and challenge the investigator's actions (see paragraphs 61-62 above). Also, the investigation was dilatory. The State forensic experts took inexplicably lengthy periods of time to conduct the forensic examinations requested by the investigation authorities. Whereas, as shown above, no effective steps had been taken to investigate the circumstances of the incident, it took around nine months before the investigator decided to discontinue the investigation.

131. Lastly, although in the present case the Government produced a copy of the investigator's letter of 26 November 2004 notifying the applicant of the decision to discontinue the investigation (see paragraph 81 above), this letter was not post-marked and the Government put forward no other evidence that this letter, together with the decision of 26 November 2004 on discontinuation of the investigation, had actually been sent to the applicant or otherwise delivered to her. The Court therefore finds that the applicant was not duly informed of this decision. In such circumstances, she was deprived of the possibility to request a court to review the lawfulness of this decision, a means by which she could have challenged, *inter alia*, the reliability of the two forensic reports and complained about other shortcomings committed by the investigation authorities, including their failure to obtain crucial witness statements.

132. Having regard to the above, the Court considers that the domestic authorities failed to conduct an effective and independent investigation into the circumstances surrounding the injuries sustained by the applicant on 16 October 2003 and that the explanations provided by the Government cannot be regarded as satisfactory and convincing. Having regard to the applicant's allegations, corroborated by sufficiently strong and concordant evidence, and in view of the absence of a plausible explanation by the Government, the Court finds that the applicant's injuries resulted from the use of force by the police and, specifically, from her being struck by a truncheon wielded by an unidentified police officer.

133. As to whether the force used on the applicant was excessive, the Court accepts, without passing a definitive judgment on this issue, that the authorities may have been justified, to a certain extent, in using a certain degree of force against the riotous protesters for the purpose of restoring order. However, in the circumstances of the present case, the Court is solely concerned with whether the force used against the applicant was excessive. In this connection, the Court notes that the Government have not furnished any arguments which would provide a basis to explain or justify the degree of force used against the applicant. There is no evidence showing that the applicant was somehow engaged in any violent behaviour during the demonstration. She was never arrested or prosecuted for resistance to the authorities during the events of 16 October 2003. At the time of the incident, she was trying to leave Azadliq Square, in an apparent attempt to avoid danger. There is nothing to indicate that her conduct somehow provoked or made it necessary for the police to use force on her. Accordingly, the force used against the applicant was unnecessary and excessive.

134. Moreover, the Court finds that the injuries sustained by the applicant establish the existence of serious physical pain and suffering. These injuries had lasting consequences for her health, as she became permanently blind in her right eye. The ill-treatment and its consequences

must have also caused the applicant considerable mental suffering diminishing her human dignity. In these circumstances, the Court considers that the ill-treatment complained of was sufficiently serious to attain a minimum level of severity falling within the scope of Article 3 and to be considered as inhuman and degrading treatment.

(iii) Conclusion

135. Based on its findings in paragraph 131 above, the Court rejects the part of the Government's objection as to exhaustion of domestic remedies which has been joined to the merits. As to the merits, the Court reiterates its finding that on 16 October 2003 the applicant was subjected to treatment which can be described as inhuman and degrading, and concludes that the investigation into the applicant's complaints fell short, for various reasons noted above, of the requirements of Article 3 of the Convention.

136. There has therefore been both a substantive and a procedural violation of Article 3 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

137. The applicant complained that the domestic criminal investigation had been ineffective and that the civil proceedings instituted by her had been unfair. She submitted that the courts had not been objective in their assessment of the facts and had failed to redress the grievance which she bore as a result of the beating by the police. She relied on Article 6 of the Convention and, in substance, on Article 13 of the Convention.

138. Article 6 of the Convention provides:

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

139. Article 13 of the Convention provides as follows:

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

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

141. The Court notes that these complaints are linked to the complaint examined above and must therefore likewise be declared admissible.

142. However, in the light of its finding of a violation of the procedural limb of Article 3 on account of the ineffectiveness of the investigation conducted by the domestic investigation authorities and courts, the Court considers that no separate issues arise under Articles 6 and 13 of the

Convention and finds that it is not necessary to examine these complaints separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. 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

144. The applicant claimed a total of 850,000 New Azerbaijani manats (AZN) in respect of non-pecuniary damage, noting that the injuries inflicted on her and the resulting loss of eyesight produced in her feelings of fear, anxiety and nervousness.

145. The Government did not comment on this claim.

146. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage which cannot be compensated solely by the findings of violations. The Court also has regard to the fact that the applicant has suffered a particularly serious injury which had permanent consequences for her health. In the specific circumstances of the case, ruling on an equitable basis, the Court awards 25,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

147. The applicant also claimed AZN 1,800 for the costs and expenses incurred before the domestic courts and the Court. This claim was not itemised or supported by any documents.

148. The Government did not comment on this claim.

149. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, having regard to the fact that the applicant failed to produce any supporting documents, the Court dismisses the claim for costs and expenses.

C. Default interest

150. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention both under its substantive and procedural limbs;
3. *Holds* that there is no need to examine separately the complaints under Articles 6 and 13 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, EUR 25,000 (twenty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 2 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President