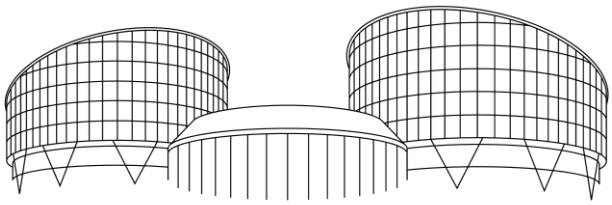

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF INSANOV v. AZERBAIJAN

(Application no. 16133/08)

JUDGMENT

STRASBOURG

14 March 2013

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

In the case of Insanov v. Azerbaijan,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 12 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 16133/08) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Ali Binnat oglu Insanov (*Əli Binnət oğlu İnsanov* – "the applicant"), on 31 March 2008.

2. The applicant was represented by Mr A. Shahverdi and Mr T. Babayev, lawyers practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant complained, in particular, about the conditions of detention, and also alleged unfairness of the civil proceedings concerning his conditions of detention, lack of adequate medical treatment in detention, unfairness of the criminal proceedings against him, and other violations of the Convention.

4. On 19 November 2009 the application was declared partly inadmissible and the complaints under Article 3 concerning lack of adequate medical treatment and conditions of detention, the complaint under Article 6 concerning the fairness of the civil proceedings, the complaints under Article 6 concerning the fairness of the criminal proceedings, and the complaint under Article 1 of Protocol No. 1 to the Convention were communicated to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946. He was the Minister of Health Care from 1993 to 2005.

A. Criminal proceedings against the applicant

1. Pre-trial stage

6. On 20 October 2005 the applicant was summoned to the Ministry of National Security ("the MNS"). He arrived at the MNS at around 3 p.m. and was questioned until 7 p.m.

7. After being questioned he was detained on suspicion of abuse of official authority, embezzlement of public funds and complicity in an attempted *coup d'état*, allegedly planned to take place after the parliamentary elections of 6 November 2005 and masterminded by former Parliament Speaker R. Guliyev (who was living abroad at that time) and several other high-ranking government officials. He was held in the detention facility of the MNS.

8. It appears that he was dismissed from his ministerial office on the same day.

9. On 22 October 2005 the Prosecutor General's Office formally charged the applicant with criminal offences under Articles 28/220.1 (preparation to organise public disorder), 278 (actions aimed at usurping State power), 179.3.2 (high-level embezzlement), 308.2 (abuse of official authority entailing grave consequences), 311.3.2 (repeated bribe-taking) and 311.3.3 (high-level bribe-taking) of the Criminal Code. The applicant was formally charged in criminal case no. 76586.

10. On 22 October 2005 the Nasimi District Court remanded the applicant in custody for a period of three months (until 20 January 2006). On 13 January 2006 the same court extended this period by another four months (until 20 May 2006). On 19 May 2006 this period was extended again, by another five months (until 20 October 2006). Lastly, on 16 October 2006 the period was extended again, by another six months (until 20 April 2007). The applicant lodged appeals against each of these decisions. All his appeals were dismissed by the Court of Appeal. An appeal by the applicant against the extension decision of 16 October 2006 was dismissed by a decision of the Court of Appeal on 2 November 2006.

11. In the course of the pre-trial investigation, the investigating authorities carried out a search of the applicant's home and found, *inter alia*, large amounts of cash in various currencies, large quantities of gold items and jewellery, and deeds of a number of residential properties.

12. On 19 January 2007 the Prosecutor General's Office issued a new indictment charging the applicant with criminal offences under Articles 28/220.1, 278, 179.3.2, 306.2 (failure by a public official to execute a final court judgment), 308.1 (abuse of official authority), 308.2, 311.3.1 (bribe-taking), 311.3.2 and 311.3.3 of the Criminal Code.

13. On 24 January 2007 a new criminal case (no. 76932) was severed from criminal case no. 76586. Under criminal case no. 76932 the applicant was formally charged with the offences under Articles 179.3.2, 306.2, 308.1, 308.2, 311.3.1, 311.3.2, 311.3.3 and 313 (forgery in public office) of the Criminal Code.

14. Specifically, the applicant was accused of having committed the following criminal acts, *inter alia*:

(i) Between 1997 and 2004 he had created conditions for unlawful disposal (by way of privatisation) of numerous State-owned real-property assets (land and non-residential premises) which were on the books of the Ministry of Health Care and had a total estimated value of 27,221,574 New Azerbaijani manats (AZN) (approximately 23,500,000 euros (EUR) at that time). Among other things, the applicant was accused of falsifying, with the assistance of accomplices, certain documents related to the above-mentioned assets, in order for that property to be designated suitable for privatisation under the State Privatisation Programme and privatisation laws, whereas in fact those assets did not qualify as such, and were necessary for the proper functioning of State health care institutions. Most of these assets were privatised by dummy companies affiliated to the applicant or his acquaintances and were subsequently resold to the applicant's family members and acquaintances. In connection with the above transactions, the applicant also received bribes in the total amount of 200,000 United States dollars (USD) (equivalent to AZN 195,460);

(ii) He had embezzled AZN 115,240 of public funds in order to pay for the publication of one of his books;

(iii) He had taken a number of bribes in the total amount of USD 76,900 (equivalent to AZN 75,423) and another bribe in the amount of AZN 2,800 in exchange for issuing licences to private companies for operating pharmacies, and had kept 70% of the above amounts for himself while distributing the remainder among his accomplices;

(iv) He had continually failed to comply with seven final domestic judgments (the earliest of which had been delivered in 1994), ordering the reinstatement of former Ministry of Health Care employees who had been unlawfully dismissed from their positions; and

(v) He had committed a number of other acts of embezzlement and abuse of official authority.

15. On 24 January 2007 the investigating authorities informed the applicant that the pre-trial investigation in criminal case no. 76932 had been completed. Criminal case no. 76932 was sent for trial in the Assize Court.

The original criminal case no. 76586, which still carried the charges under Articles 28/220.1 and 179.3.2 of the Criminal Code, was not sent for trial, but was not terminated either.

16. On 29 January 2007 the applicant's lawyers lodged a complaint with the Prosecutor General, alleging that the defence had not been allowed to properly familiarise themselves with the case materials. In particular, they complained that not all the annexes to the case files had been presented to the defence and that the defence had not been allowed to take photocopies of case materials. By a letter of 2 February 2007 the Prosecutor General rejected this complaint, noting that during the period from 24 to 30 January 2007 the applicant and his lawyers had been allowed access to all forty-three volumes of the case file, three video-tapes, photographs and other material evidence, and that on 30 January 2007 they had signed a record of familiarisation with the case file together with the annexed time sheets. Furthermore, he stated that, from the content of the other, unrelated complaints lodged with the prosecution authorities at around the same time, it was clear that the defence had sufficient knowledge of the entire investigation case file. Lastly, the Prosecutor General added that, if necessary, the defence would be given an opportunity to consult and take photocopies of the investigation materials again during the trial.

17. On 15 February 2007 the applicant lodged a complaint with the Assize Court, arguing that the defence had not been given an opportunity to adequately familiarise themselves with the case file and requesting the court to suspend the proceedings on this ground and to send the case back to the investigation stage. By an interim decision of 15 February 2007 the Assize Court refused this request, finding that the defence had been given adequate access to the case file.

2. Trial

18. The applicant was tried at the Assize Court with ten others, who were either former officials of the Ministry of Health Care or had been involved in commercial transactions with the Ministry. Each of the ten was charged with complicity in some of the criminal offences with which the applicant had been charged. In connection with the embezzlement charges, a civil claim was also advanced against the applicant and some of the other defendants in the criminal case.

19. In addition there were around twenty civil defendants in the case, against whom no criminal charges had been brought. The civil defendants were the current private owners of the formerly public property which had allegedly been unlawfully embezzled or sold by the applicant.

(a) Hearings at the Assize Court

20. A preliminary hearing was held on 15 February 2007 and hearings on the merits were held from 22 February to 20 April 2007. The hearings

were held on working days between around 9.30 a.m. and around 6 p.m., but sometimes lasted until after 7 p.m.

21. According to the Government, more than 120 witnesses were heard during the trial. The Assize Court's judgment of 20 April 2007 summarised statements from a large number of witnesses, who testified in connection with all of the accusations against the applicant and the other accused persons.

22. In addition to hearing witnesses, the court also examined various documentary and other material evidence presented by the prosecution, including various expert reports on forensic handwriting analyses of a large number of documents, reports on valuation of unlawfully privatised properties, and so on. Among this documentary evidence, an important role in the prosecution's submissions was given to three audit reports of 27 June, 11 August and 18 December 2006 concerning the "audit of the financial and economic activities of the Ministries of Health Care and Economic Development", prepared by a number of employees (sometimes referred to as "experts" in the relevant court documents) of the Ministry of Finance, the Chamber of Auditors and other State agencies, pursuant to a decision of the Nasimi District Court of 29 November 2005. In sum, these reports concluded that, despite the fact that the State privatisation programme allowed privatisation of State health care facilities only by a decision of the President of the Republic, the applicant had exceeded and abused his official powers and, together with "other persons", had unlawfully issued instructions and otherwise created conditions for unlawful privatisation of a large number of State-owned health care facilities, plots of land, and other assets. Furthermore, the reports also found that there had been a number of breaches of accounting requirements, instances of mismanagement of State budgetary resources allocated to the Ministry of Health Care, undocumented or improperly documented use of large amounts of money, and so on. It appears that these three reports were among the most decisive pieces of evidence on which the applicant's eventual conviction was based. In particular, the Assize Court stated in its judgment that these reports confirmed that the applicant had committed acts of abuse of official powers and embezzlement of public funds.

23. During the hearings, the applicant complained that he was not allowed time to confer with his lawyers in a confidential setting in the course of the hearings, and that whereas the hearings lasted a full day each time, he was not allowed to meet his lawyers at the detention facility at weekends and on other non-working days. In particular, by a letter of 17 March 2007, he complained to the MNS about the MNS Detention Facility's refusal to allow his lawyers to enter the facility for meetings with the applicant at weekends. Furthermore, in his complaints about the Assize Court judges made in late March and early April 2007, the applicant complained, among other things, that the judges had ignored his complaints

concerning inadequate time and facilities for meetings with his lawyers and that the court had repeatedly refused the defence's requests for short adjournments to the hearings in order to allow the applicant and his lawyers to hold confidential discussions concerning their defence strategy. Instead, they had been forced to confer with each other in the presence of prosecutors and judges.

24. According to the applicant, the Assize Court essentially ignored the above complaints. According to the Government, the Assize Court examined the applicant's complaints about meetings with his lawyers and, in particular, on 30 March 2007 adjourned the hearing for the defence to confer and prepare a representation. Also, the Assize Court sent a letter to the acting head of the MNS Detention Facility, reminding the latter of the applicant's right to meet with his lawyers and requesting him to allow such meetings on days when no hearings were scheduled.

(b) Various requests by the applicant concerning examination of additional witnesses

25. During both the preliminary and the trial hearings, the applicant made a number of requests to the Assize Court concerning various substantive and procedural matters, including examination of additional witnesses, as summarised below.

(i) In respect of charges relating to privatisation fraud and abuse of official power

26. On 15, 22 and 28 February and 6, 7, 12 and 30 March 2007, the applicant requested the court to summon and hear a number of witnesses in connection with the accusations against him of creating conditions for unlawful privatisation and sale of State property and other abuses of official powers.

27. In these submissions the applicant contested the findings contained in the three audit reports of 27 June, 11 August and 18 December 2006 (see paragraph 22 above). He argued that those findings were wrong and mutually contradictory, and claimed that some of the "experts" who had worked on the relevant audits had either refused to sign those reports or had signed them with reservations. In his submissions the applicant repeatedly insisted that the court summon and hear as witnesses a number of those experts who had worked on the audits and authored the reports, including the head of the State Financial Control Department of the Ministry of Finance and three other experts from that ministry, an auditor of the Chamber of Auditors, a section head of the State Committee for Management of State Property, the Deputy Minister and two other high-ranking officials of the Ministry of Economic Development, and so on.

28. Furthermore, the applicant noted that, whereas he was accused of having created conditions for unlawful privatisation and sale of State

property which belonged to the Ministry of Health Care, under domestic law the agencies responsible for privatisation of State property were the State Committee for Management of State Property (formerly the Department of Management and Privatisation of State Property) and the Ministry of Economic Development. Only these agencies had the authority to dispose of State property. As such, these State agencies had ultimately carried out and approved the sale and privatisation of the assets in question, and officials of these agencies had signed the relevant final acts. The applicant further argued that his role (as Minister of Health Care and Chairman of the State Commission on Reforms in the Health Care System) in the privatisation procedure was limited to merely submitting proposals to the President and the Cabinet of Ministers for items to be included in lists of various assets suggested for privatisation, as well as giving his confirmation to the Ministry of Economic Development on a case-by-case basis that he did not object to the privatisation of specific State-owned facilities which were on the books of the Ministry of Health Care. Therefore, even if the relevant assets had been privatised unlawfully, he could not be held responsible for it, and the officials of the State Committee for Management of State Property and the Ministry of Economic Development were responsible for the entire privatisation process and for any failure to detect abuse or unlawfulness. For these reasons, the applicant repeatedly insisted in his submissions that the court summon and examine as witnesses the Chairman of the State Committee for Management of State Property and the former Minister of Economic Development (the former Minister of Economic Development, Mr Farhad Aliyev, was tried and convicted in separate criminal proceedings at around the same time in connection with, *inter alia*, charges of alleged corruption and a number of abuses of official power).

29. At the preliminary hearing of 15 February 2007 the Assize Court examined the above request and heard the parties' submissions in connection with it. The prosecution submitted that, at this stage, this request was premature because the question whether it was necessary to examine any additional evidence should be decided after the judicial examination of the prosecution material submitted to the court. Having heard the parties' submissions, the Assize Court refused the applicant's request without providing any reasoning.

30. On 22 February 2007 the Assize Court examined the applicant's repeated request and refused it on the ground that it had been raised prematurely at the preliminary hearing stage and that it would be examined at the trial hearing stage.

31. As regards the applicant's repeated requests to the same end made on 28 February and 6, 7 and 12 March 2007, the Assize Court refused them during various trial hearings, noting that it would determine whether it was necessary to hear additional witnesses at a later stage.

32. During the trial hearing of 30 March 2007 the applicant submitted the same request again. The Assize Court refused the request. It noted that during previous trial hearings which had been held in the meantime it had already heard representatives of the State Committee for Management of State Property and examined all relevant privatisation-related and other documents signed by officials of this agency: therefore the part of the applicant's request seeking that the appropriate officials of this agency be heard was no longer relevant and should be rejected. As regards the request to call the experts who had conducted the audits and authored the reports of 27 June, 11 August and 18 December 2006, the Assize Court refused this part of the applicant's request too, noting that if the court considered, once the relevant reports had been read out at the subsequent hearings, that there were indeed some contradictions in those reports and that it was necessary to seek clarification, the court could decide to grant the request at one of the future hearings and to call those experts to testify.

33. It appears that at the subsequent hearings the Assize Court did not take up this matter again.

34. The court's judgment of 20 April 2007 (see below) was silent in respect of the applicant's procedural requests for additional witnesses to be heard.

(ii) In respect of other charges

35. A large number of individuals had been questioned by the investigation authorities during the pre-trial investigation, with the purpose of establishing and proving the allegations of corruption by Ministry of Health Care officials, including the applicant, in connection with applications for pharmaceutical licences. Not all those questioned by the investigation authorities were ultimately included in the list of prosecution witnesses to testify against the applicant during the trial. In particular, a number of individuals who stated during pre-trial questioning that they had not been asked for, and had not given, a bribe when they made their licence application were not called to testify during the trial. On 30 March and 2 April 2007 the applicant asked for eleven specifically named individuals who had stated at the pre-trial stage that they had not given any bribes in exchange for approval of their applications for a licence to be called as witnesses. It appears that he intended to use these witnesses' statements to "disprove" the prosecution's accusations concerning corruption. These requests were refused.

36. Furthermore, in connection with various other charges, the applicant repeatedly requested that the authors of the expert reports on valuation of privatised and other properties, the new Minister of Health Care and some other employees of that ministry, the chairman of the State committee for admission of students to higher education institutions, the deputy chairman of the Yeni Azerbaijan Party, various officials of the President's office,

several investigators who had conducted various stages of the pre-trial investigation, and others, be called as witnesses. These requests were also refused.

(c) The verdict and sentence

37. By a judgment of 20 April 2007 the Assize Court found the applicant guilty as charged on all counts under criminal case no. 76932, and sentenced him to eleven years' imprisonment with confiscation of property and three years' prohibition on holding official positions in public service. The court found that the applicant had caused in excess of AZN 15,000,000 in financial damage by his criminal actions, and that he was responsible for compensating for this damage, as described below.

38. Initially, the court allowed the civil claim in part, ordering the in-kind transfer of part of the unlawfully privatised real-property assets back to the Ministry of Health Care. This covered part of the financial damage caused. On the other hand, the court found that some of the unlawfully privatised assets were now owned by bona fide purchasers, and therefore dismissed the civil claim in the part relating to those assets.

39. As regards the pecuniary damage remaining to be compensated for after the partial upholding of the civil claim, the court found that the applicant remained responsible for damage in the amount of AZN 527,087 personally, and in the total amount of AZN 7,937,822 jointly and severally with three other criminal defendants. In compensation the court ordered, applying the confiscation sanction under Article 179.3.2 of the Criminal Code, that the following private property of the applicant be confiscated: (a) various precious metals and jewellery items valued at AZN 1,040,486, which had been found in his home; (b) USD 1,309,295 in cash found in his home; (c) EUR 884,475 in cash found in his home; (d) AZN 8,984 in cash found in his home; (e) eleven houses and apartments, some of them with auxiliary premises such as garages, collectively valued at AZN 3,655,179.90; and (f) a car valued at AZN 54,000.

3. Appeals

40. The applicant appealed, claiming innocence and arguing, among other things, that his convictions on all counts had been based on inadmissible, irrelevant or insufficient evidence, that he had not been given adequate time and facilities to prepare his defence and to meet with his lawyers in confidential circumstances, and that despite his repeated requests the investigating authorities and the trial court had not sought to hear certain witnesses whose statements could have been crucial for the outcome of the case. The other criminal and civil defendants also appealed, on various grounds.

41. On 21 September 2007 the Baku Court of Appeal dismissed the applicant's appeal and upheld the part of the Assize Court's judgment which

related to the applicant. The applicant and his lawyers participated in the appeal hearings.

42. The applicant lodged an appeal on points of law reiterating his complaints. Hearings in this appeal were held in the presence of the applicant's lawyer, but in the applicant's absence. On 16 January 2008 the Supreme Court dismissed the applicant's appeal and upheld the parts of the lower courts' judgments which related to the applicant.

B. The applicant's health and medical treatment received

1. Summary of the relevant facts

43. Many years before the events concerning the present case, the applicant, then at an early age, had suffered from pulmonary tuberculosis. It appears that he had been treated successfully and his tuberculosis had been in remission since then.

44. Prior to the applicant's arrest, in February 2005 he underwent a magnetic nuclear resonance tomography ("MNRT") in Munich, Germany, and was diagnosed with "herniation of L3-L4 intervertebral disc". It was recommended that therapeutic treatment be continued and that ultimately surgery would be necessary if the symptoms persisted.

45. After his arrest, from 20 October 2005 to 20 April 2007 the applicant was detained in the temporary detention facility of the MNS. From 20 April 2007 to 28 September 2007 he was kept in Detention Facility no. 1. He was then transferred to Penal Facility no. 13, where he is currently serving his prison sentence and where he is kept in a large dormitory designed for more than 100 prisoners. According to the applicant, the conditions of detention in all of these facilities were bad (see paragraphs 71-79 below).

46. While in detention, the applicant complained of health problems on a regular basis. The following is a summary of the accounts of the applicant's medical treatment in detention submitted by the applicant and the Government.

47. On 2 February 2006 the applicant was examined by MNS medical experts and was diagnosed with the following conditions: spinal disc herniation; osteochondrosis; progressing hypertension, stage I; unicameral cyst on the left kidney not entailing a loss of the kidney's function; a post-cholecystectomy condition; chronic persisting hepatitis in the remission phase; and mild neurotic reactions. The experts considered that his condition was not critical and that outpatient treatment was sufficient.

48. On 16 January 2006 the applicant was examined by the head physician of a neurosurgery hospital and was prescribed conservative treatment and a new MNRT. According to the relevant medical report, the applicant refused this treatment. However, according to the applicant, he did

not refuse to undergo a new MNRT as the report of 16 January 2006 had indicated.

49. On 16 May 2006 the applicant was examined by the Chief Phthisiologist of the Ministry of Health Care and on 20 May 2006 by the Head of the Neurology Centre; neither examination revealed any need for surgery.

50. From 25 February to 8 March 2006 and from 30 May to 8 June 2006 the applicant had medical examinations on an inpatient basis in the Neurological Unit of the Ministry of Justice's Medical Facility. The applicant was diagnosed with spinal disc herniation and was offered a new MNRT before a decision was made on whether there was a need for surgery. According to the relevant records, the applicant declined this proposal and received only conservative treatment.

51. However, according to the applicant, he did not refuse an MNRT or surgery. He claimed that the medical records concerning his alleged refusal did not "reflect reality", as they did not bear his signature. He noted that the Ministry of Justice's neurological unit lacked a neurosurgery department and specialists to carry out surgery, so he requested surgery in one of the neurosurgery clinics in Baku, but his request was not answered. According to him, his treatment in the Ministry of Justice's medical facility was terminated abruptly and he was returned to his cell.

52. According to the relevant medical records, when the applicant was transferred to Detention Facility no. 1 on 20 April 2007 he had no serious complaints about his health. On 1 and 9 June 2007 he was examined by experts of the neurology and therapy units of the Ministry of Justice's Medical Facility and no need for either inpatient or outpatient treatment was identified at this time. According to the relevant records, on 2 and 4 June 2007 the applicant refused to undergo blood and urine tests. On 6 June the applicant, in the presence of his lawyers, refused to undergo an ultrasound examination. In September 2007 it was proposed that the applicant undergo an MNRT in a private medical clinic (the Tusi Clinic) in order to determine whether surgery was needed. The examination was scheduled for 25 September, but did not take place. According to the Government, the applicant refused to go to the Tusi Clinic at the last moment. According to the applicant, he did not refuse to undergo any tests and the relevant records were falsified.

53. According to the Government, in January and February 2008 it was suggested three times that the applicant be transferred to the Ministry of Justice Medical Facility in connection with his complaints about pains in his back, but he refused those offers. According to the applicant, in the winter of 2008 he was indeed offered transport to the Medical Facility, but in an "iron-covered unheated lorry", which was not suitable for his health. As the applicant could not stand or sit comfortably because of pains in his back and legs, and as transportation in such a lorry would be very hard for him to

endure, he requested in writing to be transported in an ambulance, lying down, offering to pay any transportation costs himself. This request was refused.

54. According to the applicant, he continued to suffer from severe pain in his back and lower extremities due to the herniation of the intervertebral disc. His detention in a cold unventilated cell in Penal Facility no. 13 aggravated his health problems.

2. The Court proceedings and subsequent medical treatment

55. On 14 August 2008 the applicant, without providing detailed information about the nature of his illnesses, requested the Court to indicate to the Government under Rule 39 of the Rules of Court that he should be provided with adequate treatment and with conditions of detention which were appropriate for his illness. In reply, the applicant was requested to provide more detailed information about the nature of his ailments and complaints. The applicant complied with this request. He submitted, *inter alia*, that urgent surgery was necessary to treat his herniated disc.

56. On 16 September 2008 the Government was requested, under Rule 49 § 3 of the Rules of Court, to provide information concerning any medical treatment provided to the applicant during the entire period of his detention. In reply, the Government submitted the information summarised above, supported by a number of medical records. The applicant was given an opportunity to comment on the Government's submissions; these comments, where relevant, are also included in the above summary.

57. Having regard to the parties' submissions, on 25 November 2008 the President of the Chamber decided to indicate to the respondent Government, under Rule 39 of the Rules of Court, the following interim measures, applied until further notice:

> "- the applicant be immediately transferred to the prison medical facility of the Ministry of Justice;
>
> - at the earliest possible time and without any undue delays on both sides, a medical panel be set up on a parity basis, the Government and the applicant each appointing three members from among the qualified medical experts in Azerbaijan, to diagnose the applicant's specific problems (in particular, the herniated disc problem) and to conclude whether any long-term or immediate treatment, including surgery, is required to treat the problem(s);
>
> - on the basis of the findings of the above medical panel, the Government design and submit to the Court [by 20 January 2009] an appropriate and detailed plan of the applicant's treatment."

58. On 19 January 2009 the Government informed the Court about the measures taken.

59. In particular, according to the documents submitted by the Government, on 12 December 2008 the applicant was transferred to the Medical Facility of the Ministry of Justice. A joint medical panel was

composed on a parity basis. The panel consisted of two neurosurgeons, two phthisiologists, and two uro-nephrologists. During the period from 22 to 24 December 2008 a number of medical tests were carried out on the applicant, including an MNRT, urine test, blood test, biochemical tests, ultrasound and others. The medical panel examined the applicant several times. Additionally, cardiologists, gastroenterologists and dentists were invited to carry out necessary tests and examinations.

60. On 10 January 2009 the medical panel issued its final opinion, in the presence of the applicant and his lawyers. The panel found that the applicant was suffering from the following primary and secondary conditions: a herniation of the L3-L4 spinal disc; osteochondrosis; mild hypertension, stage II; residual signs of inactive (cured) tuberculosis of the right lungs; unicameral cyst on the left kidney; chronic colitis; and signs of first-degree dysbacteriosis. However, the panel unanimously concluded that his condition was not critical and that no surgery was required. His overall health was considered satisfactory. It was noted that he was fully autonomous and could walk using a cane. The diagnosed pathologies were chronic and slow to develop, requiring "conservative" treatment, which could be carried out either on an inpatient or an outpatient basis.

61. The panel designed a detailed long-term plan for treatment for the applicant's health problems, noting that for the first month the applicant would receive inpatient treatment in the Medical Facility of the Ministry of Justice, while thereafter such inpatient treatment could be replaced with outpatient treatment in the prison. The relevant treatment, including a detailed list of medications and recommendations, was prescribed. The panel's opinion indicated that the applicant agreed with the diagnosis and the treatment plan.

62. On 2 February 2009 the applicant submitted his comments on the Government's submissions. While he appeared to argue against the Government's allegedly wrong "interpretation" of some of the joint medical panel's findings, he did not expressly contest the panel's conclusions or the prescribed treatment plan.

63. On 12 February 2009 the President of the Chamber decided to lift the interim measures previously indicated under Rule 39 of the Rules of Court.

64. The treatment prescribed by the joint medical panel was carried out on an inpatient basis in the Medical Facility of the Ministry of Justice up to 16 March 2009.

65. On 7 March 2009 the applicant was examined by a neurosurgeon who was not a member of the joint medical panel. He noted that there had been positive progress of the applicant's condition and found no necessity for further treatment of the herniated disc, but recommended a spinal corset.

66. On 14 March 2009 the applicant was examined by the two neurosurgeons who were members of the joint medical panel. The

examination did not reveal any pathology in the applicant's peripheral nervous system. Taking into account the applicant's complaints of pain, they recommended applying two different types of medicinal ointment, to the backbone and left thigh areas.

67. On 16 March 2009 the applicant was transferred back to Penal Facility no. 13. According to the Government, his medical treatment was continued on an outpatient basis, as prescribed by the joint medical panel. According to the applicant, the treatment did not comply with the panel's prescriptions.

68. Following the applicant's repeated complaints of pain, on 10 April 2009 he was examined by a neurosurgeon and was prescribed treatment with Reton, a therapeutic ultrasonic device. According to the Government, within a short period of time the Medical Sanitary Unit of Penal Facility no. 13 had acquired this device and the treatment was followed through. According to the applicant, he did not receive this treatment.

69. With regard to preventative treatment against the recurrence of tuberculosis, the joint medical commission had prescribed anti-tuberculosis medication including Rifampicin and Izoniazid. The treatment was scheduled to start in March 2009. However, the applicant refused to take Rifampicin and asked for Pirazinamid instead. The applicant later agreed to take Rifampicin and the treatment began on 8 April 2009.

70. From April 2009 the applicant was treated on an outpatient basis by means of daily administration of two drugs for the regulation of blood pressure, two for the prevention of the recurrence of tuberculosis and two ointments for alleviation of pain resulting from the herniated spinal disc. He was able to spend a "considerable part" of the day in the open air outside his cell. However, according to the applicant, this treatment was ineffective, as it did not cure his illnesses or alleviate his condition.

C. Conditions of detention

1. The applicant's version

71. From 20 October 2005 to 20 April 2007 the applicant was held in a single-person cell in the detention facility of the MNS, which was poorly lit during the daytime. The light was not switched off at night.

72. From 20 to 30 April 2007 the applicant was held in cell no. 119, designed for four inmates, in Detention Facility no. 1. The surface area of the cell was 9.6 sq. m, or 2.4 sq. m per occupant.

73. From 30 April 2007 to 28 September 2007 the applicant was held in another cell in Detention Facility no. 1, cell no. 123, which was designed for eight inmates. The area of the cell was 15.84 sq. m, or 1.98 sq. m per occupant. The cell was unventilated. The air inside was humid, and the cell was smelly and stuffy. It was too hot inside. There was no wall or other

form of separation between the toilet area and the table and beds. The applicant had to eat his meals at the table in close proximity to the toilet.

74. In both the MNS Detention Facility and Detention Facility no. 1 the applicant was allowed only half an hour's "outdoor exercise" per day, which was confined to small areas specially designated for this purpose. There was no radio or television or other form of in-cell entertainment in those establishments. The applicant was allowed to read only official State newspapers.

75. Since 28 September 2007 the applicant has been serving his sentence in Penal Facility no. 13. He is held in a 225 sq. m dormitory, which was designed to hold 128 inmates. According to the applicant, most of the time the dormitory was occupied at full capacity (128 inmates), however occasionally there were fewer inmates when some were released after the expiry of their prison terms.

76. The air inside the dormitory is stale and humid and filled with cigarette smoke. The inmates hung their laundry to dry inside the dormitory (presumably due to the absence of proper laundry facilities).

77. The dormitory has no heating or permanent water supply, and no natural gas supply. In winter the temperature inside dropped below freezing. In this connection, in response to a request from the applicant's lawyer, the head of the Azerbaijani Committee against Torture (a non-governmental organisation) informed the former by a letter of 30 December 2007 that he had personally visited the applicant in Penal Facility no. 13 on 25 December 2007 and witnessed that: (a) there was no heating system in the dormitory where the applicant was held; (b) the floor in the dormitory was made of stone; and (c) there were no natural gas pipes in the dormitory.

78. There are only seven showers and fourteen toilets available to a total of about 700 to 950 prisoners held in Penal Facility no. 13. The toilets are in bad sanitary condition and have no running water for days, so that the inmates were forced to bring bottles of water with them and stand in a queue to use the toilet.

79. In all the places he was detained the applicant had to use bedding and clothing brought by his family, as he was not provided with those items. The applicant was not provided with the special-diet meals that he felt he needed because of his health, so he ate only the food brought to him by his family in packages twice a month.

2. The Government's version

80. Referring to the fact that Detention Facility no. 1 was demolished in 2009 (without specifying the exact date), the Government claimed to have been unable to conduct an examination of the facility or to provide a detailed account of its conditions. Instead, in connection with the conditions of detention both in Detention Facility no. 1 and Penal Facility no. 13, the Government referred to the findings contained in the judgment of

2 November 2007 of the Nasimi District Court concerning the applicant's claim of bad conditions of detention (see paragraphs 92-96 below).

81. In addition, in respect of the conditions of detention in Penal Facility no. 13, referring to the various domestic rules and regulations for penal institutions, the Government provided the following information.

82. The dormitory in which the applicant was held was designed for 116 inmates. However, after the applicant's arrival, only 70 to 90 inmates occupied the dormitory at any given time. Until January 2009, "the dormitory was heated by electric heaters". In January 2009 a central heating system was installed in the dormitory. In support of this submission the Government supplied photographs of the new heating system.

83. Every prisoner is allowed to have a shower at least once a week. His or her underclothes and bedding are changed at regular intervals. The applicant has access to the running water in the dormitory. Each prisoner has a right to a bed, a cupboard and a chair. Each prisoner also has a right to be provided with individual bedding and other amenities, including two types of blankets, a mattress, a pillow, two bed sheets, two pillow cases, and two towels.

84. Under the relevant rules, prisoners are provided with meals three times a day at State expense. The daily food norm is 3,265 calories and includes bread, various cereals, pasta, meat, fish, fat, margarine, vegetable oil, granulated sugar, dry tea, salt, potatoes, vegetables, bay leaf, tomato paste, unsalted fresh butter, and eggs. A specific menu is planned on a weekly basis. Smokers are provided with 100 cigarettes every ten days. Prisoners are also allowed to purchase, at their own expense, both food and a certain amount of other necessary products. Prison cells are provided with various board games, and the dormitory is equipped with radio and television sets.

85. The relevant domestic rules also provide for a right to receive clothing at State expense. Male prisoners have a right to the following clothing items: two types of headwear, a warm waistcoat, two "work" suits, two cotton shirts, two sets of both thin and warm underclothes, two sleeveless vests, two pairs of underpants, three pairs of cotton socks, two pairs of wool-mix socks, two pairs of shoes, a pair of slippers, a cotton belt and a pair of cotton gloves. Each item of clothing is issued to be used for a period of one to three years, depending on the specific item. Prisoners have a right to purchase, at their own expense, additional shoes, clothing and sportswear of the types allowed to be worn in prisons.

D. The applicant's attempts to obtain redress for the alleged lack of medical treatment and allegedly bad conditions of detention

86. On 14 May 2007 the applicant lodged a civil action with the Sabail District Court against the Prison Service of the Ministry of Justice (*Ədliyyə*

Nazirliyi Penitensiar Xidməti), complaining about his conditions of detention and lack of adequate medical treatment.

87. On 28 May 2007 the Sabail District Court refused to hear his action, noting that claims against the Prison Service of the Ministry of Justice should be lodged with the Nasimi District Court.

88. In June 2007 the applicant, through his lawyer, lodged a civil action with the Nasimi District Court, indicating as defendants the Minister of Justice and the Prison Service of the Ministry of Justice. He complained that he had not been provided with the necessary inpatient treatment, that the conditions of his pre-trial and post-trial detention had been bad and inadequate for his health, that he had been prohibited from receiving newspapers in pre-trial detention, and that his transfer to Penal Facility no. 13 had been unlawful, because this prison was located too far from his home.

89. On 19 June 2007 the Nasimi District Court refused to hear the case, owing to non-compliance with the formal requirements concerning the number of copies of the submissions and notarisation of the power of attorney for the applicant's lawyer. It appears that subsequently the applicant complied with these requirements and the Nasimi District Court admitted the case for examination.

90. Prior to the examination of the merits of the case, in August 2007 the applicant's lawyer requested the court, *inter alia*, to ensure the applicant's personal attendance at the hearings. This request was refused, on the grounds that the applicant could effectively argue his case through his legal representative and that ensuring his attendance at the hearings in the civil proceedings could interfere with the criminal proceedings against him, which were taking place at the same time.

91. During the examination of the merits of the applicant's claims, the Nasimi District Court had regard to his medical records, including the opinion of the MNS's medical experts issued on 2 February 2006 (see paragraph 47 above). The hearings were held in the applicant's absence but with the participation of his lawyer.

92. By a judgment of 2 November 2007 the Nasimi District Court dismissed the applicant's complaints. As regards the complaint concerning the failure to provide inpatient treatment, the court found that the applicant himself had repeatedly refused to undergo the medical tests and treatment he was offered. In any event, the medical examinations did not reveal any need for inpatient treatment.

93. As regards the allegations of poor conditions of pre-trial detention in Detention Facility no. 1, the court found that these allegations were unsubstantiated. In particular, among other things, the court noted that the applicant had been kept in a cell with a total area of 15.84 sq. m, which had eight beds, two windows, two electric lamps and a permanent water supply. Although the cell was designed for eight inmates, "most of the time" only

six inmates were kept there; therefore, there was 2.64 sq. m of space per inmate, which was compatible with the domestic minimum standard of 2.5 sq. m for pre-trial detention.

94. As regards the alleged prohibition on receiving newspapers, the court found that this allegation was unsubstantiated and that the applicant was in fact allowed to obtain four official newspapers from the detention facility authorities or to have any other newspapers brought to him by his lawyer or relatives.

95. Lastly, with regard to the lawfulness of the applicant's transfer to Penal Facility no. 13, the court found that it was lawful and that the conditions of his detention in that prison were adequate. It found that the dormitory in which the applicant was held had a total area of 240 sq. m, had ten large windows, and was properly lit and ventilated. It had separate toilet and other sanitary areas and a permanent electricity and water supply. While the dormitory was equipped with fifty-four bunk beds (two-bunk units), it housed a total of seventy inmates at the relevant time.

96. The court concluded that the applicant received adequate medical assistance and that his conditions of detention did not amount to inhuman or degrading treatment. It accordingly dismissed his claims.

97. The applicant lodged an appeal against the Nasimi District Court's judgment of 2 November 2007. He requested to be present at the appellate hearings and asked the court to conduct a physical inspection of his conditions of detention. His requests were not granted. On 6 February 2008 the Baku Court of Appeal upheld the Nasimi District Court's judgment.

98. On 3 June 2008 the Supreme Court upheld the lower courts' judgments.

II. RELEVANT DOMESTIC LAW AND DOCUMENTS OF INTERNATIONAL ORGANISATIONS

99. Article 51 of the Criminal Code, as in force at the material time, provided as follows:

Article 51. Confiscation of property

"51.1. Confiscation of property is a forcible alienation in favour of the State, without compensation, of instruments of crime used by a convicted person to commit a criminal offence, of objects acquired by criminal means, and of proceeds of crime acquired by the convicted person.

51.2. Confiscation of property is ordered only in circumstances provided for in the Special Part of this Code.

51.3. In the event that the proceeds of crime or objects acquired by criminal means have been used, disposed of or are unavailable for alienation in favour of the State for other reasons, money or other property belonging to the convicted person in the value corresponding to the value [of the proceeds or objects acquired] shall be confiscated."

100. Article 179 of the Criminal Code, as in force at the material time, provided as follows:

Article 179. Embezzlement and squandering

"179.1. Embezzlement or squandering, that is misappropriation of others' property entrusted to the perpetrator, –

is punishable by a fine in the amount of one to five hundred conventional financial units, or 180 to 240 hours of community service, or deprivation of liberty for a term of up to two years.

179.2. Commission of the same acts:

179.2.1. by a group of persons conspiring in advance;

179.2.2. repeatedly;

179.2.3. by means of abusing official authority;

179.2.4. inflicting significant damage –

is punishable by a fine in the amount of two to three thousand conventional financial units, or deprivation of liberty for a term of three to seven years with or without confiscation of property;

179.3. Commission of the acts provided for in Articles 179.1 and 179.2 of this Code:

179.3.1. by an organised group;

179.3.2. in particularly large amounts;

179.3.3. by a person with two or more previous convictions for [similar offences] –

is punishable by deprivation of liberty for a term of seven to twelve years, with or without confiscation of property."

101. Article 113.1 of the Code on Execution of Punishments provides as follows:

"Prisoners in general-regime penitentiary establishments can move around the establishment's territory in accordance with the internal regulations of penitentiary establishments."

102. The following are the relevant provisions of the Code of Criminal Procedure concerning the review of the relevant decisions delivered in domestic proceedings and reopening of the domestic proceedings following a finding by the Court of a violation of the Convention:

Article 455. Grounds for review of judicial decisions in connection with the violation of rights and freedoms

"455.0. The following are grounds for review of judicial decisions in connection with the violation of rights and freedoms:

...

455.0.2. finding by the European Court of Human Rights of a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental

Freedoms in the criminal proceedings, simplified pre-trial proceedings or proceedings involving a complaint under the private prosecution procedure, conducted by courts of the Republic of Azerbaijan; ..."

Article 456. Procedure for review of judicial decisions in connection with the violation of rights and freedoms

"456.1. The Plenum of the Supreme Court of the Republic of Azerbaijan is vested with the competence to review judicial decisions in connection with the violation of rights and freedoms.

456.2. Where grounds exist under Articles 455.0.1 and 455.0.2 of this Code, the Plenum of the Supreme Court examines the cases only on points of law, in connection with the execution of judgments of the Constitutional Court of the Republic of Azerbaijan and the European Court of Human Rights. After a judgment of the Constitutional Court or the European Court of Human Rights is received by the Supreme Court, the President of the Supreme Court assigns the case to one of the [Supreme Court] judges for preparation and presentation of the case at the Plenum [of the Supreme Court]. The case shall be reviewed at a hearing of the Plenum of the Supreme Court no later than three months after the judgment of the Constitutional Court or the European Court of Human Rights is received by the Supreme Court. ..."

Article 459. Decision taken after review in connection with the finding by the European Court of Human Rights of a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the criminal proceedings conducted by courts of the Republic of Azerbaijan

"459.0. Having conducted a review in cases stipulated by Article 455.0.2 of this Code, the Plenum of the Supreme Court has competence to deliver one of the following decisions:

459.0.1. to quash, fully or partially, judicial decisions of the first-instance, appellate and cassation courts, as well as judicial decisions delivered under the procedure of additional cassation ..., and to remit the criminal case, the case materials of simplified pre-trial proceedings, or the case materials of proceedings involving a complaint under the private prosecution procedure, for re-examination by the relevant first-instance or appellate court;

459.0.2. to amend a decision of the court of cassation and/or additional cassation in situations stipulated in Articles 421.1.2 and 421.1.3 of this Code;

459.0.3. to quash a decision of the court of cassation and/or additional cassation and to deliver a new decision."

103. The following are the relevant extracts from the report on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 November to 6 December 2002 (CPT/Inf (2004) 36) ("the 2002 CPT Report"):

"**i. Investigative isolator No. 1, Bayil settlement, Baku**

77. Investigative isolator No. 1 in Baku was constructed for the most part in the 1880s. It is the largest pre-trial facility in Azerbaijan and receives prisoners from all parts of the country, except for those near Ganja. [It has] an official capacity of 1,250 ...

78. The inmate population was housed in several blocks of different ages and configuration. Most of the adult remand prisoners were accommodated in Blocks 1 and 2, large two-storey buildings which formed part of the original prison structure. Separate accommodation was provided for women, on the second floor of Block 2 (Unit 4). Sentenced prisoners awaiting transfer were held apart, in Unit 3. Juveniles and sentenced working prisoners were also accommodated apart from other groups of prisoners (Block 6). Finally, a building referred to as Block 5, constructed in the 1920s for the purpose of holding prisoners sentenced to death, had been set aside for prisoners accused of committing serious offences (including life-sentenced prisoners awaiting transfer to other establishments), following the abolition of the death penalty in 1998.

79. Despite the buildings' advanced age, the majority of the prisoner accommodation was in a reasonable state of repair, and the delegation saw signs of ongoing refurbishment in different parts of the establishment. Another positive feature observed was the absence of shutters on cell windows: these had been removed a couple of years previously, and, as a result, the vast majority of the prisoner accommodation benefited from adequate access to natural light and ventilation. However, the delegation saw several cells (e.g. cells 6 and 7 in Block 1; cells 90 and 91 in unit 3) which, due to the configuration of the building, had no windows and were thus deprived of access to natural light and ventilation.

80. Although the establishment was operating below its official capacity, conditions of detention in the cells were cramped: in Blocks 1 and 2, cells measuring some 19 m² held ten to twelve male prisoners, and those measuring 35 m², eighteen prisoners. On the positive side, each inmate had his own sleeping place. The cells were filled with double bunk beds, leaving little space for other furniture. In addition, there were partitioned sanitary annexes, containing a floor-level toilet and a washbasin with cold water. The state of repair and cleanliness of the facilities varied from one cell to another, but were in general acceptable. However, many of the cells were cold, as the heating had not yet been turned on. ...

81. The poorest conditions of detention were found in Block 5. At the time of the visit, it was holding 28 prisoners accused of committing serious offences, including five life-sentenced prisoners in the process of appeal. The overcrowding observed in this block was worse than elsewhere in the establishment. Several of the cells were very small (4 m²), each holding two prisoners. Further, four prisoners shared a cell measuring 7 m², and up to eight prisoners could be placed in a cell of 10 m². The whole unit was in a very bad state of repair: walls damaged from damp, dilapidated furniture, broken windowpanes in some of the cells. Further, the heating was not functioning and the cells were cold; a narrow pipe running along the wall was the only source of heating inside the cells ...

85. Male prisoners could take a shower once a week; no particular complaints were received in this respect ...

The establishment provided only soap and chlorine for cleaning the cells; all other personal hygiene and cleaning products had to be purchased by the prisoners or supplied by their families. There was no laundry, and prisoners had to rely on improvised arrangements to wash their clothes and bed linen in the cells.

86. Prisoners were provided with three meals a day; however, many of them stated that they avoided eating the prison food, which was apparently monotonous and of poor quality, and relied to a great extent on food parcels from their families. Reference should also be made to the establishment's kitchen, which was small and

contained rudimentary equipment. On the positive side, the establishment had its own bakery, which guaranteed a sufficient supply of bread.

87. After the visit, the Azerbaijani authorities informed the CPT of certain measures taken in respect of Investigative isolator No. 1. In particular, the heating system in Block 5 had been repaired, and female prisoners transferred to cells equipped with sanitary facilities. As regards the overcrowding observed at the establishment, the authorities stated that the only solution would be to reduce the number of inmates to 650 - 750, which may be possible if the planned construction of a new remand facility in Baku becomes a reality."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE CONDITIONS OF DETENTION

104. The applicant complained under Article 3 of the Convention about the conditions of detention in Detention Facility no. 1 from 20 April to 28 September 2007 and Penal Facility no. 13 as from 28 September 2007. Article 3 of the Convention reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

106. The Government submitted that there was an inevitable element of suffering inflicted on the applicant inherent to the imprisonment and that he had not been subjected to any premeditated form of ill-treatment that fell foul of the standards required by Article 3 of the Convention. The conditions of the applicant's detention were the same as those of other prisoners, were compatible with respect for his human dignity, and did not subject him to distress and hardship of an intensity exceeding the unavoidable level of suffering in detention.

107. The applicant reiterated his complaint and maintained that his conditions of detention in Detention Facility no. 1 and Penal Facility no. 13 amounted to inhuman and degrading treatment.

2. The Court's assessment

(a) General principles

108. 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 level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III; and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI). 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 *Kudła*, cited above, § 92).

109. It cannot be said that detention in itself raises an issue under Article 3 of the Convention, nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds. It nevertheless imposes an obligation on States to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła*, cited above, § 94, and *Paladi v. Moldova* [GC], no. 39806/05, § 71, 10 March 2009). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

(b) Conditions of detention in Detention Facility no. 1 from 20 April to 28 September 2007

110. Severe lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions amounted to ill-treatment under Article 3 (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 143, 10 January 2012, and *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005).

111. The Court notes that the General Reports published by the Committee for the Prevention of Torture do not appear to contain an explicit indication as to what amount of living space per inmate should be considered the minimum standard for a multi-occupancy prison cell. It appears, however, from the individual country reports on the CPT's visits and the recommendations following from those reports, that the desirable standard for the domestic authorities, and the objective they should attain, should be the provision of four square metres of living space per person in pre-trial detention facilities (see *Ananyev and Others*, cited above, § 144, with further references to a number of relevant CPT reports).

112. Whereas the provision of four square metres remains the desirable standard of multi-occupancy accommodation, the Court has found that where the applicants have at their disposal less than three square metres of floor surface, the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3. Where the cell accommodated not so many detainees but was rather small in overall size, the Court noted that, deduction being made of the room occupied by bunk beds, a table, and a cubicle in which a lavatory pan was placed, the remaining floor space was hardly sufficient even to pace out the cell (ibid., §§ 145 and 147, with further references to a number of the Court's relevant earlier judgments). Furthermore, the Court has frequently observed that if the duration of the outdoor exercise period is short, for instance limited to one hour a day, this would be a factor further exacerbating the situation of applicants who were confined to overcrowded cells for the rest of the time without any kind of freedom of movement (ibid., § 151, with further references).

113. The applicant submitted, and the Government did not dispute, that from 20 to 30 April 2007 the applicant was held in cell no. 119 measuring 9.6 sq. m, designed for four inmates, and thus affording 2.4 sq. m per inmate.

114. According to the applicant, from 30 April to 28 September 2007 he was held in another cell, no. 123, measuring 15.84 sq. m, which held eight inmates in total, affording 1.98 sq. m of personal space per inmate. The Government did not make any specific submissions concerning this cell, instead referring to the findings of the Nasimi District Court in the judgment of 2 November 2007. The latter found that the applicant was indeed detained in a cell measuring 15.84 sq. m. It further found that, although the cell was designed for eight inmates, "most of the time" it accommodated only six inmates including the applicant, and therefore afforded 2.64 sq. m of personal space per inmate (see paragraph 93 above). The Court notes that the Nasimi District Court did not specify for how long exactly there were six inmates in the cell and how many inmates were held there at other times. It can therefore be inferred that, at times, this cell, which was designed for

eight inmates, might have been filled to capacity, thus reducing the amount of personal space for each inmate.

115. The Court does not find it necessary to resolve the disagreement between the parties concerning the amount of space per inmate in the second cell where the applicant was held. The figures submitted suggest that in the first cell, where the applicant was held for ten days, he had 2.4 sq. m of personal space, and that in the second cell, where he was held for more than five months, at any given time there was between 1.98 and 2.64 sq. m of space per inmate. The Court also notes that the latter cell was designed for eight inmates and therefore was equipped with the corresponding amount of beds and other furniture. Accordingly, even if during certain periods only six inmates were being held in the cell, the extra furniture must have contributed to the cramped conditions, thus in practice reducing the benefit of the small amount of extra space gained by each inmate. Accordingly, in the Court's view, the cells where the applicant was held were overcrowded and the applicant was afforded insufficient personal space throughout his detention in Detention Facility no. 1.

116. Furthermore, the applicant was confined to the cell day and night, apart from about half an hour of outdoor exercise per day. Moreover, the cells were poorly ventilated and the toilet areas were not screened or otherwise separated from the common areas. Such close proximity and exposure was not only objectionable from a hygiene perspective but also deprived the inmates using the toilet of any privacy (compare, among other authorities, *Aleksandr Makarov v. Russia*, no. 15217/07, § 97, 12 March 2009; *Grishin v. Russia*, no. 30983/02, § 94, 15 November 2007; and *Kalashnikov v. Russia*, cited above, § 99).

117. Having regard to the cumulative effect of the factors described above, the Court considers that the conditions of the applicant's detention in Detention Facility no. 1 from 20 April to 28 September 2007 amounted to inhuman and degrading treatment and that therefore there has been a violation of Article 3 of the Convention in that respect.

(c) Conditions of detention in Penal Facility no. 13 as from 28 September 2007

118. As regards the conditions of detention in Penal Facility no. 13, the applicant complained of overcrowding, lack of a heating system and poor sanitary conditions.

119. The parties disagreed in their submissions as to the personal space afforded to each inmate in the applicant's dormitory. In particular, the applicant noted that the dormitory had an area of 225 sq. m, was designed for 128 inmates, and was occupied at full capacity most of the time. However, according to the Government, who relied in part on the findings in the Nasimi District Court judgment of 2 November 2007, the dormitory had an area of 240 sq. m, was designed for 116 inmates, but held only seventy to ninety inmates at any given time. It follows that, according to

the applicant's submissions, most of the time each inmate had about 1.8 sq. m of personal space, while according to the Government's submissions each inmate has about 2.6 to 3.4 sq. m of personal space inside the dormitory. The Court further notes that the allegation of overcrowding was examined by the Nasimi District Court in its judgment of 2 November 2007, and its factual findings appear to support the Government's submissions on this matter.

120. The Court notes that, as opposed to pre-trial detention facilities and high-security prisons where inmates are confined to their cell for most of the day, when assessing the issue of overcrowding in post-trial detention facilities such as correctional colonies, it considered that the personal space in the dormitory should be viewed in the context of the applicable regime, providing for a wider freedom of movement enjoyed by detainees in correctional colonies during the daytime, which ensures that they have unobstructed access to natural light and air (see *Valašinas v. Lithuania*, no. 44558/98, § 107, ECHR 2001-VIII; *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004; *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007; and *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009). While the parties made no submissions concerning the applicable regime in Penal Facility no. 13, according to the information available to the Court, this is a "general regime" prison where prisoners are free to move around the establishment's living zone during the daytime (see paragraph 101 above). Having regard to the parties' submissions concerning personal space in the dormitory and the fact that the inmates in Penal Facility no. 13 have freedom of movement during the day, which compensate for the restricted space in the sleeping facilities inside the dormitory, the Court considers that it cannot be established that the level of alleged overcrowding in the applicant's dormitory, in itself, constitute ill-treatment reaching the minimum level of severity under Article 3. However, this aspect of the applicant's conditions of detention should be assessed together with the other aspects, examined below, in order to take account of their cumulative effects.

121. As regards the complaint that there was no heating system in the applicant's dormitory, the Court reiterates at the outset that allegations of treatment contrary to Article 3 must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the

well-foundedness of the applicant's allegations (see, among other authorities, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004, and *Kokoshkina v. Russia*, no. 2052/08, § 59, 28 May 2009). However, even in such cases applicants may well be expected to submit at least a detailed account of the matters complained of and provide, as far as is possible, some evidence in support of their complaints. In similar situations the Court has considered, for example, written statements by fellow inmates provided by applicants in support of their allegations (see *Khudobin v. Russia*, no. 59696/00, § 87, ECHR 2006-XII (extracts); *Seleznev v. Russia*, no. 15591/03, §§ 14 and 42, 26 June 2008; and *Polufakin and Chernyshev v. Russia*, no. 30997/02, § 152, 25 September 2008).

122. Turning to the present case, the Court notes that the applicant claimed that the dormitory in which he is held lacked any form of heating and, as a result, the temperatures inside the dormitory were very low in winter, sometimes dropping to below freezing. The Court notes that, despite the applicant's consistent complaints about a lack of heating in his domestic appeals, the domestic courts remained silent on this matter, despite having examined in detail some other aspects of the applicant's conditions of detention.

123. The Government submitted that the dormitory was equipped with central heating in January 2009. Thus, as far as the period prior to January 2009 is concerned, the Government did not dispute the applicant's contention that the dormitory lacked a heating system. While they maintained that the dormitory had been heated with electric heaters, no proof of this was submitted to the Court. On the other hand, the applicant submitted, in support of his claim, a letter by the head of the Azerbaijani Committee against Torture who had personally visited the prison in December 2007 and confirmed that the applicant's dormitory had no heating system (see paragraph 77 above). Having assessed the available material, the Court concludes that until January 2009 the applicant's dormitory was not heated during the winter months.

124. The Court has previously found it unacceptable that anyone should be detained in conditions involving a lack of adequate protection against extreme temperatures (see *Mathew v. the Netherlands*, no. 24919/03, § 214, ECHR 2005-IX, and *Zakharkin v. Russia*, no. 1555/04, § 125, 10 June 2010). The Court observes that, according to publicly available sources, the average low temperature during winter months in Baku and surrounding areas is usually around 2º C, and it is not uncommon for the temperature to drop below freezing. Although it appears that the windows in the applicant's dormitory were properly glazed, the Court considers plausible the applicant's claim that, owing to a lack of heating, the temperature inside could nonetheless have dropped almost as low as that outside. According to

the applicant, on some occasions the temperature inside was below freezing, and the Government submitted no information countering this allegation.

125. On the other hand, the applicant did not submit detailed information as to specific time periods when the temperature inside had dropped to freezing levels, and for how long such conditions persisted during the winter months from 2007 to 2009 (from the beginning of the applicant's detention in Penal Facility no. 13 until the installation of the heating system in January 2009). In such circumstances, the Court finds it difficult in the present case to determine precisely the severity of the situation. However, the Court stresses again that regard must be had to cumulative effects of various aspects of conditions of detention.

126. Lastly, the applicant complained about poor sanitary conditions. In this connection, the Court notes that it has frequently found a violation of Article 3 of the Convention on account of unsatisfactory sanitary conditions coupled with a number of other inadequate conditions such as, among others, the lack of personal space afforded to detainees (see, among many others, *Kalashnikov*, cited above, §§ 97 et seq.; *Testa v. Croatia*, no. 20877/04, § 60, 12 July 2007; and *Generalov v. Russia*, no. 24325/03, §§ 12-14 and 112, 9 July 2009). In the present case, according to the material available in the case file, at any given time Penal Facility no. 13 accommodated between 700 and 950 inmates, while there were a total of seven showers and fourteen toilets in the facility. The insufficient number of toilets is of special concern, as each toilet had to be shared by more than fifty inmates. There were also regular problems with running water in the shower and toilet areas, resulting in a dirty environment. The small number of showers and toilets which did not always have running water caused the inmates difficulty in taking showers and often forced them to stand in long queues to use a toilet. In the Court's view, this situation could arouse in the applicant feelings of anguish and inferiority capable of humiliating and debasing him.

127. As noted above, whereas such aspects of the applicant's conditions of detention as the alleged overcrowding and the lack of heating, on their own, might not be severe enough to amount to ill-treatment if assessed separately, a global assessment of the cumulative effects of all the aspects, having regard in particular to the poor sanitary conditions, leads the Court to conclude that the applicant's conditions of detention in Penal Facility no. 13, as a whole, amount to degrading treatment. There has accordingly been a violation of Article 3 of the Convention on this account.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE ADEQUACY OF MEDICAL TREATMENT

128. The applicant complained under Article 3 of the Convention about a lack of adequate medical treatment in detention.

A. The parties' submissions

129. The Government submitted that the applicant had been suffering from a number of illnesses before he was arrested. They argued that these diseases were not incompatible with detention and that, according to the medical records, his state of health did not deteriorate significantly during his detention. He was provided with adequate medical assistance and treatment. On the other hand, his behaviour (refusal to undergo tests and to receive treatment) demonstrated that he showed little or no concern for his state of health and, therefore, the authorities could hardly be held responsible even if there was any aggravation of his condition during the detention.

130. The applicant submitted that he had been deliberately subjected to ill-treatment. He maintained that the medical treatment he received had been inadequate throughout the years of his detention. He argued that he had never refused to undergo any examinations or to accept any medical treatment offered, and that the documents submitted by the Government in this respect had been fabricated.

B. The Court's assessment

131. The Court refers to the general principles regarding conditions of detention and medical care of detainees (see paragraphs 108-109 above). The Court reiterates that, although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005).

132. An assessment of the adequacy of medical treatment provided in detention becomes necessary if it is established that the applicant's medical condition was serious (see, *mutatis mutandis*, *Paladi*, cited above, § 72, and *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 121, 9 November 2010). The Court notes that, following the applicant's repeated complaints and requests for urgent interim measures, on 25 November 2008 the President of the Chamber decided, under Rule 39 of the Rules of Court, to request the respondent Government, *inter alia*, to transfer the applicant to a specialised medical facility and have him examined by a medical panel composed on a parity basis, with a view to establishing the gravity of his medical condition and prescribing necessary treatment (see paragraph 57 above). The respondent Government complied with the interim measures indicated. The applicant's complaints about various shortcomings in the medical assistance received and his assertion that he urgently needed surgery were not confirmed by the unanimous findings of the medical panel established on a

parity basis, which included three doctors appointed by the applicant himself (see paragraph 60 above).

133. In particular, the medical panel concluded that the applicant was suffering from spinal disc herniation and a number of other, less serious conditions. The applicant's overall state of health was considered satisfactory and did not require surgery. The diagnosed pathologies were chronic and slow to develop, requiring "conservative" treatment, which could be carried out on either an inpatient or an outpatient basis. Following this examination, the applicant was treated for a period of one month on an inpatient basis in the medical facility of the Ministry of Justice and, as it appears from the documents in the case file, the treatment was continued on an outpatient basis afterwards. It further appears that the applicant was examined by doctors at fairly regular intervals both before and after his request for an interim measure, and that the treatment prescribed was generally followed through.

134. Even assuming that, as the applicant alleged, there were certain shortcomings in the manner in which he was provided with medical assistance, the Court considers that the medical assistance provided, as a whole, was not inadequate to such a degree as to amount to "ill-treatment". Having regard to the relevant circumstances as a whole, the Court considers that the applicant received an acceptable level of attention from a number of qualified experts, was prescribed and provided with the necessary treatment, was hospitalised several times, and was examined at reasonably regular intervals when not in hospital.

135. In view of the above, the Court cannot conclude that the applicant was suffering from a health problem which was incompatible with his detention, or that the medical care available to him was inadequate to such a degree as to cause him suffering reaching the minimum level of severity required by Article 3 of the Convention.

136. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE CIVIL PROCEEDINGS

137. The applicant complained that he had been refused the opportunity to participate in the hearings in the civil proceedings concerning the adequacy of medical assistance and conditions of detention. The Court will examine this complaint under Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

139. The Government noted that the principle of adversarial trial had been ensured during the proceedings before the national courts which heard the applicant's civil case. During the court hearings at all the levels of jurisdiction the applicant was represented by a lawyer who was acting on the basis of a power of attorney issued by the applicant and was able to present the applicant's case effectively.

140. The applicant reiterated his complaint, arguing that the subject matter of the proceedings, which concerned the state of his health and the conditions of his detention, required the courts to hear him in person.

2. The Court's assessment

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

142. Article 6 of the Convention does not expressly provide for a right to be heard in person; rather it is implicit in the more general notion of a fair trial that a criminal trial should take place in the presence of the accused (see *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89). At the same time the Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court, but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights. However, the presence of the litigant may be required under Article 6 in certain categories of non-criminal cases, such as those where the personal character and manner of life of the person concerned is directly relevant to the subject matter of the case, or where the decision involves the person's

conduct (see *Vladimir Vasilyev v. Russia*, no. 28370/05, § 76, 10 January 2012).

143. The Court has previously found violations of Article 6 in a number of cases where courts refused leave to appear to imprisoned applicants who had wished to make oral submissions on their claims concerning such matters as, *inter alia*, ill-treatment by police or bad conditions of detention, finding that those claims had largely been based on an imprisoned applicant's personal experience and that his or her submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007; *Sokur v. Russia*, no. 23243/03, § 35, 15 October 2009; *Shilbergs v. Russia*, no. 20075/03, § 111, 17 December 2009; *Skorobogatykh v. Russia*, no. 4871/03, § 64, 22 December 2009; *Artyomov v. Russia*, no. 14146/02, § 205, 27 May 2010; and *Roman Karasev v. Russia*, no. 30251/03, § 67, 25 November 2010).

144. In the present case, the domestic courts' refusal to ensure the applicant's personal attendance was not based on any domestic legal provision for the exercise of the right of personal attendance by individuals who are in custody, or on a lack of such a provision. The domestic courts considered that the applicant's attendance was unnecessary because he was represented by a lawyer and because attending might have interfered with his appearance at the criminal proceedings against him. However, in the light of its case-law cited above, the Court cannot accept this reasoning as valid, for the following reasons.

145. The Court notes, and the Government did not argue otherwise, that the applicant insisted that he wished to be present at both the first-instance and the appellate hearings, but the domestic courts refused to guarantee his attendance in person. The Court observes that the applicant's claims in the impugned civil proceedings were entirely based on his personal experience. In such circumstances, the Court is not convinced that the mere fact that the applicant's legal representative attended the hearings could have secured the effective, proper and satisfactory presentation of the applicant's case. The Court finds that the applicant's testimony describing the conditions of his detention and his state of health, of which the applicant had first-hand knowledge, would have constituted an indispensable part of the plaintiff's presentation of the case. The applicant was in a position to describe the conditions most accurately and to answer the judges' questions, if any.

146. The Court also notes that, even assuming that transporting the applicant to the courtroom was not feasible, for security or any other valid reasons, the domestic courts could have considered other ways of ensuring the applicant's participation in the proceedings, such as holding a hearing in the penal establishment where the applicant was serving his sentence (see, among other authorities, *Sokur*, cited above, § 36).

147. In conclusion, the Court finds that by refusing to guarantee the applicant's attendance at the hearings concerning the conditions of his detention and alleged lack of adequate medical assistance, the domestic courts deprived him of the opportunity to present his case effectively.

148. There has accordingly been a violation of Article 6 § 1 of the Convention on this account.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE CRIMINAL PROCEEDINGS

149. The applicant complained that in the criminal proceedings against him he had not been afforded adequate time and facilities to prepare his defence and have confidential meetings and discussions with his lawyers throughout his trial, that the domestic courts had failed to ensure that he could exercise his right to examine witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as applied to witnesses against him, and that the appeal hearings in the Supreme Court had been held in his absence. He relied on Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention, which provides as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

A. Admissibility

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

B. Merits

1. The parties' submissions

151. The Government submitted that the applicant and his lawyers had been given adequate access to all prosecution materials and sufficient time and facilities to prepare for the trial. The defence's objections in this regard

had been examined by the Assize Court, which had found that they were ill-founded. Furthermore, the Government argued that during the trial the court had allowed the defence enough time to prepare their submissions. The trial court also took relevant measures in order to ensure the applicant's right to have confidential meetings with his defence counsel. In particular, the Government noted that the Assize Court had sent a letter to the head of the MNS Detention Facility requesting the latter to provide the applicant with the opportunity to meet his lawyer outwith the court hearings.

152. The Government further maintained that the applicant and his lawyers had been able to question both the prosecution witnesses and witnesses on the applicant's behalf, as well as "to put questions to the public prosecutors where evidence was heard from witnesses who were not present at the hearing". The Government noted that more than 120 witnesses were questioned in the course of the trial.

153. As regards the eleven witnesses that the applicant requested to be called in connection with the bribe-taking charges, the Government noted that, although those witnesses had given statements to the investigation authorities, their statements had not been read out at the trial and that it was within the domestic court's discretion to refuse to invite them to the hearing if the applicant had failed to demonstrate that hearing those witnesses was necessary for the truth to be ascertained.

154. As regards the experts who had authored the reports of 27 June, 11 August and 18 December 2006, and other witnesses, the Government submitted that the court had duly examined the applicant's requests to have those witnesses questioned in connection with the privatisation-related charges, and had provided sufficient reasoning for a refusal of those requests. The Government maintained that the applicant had failed to demonstrate that hearing those witnesses was necessary for the truth to be ascertained, or that failure to hear them prejudiced the rights of the defence.

155. Lastly, the Government argued that the applicant's absence from the appeal hearings before the Supreme Court had not been in breach of the Convention requirements, because the applicant was represented by his lawyers and because the Supreme Court, as a court of appeal on points of law, had jurisdiction to examine only questions of law.

156. The applicant maintained his complaints. He noted that the defence had not been given an adequate opportunity to familiarise itself with the case file prior to the commencement of the trial. Although the defence raised this matter at the preliminary court hearing, they were again deprived of the opportunity to fully familiarise themselves with the case materials, even at the trial stage. The applicant further submitted that throughout the trial he had never been afforded an opportunity to meet with his lawyers in a confidential setting for a reasonably lengthy period of time. He noted that the trial hearings took place on weekdays without breaks and lasted a full day each time, as a result of which there was no time or opportunity for him

to meet with his defence lawyers in a confidential setting, despite a number of requests in this regard. In such circumstances, the applicant and his lawyers were forced to discuss various matters concerning the case at the court hearings themselves, speaking through the bars of the metal cage in which the applicant was held inside the courtroom, and in the presence of the judge, the prosecution, the audience and other trial participants. Furthermore, contrary to the Government's submissions, the applicant insisted that, during weekends and public holidays (the only days when no hearings were scheduled), his lawyers were not allowed access to the MNS Detention Facility in order to meet with him. Moreover, the applicant claimed that the court routinely refused the defence's requests for short (up to half a day) recesses in hearings for the purpose of preparing requests and submissions.

157. The applicant further maintained that the Assize Court refused, without giving reasons, all his requests for additional witnesses to be called, and thus breached his defence rights. In particular, he noted that he had never been given an opportunity to question the authors of the audit reports of 27 June, 11 August and 18 December 2006, who as prosecution witnesses had made statements in those reports which had served as the basis for his conviction on charges related to unlawful privatisation and abuse of powers. He further maintained that, although he had provided justification for his requests for a number of other witnesses to be called, the domestic courts had refused his requests without giving any plausible reasoning.

158. Lastly, the applicant argued that the failure to ensure his presence at the Supreme Court hearing had amounted to an infringement of his rights under Article 6 of the Convention.

2. The Court's assessment

159. As the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the complaint under both provisions taken together (see, among many other authorities, *F.C.B. v. Italy*, 28 August 1991, § 29, Series A no. 208-B; *Poitrimol v. France*, 23 November 1993, § 29, Series A no. 277-A; *Lala v. the Netherlands*, 22 September 1994, § 26, Series A no. 297-A; and *Krombach v. France*, no. 29731/96, § 82, ECHR 2001-II). In doing so, the Court will examine, in turn, the various grounds giving rise to the present complaint, in order to determine whether the proceedings, considered as a whole, were fair (compare *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, §§ 68 et seq., Series A no. 146).

(a) Refusal to hear witnesses called by the applicant in connection with the charges relating to embezzlement and abuse of official authority

160. All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument (see *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 51, *Reports of Judgments and Decisions* 1997-III). Exceptions to this principle are possible, but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of proceedings (see, among many authorities, *Isgrò v. Italy*, 19 February 1991, § 34, Series A no. 194-A; *Lüdi v. Switzerland*, 15 June 1992, § 47, Series A no. 238; *Lucà v. Italy*, no. 33354/96, § 39, ECHR 2001-II; and *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011). There are two requirements which follow from the above general principle. The first, and preliminary, requirement is that there must be a good reason for the non-attendance of a witness (see *Al-Khawaja and Tahery*, cited above, §§ 119-20, with further references). The second requirement is that, when a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the pre-trial stage or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6 (ibid. §§ 119 and 143 et seq., with further references). Where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance in the case (ibid., § 147).

161. The Court draws particular attention to the fact that when finding the applicant guilty, the national courts relied extensively on the audit reports of 27 June, 11 August and 18 December 2006. The courts did not treat these simply as items of information, but to a large extent accepted the factual findings in those reports as true, and relied on those findings as established facts. The Court concludes that in the instant case the conclusions given by the employees of the Ministry of Finance, the Chamber of Auditors and other State agencies who had participated in the preparation of the reports of 27 June, 11 August and 18 December 2006 had a key role in the proceedings against the applicant in connection with the charges related to embezzlement by way of unlawful privatisation and abuse of official authority. Accordingly, whereas the applicant's conviction on those charges was based to a decisive degree on the conclusions of the

authors of those reports, he should have had an adequate opportunity to challenge them as witnesses who had made statements against him. It is therefore necessary to determine whether the applicant expressed a wish to have them examined in open court and, if so, whether he had such an opportunity (compare, *mutatis mutandis*, *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, §§ 62-66, 4 November 2008).

162. The Court notes that the applicant had not been given an opportunity to question those witnesses at the pre-trial stage. At the trial stage he requested the Assize Court, on at least seven separate occasions, to have them invited to and questioned at the trial hearings. On each occasion the Assize Court either refused those requests without reasoning, or deferred its decision on this matter until a later stage, explaining that the issue of necessity of inviting those witnesses for questioning could be decided only after the court had completed its examination of the evidence produced by the prosecution. In its response to the applicant's most recent request, of 30 March 2007, the Assize Court again postponed making a decision on this issue for an indefinite period of time, noting that it would decide whether it was necessary to have those witnesses examined at the court hearings only after the audit reports in question had been fully read out in the course of the subsequent hearings. However, the Assize Court never returned to this matter again, and thus did not provide any final and definitive reasoning for not having ultimately called them for questioning. Despite that, the trial court proceeded to rely on those audit reports in its judgment convicting the applicant. Accordingly, despite having repeatedly raised before the trial court the issue of attendance of those witnesses, the applicant was never given an opportunity to question them or provided with a reasoned definitive answer to his requests.

163. Having regard to the above, the Court considers that no good reasons were given for the failure to have the authors of the audit reports of 27 June, 11 August and 18 December 2006 examined at the trial court hearings. Moreover, whereas the conclusions in those reports served to a decisive degree as the basis for the applicant's conviction, it has not been shown that there were sufficient counterbalancing factors put in place for the witnesses' credibility to be subjected to scrutiny or cast any doubt on their conclusions. In these circumstances, the Court concludes that the defence rights were restricted to an extent that is incompatible with the guarantees provided by Article 6.

164. Taking into consideration the above conclusion, the Court finds it unnecessary to examine further the refusal by the Assize Court to grant the applicant's requests to invite other witnesses.

(b) Issues concerning effective legal assistance and preparation of the defence

165. An accused's right to communicate with his legal representative out of the hearing of third parties is part of the basic requirements of a fair trial

in a democratic society, and follows from Article 6 § 3 (c) of the Convention. If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective (see *S. v. Switzerland*, 28 November 1991, § 48, Series A no. 220, and *Öcalan v. Turkey* [GC], no. 46221/99, § 133, ECHR 2005-IV). The importance to the rights of the defence of ensuring confidentiality in meetings between an accused and his lawyers has been affirmed in various international instruments, including European instruments (see *Brennan v. the United Kingdom*, no. 39846/98, §§ 38-40, ECHR 2001-X). However, restrictions may be imposed on an accused's access to his lawyer if good cause exists. The relevant issue is whether, in the light of the proceedings taken as a whole, the restriction has deprived the accused of a fair hearing (see *Öcalan*, cited above, § 133).

166. The Court observes that in the instant case, the charges against the applicant included numerous and various acts of embezzlement of public property, abuse of official authority, corruption, and forgery in public office, with various aggravating circumstances. It further notes that the presentation of those highly complex, lengthy and detailed charges generated an exceptionally voluminous case file (see paragraph 16 above) and required examination and assessment of an immense amount of documentary evidence, witness statements and other material. The Court considers that in order to prepare his defence to those charges the applicant required effective and skilled legal assistance equal to the complex nature of the case.

167. The applicant maintained that he had been unable to confer with his lawyers in a confidential setting on weekdays when trial hearings were held, and that at weekends and on other non-working days when no trial hearings were scheduled his lawyers had not been given access to the MNS Detention Facility where he was detained. Although the Government maintained that the trial court had allowed the applicant enough time to consult with his lawyers during trial hearings, they referred to only one occasion when the Assize Court ordered a short adjournment of the hearing to allow the defence lawyer to draw up a submission. It is not possible to determine the total length of that break from the relevant extract from the transcript of the hearing. Furthermore, while the Government noted that the Assize Court had sent a letter to the head of the MNS Detention Facility requesting the latter to provide the applicant with the opportunity to meet his lawyers outwith the court hearings, they have not produced any evidence that the applicant's lawyers were actually allowed contact with the applicant in the detention facility. In particular, the Government could have submitted copies of the relevant extracts of the record book of the MNS entrance-exit checkpoint containing any entries documenting any visits by the applicant's lawyers and thus showing that they had been allowed to meet with the applicant (see, *mutatis mutandis*, *Farhad Aliyev*, cited above, § 159).

168. Having regard to the material in its possession, the Court accepts, in the absence of any convincing rebuttal from the Government, that the applicant and his lawyers were not given sufficient opportunities to consult in a confidential setting throughout the trial. During the trial hearings, which were held every working weekday and lasted all day, the applicant and his lawyers were not allowed a sufficient number of adjournments for consultation, and therefore had to speak to each other during the hearings inside the courtroom, through the metal bars of the cage in which the applicant was seated, in the presence and within earshot of all trial participants. At weekends and on other non-working days, the lawyers' access to the MNS Detention Facility for meetings with the applicant was restricted. The Court considers that such restrictions inevitably prevented the applicant from conversing openly with his lawyers and asking them questions that were important to the preparation of his defence (compare *Öcalan*, cited above, § 133). The rights of the defence, and in particular the applicant's right to effective legal assistance, were thus significantly affected throughout the trial.

169. Having reached the above conclusion, the Court finds it unnecessary to examine the applicant's further argument that the defence had not been given sufficient time and facilities to consult the case file.

(c) Conclusion

170. In view of the above findings, the Court concludes that the proceedings in question did not meet the requirements concerning the defence rights to have witnesses examined and to effective legal assistance. In the light of this conclusion, the Court considers it unnecessary to examine further the applicant's other submissions in connection with the present complaint, such as the question of his absence from the hearing before the Supreme Court.

171. Accordingly, there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (c) and (d) of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

172. The applicant complained under Article 1 of Protocol No. 1 to the Convention about the confiscation of various property belonging to him and to his relatives. Article 1 of Protocol No. 1 provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in

accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

173. The applicant argued that of the confiscated property the domestic court had unlawfully ordered the confiscation of: (a) a house, a flat and a garage belonging to his son; (b) a house, three flats and a garage belonging to his daughter; (c) a house belonging to another relative of his; and (d) various items of jewellery belonging to his wife, daughter and daughter-in-law. Furthermore, he noted that the remaining confiscated property was in his and his wife's common ownership, and therefore its confiscation was in breach of his wife's property rights.

174. The applicant maintained that the confiscation order was unfair and unjustified, because it had been imposed as the result of an unfair trial. He argued that he had acquired most of his property using the royalty payments he had legally received from the sale of a medicine invented by him, amounting to USD 10,000,000 million in total, from which he had duly paid "hundreds of thousands" of United States dollars in taxes. He further argued that the total amount of the property to be confiscated was incorrectly determined by the trial court.

175. The Government submitted that the applicant could not claim to be a victim in respect of the confiscation of the property that he alleged belonged to his relatives. They also noted that he had failed to produce any evidence of his relatives' ownership right to this property.

176. The Government further maintained that all the property in question had been confiscated by judicial decisions concerning the applicant's criminal conviction and sentencing. The interference was lawful, served the general interests of the community and did not impose any excessive burden on the applicant.

177. As for the applicant's claim that he had acquired the confiscated property using money (USD 10,000,000) he had lawfully "earned" from the sales of a medicine invented by him, the Government noted that the applicant had never raised this argument before the domestic courts. The Government further noted that in any event the applicant had failed to provide any meaningful evidence of legal income in that amount. They noted that the only evidence presented was an old newspaper article from 1999 mentioning that in 1997 and 1998 the applicant had paid around USD 100,000 in taxes. The Government noted that this was not proper proof of tax payments and that, in any event, from a total legal income of USD 10,000,000, the amount of due tax applicable at that time would be around USD 3,500,000 to 4,000,000 which the applicant had never declared or paid.

B. The Court's assessment

178. The Court notes that members of the applicant's family have lodged separate applications with the Court, in their own names, concerning the alleged violations of their respective property rights at the outcome of the criminal proceedings against the applicant. In the present case, in so far as the applicant claimed that part of the confiscated property was in the ownership of his family members and relatives, the Court notes that in essence he was complaining about the alleged violation of other persons' property rights. In such circumstances, the applicant cannot claim victim status in respect of the alleged violations and, therefore, the Court finds that the part of the complaint relating to the part of the property allegedly owned by the applicant's family members is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

179. As for the remainder of the complaint, the Court observes that, while the applicant argued that some of the confiscated property (of unspecified total value) did not belong to him, at least part of that property constituted his "possessions" forming the object of his complaint and comprising various sums of cash in different currencies, various precious metals and items of jewellery, a number of residential properties, and a car. The Court considers that confiscation of that property amounts to an interference with the applicant's right to peaceful enjoyment of his possessions and that Article 1 of Protocol No. 1 is therefore applicable.

180. These possessions were confiscated by means of imposition of a criminal sanction provided for in Articles 51 and 179.3 of the Criminal Code, as in force at the material time (see paragraphs 99 and 100 above). The Court considers that this confiscation order constituted a "penalty" within the meaning of the Convention (see *Phillips v. the United Kingdom*, no. 41087/98, § 51, ECHR 2001-VII). It therefore falls within the scope of the second paragraph of Article 1 of Protocol No. 1, which, *inter alia*, allows the Contracting States to control the use of property to secure the payment of penalties. However, this provision must be construed in the light of the general principle set out in the first sentence of the first paragraph and there must, therefore, exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, among other authorities, *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, § 55, Series A no. 163, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V). The Court recognises that the Contracting States enjoy a wide margin of appreciation under the second paragraph of Article 1 of Protocol No. 1 (see *AGOSI v. the United Kingdom*, 24 October 1986, § 52, Series A no. 108).

181. As regards the aim pursued by the penalty of confiscation of property, the Court notes that it deprived those engaging in embezzlement

of public funds of the proceeds of their crime, and held them liable for the pecuniary damage inflicted by their criminal actions. The Court accepts that the imposition of this penalty pursued a legitimate aim in the general interest, namely it served as a measure preventing and deterring unlawful acquisition of property and enrichment through criminal activities to the detriment of the community (see, *mutatis mutandis*, *Silickienė v. Lithuania*, no. 20496/02, § 65, 10 April 2012; *Phillips*, cited above, § 52; and *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A).

182. The Court notes that the total value of the property found in the applicant's possession and confiscated, while considerable, did not exceed the total amount of the financial damage the applicant had been found responsible for through having committed the criminal offences of embezzlement and abuse of official powers. The confiscation order was imposed in the sentencing procedure that was an integral part of the criminal trial conducted by a competent court.

183. The Court has previously found that a confiscation order made in the sentencing procedure conducted in compliance with Article 6 § 1 did not constitute a disproportionate interference with the right to peaceful enjoyment of possessions (see *Phillips*, cited above, §§ 48-53, and *Grayson and Barnham v. the United Kingdom*, nos. 19955/05 and 15085/06, § 52, 23 September 2008). In both of the above-mentioned cases the confiscation orders were imposed in separate sentencing proceedings instituted after the proceedings resulting in the applicants' criminal conviction, unlike in the present case, where both the conviction and sentencing were decided by the trial court in the same proceedings. The Court notes that in the present case the applicant's complaint under Article 1 of Protocol No.1 is essentially premised on the argument that the confiscation order had been wrongful because it had been imposed following a conviction in the criminal proceedings conducted in breach of Article 6.

184. While it is true that, as has been found above, the criminal proceedings against the applicant did not comply with certain guarantees of Article 6, the Court nevertheless cannot accept the applicant's argument. The Court considers that the applicant's assertion could be true if the criminal proceedings against him amounted to a flagrant denial of justice, that is, were manifestly contrary to the provisions of Article 6 or the principles embodied therein (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 51, 24 March 2005, and *Tsonyo Tsonev v. Bulgaria (no. 3)*, no. 21124/04, § 59, 16 October 2012, both cases assessing the compatibility with Article 5 § 1 (a) of the prison sentence imposed at the outcome of the proceedings conducted in breach of Article 6). This is a stringent test: a flagrant denial of justice goes beyond mere irregularities or lack of safeguards in trial procedures that result in a breach of Article 6 of the Convention. What is required is a breach of the principles of fair trial that is so fundamental as to amount to a nullification, or destruction of the very

essence, of the right guaranteed by that Article (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 260, 17 January 2012). Until now, the Court has found that a flagrant denial of justice has occurred or would occur only in certain very exceptional circumstances (see *Othman (Abu Qatada)*, cited above, § 259, and *Tsonyo Tsonev (no. 3)*, cited above, § 59, for references to specific cases, with relevant summaries, where the Court found such exceptional circumstances). This is not the case here. Although the proceedings against the applicant were not in conformity with the requirements of Article 6 of the Convention, the flaws that the Court found in them are not of such a nature as to render the entire trial so fundamentally unfair as to amount to a flagrant denial of justice. In these circumstances, the Court considers that it would be speculative to assume that, had the criminal proceedings complied with the relevant fair trial requirements, the applicant would not have been convicted of the criminal offences with which he had been charged.

185. Specifically as regards the sentencing part of the domestic decision, the Court notes that the applicant had an opportunity, of which he appears to have made use, to advance his arguments against the confiscation in the domestic proceedings (compare, *mutatis mutandis*, *Saccoccia v. Austria*, no. 69917/01, § 90, 18 December 2008). Bearing in mind the above, and having regard to the wide margin of appreciation enjoyed by States in pursuit of a policy on crime designed to combat the most serious crimes, the Court considers that the imposition of a confiscation order in the present case, in itself, was not disproportionate to the legitimate aim pursued.

186. Furthermore, in so far as the applicant could be understood as complaining that the breach of guarantees of Article 6 of the Convention during the criminal trial resulted in an incorrect calculation by the domestic court of the amount of damage inflicted, or in an incorrect assessment of the value of property to be confiscated, the Court notes that, following the finding of a violation of Article 6 above, the respondent State is required to review the case (see paragraph 195 below) wherein the domestic courts will be called upon to re-examine all the matters relating to the applicant's conviction and sentencing, including various assessments relating to pecuniary matters, in compliance with the requirements of Article 6 of the Convention.

187. Having regard to the above considerations, the Court finds that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

188. 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

1. Pecuniary damage

189. The applicant claimed that his and his relatives' confiscated possessions should be returned to him and his relatives. He further claimed loss of earnings in the amount of AZN 60,000 as the Minister of Health Care (calculated from the date of his dismissal) and AZN 36,000 as a member of the Academy of Sciences, from which role he had also been dismissed.

190. The Government noted that the applicant could not claim back the confiscated property, as it had been confiscated pursuant to a lawful court judgment. They further submitted that the applicant could not claim any salary for the Government post from which he had been dismissed. Lastly, they noted that his complaint concerning the dismissal from the Academy of Sciences had been declared inadmissible (see *Insanov v. Azerbaijan* (dec.), no. 16133/08, 19 November 2009) and that therefore he could not claim any pecuniary damages in connection with that complaint.

191. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects the applicant's claims.

2. Non-pecuniary damage

192. The applicant claimed EUR 30,000,000 in respect of non-pecuniary damage.

193. The Government submitted that the amount claimed was excessive and considered that the finding of violations would constitute in itself sufficient compensation for any non-pecuniary damage suffered.

194. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations, and that compensation has thus to be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 10,000 under this head, plus any tax that may be chargeable on this amount.

195. The Court reiterates that when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of

the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). As has been found above, the criminal proceedings in the present case did not comply with the requirements of fairness. In these circumstances, the most appropriate form of redress would, in principle, be the reopening of the proceedings in order to guarantee the conduct of the trial in accordance with the requirements of Article 6 of the Convention (see, *mutatis mutandis*, *Somogyi v. Italy*, no. 67972/01, § 86, ECHR 2004-IV; *Shulepov v. Russia*, no. 15435/03, § 46, 26 June 2008; *Maksimov v. Azerbaijan*, no. 38228/05, § 46, 8 October 2009; and *Abbasov v. Azerbaijan*, no. 24271/05, §§ 41-42, 17 January 2008). The Court notes in this connection that the Code of Criminal Procedure of the Republic of Azerbaijan provides for a review of domestic criminal proceedings by the Plenum of the Supreme Court and remittal of the case for re-examination, if the Court finds a violation of the Convention (see paragraph 102 above).

B. Costs and expenses

196. The applicant made no claim in respect of costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest rate

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 (concerning the conditions of detention), Article 6 (concerning the civil proceedings) and Article 6 (concerning the criminal proceedings) admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the conditions of detention in Detention Facility no. 1;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the conditions of detention in Penal Facility no. 13;

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

5. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (c) and (d) of the Convention in respect of the criminal proceedings;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President