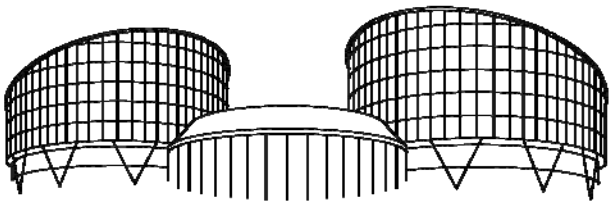

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ABDULGADIROV v. AZERBAIJAN

(Application no. 24510/06)

JUDGMENT

STRASBOURG

20 June 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 Abdulgadirov v. Azerbaijan,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 28 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 24510/06) 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 Rizvan Mammad oglu Abdulgadirov (*Rizvan Məmməd oğlu Abdulqədirov* – "the applicant"), on 29 May 2006.

2. The applicant was represented by Mr E. Osmanov, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that his absence from hearings before the Court of Appeal and the Supreme Court had breached his right to a fair trial.

4. On 8 June 2009 the application was communicated to the Government. It was 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 1958 and lives in Baku.

6. The applicant is a practising Muslim and attended a mosque, where he met A. Subsequently, A. was arrested by officers of the Ministry of National Security ("the MNS") on suspicion of having had contact with Al-Qaeda in

the past and being the leader of a group planning to carry out terrorist acts in Azerbaijan. The authorities considered the group to be religious fundamentalists (referred to as "adherents of Wahhabism").

7. On 7 September 2004 the applicant was also arrested by the MNS officers, on suspicion of being associated with that group.

8. A search of his place of residence, carried out on the same day, did not reveal any incriminating evidence. However, a hand grenade was found in the flat of the applicant's wife, which the MNS officers had also searched.

9. The applicant was charged with illegal possession of a weapon under Article 228.1 of the Criminal Code. In addition to the applicant, the criminal proceedings involved five other accused (including A.), all of whom were charged with more serious offences than the applicant. Four of them were charged with complicity in the preparation of terrorist acts.

10. On 10 September 2004 the applicant was brought before a judge, who ordered his detention pending trial.

11. The applicant was tried by the Assize Court, together with the other five accused. The trial was closed to the public. According to the applicant, before the Assize Court he argued that the hand grenade did not belong to him and that it had been "planted" in his wife's flat by the MNS officers who, having tricked his wife, had gained access to the flat about 30 minutes before she, the applicant himself, and two passers-by who had been asked to witness the search, entered the flat.

12. On 7 February 2005 the Assize Court convicted the applicant of illegal possession of a weapon and sentenced him to three years' imprisonment. The other accused were convicted of more serious criminal offences (terrorist activities) and received longer prison sentences, ranging from five to fourteen years' imprisonment.

13. On 18 February 2005 the applicant lodged an appeal against the judgment, requesting the Court of Appeal to quash the judgment in the part concerning him and to terminate the criminal case against him. He reiterated his allegations that the hand grenade had not belonged to him, that the case file did not contain any other evidence against him, and that he had not committed the criminal offence for which he had been convicted. He argued that, in circumstances where the discovery of the hand grenade in his wife's flat was essentially the only incriminating evidence against him, the trial court had failed to take into account the unlawful manner in which the search had been conducted and to properly assess the admissibility and reliability of the evidence obtained as a result of the search. He also noted that the first-instance court had applied the most severe sentence provided for in Article 228.1 of the Criminal Code and had not taken into account his personal circumstances when imposing the sentence, such as, *inter alia*, the fact that he had to provide and care for his aged and ailing mother.

14. Some of the other defendants also lodged appeals.

15. At a preliminary hearing on 22 March 2005, held in the presence of the public prosecutor but in the absence of the defendants and their lawyers, the Court of Appeal fixed the date of the hearing on the merits for 29 March 2005 and decided that only the public prosecutor and the defendants' lawyers should be invited to that hearing. The Court of Appeal's decision was silent as to whether the defendants or their lawyers had been informed of the time and place of the preliminary hearing (see paragraph 23 below). It was also silent as to whether the hearing on the merits would be held with or without a "court investigation" (see paragraph 24 below).

16. On 29 March 2005 the Court of Appeal examined the appeals lodged by all six defendants, including the applicant. The court examined the appeals "without a court investigation", that is, without a full rehearing of the case (see paragraph 25 below for an explanation of the differences in appellate proceedings conducted with and without a "court investigation"). According to the applicant, the Court of Appeal hearing lasted between ten and twenty minutes. According to the minutes of the hearing, the applicant was absent but the applicant's lawyer and the public prosecutor were present. On the same day the Court of Appeal upheld the Assize Court's judgment of 7 February 2005. The Court of Appeal's judgment was largely a word-for-word copy of the judgment of 7 February 2005.

17. On 5 August 2005 the applicant lodged a cassation appeal with the Supreme Court. He claimed, *inter alia*, that his absence from the Court of Appeal's hearing had breached his rights under the domestic law. The Supreme Court examined the applicant's cassation appeal separately and, on 29 November 2005, upheld the lower courts' judgments. The Supreme Court's decision was silent on the applicant's complaint about his absence from the hearing before the Court of Appeal. At the Supreme Court hearing the applicant was represented by his lawyer but was not present personally.

II. RELEVANT DOMESTIC LAW

A. Competence of an appellate court

18. In accordance with Article 397 of the Code of Criminal Procedure ("the CCrP"), an appellate court (second instance) verifies whether the court of first instance correctly established the facts of the case and correctly applied the provisions of the criminal law and the CCrP.

19. In accordance with Article 398 of the CCrP, following the examination of an appeal, the appellate court may dismiss the appeal and uphold the judgment of the first-instance court, quash the first-instance judgment and deliver a new judgment, quash the first-instance judgment and terminate the criminal proceedings, or amend the first-instance judgment.

B. Presence of the defendant at appellate hearings

20. In accordance with Article 91.5.25 of the CCrP, the accused has the right to be present at hearings before the first-instance and appellate courts, and to examine the case materials.

21. In accordance with Article 392.2 of the CCrP, if the issues raised before the appellate court may lead to the worsening of the situation of the convicted or acquitted person as a result of the appeal proceedings, or if the appellate court decides that a full judicial review of the case ("a court investigation") is necessary, it is imperative that the convicted or acquitted person, as well as his or her counsel, be summoned to the appeal hearings. In such cases the participation of the public prosecutor is also compulsory. According to the same provision, the participation of the appellant and the consequences of his or her absence are determined with reference to the criteria set out in Article 311 of the CCrP.

22. According to Article 311 of the CCrP, the accused has a right to participate in all trial hearings and enjoys all the defence rights provided for in the CCrP. Article 311.2 specifies two exceptional circumstances where the court can examine the case in absence of the accused: (a) the accused is abroad and intentionally avoiding attending the hearing; or (b) the person is charged with a minor criminal offence and has waived his or her right to be present at the court hearings.

According to Article 311.4 of the CCrP, except for the circumstances specified in Article 311.2 of the CCrP, if the accused is absent from the hearing, the court's examination of the case must be postponed.

C. Procedure for the examination of an appeal by an appellate court

23. Under Article 391.1 of the CCrP, the appellate court must hold a preliminary hearing within fifteen days (in some circumstances, within thirty days) of receiving an appeal. Persons who have the right to lodge an appeal, and the public prosecutor, have the right to be present at the preliminary hearing. These parties must be informed in advance of the time and place of the preliminary hearing; however, their failure to attend does not prevent the preliminary hearing from taking place. If a convicted person who is detained lodges a request to participate in the preliminary hearing, it is for the court to order that he or she be brought to the hearing.

24. During the preliminary hearing the appellate court examines various admissibility issues and decides on a number of procedural matters, following which, in accordance with Article 391.3.4 of the CCrP, it can decide to fix a date for a hearing on the merits. According to Article 392.1 of the CCrP, if the court decides to proceed with the examination of the merits of the appeal and fixes a date for a hearing on the merits, it must also decide on the following issues, *inter alia*: whether a "court investigation" is

necessary and, if so, its scope; whether it is necessary to procure additional evidence; and which persons should be invited to attend the hearing on the merits.

25. According to Article 394.3 of the CCrP (which contains further references to Articles 339-341 of the CCrP), if the appellate court examines the appeal "without a court investigation", the appeal hearing on the merits proceeds approximately as follows: the court (a) opens the hearing by, *inter alia*, explaining the substance of the first-instance judgment, summarising the points of appeal and asking if the parties have any objections; (b) notifies the participants of any additional requests lodged at the appeal hearing; (c) hears the arguments of the parties concerning the points of appeal; (d) invites the parties to make closing statements and exercise their right of reply to the other party's closing statement (in the manner stipulated in Articles 339-341 of the CCrP); and (e) closes the hearing and retires to the deliberations room.

In accordance with Articles 394.4 and 394.6 of the CCrP (which contain further references to Articles 324-341 of the CCrP), if the appellate court examines the appeal by means of a "court investigation", the appellate hearing essentially takes the form of a full rehearing of the case resembling the first-instance trial (but limited to the issues raised on appeal). Specifically, the appellate hearing proceeds approximately as follows: the court (a) opens the hearing by, *inter alia*, explaining the substance of the first-instance judgment, summarising the points of appeal and verifying if the parties have any objections; (b) begins the "court investigation" by reading out the operative provisions of the public prosecutor's indictment, explaining to the accused the substance of the charges against him and his rights as an accused, and asking the accused whether he wishes to plead guilty or not guilty; (c) questions the accused concerning all relevant aspects of the case and gives the other party the opportunity to cross-examine him, and, where necessary, examines any other statements made by the accused prior to the trial stage; (d) determines the order in which evidence will be presented, invites the parties to present their evidence and examines the evidence in an open hearing, allowing the parties to cross-examine the witnesses: this includes hearing witnesses, reading out witness statements, hearing victims, examining expert opinions, questioning experts, examining material and documentary evidence, and so on; (e) closes the "court investigation" by notifying the parties that the court is ready to proceed to closing statements and enquiring if the parties have any additional requests; (f) invites the parties to make their closing statement and exercise their right of reply to the other party's closing statement; (g) provides an opportunity for the defendant to make a final plea; and (h) closes the hearing and retires to the deliberations room.

D. Competence of the cassation court and presence of the defendant at cassation hearings

26. Under Article 419 of the CCrP, when examining the merits of an appeal the Supreme Court deals only with points of law, verifying whether the rules of criminal law and criminal procedure have been applied correctly. Persons having the right to lodge a cassation appeal, and the public prosecutor, have the right to be present at the Supreme Court hearing (Article 419.2 of the CCrP). The absence of the person who has lodged the appeal, if he or she has been duly informed of the hearing, does not prevent the Supreme Court from deciding to proceed with the hearing in his or her absence (Article 419.4 of the CCrP).

E. Criminal Code

27. Article 228.1 of the Criminal Code (illegal acquisition, transfer, sale, storage, transportation or carrying of firearms or their accessories or explosives) provides for a maximum sentence of three years' imprisonment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

28. The applicant complained that his absence from the hearings before the Court of Appeal and the Supreme Court had breached his right to a fair trial under Article 6 §§ 1 and 3 (c) of the Convention, which reads 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:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ..."

A. Admissibility

29. 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

30. The Government submitted that the applicant had received a fair trial in the court proceedings before the first-instance court. He and his lawyer had participated in all the first-instance hearings. As to the hearings before the Court of Appeal, the Government submitted that in the present case the Court of Appeal had decided to examine the merits of the appeal without a "court investigation" and there had been no possibility of the worsening of the applicant's situation as a result of his appeal. In such circumstances, under Article 392.2 of the CCrP, the Court of Appeal "had the right to hear the case" in the applicant's absence. Furthermore, the applicant's lawyer had been present at the hearing on the merits and had been given the opportunity to present arguments on the applicant's behalf. In particular, in accordance with Article 394.3 of the CCrP, the defence counsel had made submissions in support of the appeal. The Government concluded that equality of arms had been fully ensured in the proceedings before the Court of Appeal.

31. Concerning the applicant's absence from the hearing before the Supreme Court, the Government submitted that, under the domestic legislation, the Supreme Court was competent to examine the case only on points of law. As the applicant had been represented by a lawyer before the Supreme Court, the Government concluded that his absence in person had not infringed the rights of the defence.

32. The applicant maintained his complaints.

2. The Court's assessment

(a) General principles

33. The Court reiterates that the object and purpose of Article 6 taken as a whole imply that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court", and it is difficult to see how one can exercise these rights without being present (see *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89). The duty to guarantee the right of a criminal defendant to be present in the courtroom – either during the original proceedings or in a retrial – ranks as one of the essential

requirements of Article 6 (see *Stoichkov v. Bulgaria*, no. 9808/02, § 56, 24 March 2005).

34. The personal attendance of the defendant does not necessarily take on the same crucial significance for an appeal hearing as it does for the trial (see *Kamasinski v. Austria*, 19 December 1989, § 106, Series A no. 168). The manner in which Article 6 is applied to proceedings before appellate courts depends on the special features of the proceedings involved – account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appeal court therein (see *Ekbatani v. Sweden*, 26 May 1988, § 27, Series A no. 134).

35. Leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even if the appellant has not been given an opportunity to be heard in person by the appeal or cassation court, provided that he was heard by the first-instance court (see, among other authorities, *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 58, Series A no. 115, as regards the issue of leave to appeal, and *Sutter v. Switzerland*, 22 February 1984, § 30, Series A no. 74, as regards the cassation stage).

36. In appeal proceedings reviewing a case both as to facts and as to law, Article 6 does not always require a right to a public hearing, still less a right to appear in person (see *Fejde v. Sweden*, 29 October 1991, § 33, Series A no. 212-C). In order to decide this question, regard must be had to, among other considerations, the specific features of the proceedings in question and the manner in which the applicant's interests were actually presented and protected before the appeal court, particularly in the light of the nature of the issues to be decided by it and of their importance to the appellant (see, among many other authorities, *Kremzow v. Austria*, 21 September 1993, § 59, Series A no. 268-B; *Belziuk v. Poland*, 25 March 1998, § 37, *Reports of Judgments and Decisions* 1998-II; and *Hermi v. Italy* [GC], no. 18114/02, § 62, ECHR 2006-XII). For instance, where an appeal court has to make a full assessment of the issue of guilt or innocence, it cannot determine the issue without a direct assessment of the evidence given in person by the accused for the purpose of proving that he did not commit the act allegedly constituting a criminal offence (see *Dondarini v. San Marino*, no. 50545/99, § 27, 6 July 2004).

37. The Court further reiterates that the principle of equality of arms is one of the features of the wider concept of a fair trial, which also includes the fundamental right that criminal proceedings should be adversarial. The principle of equality of arms requires each party to be given a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his opponent (see *Nideröst-Huber v. Switzerland*, 18 February 1997, § 23, *Reports* 1997-I). The right to an adversarial trial means, in a criminal case, that both the prosecution and the defence must be given the opportunity to have

knowledge of and comment on the observations made and the evidence adduced by the other party (see *Brandstetter v. Austria*, 28 August 1991, §§ 66-67, Series A no. 211).

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

38. At the outset, the Court notes that it is not convinced by the Government's argument that Article 392.2 of the CCrP clearly affords the Court of Appeal the "right" to hold a hearing in the absence of the accused whenever an appeal is examined without a "court investigation" and the examination of the appeal cannot result in the worsening of the defendant's situation. The Court notes that, in general, the CCrP expressly provides for the accused's right to be present at appellate hearings at second instance, and the Court refers, in particular, to Article 91.5.25 of the CCrP in this regard (see paragraph 20 above). Article 392.2 of the CCrP appears, at first sight, to further reinforce the importance of this right by outlining circumstances where the presence of the accused at the hearing is "imperative" (see paragraph 21 above). Moreover, the Government have not elaborated as to how the accused's right to be present, unequivocally declared by Article 91.5.25 of the CCrP, could be ignored in a situation where the circumstances outlined in Article 392.2 did not obtain. Nor do they refer to any domestic case-law containing an interpretation of these legal provisions that would support the Government's argument. Furthermore, the CCrP expressly provides for only two exceptions to the accused's right to be present at second-instance appeal hearings (see paragraph 22 above), neither of which applied in the present case.

39. In any event, the existing requirements of the domestic law concerning a defendant's presence in person are not crucial for the examination of the present complaint, as the Court's task in the present case is to determine whether the applicant's absence from the Court of Appeal hearings was in compliance with the requirements of Article 6 of the Convention, which are autonomous in relation to those of national legislation.

40. The Court considers that, in the present case, the issue of the applicant's absence from the Court of Appeal hearing on the merits should be assessed in conjunction with the issue of his and his lawyer's absence from the same court's preliminary hearing.

41. The Court observes that, under the Azerbaijani legal system, the Court of Appeal has competence to examine points of both fact and law and to conduct a full review of the assessment of an accused's guilt or innocence. If necessary, the Court of Appeal has competence to retry the case and directly examine the evidence, question witnesses, and so on.

42. In his grounds of appeal, the applicant contested his conviction, and the sentence imposed, on both factual and legal grounds. He submitted, in particular, that his guilt had not been proved by lawfully-obtained evidence

and that the first-instance court had failed to properly assess the admissibility and reliability of the only piece of evidence against him, that is, the discovery of a hand grenade during a search that was allegedly procedurally flawed. The Court considers that these arguments indicate that the applicant wished to obtain a review by the Court of Appeal of the factual circumstances in which the search was conducted and a new assessment as to the admissibility and reliability of the evidence obtained. Furthermore, the applicant also complained that the court had applied the most severe punishment provided for in the relevant provision of the Criminal Code, without giving due consideration to his personal circumstances. It therefore appears that in his appeal the applicant called on the Court of Appeal to conduct a full review of the factual and legal grounds for his conviction and sentencing.

43. According to the Government, the Court of Appeal, at its preliminary hearing of 22 March 2005, decided to dispense with a full rehearing of the case (that is, decided to hold a hearing "without a court investigation"). However, the Court notes that, contrary to the Government's assertion, and despite the requirement of Article 392.1 of the CCrP (see paragraph 24 above), the Court of Appeal's decision of 22 March 2005 did not contain any order in respect of the "court investigation", and was in fact silent on that matter (see paragraph 15 above). Although the Court of Appeal eventually conducted the proceedings "without a court investigation", the Court notes that neither in the decision adopted at the preliminary hearing nor in its judgment on the merits did the Court of Appeal provide any reasons for its informal decision to proceed in this manner, or any explanation as to why the applicant's appeal did not merit an examination with a "court investigation".

44. Furthermore, the Court notes, firstly, that at the preliminary hearing of 22 March 2005 the Court of Appeal heard submissions by the public prosecutor, whereas neither the applicant nor his lawyer was present. Accordingly, the defence was placed at a disadvantage vis-à-vis the prosecution, as it was unable to argue in favour of holding a hearing on the merits "with a court investigation" in order to obtain a full rehearing of the issues raised in the appeal and, moreover, was not given an opportunity to have knowledge of or comment on the oral submissions of the public prosecutor.

45. Secondly, the merits of the appeal were examined by the Court of Appeal at a single hearing, attended by the applicant's lawyer, which lasted between ten and twenty minutes, where the court reviewed the findings of the court of first instance on the basis of the material in the case file and heard oral submissions by the applicant's lawyer in support of the appeal, as well as the counter-arguments of the prosecution. The Court notes that, as stated above, the issues raised by the defence before the appellate court

concerned, among other things, the applicant's personal circumstances, and therefore, hearing him directly was necessary.

46. Having regard to the above, the Court considers that by holding the preliminary hearing in the absence of the defence, by dispensing with a full rehearing of the case without a formal decision and without giving the defence an opportunity to argue otherwise, and by subsequently examining the merits of the appeal in the applicant's absence, the Court of Appeal deprived the applicant of the opportunity to effectively argue his points of appeal in a manner complying with the principles of equality of arms and adversarial proceedings, and denied him the right to be heard in person in connection with points of appeal that, at least *prima facie*, required him to be heard directly. The fact that the applicant's lawyer was present at the hearing on the merits and was allowed to make very brief submissions in favour of the appeal did not remedy the situation.

47. Furthermore, having regard to the material in the case file, the Court notes that it cannot be established that the applicant waived, in any manner, his right to take part in the appeal hearings (see, for example, *Samokhvalov v. Russia*, no. 3891/03, §§ 55 et seq., 12 February 2009).

48. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

49. In view of the above finding, the Court does not consider it necessary to examine separately the applicant's complaint concerning his absence from the hearing of the Supreme Court.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant also complained under Articles 3, 5, 6, 7, 13 and 14 that the conditions of his detention in prison had been poor; that his arrest and pre-trial detention had not complied with a number of the requirements of the Convention; that the Supreme Court had not been impartial because its President (who did not hear the applicant's case personally) and the prosecutor who had signed the applicant's indictment were the same person; that he should not have been tried by the Assize Court, which was a court for especially serious crimes; that there had been no effective domestic remedies in his case; and that he had been discriminated against on the ground of his alleged association with Wahhabism.

51. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of the violations alleged by the applicant. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 13,200 euros (EUR) in respect of pecuniary damage, to cover loss of salary during the period of his arrest and imprisonment.

54. The Government submitted that the claim was unsubstantiated and that the applicant had failed to submit any evidence in support of it.

55. The Court considers that there is no causal link between the alleged pecuniary loss and the violation found. It therefore rejects the applicant's claim under this head.

2. Non-pecuniary damage

56. The applicant claimed EUR 150,000 in respect of non-pecuniary damage.

57. The Government deemed the sum claimed excessive. They added that if the Court found a violation of the Convention provisions in his case, the applicant would have the right to a re-examination of his case by the domestic courts. Therefore a finding of a violation would constitute sufficient reparation in respect of any non-pecuniary damage suffered by the applicant.

58. The Court considers that the applicant must have endured mental suffering which cannot be compensated solely by the finding of a violation. Nevertheless, the particular amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

59. The Court reiterates that when an applicant has been convicted despite a potential infringement of his rights 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 appellate proceedings in the present case did not comply with the requirements of fairness. In such circumstances, the most appropriate form of redress would, in principle, be

the reopening of the appellate 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 *Insanov v. Azerbaijan*, no. 16133/0, § 102, 14 March 2013, for the relevant texts of Articles 455, 456 and 459 of the Code of Criminal Procedure of the Republic of Azerbaijan).

B. Costs and expenses

60. The applicant also claimed EUR 4,000 for costs and expenses incurred before the Court.

61. The Government submitted that the applicant had failed to present any supporting documents in respect of this part of the claim.

62. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the available documents, the Court awards the applicant EUR 1,000 for costs and expenses, plus any tax that may be chargeable to the applicant.

C. Default interest

63. 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 complaint concerning the fairness of the appeal proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on these amounts, 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;

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

Done in English, and notified in writing on 20 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President