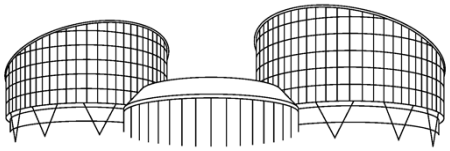

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ABDULLAYEV v. AZERBAIJAN

(Application no. 6005/08)

JUDGMENT

STRASBOURG

7 March 2019

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 Abdullayev v. Azerbaijan,

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

Angelika Nußberger, *President,*
Yonko Grozev,
Ganna Yudkivska,
André Potocki,
Síofra O'Leary,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 5 February 2019,

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

PROCEDURE

1. The case originated in an application (no. 6005/08) 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 Huseyn Abbas oglu Abdullayev (*Hüseyn Abbas oğlu Abdullayev* – "the applicant"), on 4 February 2008.

2. The applicant was represented by Clyde & Co., a law firm based in London and Mr Aslan Ismayilov, 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 the criminal proceedings against him were unfair.

4. On 5 July 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967. He was a member of the National Assembly (Milli Majlis), elected in 2005.

A. Alleged events in parliament

6. The applicant provided the following account of the impugned events.

7. On 16 March 2007 the National Assembly was hearing a 2006 Cabinet of Ministers report presented by the Prime Minister. The presentation of the report was to be followed by questions and subsequently by a debate.

8. According to the applicant, when he was given an opportunity to ask a question, he began to deliver a speech criticising the Cabinet of Ministers. After a few sentences his microphone was cut and he was not allowed to finish his speech. This prompted the applicant to engage in a verbal argument with the Speaker.

9. The applicant claimed that while he and the Speaker were arguing, F.A., a member of parliament who was seated behind him, shouted an insult directed at the latter. In reply, the applicant, also using insulting language, demanded that F.A. mind his own business. F.A. allegedly responded by continuing to shout curses directed at the applicant and his close family members, and a heated argument between the applicant and F.A. ensued.

10. The applicant, using gestures, invited F.A. to follow him so that they could settle their differences outside the assembly room and began heading towards the exit. However, according to the applicant, at that point F.A. approached him from behind and punched him in the face. The applicant pushed F.A. away, as a result of which F.A. fell onto a desk. However, he allegedly continued to throw punches at the applicant. The applicant also attempted to punch F.A., but was stopped by several other members who had quickly intervened to stop the fight. He was led out of the assembly room and left the parliament building.

11. The Government neither disputed the applicant's above account of the events nor provided a separate description thereof (see paragraph 56 below).

12. The above incident in the National Assembly was video recorded and broadcast later by various public television channels.

B. Criminal proceedings against the applicant

13. On the same day F.A. lodged a criminal complaint against the applicant with the Prosecutor General's Office and the latter instituted criminal proceedings under Articles 132 (battery) and 221.2.2 (hooliganism accompanied by resistance to a State official or other person carrying out duties in protection of public order or prevention of breaches of public order) of the Criminal Code.

14. According to the applicant, at around 10.30 a.m. on 19 March 2007 he was arrested by masked police officers in the street. The police allegedly applied force during his arrest.

15. Several hours after the arrest the National Assembly lifted the applicant's parliamentary immunity, following a request by the Prosecutor General.

16. By a decision of the Prosecutor General's Office of 19 March 2007, the applicant was formally charged with criminal offences under Articles 132 and 221.2.2 of the Criminal Code. The decision stated that the applicant's actions had caused F.A. to experience symptoms of a closed craniocerebral trauma.

17. On the same day, based on a request by the Prosecutor General's Office, the Nasimi District Court ordered the applicant's remand in custody for a period of two months.

18. On 16 March 2007 the investigator in charge ordered F.A.'s medical expert examination. The forensic report, finalised on 17 April 2007, found that F.A. had a closed craniocerebral trauma, concussion, a haematoma on his forehead and other less serious injuries. According to the expert, the injuries had been caused by several punches to the head and the time of the infliction of injuries corresponded to 16 March 2007 as claimed by F.A.

19. On 27 March 2007 the investigator carried out the inspection of the videotapes (*videokasetə baxış keşirilməsi barədə protokol*), which were submitted by various television channels and contained footage of the incident.

20. On 3 May 2007 the charges against the applicant were reclassified under Articles 127.2.1 ((deliberate infliction of less serious harm (*az ağır zərər*) to health, in connection with the victim's performance of his professional or public duties)), 127.2.3 (deliberate infliction of less serious harm to health, in a publicly dangerous way and with hooligan intent) and 221.2.2 (hooliganism accompanied by resistance to a State official or other person carrying out duties in protection of public order or prevention of breaches of public order) of the Criminal Code.

21. After the completion of the pre-trial investigation, on 8 May 2007 the Prosecutor General's Office issued an indictment in respect of the applicant under Articles 127.2.1, 127.2.3 and 221.2.2 of the Criminal Code and the case went to trial.

22. During the trial the applicant pleaded not guilty and claimed that he had not been the instigator of the fight and it had been F.A. who had punched him first.

23. On 18 May 2007 the Sabail District Court convicted the applicant on all counts, revoked his mandate as a member of parliament and sentenced him to two years' imprisonment suspended for two years. The applicant was released, but was forbidden to change his place of residence during the period that the suspended sentence was in force, without notifying in advance the relevant authority for the execution of court judgments. The description of the acts for which the applicant was found guilty read as follows:

> "At 12.30 p.m. on 16 March 2007 at [the National Assembly's address] [the applicant], while making a speech during a plenary session [of the National Assembly], in breach of parliamentary ethics used rude and insulting expressions violating human dignity and honour despite a warning and a call to order [by the Speaker of the National Assembly] in accordance with Articles 45 and 46 [of the National Assembly's internal regulations. [The applicant], by committing deliberate actions aimed at manifestly displaying, without any reason, disrespect towards the members of parliament, parliamentary officials and members of the public watching the parliamentary session, insulted and offended [the latter] with indecent expressions. [The applicant] used violence to offer resistance to [F.A.] who, by carrying out his civic obligation, called [the applicant] to order and prevented a breach of order in a parliamentary session as defined by law. [The applicant], by punching [F.A.] in the head and various other parts of his body with hooligan intent, inflicted less serious harm (*az ağır zərər*) to [F.A.]'s health and disrupted the conduct of the plenary session [of the National Assembly] for twenty minutes."

24. It is evident from the judgment that, in finding the applicant guilty, the court relied on the following evidence: the testimony of F.A.; the testimonies of a number of members of parliament and parliamentary officials who had witnessed the incident; and the medical forensic report of 17 April 2007. The court's judgment was silent as regards the video evidence. According to the applicant, his request to play the videotape during the trial hearing was refused by the first-instance court.

25. On 22 June 2007 the applicant lodged an appeal, in which he complained, *inter alia*, of an erroneous assessment of the factual circumstances, procedural irregularities in obtaining forensic and other evidence, and misapplication of the substantive criminal law. In particular, he argued that the classification under Article 221.2.2 presupposed the existence of other victims against whom the act of hooliganism had been directed, apart from a person to whom the resistance was offered, whereas in his case F.A. had been the only victim involved. The applicant also complained that, having regard to the decision of the Plenum of the Supreme Court on the judicial practice concerning cases related to hooliganism, F.A. could not be considered as a person carrying out a duty in protection of public order. In addition, the applicant argued that the trial court had relied on the prosecution's distorted version of the events rather than examining the video footage of the incident which showed that he had not been the instigator of the fight.

26. On 24 July 2007 the Baku Court of Appeal held a preliminary hearing. It appears from the transcript of the hearing that the applicant applied to have the court ensure F.A.'s presence at the appeal hearing and examine the videotape of the incident. The court dismissed the applicant's application with regard to the latter as follows:

"The Court's Panel, after having briefly deliberated on the bench,

Decides

To ensure the participation of [F.A.] at the court hearing and to reject the remaining part of the application as being unfounded ..."

27. On 6 August 2007 the appellate court upheld the Sabail District Court's judgment. The court found that the applicant's guilt was confirmed by the witness testimonies and the medical forensic report. The court's judgment was silent in relation to the applicant's complaints concerning incorrect classification of the crime and the failure to examine the video evidence. The applicant lodged a cassation appeal reiterating his complaints.

28. On 4 December 2007 the Supreme Court upheld the lower courts' judgments. In its decision the court did not address the applicant's above complaints.

C. The applicant's health and medical treatment in detention from 19 March to 18 May 2007

1. The applicant's version

29. The applicant suffered from spinal disc herniation before his arrest. According to the applicant, the conditions of his pre-trial detention were harsh and unsuitable for his health condition as he experienced chronic pain. His state of health significantly deteriorated during the two months' pre-trial detention owing to the delays in providing him with the requisite medical assistance. Although he continuously complained about this to various domestic authorities, no measures were taken to adequately address his medical problems. His request to be transferred to a specialised medical institution was granted only after he had gone on hunger strike.

2. The Government's version

30. On 19 March 2007 following his arrest the applicant underwent a medical examination, which concluded that he was "practically healthy".

31. On 27 March 2007 the applicant was examined by a neurologist, who found that he was "neurologically healthy" and did not need inpatient treatment.

32. On 28 March 2007 the applicant underwent an X-ray examination, which did not reveal any pathology in his thorax.

33. After this, the applicant refused to undergo medical examinations on several occasions.

34. On 13 April 2007 the applicant was transferred to the Ministry of Justice's Medical Facility and diagnosed with "lumbosacral radiculitis". He received inpatient medical treatment in the neurology department of the facility for thirty-five days until his release from custody on 18 May 2007.

During his treatment in the facility, he underwent various medical examinations, which did not reveal any need for surgery, and a "conservative treatment" was recommended.

D. Restrictions on the applicant's leaving the country and judicial review thereof

35. On 13 August 2007 the applicant applied to the Department of Execution of Court Judgments of the Ministry of Justice for permission to travel to Germany for medical treatment.

36. On 16 August 2007 the Department refused the applicant's request. The applicant appealed to the courts.

37. On 17 September 2007 the Sabail District Court issued a decision permitting the applicant to travel abroad for medical reasons.

38. The ban on the applicant's departure from the country was *de facto* lifted on 22 September 2007.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. The relevant parts of Article 127 of the Criminal Code, as in force at the material time, provided as follows:

Article 127. Deliberate infliction of less serious harm to health

"127.1. Deliberate infliction of less serious harm (*az ağır zərər*) to health, which was not dangerous to life of a victim and did not entail any consequences provided by Article 126 of the present Code, but which caused a long-term deterioration of health or significant loss of working capacity by less than a third-

is punishable by corrective labour for a term of up to two years, or by restriction of liberty for the same term, or by imprisonment for a term of up to two years.

127.2. Commission of the same act:

127.2.1. against a victim or his or her close relatives in connection with the performance of his or her professional or public duties;

...

127.2.3. in a publicly dangerous way or with hooligan intent-

is punishable by imprisonment for a term of up to five years."

40. The relevant parts of Article 221 of the Criminal Code, as in force at the material time, provided as follows:

Article 221. Hooliganism

"221.1. Hooliganism, that is to say deliberate actions which seriously breach public order, display a manifest disrespect to society accompanied by use of violence against citizens or threat of its use, or by damaging or destruction of property of others-

is punishable by 160 to 200 hours of community service, or by corrective labour for a term of up to one year, or by imprisonment for a term of up to one year.

221.2. Commission of the same act:

...

221.2.2. by offering resistance to a representative of public authority or other persons carrying out duties in protection of public order or prevention of breach of public order-

is punishable by corrective labour for a term of up to two years, or by imprisonment for a term of up to five years...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. Relying on Article 3 of the Convention the applicant complained that he had been held in conditions incompatible with his state of health and he had not received adequate medical treatment in breach of Article 3 of the Convention, which reads:

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

42. The Government raised an objection by arguing that the applicant’s complaint was inadmissible for non-exhaustion of domestic remedies and non-compliance with the six-month time-limit.

43. The applicant contested the Government’s objection.

44. The Court finds that it is not necessary to examine the objection raised by the Government since the applicant’s complaint is in any event inadmissible for the following reasons.

45. It is apparent from the medical records submitted by the Government that during the applicant’s pre-trial detention of an overall period of two months he was examined by doctors at fairly regular intervals and prescribed “conservative” treatment. According to the applicant’s medical examinations, no serious health conditions were revealed, which would have required more substantial treatment. There is nothing in the materials before the Court that would cast doubt on the adequacy of these medical examinations or their results. The applicant was also treated for a period of more than one month on an inpatient basis in the medical facility of the Ministry of Justice until his release from custody. Contrary to the applicant’s submissions, the Court does not discern from the circumstances of the case that the applicant’s detention was marked by a significant worsening of his condition (compare, for instance, *Yunusova and Yunusov v. Azerbaijan*, no. 59620/14, § 149, 2 June 2016). The applicant did not put forward material arguments disclosing any serious failings on the part of the national authorities to provide him with the requisite medical care or

demonstrating that the assistance provided failed to meet the standard of reasonable care.

46. On the basis of the evidence before it and assessing the relevant facts as a whole, the Court cannot therefore conclude that the medical care available to the applicant was inadequate to such a degree as to cause him suffering reaching the minimum level of severity required by Article 3 of the Convention (see *Insanov v. Azerbaijan*, no. 16133/08, § 134, 14 March 2013).

47. It follows 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.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

48. Relying on Article 6 of the Convention the applicant complained that the criminal proceedings against him had been unfair, that there had been numerous procedural shortcomings in the manner the forensic evidence had been obtained and examined, that the courts failed to examine the video evidence, refused to examine witnesses on the applicant's behalf and arbitrarily applied domestic criminal law. The relevant parts of Article 6 of the Convention read as follows:

> "1. In the determination of... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (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

1. The parties' submissions

49. The Government submitted that the applicant's complaints were inadmissible for failure to comply with the six-month time-limit laid down by Article 35 § 1 of the Convention. They noted that the final decision in the applicant's case had been the decision of the Supreme Court of 4 December 2007, whereas the applicant had submitted his application to the Court on 3 October 2008.

50. The applicant disagreed with the Government, noting that he had lodged his application with the Court on 4 February 2008.

2. The Court assessment

51. The Court reiterates that pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter "within a period of six months from the date on which the final decision was taken". The object of the six-month time-limit is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge (see, among other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

52. The Court observes that the application form in the present case is dated 25 January 2008 and bears two date stamps, namely 4 February 2008 and 3 October 2008. The date stamp of 4 February 2008 containing the words *déposé à l'accueil* shows that the application form was deposited on that date with the Registry at the Court's reception desk. This is also confirmed by the Registry's letter dated 25 March 2008 acknowledging receipt of the application form of 4 February 2008. The second date stamp on the application form – 3 October 2008 – corresponds to the date when the Court received from the applicant by post an additional copy of the application form. This stamp was put on the original form deposited at the reception desk.

53. In such circumstances, the Court finds that the date when the application form was deposited with the Registry at the Court's reception desk – 4 February 2008 – should be considered as the date of the introduction of the application (compare *Zakharov v. Russia* (dec.), no. 16208/05, 24 January 2017).

54. It follows that the application was lodged with the Court within the six-month time-limit and the Government's objection must be dismissed.

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

B. Merits

1. The parties' submissions

56. The Government did not submit any observations on the merits of the applicant's complaints.

57. The applicant complained about various procedural shortcomings, in particular, that the domestic courts had failed to examine the most crucial piece of evidence, namely the video of the incident, and that such a failure had constituted in itself a breach of Article 6 of the Convention.

2. The Court assessment

58. The Court reiterates that the principle of equality of arms, which is one element of the broader concept of fair trial, requires "a fair balance between the parties": each party must 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 or her opponent (see *Jasper v. the United Kingdom* [GC], no. 27052/95, § 51, 16 February 2000).

59. The Court further recalls that in its recent judgment of *Murtazaliyeva v. Russia (*[GC], no. 36658/05, §§ 150-86, 18 December 2018), the Grand Chamber clarified the general principles concerning the examination of defence witnesses as formulated in its case-law under Article 6 §§ 1 and 3 (d) of the Convention. It formulated the following three-pronged test (ibid., § 158):

(1) Whether the request to examine a witness was sufficiently reasoned and relevant to the subject matter of the accusation?

(2) Whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine a witness at trial?

(3) Whether the domestic courts' decision not to examine a witness undermined the overall fairness of the proceedings?

60. Turning first to the applicant's complaint concerning the domestic courts' refusal to examine video evidence, the Court considers that the above test, as set out *in Murtazaliyeva* (cited above), should apply, *mutatis mutandis*, to the present case.

61. In this context, as regards the first question whether the applicant's request to examine a videotape of the incident was sufficiently reasoned and relevant to the subject matter of the accusation, the Court observes that during the trial the applicant complained about the incorrect account of the facts put forward by the prosecution. He argued, in particular, that he had not been the instigator of the fight and it had been F.A. who had punched him first (see paragraphs 22 and 25 above). In order to prove his own version of the impugned events the applicant applied to have the trial court examined the video recording of the incident. In the Court's view, having regard to its probative value to support the applicant's line of defence, his application to have this evidence examined by the courts does not appear to have been vexatious or unreasonable. However, as alleged by the applicant and not disputed by the Government, his motion was denied. Furthermore, it is clear from the transcript of the appeal hearing that the applicant reiterated his motion before the appellate court but to no avail as the latter dismissed it as being unfounded (see paragraph 26 above).

62. As regards the question whether the domestic courts considered the relevance of this piece of evidence and provided sufficient reasons for their decision not to examine it, the Court notes that the domestic courts never acceded to the applicant's request to examine this evidence. As it appears

from the case-file, the first-instance court was silent as regards the video recording whereas the appellate court merely held that the applicant's motion was unfounded without providing any explanations to that end (see paragraphs 24 and 26 above). Furthermore, the Court finds it important to stress that the present case does not concern a situation where the evidence is withheld for public interest grounds and which requires counterbalancing procedural safeguards (compare *Jasper* cited above §§ 54-56). In the case at hand the video recording was already in public domain (see paragraph 12 above) and there was nothing on the facts of the case which precluded the domestic courts to examine it at a court hearing.

63. As to whether the domestic courts' decision not to examine the videotape undermined the overall fairness of the proceedings, the Court points out that the domestic courts found the applicant guilty, in particular, as regards the criminal offence of hooliganism, essentially on the strength of eyewitness submissions, specifically testimonies of members of parliament and parliamentary officials who were present at the parliamentary session. While the applicant does not argue that he had not been able to cross-examine the witnesses in question during the trial, the Court, nonetheless, cannot ignore the fact that those witnesses testified on behalf of the prosecution. Therefore, the video recording of the incident was a crucial piece of physical evidence in the circumstances of the case and its examination by the domestic courts could have shed light, in the Court's view, on the circumstances of the incident, including the manner in which the fight between the applicant and F.A. unfolded and whether the latter, as argued by the applicant throughout the whole trial, bore responsibility for the incident.

64. Having regard to the above considerations, the Court concludes that the domestic courts' refusal to examine the video evidence without any reasons undermined the overall fairness of the proceedings.

65. The Court takes note of other complaints raised by the applicant under Article 6 of the Convention. The Court considers, however, that the shortcoming identified above was sufficiently serious to render the trial as a whole unfair. Therefore, the Court does not need to address the other procedural violations alleged by the applicant.

66. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. Relying on Article 3 of the Convention the applicant complained of ill-treatment during his arrest. Relying on Article 5 of the Convention he complained of the unlawfulness of his arrest prior to the lifting of his parliamentary immunity and unreasonableness of his pre-trial detention. Relying on Article 6 § 2 of the Convention he complained of the breach of

presumption of innocence in his case on account of the statements made by a senior official of the National Assembly with respect to revoking the applicant's mandate. Relying on Articles 9 and 10 of the Convention he complained that he had been prosecuted because of his criticism of the Government. Relying on Article 2 of Protocol No. 4 to the Convention he complained about the restrictions imposed on his right to leave the country.

68. As regards the applicant's complaints under Article 5, the Court observes that the applicant was arrested on 19 March 2007 and his pre-trial detention ended on 18 May 2007, whereas the application was not lodged with the Court until 4 February 2008, which is more than six months later (see *Insanov v. Azerbaijan* (dec.), no. 16133/08, 19 November 2009). It follows that the complaints under Article 5 were introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

69. As to the remaining complaints, the Court finds that, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. In respect of pecuniary damage the applicant claimed 4,833.44 euros (EUR) on account of his medical and other related expenses. In respect of non-pecuniary damage the applicant claimed EUR 50,000, or any other amount which the Court considered just, on account of the adverse consequences brought about by his conviction, in particular distress, loss of opportunity and the reputational damage sustained.

72. The Government submitted that the amounts claimed by the applicant were unsubstantiated and excessive.

73. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation of Article 6 § 1 of the Convention, 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 2,400 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

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

C. Default interest

75. 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 6 § 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Azerbaijani new 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 7 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President