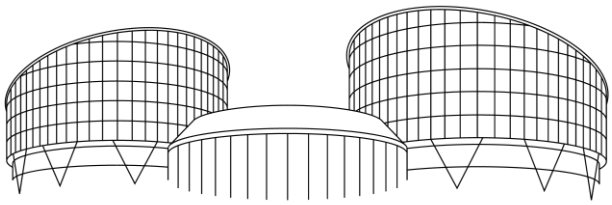

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ASADBEYLI AND OTHERS v. AZERBAIJAN

(Applications nos. 3653/05, 14729/05, 20908/05, 26242/05, 36083/05 and 16519/06)

JUDGMENT

STRASBOURG

11 December 2012

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 Asadbeyli and Others v. Azerbaijan,

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

Isabelle Berro-Lefèvre, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 20 November 2012,

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

PROCEDURE

1. The case originated in the following six applications 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 the following Azerbaijani nationals (hereinafter collectively referred to as "the applicants"):

(i) Application no. 3653/05 lodged on 7 January 2005 by:

- Mr Bahruz Sabir oglu Asadbeyli (*Bəhruz Sabir oğlu Əsədbəyli*) born in 1952 and living in Sumgayit;
- Mr Shirali Pasha oglu Hamidov (*Şiralı Paşa oğlu Həmidov*) born in 1963 and living in Sumgayit;
- Mr Emin Huseynaga oglu Huseynli (*Emin Hüseynağa oğlu Hüseynli*) born in 1976 and living in Sumgayit;
- Mr Hasan Khansuvar oglu Mammadov (*Həsən Xansuvar oğlu Məmmədov*) born in 1960 and living in Sumgayit;
- Mr Saleh Ahmadali oglu Aliyev (*Saleh Əhmədəli oğlu Əliyev*) born in 1983 and living in Sumgayit;
- Mr Elshad Eyvaz oglu Mammadov (*Elşad Eyvaz oğlu Məmmədov*) born in 1983 and living in Sumgayit;

(ii) Application no. 14729/05 lodged on 20 March 2005 by Mr Shahin Mahammad oglu Gojayev (*Şahin Məhəmməd oğlu Qocayev*) born in 1979 and living in Baku;

(iii) Application no. 20908/05 lodged on 21 May 2005 by Mr Ramiz Mirza oglu Guliyev (*Ramiz Mirzə oğlu Quliyev*) born in 1955 and living in Baku;

(iv) Application no. 26242/05 lodged on 2 July 2005 by Mr Sadiq Sabir oglu Dashdamirli (*Sadiq Sabir oğlu Daşdəmirli*) born in 1958 and living in Gabala;

(v) Application no. 36083/05 lodged on 4 October 2005 by Mr Ilgar Ibrahim oglu Allahverdiyev (*İlqar İbrahim oğlu Allahverdiyev*) born in 1973 and living in Baku;

(vi) Application no. 16519/06 lodged on 13 April 2006 by Mr Yashar Musa oglu Jafarli (*Yaşar Musa oğlu Cəfərli*) born in 1964 and living in Baku.

2. Applicant Mr S. Gojayev (application no. 14729/05) was represented before the Court by Ms N. Huseynova, a lawyer practising in Azerbaijan. Applicant Mr I. Allahverdiyev (application no. 36083/05) was represented by Mr W. Bowring, a lawyer practising in London. All the other applicants were represented by Mr A. Mustafayev, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged, among other things, that there had been numerous defects in the criminal proceedings against them, resulting in a violation of their right to a fair trial and other rights under the Convention.

4. On various dates in 2007 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were participants in or were alleged to be organisers of the unauthorised demonstration of 16 October 2003, which escalated into violent clashes between the law-enforcement authorities and the demonstrators, as described below.

A. The events of 16 October 2003 and the criminal proceedings relating to those events

6. The events of the present case occurred in the aftermath of the presidential elections of 15 October 2003. The main opposition candidate, Mr Isa Gambar, the chairman of the Müsavat Party, lost the elections of 15 October 2003.

7. On the evening of election day a group of opposition supporters gathered in front of the Müsavat Party's headquarters in the centre of Baku, claiming victory for their candidate in the election. Violent altercations

between opposition supporters and the security forces took place at this time.

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

9. It has been claimed that some police officers who had been deployed in Azadliq Square were attacked by some of the demonstrators. Shortly thereafter large numbers of riot police and military personnel, fully equipped with helmets, shields and truncheons, arrived in the square with the aim of dispersing the demonstration. The situation quickly escalated into public disorder, and violent clashes occurred between the crowd and the police. It was widely reported that the authorities used excessive force indiscriminately against anyone who happened to be in the area in question.

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

11. On 16 October 2003 the Prosecutor General's Office instituted criminal proceedings (case no. 80308) concerning the events of 15 and 16 October 2003. More than 100 people, of the several hundred arrested in connection with those events, were eventually prosecuted in connection with those proceedings. The proceedings concerned only the actions of the organisers of the demonstration and those participating in it, and it appears that no criminal or other form of investigation was carried out in connection with the allegations of excessive use of force by the police and military units during the dispersal of the demonstration (see *Muradova v. Azerbaijan*, no. 22684/05, §§ 23 and 114, 2 April 2009).

12. Almost the whole pre-trial investigation, in respect of all the defendants, was conducted in the context of this single set of criminal proceedings. However, as the investigation drew close to completion, criminal case no. 80308 was gradually split into several cases, eventually dividing the accused into fifteen separate groups. It appears that the only reason formally given by the prosecution for splitting up the case was the concern that the sheer number of defendants involved (more than 100) would prolong the proceedings and that it would be impractical to hold a single trial involving so many defendants (see *Huseyn and Others v. Azerbaijan*, nos. 35485/05, 45553/05, 35680/05 and 36085/05, § 28, 26 July 2011). Furthermore, it appears that no significant investigative steps were taken after the cases were split (ibid., §§ 29 and 166). Each of the fifteen defendant groups thus created was tried separately. Fourteen of those

trials concerned the events of 16 October 2003: they were all conducted by the Assize Court and were completed in March and April 2004 (one trial concerned the events of 15 October 2003, and this trial was conducted by the Sabail District Court). All the defendants in those trials, including the applicants in the present case, were found guilty and sentenced to either imprisonment, suspended prison terms or restriction of liberty.

13. The circumstances relating to each individual applicant in the present case are summarised separately below.

B. Application no. 3653/05, lodged by Mr Bahruz Asadbeyli, Mr Shirali Hamidov, Mr Emin Huseynli, Mr Hasan Mammadov, Mr Saleh Aliyev and Mr Elshad Mammadov

14. Mr B. Asadbeyli was the head of the Sumgayit branch of the Müsavat Party. Mr S. Hamidov, Mr E. Huseynli and Mr H. Mammadov held various positions within the Müsavat Party. Mr S. Aliyev and Mr E. Mammadov were students at a public university and had no formal affiliation to any political party.

15. Applicant H. Mammadov died on 27 May 2008, after the events described below and after the present application had been lodged with the Court. His brother, Mr Islam Mammadov, expressed a wish to continue pursuing the application on his behalf.

1. Arrest and detention of Mr E. Mammadov and Mr S. Aliyev

16. Mr S. Aliyev was arrested on 16 October 2003 during the dispersal of the demonstration by the police. He was charged with "organising or participating in public disorder" and "use of violence against public officials" under Articles 220 and 315.2 of the Criminal Code. On the same day the Nasimi District Court remanded him in custody for a period of three months.

17. Mr E. Mammadov was also arrested on 16 October 2003. He states that the arresting police officers issued a "report on an administrative offence" (*inzibati xəta barədə protokol*), accusing him of non-compliance with police orders in Azadliq Square, an offence under Article 310.1 of the Code of Administrative Offences ("the CAO").

18. It appears from the documents submitted by the Government that on 18 October 2003 Mr E. Mammadov was brought before the judge of the Narimanov District Court in connection with the charge under the CAO. According to the transcript of the hearing, the applicant admitted that he had not complied with police orders, and expressed remorse for his actions. On 18 October 2003 the Narimanov District Court convicted him under Article 310.1 of the CAO and sentenced him to fifteen days' "administrative detention".

19. On 25 October 2003 Mr E. Mammadov lodged an appeal seeking a reduction of his sentence on the grounds of family circumstances and the fact that he was a student. On the same day, 25 October 2003, the Court of Appeal reduced the sentence to nine days' detention and, having regard to the fact that he had already been in detention for nine days, ordered his immediate release.

20. According to Mr E. Mammadov, no copies of decisions concerning these administrative proceedings were made available to him.

21. However, soon after his release from "administrative detention", Mr E. Mammadov was arrested again and charged with "organising or participating in public disorder" and "use of violence against public officials" under Articles 220 and 315.2 of the Criminal Code. In particular, he was accused of joining other participants in the demonstration in destroying public benches and asphalt and concrete revetments of pavements and roads, and of using stones as well as wooden and concrete debris obtained from the properties destroyed to assault police officers in Azadliq Square, in a manner posing a danger to their life and health.

22. Mr E. Mammadov was then remanded in custody pending criminal trial.

23. During their pre-trial detention, both Mr S. Aliyev and Mr E. Mammadov were expelled from the university.

2. Arrest and detention of Mr B. Asadbeyli, Mr S. Hamidov, Mr E. Huseynli and Mr H. Mammadov

24. On 17 October 2003 Mr B. Asadbeyli, Mr S. Hamidov, Mr E. Huseynli and Mr H. Mammadov were taken from their homes to the Sumgayit City Prosecutor's Office for questioning. Several hours later they were allowed to go home but were instructed to come back the next morning. On 18 October 2003 they were taken to the Prosecutor General's Office in Baku. When they arrived in Baku they were held in a police car for around nine to ten hours outside the building of the Prosecutor General's Office. In the evening they were taken into the building and questioned. On both days they were questioned in the absence of a lawyer.

25. Following the questioning, the four applicants were charged with "organising or participating in public disorder" and "use of violence against public officials". On the same day Nasimi District Court, issuing separate detention orders for each of the four applicants, remanded them in custody for three months. Some of the applicants were represented by State-appointed lawyers at the hearings.

26. On 15 November 2003 the court replaced Mr S. Hamidov's detention with a written undertaking not to leave his place of residence, and he was released pending trial.

3. Investigation and trial

27. According to the applicants, prior to their trial, several high-ranking state officials, including the Prosecutor General and the Minister of Internal Affairs, made public statements on television and in newspapers, referring to the participants in the demonstration of 16 October 2003 as "criminals" and promising that they would be punished.

28. In the course of the investigation, following a request by the prosecution, the Nasimi District Court authorised the Prosecutor General's Office to obtain from Azercell Telecom, a cellular network operator, detailed information on all mobile phone connections registered during the period from 11 a.m. to 5 p.m. on 16 October 2003 in the area around Azadliq Square, with the purpose of establishing whether various defendants were present in the square at the relevant time. However, according to Mr B. Asadbeyli, he subsequently discovered that the case file contained print-outs of a "call details report" concerning all his private phone calls made over a longer time span and a larger geographical area than those authorised by the court.

29. All the applicants were tried together by the Assize Court (this trial was referred to as "Trial Group 8" in the OSCE report cited below). In total, there were nine defendants in the case, including the applicants.

30. The court relied on statements from a number of police officers as witnesses, who testified against the demonstrators. During the pre-trial investigation several police officers were shown photographs of the applicants and recognised them as demonstrators who had been throwing stones at police officers during the events of 16 October 2003. According to the applicants, they were not given an opportunity to meet these witnesses during the pre-trial investigation or to cross-examine them during the trial. According to the Government, the applicants were able to question all the witnesses who testified in court.

31. By a judgment of 24 March 2004, the Assize Court convicted all the applicants as charged under Articles 220.1 and 315.2 of the Criminal Code. Mr B. Asadbeyli, Mr S. Hamidov, Mr H. Mammadov and Mr E. Mammadov were given suspended sentences of four years and six months' imprisonment and released immediately from the courtroom. Mr E. Huseynli and Mr S. Aliyev were sentenced to three and two years' imprisonment respectively.

4. Appeals

32. All the applicants appealed against the Assize Court's judgment of 24 March 2004. The Court of Appeal examined all six appeals together. According to the applicants, they were not notified in advance of the time of the hearing at the Court of Appeal. Only Mr B. Asadbeyli, Mr S. Aliyev and the latter's lawyer were able to attend the hearing. Mr B. Asadbeyli learned

of the examination of the appeal by chance on the day the hearing was held. On 8 June 2004 the Court of Appeal dismissed the applicants' appeals and upheld the Assize Court's judgment of 24 March 2004. That court reduced the sentences of Mr E. Huseynli and Mr S. Aliyev to two years and one year respectively.

33. On 30 July 2004 Mr E. Huseynli lodged a cassation appeal against the Court of Appeal's judgment. According to the Government, on 9 March 2005 the Supreme Court informed the applicant of the date of the hearing; however, the applicant failed to request the court to ensure his presence at the hearing and both the applicant and his lawyer failed to appear at the hearing. However, according to the applicant, he did not receive any response from the Supreme Court to his cassation appeal.

34. After his release from prison, on 28 March 2005 Mr E. Huseynli sent an inquiry to the Supreme Court concerning his appeal. On 31 March 2005 the Supreme Court sent him a letter informing him that his appeal was still pending and stating, *inter alia*: "... your cassation appeal will be examined."

35. According to Mr E. Huseynli, his appeal was never examined.

36. On an unspecified date, Mr S. Aliyev lodged a cassation appeal with the Supreme Court. In reply, on 3 September 2004 the Supreme Court sent him a letter stating the following:

> "The Supreme Court has received your cassation appeal. We would like to inform you that if you disagree with the judgment of the Court of Appeal, you may lodge a cassation appeal with the Supreme Court in accordance with Articles 407-413 of the Code of Criminal Procedure."

37. According to Mr S. Aliyev, his appeal was never examined.

38. The other four applicants, Mr B. Asadbeyli, Mr S. Hamidov, Mr H. Mammadov and Mr E. Mammadov, also lodged cassation appeals against the Court of Appeal's judgment of 24 March 2004. The Supreme Court examined their appeals together and, on 19 October 2004, dismissed them, upholding the lower courts' judgments. The full text of the Supreme Court's decision was sent to the applicants on 2 November 2004.

39. Mr S. Aliyev served his full one-year prison sentence and was released on 16 October 2004.

40. Following a presidential pardon decree, on 21 March 2005 Mr E. Huseynov was released from serving the remainder of his sentence of two years' imprisonment.

C. Application no. 14729/05 lodged by Mr Shahin Gojayev

41. The applicant was arrested on 16 October 2003 during the dispersal of the demonstration.

42. After the arrest, he was taken to the Sabail District police station and later to the Baku Central police station. His family was not informed of his arrest. According to the applicant, at both police stations he was questioned

in the absence of a lawyer. Interrogations were accompanied by ill-treatment, in order to make him confess that he had actively participated in the disorder and had used violence against police, as well as to disclose the names of the organisers of the disorder.

43. On 17 October 2003 the applicant was formally charged under Articles 220 and 315.2 of the Criminal Code. He was then taken to the Prosecutor General's Office, where, he states, he was forced to sign self-incriminatory statements.

44. On the same day, a district court in Baku remanded the applicant in custody for three months. This decision was taken in the applicant's absence. He was not informed of the decision and was not given a copy of it. He was still unrepresented by a lawyer at this stage.

45. On 18 October 2003 the applicant's parents were informed about the applicant's arrest. On 23 October 2003 he was allowed to meet his lawyer for the first time.

46. The trial at the Assize Court began on 30 January 2004 (Trial Group 3). The applicant was tried with six others, including another applicant in this case, Mr Ramiz Guliyev. During the first hearing, the applicant declared that he was not guilty and claimed that he had been forced to give self-incriminatory evidence during his first days in detention. He asked the court not to admit in evidence his statements made during the pre-trial investigation. Some of the other defendants made similar complaints and requests.

47. Following the applicant's allegations of ill-treatment in pre-trial detention, the court ordered a medical examination of the applicant. According to the forensic report of 14 February 2004, the forensic expert found no injuries which could have been inflicted at the time and in the circumstances alleged by the applicant. The applicant's lawyer protested, claiming that he had not been informed about the time and place of the medical examination and was therefore unable to put questions to the medical expert. His request for a new medical examination was refused. The court found the applicant's and other defendants' allegations of ill-treatment unsubstantiated and admitted in evidence their statements given during pre-trial investigation.

48. During the trial, the court heard and relied on statements from over 100 prosecution witnesses (the great majority of whom were police officers and military personnel) who testified against all demonstrators in general, describing the public disorder which had taken place and characterising the demonstrators' intentions and actions as violent. The court also heard two police officers who testified against the applicant in particular; they stated that they had seen the applicant throwing stones at police officers. The court also watched a video recording which allegedly identified the applicant as one of the demonstrators throwing stones and running around with a club and a shield in his hands. The court refused the applicant's request for

witnesses to be examined who would testify to violence by law-enforcement officers against peaceful demonstrators, and also refused to admit in evidence a video recording and photographs with scenes of police brutality against demonstrators. The court noted that this evidence did not contain any information specifically concerning the applicant, and was therefore irrelevant.

49. On 4 March 2004 the Assize Court convicted the applicant of organising mass disorder and use of violence against the police, and sentenced him to four years' imprisonment.

50. The applicant lodged an appeal, complaining, *inter alia*, that the Assize Court had conducted the proceedings unfairly and had relied only on the evidence provided by police officers. On 29 April 2004 the Court of Appeal dismissed the appeal and upheld the Assize Court's judgment. On 21 September 2004 the Supreme Court upheld the lower courts' judgments.

D. Application no. 20908/05 lodged by Mr Ramiz Guliyev

51. The applicant was an active member of the Müsavat Party. He was an election observer during the presidential elections of 15 October 2003.

52. On 17 October 2003 the applicant was taken from his home to a police station and questioned. He told the police that during the events of 16 October 2003 he had not been present in Azadliq Square but had been in another part of the city. He was then allowed to leave the police station.

53. However, on 21 October 2003 he was arrested and accused of resisting the police when he had been called to the police station to testify about the events of 16 October. The applicant was brought before a judge of the Yasamal District Court who, on the same day, found the applicant guilty of resistance to the police under Article 310.1 of the Code of Administrative Offences, and sentenced him to fifteen days' "administrative detention".

54. On the same day, the applicant was taken to the Organised Crime Department of the Ministry of Internal Affairs ("the OCD") where he was asked questions about his role in the events of 16 October 2003. According to the applicant, the interrogators beat him and burned him with cigarettes. He was held in the OCD until 31 October. He stated that throughout his detention he was ill-treated by various means, such as beating, crushing his fingers and toes, and burning his skin with cigarettes.

55. On 28 October 2003 the applicant was taken to the Prosecutor General's Office for interrogation, but refused to testify because his lawyer was absent. He was taken back to the OCD.

56. The applicant was charged with "organising or participating in public disorder" and "use of violence against public officials". On 31 October 2003 the applicant was taken to an unspecified district court, which remanded him in custody for three months. The applicant was not represented by a lawyer during this hearing. Following this, the applicant

was transferred from the OCD's detention facility to Detention Facility no. 1.

57. The applicant was tried at the Assize Court with six others (Trial Group 3), one of whom was another applicant in this case, Mr Shahin Gojayev (see section C. above). It appears that during the trial he was represented by a State-appointed lawyer. In his submissions to the court, the applicant maintained that he was not in Azadliq Square on 16 October 2003.

58. Some of the facts concerning the trial and witnesses heard by the court have been described above (see paragraph 48 above). As to the applicant's particular situation, the court heard statements from several police officers and one civilian witness, who had been shown a photograph of the applicant during the pre-trial investigation and had identified him as one of the demonstrators who had been throwing stones at the police officers during the events of 16 October 2003. According to the applicant, those statements were false and hearsay evidence. The witnesses gave the same statements during the trial. According to the applicant, he was not given an opportunity to confront the witnesses during the pre-trial investigation. According to the Government, he was given an opportunity to confront them at the trial hearings.

59. According to the applicant, during the trial, he requested the court to hear three witnesses who could confirm that he was not in Azadliq Square on 16 October 2003. However, the court heard only one of these witnesses and refused to hear the other two.

60. The applicant also complained before the Assize Court that he had been ill-treated during his detention in the OCD's detention facility. The court requested that the applicant be medically examined by a forensic expert. The forensic report of 24 February 2004 found a dark bruise on one of the fingers of the applicant's left hand and four dark spots on his belly. The expert estimated that the bruise on the finger had most likely been caused by a hard blunt object about one month before, while the dark spots on the belly could be considered marks of burns which had been inflicted about two months before. The court also had regard to a letter from Detention Facility No. 1, dated 24 February 2004, stating that no injuries had been observed on the applicant's body when he was transferred to Detention Facility No. 1 on 31 October 2003. The court concluded that the applicant's allegations that he had been ill-treated in the OCD's detention facility during the period between 21 October and 31 October 2003 were not supported by the available evidence.

61. On 4 March 2004 the Assize Court found the applicant guilty of both the charges against him and sentenced him to five years' imprisonment.

62. Following an appeal by the applicant, on 29 April 2004 the Court of Appeal upheld the Assize Court's judgment of 4 March 2004. On 23 November 2004 the Supreme Court upheld the lower courts' judgments.

63. Following a presidential pardon decree of 21 March 2005, the applicant was released from serving the remainder of his sentence.

E. Application no. 26242/05 lodged by Mr Sadig Dashdamirli

64. The applicant was a member of the Müsavat Party. During the presidential elections of 15 October 2003 he was the chairman of the Gabala regional headquarters for I. Gambar's electoral campaign.

65. The applicant was in Azadliq Square on 16 October 2003. He went back to Gabala on the same day, after the demonstration. In the morning of 17 October he was taken to a local police station and questioned. In the evening of 17 October he was taken to Baku, where he was detained in a police station until the next day.

66. On 18 October 2003 the applicant was formally charged with "organising or participating in public disorder" and "use of violence against public officials". On the same day Nasimi District Court remanded the applicant in custody for three months. During the court hearing, the applicant was represented by a State-appointed lawyer whom he had not met before. The lawyer did not introduce himself to the applicant and did not talk to him. The applicant did not meet this lawyer again after the hearing of 18 October 2003.

67. The applicant was tried by the Assize Court with six others (Trial Group 5). It appears that he was represented by a lawyer during the trial. In his submissions to the court, the applicant denied that he had personally taken part in any violence during the events of 16 October 2003, and claimed that he had left Azadliq Square as soon as he saw the first signs of confrontation between demonstrators and police. The court relied on statements from more than 200 prosecution witnesses, mostly police officers and internal forces soldiers, who testified against all the demonstrators as a group, describing the public disorder which took place. During the pre-trial investigation, one police officer and one soldier were shown a photograph of the applicant and recognised him as one of the demonstrators who had been throwing stones at the police officers during the events of 16 October 2003. According to the applicant, he was not given the opportunity to meet these witnesses during the pre-trial investigation or to cross-examine them during the trial. According to the Government, the applicant's lawyer had questioned them at the trial hearings.

68. On 5 March 2004 the Assize Court found the applicant guilty of both the charges against him and sentenced him to four years and six months' imprisonment.

69. On 27 April 2004 the Court of Appeal upheld this judgment. It appears from the case file that the applicant's lawyer, but not the applicant himself, was present at the appellate hearings. On 21 December 2004 the Supreme Court upheld the lower courts' judgments. The applicant was sent

the full text of the Supreme Court's decision on 5 January 2005. According to the applicant, neither he nor his lawyer were present at any of the appeal hearings.

70. In accordance with a presidential pardon decree of 19 March 2005, the applicant was released from serving the remainder of his prison sentence. Despite his early release, in accordance with Article 83 of the Criminal Code, the applicant's conviction would remain on his criminal record for a period of six years after he was released.

71. In July 2005 the applicant made an application to the Gabala District Court for early expunging of the conviction from his criminal record, in accordance with Article 83.5 of the Criminal Code, taking into account his good behaviour in prison and after release. On 26 July 2005 the Gabala District Court refused this application. The Court of Appeal and the Supreme Court upheld this decision on 31 August 2005 and 22 March 2006 respectively.

72. According to the applicant, he had intended to stand as a candidate in the parliamentary elections of 6 November 2005. However, under the electoral law, his recent conviction record precluded him from doing so.

F. Application no. 36083/05 lodged by Mr Ilgar Allahverdiyev

73. The applicant was the chairman of several non-governmental organisations dealing with issues of civil society and freedom of religion, a chief editor of a magazine and an information portal, and a religious leader of a small congregation of Muslims. During the presidential elections of 15 October 2003, he publicly supported I. Gambar.

74. The applicant was in Azadliq Square on 16 October 2003. According to him, he left the square prior to the eruption of violence between the demonstrators and the police, and observed the subsequent events from a distant location.

75. On 17 October 2003 the applicant was leading public prayers in Juma Mosque. During the prayers, a number of police officers surrounded the mosque with the intention of arresting the applicant. The applicant managed to avoid arrest with the aid of some "members of the international community" in Baku who, according to the applicant, included representatives of the OSCE, the Council of Europe and some foreign embassies. He was taken to the Norwegian embassy, where he remained for three days.

76. According to the applicant, on the same day, state television reported that all the "organisers" of the public disorder of 16 October 2003 had been arrested, with the exception of the applicant and one other person.

77. The applicant left the Norwegian embassy after receiving guarantees that "no unlawful actions would be taken against him". Shortly thereafter, he attended a conference in Georgia. According to the applicant, during his

stay in Georgia, it was reported on State television that "having committed a crime, he fled the country". According to the applicant, a number of government officials, including the Prosecutor General, were featured in those television reports.

78. On 1 December 2003 the applicant was summoned to the Prosecutor General's Office. After some questioning, he was arrested in connection with the events of 16 October 2003.

79. On 3 December 2003 the applicant was charged with "organising or participating in public disorder" and "use of violence against public officials". On same day, at around 7 p.m., the Nasimi District Court remanded him in custody for three months.

80. During the first three days of detention the applicant was kept in a cold single cell, where he had to sleep on a metal bed without a mattress. He was then transferred to a cell which had previously been used for convicts awaiting the execution of their death sentence.

81. On 5 December 2003 the Prosecutor General sent a letter to the Head of the Baku City Executive Authority in connection with the alleged unlawfulness of the use of Juma Mosque by the applicant's religious congregation, a matter which was not directly related to the criminal proceedings in the present case. However, among other things, the letter also contained the following statements:

> "The Prosecutor General's Office is conducting a criminal investigation under Articles 220.1, 233 and 315.2 in connection with the mass disorder in the city of Baku on 15 and 16 October 2003 ...
>
> It has been determined that Ilgar Allahverdiyev took part in the mass disorder in Baku."

82. The applicant was tried by the Assize Court with eight other defendants (Trial Group 13). The court relied on statements from a large number of police officers, who testified against the defendants and the demonstrators in general. Most of those statements did not relate specifically to the applicant. Two police officers testified that they had seen the applicant at Azadliq Square and that they had heard from someone that the applicant had instructed some of his followers to go to the square. The court also relied on the pre-trial deposition of a witness who failed to appear at the court hearings, despite the applicant's requests to cross-examine him. According to the applicant, written depositions from some prosecution witnesses were identical, word for word. The court refused to hear the majority of witnesses who had been called by the applicant to testify on his behalf.

83. On 2 April 2004 the Assize Court convicted the applicant under Articles 220.1 and 315.2 of the Criminal Code. He received a suspended sentence of five years' imprisonment and was released immediately from the courtroom.

84. On 25 May 2004 the Court of Appeal upheld this judgment. According to the applicant, the appellate hearing took place in the presiding judge's office in the applicant's absence, despite his request for the hearing to be postponed owing to his inability to attend because of illness. The hearing lasted a few minutes.

85. On 5 April 2005 the Supreme Court dismissed the applicant's cassation appeal. According to the applicant, the hearing in the Supreme Court lasted six minutes.

G. Application no. 16519/06 lodged by Mr Yashar Jafarli

86. The applicant was in Azadliq Square on 16 October 2003. In the evening of the same day he was arrested after he had returned home from the demonstration, and was taken to a local police station. He was then questioned, with no lawyer present, and detained at the police station until the next day.

87. On 17 October 2003 the applicant was formally charged with "organising or participating in public disorder" and "use of violence against public officials". On the same day the Nasimi District Court remanded the applicant in custody for three months. During the court hearing the applicant was represented by a State-appointed lawyer he had not met before.

88. The applicant was tried at the Assize Court with seven others (Trial Group 11). It appears that he was represented by another State-appointed lawyer during the trial. In his submissions to the court, the applicant denied taking part personally in any violence that had taken place during the events of 16 October 2003, and claimed that he had left Azadliq Square as soon as he saw the first signs of confrontation between demonstrators and the police.

89. During the trial, the Assize Court relied on statements from a number of police officers and internal forces soldiers as witnesses who testified against the demonstrators. Several police officers testified that they had seen the applicant in Azadliq Square. During the pre-trial investigation two police officers had been shown a photograph of the applicant and recognised him as one of the demonstrators throwing stones at the police officers during the events of 16 October 2003. These police officers gave the same testimony during the trial. According to the applicant, he was not given the opportunity to meet these witnesses during the pre-trial investigation, or to cross-examine them during the trial.

90. On 19 March 2004 the Assize Court found the applicant guilty of both the charges against him and sentenced him to five years' imprisonment, suspended, with a four-year probation period. The court ordered that he be released after the conviction became final following any appeals.

91. Following an appeal by the applicant, on 24 May 2004 the Court of Appeal upheld the Assize Court's judgment of 19 March 2004. On 30 August 2005 the Supreme Court upheld the lower courts' judgments. The applicant was sent the full text of the Supreme Court's decision on 13 October 2005.

92. Although the applicant was released because the sentence was suspended, his conviction would remain on his criminal record for a period of six years. According to the applicant, he had intended to stand as a candidate for the parliamentary elections of 6 November 2005. However, under the electoral law, his recent conviction record precluded him from doing so.

93. In July 2005 the applicant made an application to the Nasimi District Court for early expunging of the conviction from his criminal record. On 15 July 2005 the Nasimi District Court refused this application, noting that in accordance with the Criminal Code it was only possible for such a conviction to be expunged after the expiry of at least half the probation period, which in the applicant's case had not yet happened. The Court of Appeal and the Supreme Court upheld this decision on 2 September 2005 and 23 March 2006 respectively. The full text of the Supreme Court's decision of 23 March 2006 was sent to the applicant on 11 April 2006.

II. RELEVANT DOMESTIC LAW

A. Code of Administrative Offences

94. Article 310 of the CAO provides:

Article 310. Deliberate non-compliance with the lawful order of a police officer or military serviceman

"310.1. Deliberate non-compliance [by individuals] with the lawful orders of a police officer or military serviceman while the latter is carrying out his duties of protection of public order –

is punishable by a fine ... or, if that sanction is inadequate in the circumstances of the case and taking into account the character of the offender, by administrative arrest for a term of up to fifteen days."

B. Criminal Code

95. Article 220 of the Criminal Code provides:

Article 220. Mass disorder

"220.1. Organising or participating in mass disorder involving acts of violence, plunder, arson, destruction of property, use of firearms or explosives, or armed resistance to public officials –

is punishable by imprisonment for a period of four to twelve years.

220.2. Inciting active resistance to lawful orders of public officials and to mass disorder and violence against citizens –

is punishable by imprisonment for a period of up to three years.

96. Article 315 of the Criminal Code provides:

Article 315. Resistance to or use of violence against public officials

"315.1. Use of violence against, or violent resistance to, a public official in connection with the performance of his or her duties, or acts or threats of violence towards relatives of [such a public official], which do not pose danger to life or health –

is punishable by imprisonment for a period of up to three years.

315.2. Use of violence towards persons mentioned in Article 315.1 of this Code endangering their life or health –

is punishable by imprisonment for a period of three to seven years."

C. Code of Criminal Procedure

97. Under Article 455 of the Code of Criminal Procedure ("the CCrP"), the finding of a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights is a ground for reopening the proceedings. Pursuant to Article 456, in this case, the Plenum of the Supreme Court examines the case exclusively on points of law. After the examination of the case, the Plenum of the Supreme Court may decide to quash the lower courts' rulings and remit the case to the relevant lower court, or to vary the decision of the courts of cassation or other courts, or to quash the decision of the courts of cassation or other courts and deliver a new decision (Article 459 of the CCrP).

D. Restrictions on convicted persons' right to stand for election

98. According to Articles 13.3.1 and 13.3.2 of the Electoral Code, persons imprisoned pursuant to a final court judgment and persons convicted of criminal offences indicated in Articles 15.4 and 15.5 of the Criminal Code do not have a right to stand for election in parliamentary, presidential and municipal elections (see also paragraph 101 below).

99. Article 15 of the Criminal Code classifies criminal offences by degree of gravity into offences which do not pose a major public threat, "less serious" criminal offences, serious criminal offences and especially serious criminal offences. According to Article 15.3, a "less serious criminal offence" is an offence committed deliberately or negligently for which the maximum punishment does not exceed seven years' imprisonment. According to Article 15.4, a "serious criminal offence" is an offence committed deliberately or negligently for which the maximum punishment

does not exceed twelve years' imprisonment. According to Article 15.5, an "especially serious criminal offence" is an offence committed deliberately for which the punishment exceeds twelve years' imprisonment.

100. The maximum sentence for a criminal offence under Article 220 of the Criminal Code is twelve years' imprisonment (see paragraph 95 above); accordingly, pursuant to Article 15.4 of the same Code, it is considered a "serious criminal offence".

101. According to Article 83.1 of the Criminal Code, a person convicted pursuant to a final court judgment is considered a "convicted person" from the date the judgment enters into force until the date the conviction is expunged from his or her criminal record. According to Article 83.4 of the Criminal Code, the criminal conviction of a person convicted of a "serious criminal offence" is expunged after the expiry of a period of six years from the date he or she completed serving the sentence imposed. Article 83.5 provides that a conviction may be expunged earlier if an application is made and he or she is able to demonstrate exceptionally good behaviour following conviction.

III. RELEVANT INTERNATIONAL DOCUMENTS

102. Extracts from the report by the Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the Trial Monitoring Project in Azerbaijan 2003-2004 ("the OSCE Report"), containing detailed observations by the OSCE trial monitors concerning various deficiencies in the trials concerning the events of October 2003, have been previously extensively quoted in the *Huseyn and Others* judgment (cited above, §§ 107-08).

103. Extracts from a number of reports by international bodies and human rights NGOs describing the violent clashes between demonstrators and law-enforcement authorities during the events of 15 and 16 October 2003 have previously been quoted in the *Muradova* judgment (cited above, §§ 71-77).

104. Among other similar reports by international NGOs, the report by Human Rights Watch entitled *Crushing Dissent: Repression, Violence and Azerbaijan's Elections* (January 2004 Vol. 16, No. 1(D)), contains lengthy summaries of numerous first-hand accounts by persons arrested in connection with the events of 15 and 16 October 2003 concerning the alleged acts of torture and ill-treatment they had been subjected to while in detention. The relevant statements were made by the alleged victims in interviews personally conducted by Human Rights Watch researchers during the organisation's two missions to Azerbaijan between September and November 2003.

THE LAW

I. JOINDER OF THE APPLICATIONS

105. Given the applications' similar factual and legal background, the Court has decided to join the applications, in accordance with Rule 42 § 1 of the Rules of Court.

II. LOCUS STANDI

106. Applicant H. Mammadov died on 27 May 2008, while the case was pending before the Court, and his brother, Mr Islam Mammadov, expressed a wish to pursue the application on his behalf (see paragraph 15 above). The Court reiterates that in a number of cases in which an applicant died in the course of the proceedings it has taken into account statements from the applicant's heirs or close family members expressing the wish to pursue the proceedings before the Court (see, among many others, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI; *Toteva v. Bulgaria*, no. 42027/98, § 45, 19 May 2004; *Mutlu v. Turkey*, no. 8006/02, §§ 13-14, 10 October 2006; *Yakovenko v. Ukraine*, no. 15825/06, § 65, 25 October 2007; and *Getiren v. Turkey*, no. 10301/03, §§ 60-62, 22 July 2008). In the present case, it has not been disputed by the Government that the applicant's brother is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise. However, where relevant, the Court will continue to refer to Mr H. Mammadov as the "applicant".

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

107. Relying on Article 6 §§ 1 and 3 (b), (c) and (d) and Articles 13 and 14 of the Convention, the applicants complained of a number of breaches of guarantees of fair trial, in particular:

(a) All the applicants complained that the accusations against them had been based on either false and/or largely insufficient evidence, that they had not been afforded sufficient time and facilities to prepare their defence, that they had been unable to properly examine witnesses against them and to obtain the attendance and examination of defence witnesses under the same conditions as witnesses against them, and that the domestic courts had failed to reply to their well-founded objections concerning the witnesses and to provide adequate reasons for its decisions concerning the admissibility and assessment of the evidence;

(b) All the applicants, except Mr Allahverdiyev, complained that their right to be represented by a lawyer of their choice had been restricted during

the initial stages of the proceedings, and that they had not been able to receive effective legal assistance;

(c) Mr Gojayev complained that his conviction was based on self-incriminatory statements obtained from him by means of ill-treatment during the pre-trial investigation;

(d) Mr Huseynli, Mr H. Mammadov, Mr E. Mammadov, Mr Hamidov, Mr Guliyev, Mr Dashdamirli, Mr Allahverdiyev and Mr Jafarli complained that their presence at appeal hearings had not been ensured;

(e) Relying on Article 6 of the Convention and Article 2 of Protocol No. 7 to the Convention, Mr Aliyev and Mr Huseynli complained that the Supreme Court had failed to examine their cassation appeals.

108. The Court considers that the above complaints fall to be examined solely under Article 6 of the Convention, and that it is not necessary to examine the same allegations under other Convention provisions relied on by the applicants. Article 6 of the Convention provides as follows, in the relevant part:

> "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: ...
>
> (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. Preliminary considerations

109. The Court notes that it has already examined a very similar case brought by four applicants concerning a trial relating to the events of 16 October 2003 (see *Huseyn and Others*, cited above). In that judgment, the Court analysed in great detail the quality of the criminal proceedings against the applicants, following allegations of numerous defects, and found that their trial, viewed as a whole, did not comply with the requirements of Article 6 § 1 of the Convention taken together with Article 6 § 3 (b), (c) and (d) of the Convention. Having had regard to the factual circumstances and the complaints of the *Huseyn and Others* case, as well as those in the applications forming part of the present case, the Court notes that all these applications share many similar characteristics when it concerns their factual circumstances and the manner in which the applicants' respective trials were conducted. In the Court's view, these similarities, reviewed in more detail below, are not coincidental. The special features unifying all

these applications cannot be overlooked and proper assessment of them is necessary for effective examination of the admissibility and merits of the complaints under Article 6 raised by the applicants.

110. In this connection, the Court reiterates that the Convention and its Protocols are intended to safeguard rights which are practical and effective, and not theoretical or illusory. Following this principle in examination of complaints brought before it, the Court must look behind appearances and investigate the realities of the situation complained of.

111. The Court notes that, despite the fact that formally the applicants in the present case were tried in separate trials (except applicants Gojayev and Guliyev, as well as the applicants in application no. 3653/05, who were tried together in "Trial Groups" 3 and 8), all these proceedings originated from the single criminal case no. 80308 instituted in connection with the events of 16 October 2003 and involving as defendants more than 100 alleged participants in the unauthorised demonstration held on that date (see paragraph 11 above). The criminal case remained unified essentially for the whole of the investigation stage of the proceedings. The same main body of evidence, in essence, and other material collected by the prosecuting authorities, was used at the trial of each defendant. This single criminal case was eventually split into fifteen different groups only for the purposes of practical expediency of holding several smaller-scale trials instead of one large-scale trial involving a very large number of defendants (see paragraph 12 above). No other reason for splitting the case has been cited. All the defendants were still facing the same criminal charges relating to the same events and based on largely the same or similar incriminating evidence (almost all of which was collected while the case was still formally unified). All the trials involving all the applicants in the present case and the applicants in the *Huseyn and Others* case were conducted by the same first-instance court, the Assize Court, and some of the judges forming the panel (and sometimes the entire panel of judges) were often the same in different "trial groups". It is apparent from the case materials that a small group of Assize Court judges was assigned to deal with these trials on some sort of rotation, so that each judge sat on the bench in more than one trial dealing with essentially the same or very similar factual and legal issues. It appears that a similar arrangement was followed in the Court of Appeal and the Supreme Court, as in each of those courts a relatively small group of judges dealt with several appeals each. Accordingly, all the applicants faced the same charges, which were based on largely the same evidence, were convicted by the same court, and had their appeals examined by the same appeal courts, while judges sitting in those courts were often the same as in several other "trial groups".

112. Having regard to the above, the Court considers that, although the original case was formally split into fifteen smaller "trial groups" taken to trial separately, these trials cannot be regarded as involving unrelated cases

or even related but separate cases. Even though the formal splitting of the case might have created an appearance of fifteen different trials, the reality of the situation was that all these "trial groups" taken together constituted a single large trial involving more than 100 defendants.

113. Accordingly, the Court will continue its examination of the admissibility and merits of the present complaint on the premise that all the applicants were, in reality, involved in one and the same set of criminal proceedings, with regard to which the Court has already delivered an earlier judgment in *Huseyn and Others* (cited above).

B. Admissibility

114. The Government argued that the applicants had not exhausted domestic remedies in respect of all or part of their complaints. In particular, the Government submitted that applicants Gojayev, Guliyev and Allahverdiyev had not properly complained before the domestic courts about any of the issues raised in the present complaint, while applicants Dashdamirli and Jafarli had not raised before the domestic courts the part of the present complaint concerning the alleged restriction of their right to legal assistance.

115. The applicants contested the Government's objections.

116. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing the States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with this rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The Court notes that the application of this rule must make due allowance for the context of the individual case, including, among other things, the personal circumstances of the applicant. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-66 and 69, *Reports of Judgments and Decisions* 1996-IV).

117. The Court notes that, in *Huseyn and Others*, it rejected a similar objection raised by the Government in respect of one of the applicants (see *Huseyn and Others*, cited above, §§ 135-37). The Court considers that a similar approach should be taken in the present case, for the following reasons.

118. Even assuming that in the present case some of the applicants had not specifically complained about certain issues or had not fully elaborated on their complaints in their domestic appeals, the circumstances of the case

call for the rule of exhaustion of domestic remedies to be applied with a certain degree of flexibility. The Court notes that the applicants were in a situation very similar to that of all other defendants in the criminal proceedings concerning the events of 16 October 2003. As noted above, all of the defendants were involved in essentially the same set of criminal proceedings, despite its formal splitting up into fifteen "trial groups". In the framework of these proceedings, the same or very similar arguments, covering all of the complaints raised in the present case, had been raised before the same domestic courts by a number of other defendants (including the applicants in *Huseyn and Others*, cited above) on many occasions. Nevertheless, all these complaints and appeals were unsuccessful, even where they were well presented and supported by strong argumentation.

119. In such circumstances, the Court considers that the domestic appeals lodged by the other defendants, some of whom were applicants before the Court (both in the present case and in *Huseyn and Others*), sufficiently brought to the domestic authorities' attention all the alleged defects in the first-instance trials. In view of the above considerations, it cannot be argued that, within the framework of criminal proceedings in question, the applicants' appeals would have had any more prospects of success than the well-substantiated appeals of other defendants.

120. For these reasons, the Court dismisses the Government's objection. It further notes that, the complaint 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.

C. Merits

1. The parties' submissions

121. The Government submitted that the applicants' trial had been fair and had complied with all the requirements of Article 6. The applicants had been able to cross-examine the prosecution witnesses who testified at trial hearings. While some witnesses had not been able to attend the trial, the applicants had been able to comment on their pre-trial statements read out publicly at the hearing. Furthermore, the Government noted that the Assize Court granted some of the applicants' requests to hear a witness on their behalf; on the other hand, where such requests were refused, such refusals were justified because it was up to the domestic courts to decide which evidence was relevant.

122. The Government submitted that the applicants' rights to be represented by a lawyer and to effective legal assistance had been adequately ensured. In particular, the Government submitted that applicant Asadbeyli (who had been arrested on 17 October 2003) had been provided with a State-appointed lawyer on 18 October 2003, and with a new lawyer

on 22 October 2003 after he refused the services of the first one. Applicants Huseynli and H. Mammadov (both arrested on 17 October 2003) were provided with a lawyer on 18 October 2003, while applicants Aliyev (arrested on 16 October 2003) and Hamidov (arrested on 17 October 2003) were given access to a lawyer on 20 October and 6 November 2003 respectively. Applicant Guliyev (arrested on 21 October 2003) had been provided with a State-appointed lawyer from 30 October 2003, the date on which he was formally charged with criminal offences. Subsequently, in November 2003, he had hired a lawyer of his choice. As to applicant Dashdamirli, on 18 October 2003 the prosecuting authority had appointed a public lawyer to defend the applicant, but the latter had refused the State-appointed lawyer's services and, from 28 October 2003, had retained the services of a lawyer of his own choice. As to applicant Jafarli, the Government submitted that he had been provided with a State-appointed lawyer on 17 October 2003 and, in addition, had subsequently hired a lawyer of his own choice.

123. As to the applicants' complaints that they had been absent from appeal hearings, the Government submitted that the applicants had been notified of the hearings, but had not requested to attend them and that in any event they had usually been represented by a lawyer at appeal hearings. The Government claimed to have been unable to produce evidence that the applicants had been sent summons to appeal hearings, citing as the reason the fact that postal records for that period had been erased.

124. As to the appeals lodged by applicants Huseynli and Aliyev, the Government submitted that on 9 March 2005 applicant Huseynli had been formally summoned to a Supreme Court hearing but had failed to appear; however, the Government were unable to produce documentary evidence that the summons had been sent to the applicant. As to applicant Aliyev's appeal, the Government noted that his appeal had been returned to him on 3 September 2004 for non-compliance with the formal requirements.

125. The applicants submitted that the criminal proceedings against them had been unfair as a whole, that the outcome had been "predetermined", and that numerous guarantees of a fair trial had been breached.

126. In particular, all the applicants (except applicant Allahverdiyev) submitted that when they were arrested their ability to invite a lawyer of their choice had been restricted and, instead, they had been belatedly (sometimes many days later) provided with State-appointed lawyers whose participation in the case was a formality and whose services were ineffective.

127. All the applicants complained of various shortcomings in the way witness statements were admitted in evidence, examined and assessed. In particular, applicant Guliyev submitted that he had insisted before the Assize Court that he had not been in Azadliq Square on 16 October 2003

and had requested the examination of a number of witnesses who could confirm this. However, the court heard only one defence witness and did not even take his testimony into consideration, relying instead, without relevant and sufficient justification, on statements from four witnesses for the prosecution, mainly police officers, who had allegedly identified the applicant as a violent demonstrator from a photograph. Moreover, dozens (and sometimes more than 100, depending on the "trial group") of prosecution witnesses who had given statements about demonstration participants in general, had not attended the trial; nevertheless, their statements had been read out and subsequently relied on by the court, depriving the applicant of the opportunity to cross-examine them at the trial. Applicants Dashdamirli and Jafarli submitted that, despite the defence's calls for serious scrutiny of the evidence presented by the prosecution, they had been convicted on very weak and unreliable evidence, consisting of statements from two witnesses (a police officer and a soldier) who had identified him from a photograph as a violent demonstrator. Similar submissions were made by applicant Asadbeyli and other applicants in application no. 3653/05. Applicant Allahverdiyev submitted that the domestic courts had refused to hear any witnesses who were ready to testify on his behalf. Moreover, the court relied on statements from a number of witnesses who were not first-hand observers of the events in question; those witnesses had stated that they had got their information from third parties. The court did not seek to examine the original source of this evidence.

128. According to the applicants, the fact that they had not been informed of the appeal hearings was confirmed by the Government's inability to produce documentary evidence that the summons had been sent to the applicants, as copies of the relevant summons would have been in the case files, if they existed at all. Applicants Hamidov, H. Mammadov, E. Mammadov and Huseynli submitted that they had not been informed of the Court of Appeal hearing and therefore had not been able to attend it. Applicant Guliyev noted that, as an imprisoned person, his presence at the Court of Appeal hearings had not been ensured, although the Court of Appeal had full competence to review the case on both points of fact and law and to conduct new examination, both of the evidence presented at the first-instance court and of any new evidence. Furthermore, he and his lawyer had not been informed about the date of examination of his cassation appeal and therefore had not been able to attend the Supreme Court hearing. Applicants Dashdamirli and Jafarli submitted that they had been deprived of the opportunity to attend the Court of Appeal and Supreme Court hearings in person. Applicant Allahverdiyev submitted that he had been unable to attend the appeal hearing owing to ill-health; however, his application for the hearing to be postponed had been refused and the appeal was examined in his absence at a hearing that lasted only a few minutes.

129. Applicants Aliyev and Huseynli submitted that their cassation appeals had not been examined by the Supreme Court, for unknown reasons. Applicant Huseynli maintained that what was alleged to be a copy of the summons of 9 March 2005, submitted by the Government, was a fake document and had never been sent to him. Instead, he received the Supreme Court's letter of 31 March 2005 stating that his appeal was still pending and would be examined on an unspecified date. He noted that there were no further developments. Applicant Aliyev submitted that on 3 September 2004 he had received a letter from the Supreme Court with an uncertain and vague text, that his cassation appeal had never been formally returned to him or declared inadmissible by the court, and that the appeal had never been examined.

2. The Court's assessment

130. 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, each of 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).

131. The Court refers to the summaries of its case-law made in the *Huseyn and Others* judgment, cited above, relating to various guarantees of fair trial, including the right to effective legal assistance at the initial stage of criminal proceedings and throughout the entire proceedings (see *Huseyn and Others*, cited above, §§ 171, 175 and 180), equality of arms (ibid., §§ 188 et seq.), the rights relating to admission and examination of evidence and the right to a reasoned judgment (ibid., §§ 196 et seq.).

132. Having regard to the material in the case files, the parties' submissions and other information available concerning the proceedings relating to the events of 16 October 2003, the Court notes that the present case is in many respects similar to the *Huseyn and Others* judgment and that it discloses a number of breaches of guarantees of fair trial, many of which have been discussed in detail in that judgment. In connection with the present case the Court would point out, in particular, the following.

133. The applicants in the present case (except applicant Allahverdiyev) either were not promptly allowed contact with a lawyer after their arrest or were provided, belatedly and for form's sake with a State-appointed lawyer whose assistance was ineffective. It appears that some of them were questioned without the benefit of legal assistance and made statements that

were included in the criminal case file. It does not appear that any of them expressly waived their right to a lawyer after their arrest. The Court considers that such a restriction on initial access to legal assistance affected the applicants' defence rights (compare *Huseyn and Others*, cited above, §§ 170-73).

134. Furthermore, at the trial stage, there were a number of defects which concerned the admission and examination of evidence and the domestic courts' insufficient legal reasoning serving as a basis for convicting the applicants. In particular, although there were hundreds of prosecution witnesses, most of whom testified about the demonstrators in general, each applicant's individual conviction was based mainly and decisively on statements from a very few prosecution witnesses (almost always police officers or military personnel). However, these statements were not subjected to sufficient scrutiny in the light of serious and substantiated objections by the defence concerning the reliability and probative value of this evidence and the manner in which it had been obtained (compare *Huseyn and Others*, §§ 204-07). Moreover, the Court reiterates that defence rights under Article 6 § 3 (d) of the Convention require an accused to be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness was making his statement or at some later stage of the proceedings (see, among many other authorities, *Kostovski v. the Netherlands*, 20 November 1989, § 41, Series A no. 166, and *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 118-19, ECHR 2011). However, in the present cases, there were recurring problems with the defence's right to cross-examine witnesses for the prosecution. In particular, a relatively large number of prosecution witnesses whose statements had been taken at the pre-trial stage did not attend the trials and, instead, their statements were read out at the hearings. This deprived the defendants of the opportunity to question those witnesses in person, either at the time those statements were made or during the trial. It has not been convincingly shown that there were good reasons for the non-attendance of those witnesses, that the courts made a reasonable effort to secure their attendance, or that there were sufficient counterbalancing factors permitting a fair and proper assessment of the reliability of those statements. While the applicant's convictions might not have been based solely and decisively on the statements of non-appearing witnesses, the above-mentioned shortcomings, coupled with a number of other defects in the proceedings, affected the effective exercise of defence rights in the present case.

135. Furthermore, despite a large number of allegations by witnesses and defendants (such as applicant Gojayev) that they had been forced to give incriminating or self-incriminating statements under duress or by means of ill-treatment, the domestic courts accepted those statements without a sufficient level of scrutiny and without adequate reasoning for

rejecting or disregarding the defence's objections in this regard (compare *Huseyn and Others*, §§ 208 et seq.).

136. The Court notes that the same or similar matters have been discussed at length in the *Huseyn and Others* judgment, and finds that the circumstances of the present case disclose very similar characteristics. It therefore sees no reason to deviate from the findings in *Huseyn and Others*, and finds that the defects summarised above amounted to breaches of the relevant guarantees of Article 6 in the present case.

137. Furthermore, the Court notes that none of the defects noted at the pre-trial and first-instance trial stage were subsequently remedied by the appeal courts. The Court of Appeal conducted very brief hearings in respect of the applicants' appeals and, despite having jurisdiction to review all aspects of a case on points of both fact and law, refused to conduct a new judicial examination of the available evidence and the parties' legal and factual arguments. Both the Court of Appeal and the Supreme Court merely reiterated the trial court's findings, and did not address recurring complaints by defendants concerning various defects in the trial, summarily rejecting those complaints as unsubstantiated without giving any reasoning (ibid., § 214). Moreover, despite the public prosecutor's presence at appeal hearings, it appears from the material in the case file that most of the applicants' presence at the Court of Appeal hearings was not ensured, while it cannot be established from the available documents that any of them had unequivocally waived their right to attend the appeal hearings as guaranteed by the domestic law (compare, *mutatis mutandis*, *Nefedov v. Russia*, no. 40962/04, §§ 42-47, 13 March 2012). It further appears that at least some of the applicants and their lawyers (for example, applicant Guliyev) were not informed of the subsequent Supreme Court hearings (compare *Abbasov v. Azerbaijan*, no. 24271/05, §§ 29 et seq., 17 January 2008). Furthermore, it appears that the appeals of applicants Aliyev and Huseynli were not examined by the Supreme Court at all. The letter of 3 September 2004 sent to applicant Aliyev by the Supreme Court did not constitute a formal judicial decision declaring the appeal inadmissible under the domestic law (compare, *mutatis mutandis*, *Hajiyev v. Azerbaijan*, no. 5548/03, § 36, 16 November 2006). It follows that the appeal was simply left unexamined. Similarly, although the Government claimed that applicant Huseynli had been summoned to a hearing to be held on 5 April 2005, they failed to inform the Court whether that hearing had actually taken place or to produce any copy of a Supreme Court decision on examination of the applicant's appeal.

138. The Court notes that although it could be argued that the breaches of defence rights found above did not affect all the applicants to the same degree, it is nevertheless clear that each of the applicants was affected, if not by all, at least by some of those defects in the trial. In view of the above

findings, the Court concludes that the proceedings in question, taken as a whole, did not satisfy the requirements of a fair trial.

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

IV. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

140. Relying on Article 11 of the Convention and, in conjunction with it, on Articles 7, 9, 10 and 14 of the Convention, all the applicants (except applicant Guliyev) complained that their unfair criminal conviction had been aimed at suppressing their freedom of peaceful assembly with others and freedom to express views opposing the Government. The Court considers that the complaint falls to be examined under Article 11 of the Convention and does not raise separate issues under other Convention provisions relied on by the applicants. Article 11 reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

141. The parties made submissions very similar to those concerning a similar Article 11 complaint made in the *Huseyn and Others* case (see *Huseyn and Others*, cited above, §§ 236-42).

142. The Court considers that the scope of the present complaint is the same as that of the complaint raised in the *Huseyn and Others* case (ibid., §§ 243-45) and declares it admissible within that scope (ibid., §§ 246-47).

143. The Court notes that it found as follows as to the merits of the complaint in the *Huseyn and Others* case:

> "248. The Court notes that a careful distinction may be necessary in situations where applicants are not punished for participation in a demonstration as such, but for particular behaviour in the course of the demonstration, such as violence or incitement to violence (compare, *mutatis mutandis*, *G. v. the Federal Republic of Germany*, no. 13079/87, Commission decision of 6 March 1989). Accordingly, the subject matter of this complaint hinges on the determination of whether the applicants indeed engaged in incitement to violence, a question which is normally to be decided by the relevant domestic courts in proceedings offering the guarantees of a fair trial. The Court has already found that the criminal proceedings in the present case did not comply with the required guarantees of fairness. Furthermore, the applicants' submissions in respect of the complaint under Article 11, as declared admissible, are essentially the same as under Article 6.

249. In such circumstances, as the applicants' arguments concerning the unfairness of the trial have already been covered by the finding of a violation of Article 6, the Court considers that there is no need for a separate examination of the same arguments under Article 11."

144. The Court finds no reasons to deviate from the above analysis, and considers that there is no need for a separate examination under Article 11 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 7 IN RESPECT OF APPLICANT ELSHAD MAMMADOV

145. Mr E. Mammadov complained that he had been punished twice for the same offence because initially, on 18 October 2003, he had been convicted of the "administrative" offence under the CAO of "non-compliance with lawful police orders" and sentenced to nine days' detention and had later been convicted of the criminal offences of "organising public disorder" and "use of violence against State officials" under the Criminal Code. Article 4 of Protocol No. 7 to the Convention provides as follows:

"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention."

A. Admissibility

146. 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

147. Relying on *Oliveira v. Switzerland* (30 July 1998, § 27, *Reports of Judgments and Decisions* 1998-V), the Government argued that Article 4 of Protocol No. 7 "does not preclude separate offences, even if they are all part

of a single criminal act, being tried by different courts". They submitted that the offences for which the applicant was prosecuted in separate sets of proceedings were not the same and that he had been found guilty of separate offences. Lastly, the Government submitted that the convictions for these separate offences entailed "different types of responsibility". In particular, by the judgments of Narimanov District Court of 18 October 2003 the applicant "was brought to administrative responsibility" and by the judgment of Assize Court of 24 March 2004 he "was brought to criminal responsibility".

148. The applicant submitted that his actions during the events of 16 October 2003 had been first qualified as insubordination against lawful orders of the police under Article 310.1 of the CAO and his conviction under this provision had become final. He argued that the conviction under Article 310.1 of the CAO was based solely on the submissions of the police, which had not been supported by any evidence or witness statements. Subsequently, after the conviction had become final, he was charged with offences under the Criminal Code for the same act for which he had already been convicted.

2. The Court's assessment

(a) Whether the first sanction was criminal in nature

149. The Court notes that the Government appeared to argue that the applicant's conviction and sentencing in the proceedings conducted under the CAO were not criminal in nature.

150. The Court reiterates that the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of the principle of *ne bis in idem* under Article 4 § 1 of Protocol No. 7. Otherwise, the application of this provision would be left to the discretion of the Contracting States to a degree that might lead to results incompatible with the object and purpose of the Convention. The notion of "penal procedure" in the text of Article 4 of Protocol No. 7 must be interpreted in the light of the general principles concerning the corresponding words "criminal charge" and "penalty" in Articles 6 and 7 of the Convention respectively (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 52, ECHR 2009, with further references).

151. The Court's established case-law sets out three criteria to be considered in determining whether or not there was a "criminal charge". The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative and not necessarily cumulative. This, however, does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear

conclusion as to the existence of a criminal charge (ibid., § 53, with further references, including *Engel and Others v. the Netherlands*, 8 June 1976, § 85, Series A no. 22).

152. In Azerbaijani domestic legal classification the offence under Article 310.1 of the CAO was characterised as an "administrative" one. Nevertheless, the Court reiterates that it has previously found that the sphere defined in other similar legal systems as "administrative" embraces certain offences that have a criminal connotation but are too trivial to be governed by criminal law and procedure (see *Palaoro v. Austria*, 23 October 1995, §§ 33-35, Series A no. 329-B; *Ziliberberg v. Moldova*, no. 61821/00, §§ 32-35, 1 February 2005; *Menesheva v. Russia*, no. 59261/00, § 96, ECHR 2006-III; and *Galstyan v. Armenia*, no. 26986/03, § 57, 15 November 2007).

153. By its nature, the offence under Article 310.1 of the CAO served to guarantee the protection of public order, an interest which normally falls within the sphere of protection of criminal law. This was directed towards all citizens rather than towards a group possessing a special status. Finally, the Court considers that the primary aims in establishing the offence in question were punishment and deterrence, which are recognised as characteristic features of criminal penalties (compare *Sergey Zolotukhin*, cited above, § 55).

154. Lastly, the Court observes that Article 310.1 of the CAO provided for fifteen days' imprisonment as the maximum penalty and that the applicant was eventually sentenced to serve nine days' deprivation of liberty. As the Court has confirmed on many occasions, in a society subscribing to the rule of law, where the penalty liable to be and actually imposed on an applicant involves loss of liberty, there is a presumption that the charges against the applicant are "criminal", a presumption which can be rebutted entirely exceptionally, and only if the deprivation of liberty cannot be considered "appreciably detrimental" given its nature, duration or manner of execution (ibid., § 56, with further references). In the present case the Court does not discern any such exceptional circumstances.

155. In the light of the above considerations the Court concludes that the nature of the offence sanctioned under Article 310.1 of the CAO, together with the severity of the penalty, were such as to bring the applicant's conviction on 18 October 2003 within the ambit of "penal procedure" for the purposes of Article 4 of Protocol No. 7.

(b) Whether the applicant was tried and convicted twice for the same offence

156. The Court notes that in the administrative proceedings, the applicant was convicted under Article 310.1 of the CAO for "non-compliance with lawful police orders" in Azadliq Square on 16 October 2003. In the subsequent criminal proceedings the applicant was prosecuted and convicted under Articles 220 and 315.2 of the Criminal

Code of "participating in public disorder" and "use of violence against public officials" committed on the same day and in the same place.

157. Having regard to the provisions of the relevant Articles of the CAO and the Criminal Code (see paragraphs 94-96 above), the Court notes that, while these offences differed in respect of a number of elements, there was a certain overlap in respect of the elements central to all these offences: they all concerned various types of misconduct involving a breach of public order and non-compliance with, or resistance to, lawful demands of public officials protecting the public order. Therefore, there could be situations where a certain act could lend itself to being potentially considered as constituting an offence both under Article 310.1 of the CAO and the two impugned provisions of the Criminal Code (more relevantly, Article 315.2 of that Code).

158. The Court notes that its case-law in respect of the *ne bis in idem* principle has developed since the *Oliveira* judgment, cited by the Government. Whereas there had been several approaches to this issue in the earlier case-law (see, as primary examples, *Gradinger v. Austria*, 23 October 1995, Series A no. 328-C; *Oliveira*, cited above; and *Franz Fischer v. Austria*, no. 37950/97, 29 May 2001, all summarised in *Sergey Zolotukhin*, cited above, §§ 70-77), the Court attempted to harmonise those approaches in the *Sergey Zolotukhin* judgment (cited above) and took the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same (ibid., §§ 78-82).

159. The guarantee enshrined in Article 4 of Protocol No. 7 becomes relevant on commencement of a new prosecution, where a prior acquittal or conviction has already acquired the force of *res judicata*. At this juncture the available material will necessarily comprise the decision by which the first "penal procedure" was concluded and the list of charges levelled against the applicant in the new proceedings. Normally these documents would contain a statement of facts concerning both the offence for which the applicant has already been tried and the offence of which he or she stands accused. In the Court's view, such statements of fact are an appropriate starting point for its determination of the issue whether the facts in both proceedings were identical or substantially the same (ibid., § 83).

160. The Court notes that in the present case the specific conduct for which the applicant was prosecuted in the second set of proceedings has been described in some degree of detail (participating in "public disorder", destroying public property in and near Azadliq Square, attacking police officers with stones and pieces of wood and concrete, and so on). However, the earlier judgment of the Narimanov District Court of 18 October 2003, convicting the applicant under Article 310.1 of the CAO, did not provide any description of the applicant's specific conduct that gave rise to this "administrative offence". The transcript of the hearing also lacked a

meaningful and detailed description of the alleged misconduct characterised as "non-compliance with lawful police orders". The parties' submissions do not provide much more clarification either.

161. The Court accepts that hypothetically it is entirely possible for a person to be first prosecuted under the CAO for an isolated incident of non-compliance with a police order and then, in subsequent criminal proceedings, prosecuted for other actions, such as the allegedly violent actions in Azadliq Square in this case, committed before or after that isolated incident. However, the Court notes that there is nothing in the documents relating to the two sets of proceedings in question suggesting that this was so in the present case or showing that the applicant was prosecuted in connection with offences arising from different sets of facts. While, as noted above, the judgment of 18 November 2003 did not provide any specific description of the misconduct, in the subsequent criminal proceedings neither the prosecution authorities nor the courts attempted to differentiate the factual circumstances giving rise to the new criminal charges from those giving rise to the offence in respect of which the applicant had already been convicted under the CAO. Neither did they provide a detailed chronological description of the applicant's conduct throughout his involvement in the events of 16 October 2003 (contrast *Sergey Zolotukhin*, cited above, § 21), which could serve as a starting point for determining whether the facts in the first set of proceedings might have been different. Furthermore, the Court notes that the Government did not argue that the proceedings had been instituted in connection with offences arising from different sets of facts; instead, by relying on the *Oliveira* judgment (cited above), they appeared to argue that the applicant had been prosecuted in connection with different offences arising from "the same criminal act".

162. In such circumstances, the Court considers it apparent that in both sets of the proceedings the applicant was prosecuted in connection with his general involvement in the events of 16 October 2003, comprising the entirety of the allegedly unlawful actions he might have committed on that day in Azadliq Square. In the proceedings before the Narimanov District Court, it was found that the applicant's conduct in Azadliq Square on 16 October 2003 constituted an offence under Article 310.1 of the CAO. However, subsequently, after this conviction had become final and after he had served his prison sentence, the applicant was prosecuted again in connection with essentially the same facts and convicted by the Assize Court. Therefore, the Court considers that the proceedings instituted against the applicant under Articles 220 and 315.2 of the Criminal Code concerned essentially the same offence as that of which he had already been convicted by a final decision under Article 310.1 of the CAO.

163. There has accordingly been a violation of Article 4 of Protocol No. 7 to the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaint under Article 3 of the Convention by applicants Gojayev and Guliyev

164. Mr Gojayev complained under Article 3 of the Convention that he had been ill-treated during his arrest as well as during his first few days in police custody. Mr Guliyev complained that he had been ill-treated in the OCD detention facility where he had been detained until 31 October 2003.

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

1. The parties' submissions

165. The Government submitted that Mr Gojayev had not exhausted the domestic remedies, as he had never raised this complaint before the domestic authorities or courts.

166. Mr Gojayev failed to submit any comments in reply to the Government's submissions.

167. In respect of the allegations by Mr Guliyev, the Government submitted that, prior to the criminal trial, he had not raised before any domestic authorities any complaints that he had been ill-treated in police custody. Although he subsequently made a complaint before the trial court, he did not pursue the complaint before the Court of Appeal. Therefore, the Government maintained that Mr Guliyev had not exhausted domestic remedies. As to the merits of the complaint, the Government maintained that the applicant had failed to substantiate his complaint and that his allegations had been found to be untrue. In particular, the Government noted that no injuries had been discovered on the applicant's person during an examination carried out on 31 October 2003, the date of his transfer from the OCD detention facility to Detention Facility No. 1. Furthermore, they noted that the forensic examination of 24 February 2004 ordered by the Assize Court had revealed no injuries on the applicant's person that could have been caused in the time period and circumstances alleged by the applicant.

168. Mr Guliyev did not comment on the Government's objection as to non-exhaustion of domestic remedies. As to the merits, he maintained that he had been tortured in the OCD detention facility. In particular, he alleged, *inter alia*, that he had been beaten with batons and that his skin had been burned with cigarettes. He disagreed with the findings of the forensic report of 24 February 2004, arguing that the experts had failed to note in their report the existence of "many injuries" on his person.

2. The Court's assessment

169. The Court finds that it is not necessary to examine whether the applicants have exhausted domestic remedies as, even assuming that they have done so, the complaints are in any event inadmissible for the following reasons.

170. The Court reiterates that allegations of ill-treatment 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, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In particular, where an individual is in good health when taken into police custody but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

171. At the outset, the Court notes that it cannot disregard the reports of various NGOs and international organisations concerning the widespread allegations of ill-treatment in custody of individuals arrested in connection with the events of 15 and 16 October 2003, which contained numerous first-hand accounts of ill-treatment given, in various degrees of detail, by alleged victims. Moreover, the Court refers to its earlier judgment concerning a similar complaint by one of the defendants in the criminal proceedings relating to those events (see *Mammadov v. Azerbaijan*, no. 34445/04, 11 January 2007), in which it found that the applicant had been tortured in the OCD detention facility in circumstances similar to those alleged by the two applicants in the present case. All of the above information supports, albeit indirectly, the applicants' allegations made in the present case. However, this background information in itself is insufficient to establish an appearance of a violation of Article 3 in the present case.

172. The Court notes that in his submissions to the Court Mr Gojayev has been unable to substantiate his allegations with any evidence, such as medical certificates or other relevant evidence confirming the existence of any injuries corresponding to the time of alleged ill-treatment. There is no

indication in the case file that he attempted to request a medical examination immediately (or reasonably soon after) the alleged acts of ill-treatment, either from the domestic authorities or independently, in order to procure evidence of the alleged ill-treatment; he has not provided any plausible explanation as to why he might have been unable to do so.

173. Similarly, Mr Guliyev has failed to produce any evidence confirming the existence of any injuries caused during the period prior to 31 October 2003, as alleged by him. He did not raise any complaints of ill-treatment, nor did he seek any medical examinations immediately (or reasonably soon after) the alleged acts of ill-treatment, and he has not attempted to provide any explanation for his failure to do so. Instead, he raised this issue for the first time at his trial before the Assize Court in February 2004, several months after his transfer out of the OCD detention facility where he had allegedly been ill-treated. The forensic examination ordered by the Assize Court and carried out following his complaint did not reveal any injuries corresponding to the time and circumstances alleged by him. There is no indication in the case file that the applicant attempted to formally challenge this forensic report in the domestic proceedings.

174. In such circumstances, the Court considers that there is insufficient evidence either to prove the applicants' allegations beyond reasonable doubt or at least to establish a prima facie case of ill-treatment, in which event the burden of proof would be shifted to the Government to provide a satisfactory and convincing explanation.

175. 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.

B. Complaint under Article 6 § 2 of the Convention by applicants Asadbeyli, Hamidov, Huseynli, H. Mammadov, Aliyev, E. Mammadov and Allahverdiyev

176. The applicants complained that, in breach of their right to the presumption of innocence, various State officials had given interviews and published statements declaring their guilt prior to their conviction by the competent court. In addition, Mr Allahverdiyev complained that the Prosecutor General's letter of 5 December 2003 (see paragraph 81 above) also contained statements infringing his presumption of innocence. Article 6 § 2 of the Convention provides as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

177. The Government submitted that Mr Allahverdiyev had not exhausted domestic remedies and that, in any event, the applicants' presumption of innocence had not been breached and that the applicants had

failed to present copies of any statements they had referred to or any other "documents proving the fact that their presumption of innocence [had been] violated by the public authorities".

178. Mr Allahverdiyev submitted that he had previously had recordings of some television interviews by high-ranking public officials in which they had made incriminating statements, but had lost those recordings, and that he was "searching" for video recordings or other records of some of the other public broadcasts with statements about him. He did not submit any of those recordings within the time-limits indicated by the Court. Apart from that, he and the other applicants reiterated their complaints.

179. The Court considers that it is not necessary to examine the Government's objection as to non-exhaustion of domestic remedies, as even assuming that Mr Allahverdiyev has complied with this requirement, his and the other applicants' complaint is in any event inadmissible for the following reasons.

180. The Court notes that, throughout the proceedings before it, the applicants' submissions in connection with this complaint have remained very vague and lacking almost all necessary detail. They have failed to submit any copies or video or audio recordings of alleged statements which they referred to quite vaguely in their complaint and which had been allegedly published in print or other media. Nor have they attempted to at least reproduce the verbatim content of those statements in order to show that either of the applicants was explicitly named and declared guilty of a criminal offence prior to his criminal conviction. As to the part of Mr Allahverdiyev's complaint about the Prosecutor General's letter of 5 December 2003, the Court notes that, apart from not being a statement intended for or open to the public, that letter in any event did not contain wording that went as far as declaring the applicant guilty of a criminal offence.

181. It follows that this part of the applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Complaint under Article 3 of Protocol No. 1 to the Convention by applicants Dashdamirli and Jafarli

182. Applicants Dashdamirli and Jafarli complained that unfair criminal proceedings against them resulting in criminal convictions and the authorities' subsequent refusal to expunge the convictions from their criminal records had deprived them of the right to stand as candidates in the parliamentary elections in 2005. Article 3 of Protocol No. 1 to the Convention provides as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

183. The Government submitted that the applicants had been convicted of serious criminal offences and that Contracting States had a wide margin of appreciation in restricting convicted persons' right to stand for elections. The Government further submitted that no grounds existed for expunging the conviction from the applicants' conviction records earlier than the time prescribed by law.

184. The applicants reiterated their complaints.

185. The Court notes that it is not its task to review *in abstracto* whether the provisions of the domestic electoral law restricting the right of an individual with a recent conviction record to stand as a candidate in parliamentary elections are, *per se*, incompatible with Article 3 of Protocol No. 1 to the Convention. Whether the manner of application of these provisions can lead to arbitrary or disproportionate restrictions on electoral rights is a matter to be assessed on a case-by-case basis, taking into consideration the specific circumstances of each case.

186. It has been found above that the proceedings resulting in the applicants' criminal convictions had not complied with the requirements of fair trial under Article 6 of the Convention. Nevertheless, firstly, for the purposes of the present complaint, it would have been speculative to assume that, had their trial complied with the fair trial requirements, the applicants would not have been convicted. Secondly, it cannot be established in the present case that the applicants were convicted in 2004 specifically with the aim of preventing them from standing in future elections, at the time when their future intent to stand for election in 2005 could not have been known.

187. Furthermore, it appears from the case file that neither of the applicants had actually applied to the relevant electoral authorities to be registered as candidates for the parliamentary elections of 6 November 2005, whereby their registration could have been potentially refused by a decision of the relevant electoral commission or court pursuant to Article 13.3 of the Electoral Code, in which case the applicants could have challenged such a refusal at the domestic level prior to applying to Strasbourg. Accordingly, the Court finds that, in any event, the applicants cannot claim to have been victims of a violation of Article 3 of Protocol No. 1 by virtue of the restriction provided for by Article 13.3 of the Electoral Code.

188. Taking into consideration the above, the Court cannot establish that there has been an interference with the applicants' electoral rights in the 2005 elections by virtue of their unfair criminal conviction in 2004.

189. It follows that this part of these applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. Other complaints

190. Applicant Allahverdiyev complained under Article 3 of the Convention about the conditions of his pre-trial detention. All the applicants complained that their arrests and pre-trial detention had not complied with the requirements of Article 5 of the Convention. Applicant Asadbeyli complained under Article 8 of the Convention about the disclosure in the criminal proceedings of information about his personal telephone calls in a volume and detail exceeding those authorised by the court. Applicants Aliyev and E. Mammadov complained under Article 2 of Protocol No. 1 to the Convention about their expulsion from the university.

191. 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 finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the above-mentioned complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

192. 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."

193. Applicant Gojayev did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

194. The remaining applicants made the following claims, examined by the Court below.

A. Damage

1. Pecuniary damage

195. Three applicants submitted claims for loss of salary during their pre-trial detention and/or imprisonment. In particular, Mr Asadbeyli claimed 1,250 euros (EUR), Mr Huseynli claimed EUR 3,400, and Mr Dashdamirli claimed EUR 1,400. The remaining applicants did not submit any claims in respect of pecuniary damage.

196. The Government noted that the applicants had failed to submit any documentary evidence in support of their claims.

197. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it further notes that, in any event,

the applicants did not submit any supporting documents. It therefore rejects these claims.

2. Non-pecuniary damage

198. The applicants claimed the following amounts in respect of non-pecuniary damage:

- Mr Asadbeyli – EUR 50,000;
- Mr H. Mammadov – EUR 60,000 (claimed on his behalf by Mr I. Mammadov, the deceased applicant's brother);
- Mr Huseynli – EUR 60,000;
- Mr Aliyev – EUR 60,000;
- Mr E. Mammadov – EUR 55,000;
- Mr Hamidov – EUR 40,000;
- Mr Guliyev – EUR 55,000;
- Mr Dashdamirli – EUR 20,000;
- Mr Allahverdiyev – EUR 200,000; and
- Mr Jafarli – EUR 40,000.

199. The Government submitted that the amounts claimed were excessive and unjustified, and considered that finding of a violation would constitute sufficient compensation in respect of any non-pecuniary damage suffered.

200. The Court considers that the applicants must have endured psychological distress which cannot be compensated for solely by the finding of violations. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the sum of EUR 12,000 to applicant E. Mammadov and the sum of EUR 10,000 to each of the other applicants listed in paragraph 198 above, plus any tax that may be chargeable on these amounts.

201. 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 such circumstances, the most appropriate form of redress would, in principle, be the reopening of the proceedings in respect of all the applicants 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 Articles 455 and 456 of the Code of Criminal Procedure of the Republic of Azerbaijan provide that

criminal proceedings may be reopened by the Plenum of the Supreme Court if the Court finds a violation of the Convention.

B. Costs and expenses

202. Mr Guliyev, Mr Dashdamirli and Mr Jafarli each claimed EUR 5,000 for legal fees for services provided by their representative in the proceedings before the Court. Mr Allahverdiyev claimed 1,900 pounds sterling (GBP) for legal fees and GBP 135 for other costs and expenses incurred in the proceedings before the Court. The remaining applicants did not submit any claims for costs and expenses.

203. The Government submitted that the claims by Mr Guliyev, Mr Dashdamirli and Mr Jafarli were unsubstantiated, because they had not itemised their claims and failed to produce any relevant supporting documents. In respect of the claim by Mr Allahverdiyev, the Government submitted that the applicant was not entitled to reimbursement of his costs and expenses, because the legal fees and other expenses would not be paid unless and until the applicant's just satisfaction claim was satisfied.

204. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

205. The Court notes that Mr Guliyev, Mr Dashdamirli and Mr Jafarli had not submitted any supporting documents in respect of their claims. It therefore rejects their claims.

206. As regards Mr Allahverdiyev's claim, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award him the sum of EUR 2,400 to cover the costs of the proceedings before the Court.

C. Default interest rate

207. 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. *Decides* to join the applications;

2. *Holds* that applicant Hasan Mammadov's brother has standing to continue the present proceedings in his stead;

3. *Declares* the applicants' complaints under Article 6 §§ 1 and 3 (b), (c) and (d) and Article 11 of the Convention and applicant Elshad Mammadov's complaint under Article 4 of Protocol No. 7 to the Convention admissible and the remainder of the applications inadmissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention taken together with Article 6 § 3 (b), (c) and (d);

5. *Holds* that there is no need to examine separately the complaint under Article 11 of the Convention;

6. *Holds* that there has been a violation of Article 4 of Protocol No. 7 to the Convention in respect of applicant Elshad Mammadov;

7. *Holds*

(a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into Azerbaijani manats at the rate applicable at the date of settlement:

(i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, to applicant Elshad Mammadov, in respect of non-pecuniary damage;

(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to applicant Hasan Mammadov's brother, Mr Islam Mammadov, in respect of the non-pecuniary damage suffered by the applicant;

(iii) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to each of applicants Bahruz Asadbeyli, Shirali Hamidov, Emin Huseynli, Saleh Aliyev, Ramiz Guliyev, Sadiq Dashdamirli, Ilgar Allahverdiyev and Yashar Jafarli;

(iv) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable to the applicant, to applicant Ilgar Allahverdiyev in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into his representatives' bank account in the United Kingdom;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 11 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President