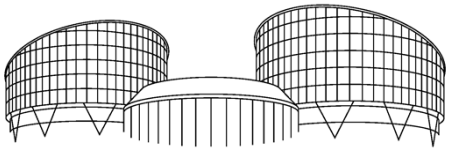

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF FATULLAYEV v. AZERBAIJAN (No. 2)

(Application no. 32734/11)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Applicant not given opportunity to effectively present main defence, during criminal proceedings for drug possession, that drugs had been planted during a personal search in prison • Applicant's inability to effectively challenge decisive evidence and adduce evidence in his favour, in the absence of reasons by the domestic court • Applicant's allegations dismissed by courts merely by relying on statements by prison authorities and without considering his journalistic activities which made him a potential target
Art 34 • Hinder the exercise of the right of petition • Seizure of case files, including on the applicant's pending application before the Court, from the office of the applicant's representative

STRASBOURG

7 April 2022

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 Fatullayev v. Azerbaijan (no. 2),

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Lado Chanturia,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 32734/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Eynulla Emin oglu Fatullayev (*Eynulla Emin oğlu Fətullayev*) ("the applicant"), on 7 April 2011;

the decisions to give notice to the Azerbaijani Government ("the Government") of the complaints concerning Articles 6, 10, 18 and 34 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 15 March 2022,

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

INTRODUCTION

1. The applicant complained in particular that the criminal proceedings against him had been in breach of Article 6 of the Convention because he had been convicted on the basis of planted and fabricated evidence; he had not been given an opportunity to effectively challenge that evidence and to adduce evidence in his favour. The applicant also complained that the seizure of his case file from the office of his lawyer had been in breach of his right of individual application without hindrance under Article 34 of the Convention.

THE FACTS

2. The applicant was born in 1976 and lives in Baku. He was initially represented by Mr I. Aliyev, and, from 7 January 2019, by Mr E. Sadigov, lawyers based in Baku.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background information

1. The applicant's earlier case before the Court

5. At the time of the events complained of the applicant was a journalist, and the founder and chief editor of the newspapers *Gündəlik Azərbaycan* and *Realniy Azerbaijan*, widely known for publishing articles criticising the Azerbaijani government and various public officials. The applicant had been sued for defamation in a number of sets of civil and criminal proceedings instituted following complaints by various high-ranking government officials.

6. In 2007 the applicant was convicted, in two sets of criminal proceedings, of defamation, threat of terrorism, incitement to ethnic hostility, and tax evasion – in particular, on the basis of two articles published by him. The applicant was sentenced to imprisonment for eight years and six months. Those events were the subject of the Court's judgment in *Fatullayev v. Azerbaijan* (no. 40984/07, 22 April 2010), where the Court found violations of Articles 6 §§ 1 and 2 and 10 of the Convention.

7. In November 2010 the applicant's convictions for defamation, threat of terrorism and incitement to ethnic hostility were quashed, following the Court's judgment in the above-cited case of *Fatullayev*.

8. The events complained of in the present case occurred while the applicant was serving his above-mentioned sentence at Penal Facility No. 12 ("the penal facility").

2. Articles published by the applicant while he was in the penal facility and the alleged attacks and provocations against him

9. While in the penal facility, the applicant wrote several articles and had them (with the help of third persons) published on an Internet-based media outlet called *Mediaforum*. In one of the articles the applicant alleged that in June 2009 inmates had rioted against the penal facility authorities and that those authorities had tried to "hush it up". In an article entitled "My new arrest" (*mənim yeni həbsim*) published on 21 December 2009 the applicant, *inter alia*, gave information about his case pending before the Court (see paragraph 6 above) and declared that he might possibly be sentenced again on some new, fabricated charges (the applicant did not submit copies of his articles).

10. According to the applicant, he wrote the latter article because he had deduced from certain earlier events that, ultimately, he would be "framed" for a crime that he had not committed. In particular, he had been subjected to several attacks and "provocations" aimed at implicating him in criminal offences for which he could then be held liable: in 2008 he had been physically attacked by some inmates; in June 2009 some inmates had tried to make him join in the above-mentioned riot; and in September 2009 the

governor of the penal facility had called him to his office and questioned him, saying that a high-ranking official had asked whether he had been using drugs. Furthermore, via an acquaintance of his the applicant had received threats made by a certain public official that he would remain in prison indefinitely if he continued to pursue his journalistic enquiries – in particular, if he publicised and sent to the Court information that he had uncovered about the death of his friend, Elmar Huseynov, a journalist (see *Huseynova v. Azerbaijan*, no. 10653/10, 13 April 2017).

B. Criminal investigation against the applicant

1. A personal search of the applicant and a search of the inmates' dormitories

11. On 28 December 2009, a penal facility officer, K.S., submitted a written report to the governor of the penal facility, saying that he had received "operational information" according to which the applicant and four other inmates (I.Z., G.A., F.G. and S.S.) had recently "exhibited signs of drug use". On the same date, in reply to K.S.'s report, the governor of the penal facility (A.Ag.) authorised a personal search of the applicant and of those inmates and a search of their dormitories.

12. On 29 December 2009 at around 9.30 a.m, the applicant and the other inmates mentioned above were taken to the office of K.S. and were searched by penal facility officers (Fa.S., B.G., E.I., A.Ah. and Fe.S.), in the presence of attesting witnesses – two inmates (A.B. and T.D.) and two employees of the penal facility (I.I. and Sh.S.).

13. As a result of the search two wrapped plastic packages were found on the applicant – one hidden in the sleeve of his jacket and the other in his shoe. One similar package was also found on one of the other inmates (S.S.).

14. Before being searched the applicant requested to be allowed to call his family and to ask his lawyer to be present at the search. That request was refused.

15. According to the search records, the packages found on the applicant contained yellowish powder that resembled a narcotic substance and had a specific smell.

16. After the body search the applicant was placed in a punishment cell and, on the same date, a search of the inmates' dormitories was also conducted, with the participation of the same attesting witnesses. No forbidden items were found as a result of that search.

2. Initial expert examination of the packages found on the applicant

17. On the same date, 29 December 2009, the packages found on the applicant were sent by the penal facility authorities for an initial expert examination (*ilkin ekspertiza*). The expert report, issued on the same day,

concluded that the yellowish sandy powder contained in the packages weighed in total 0.223 grams and was "home-made" (*kustar*) heroin.

3. Further investigative measures

18. The penal facility authorities sent the collected documents and physical evidence to the investigations unit of the Garadagh district police office.

19. On 30 December 2009 the investigator in charge of the case ordered expert examinations of the applicant's blood and urine and of his jacket and shoe in order to test for traces of drugs; the investigator also ordered an expert examination of the applicant's general health, including a narcology examination (see paragraphs 20-27 below). He also questioned the applicant and a number of witnesses and held confrontations between the applicant and some of the witnesses.

(a) Expert examinations of the applicant's blood and urine samples and of his jacket and shoe for traces of drugs

20. On 30 December 2009 a 10-millilitre blood sample and a 20-millilitre urine sample were taken from the applicant for expert examination ordered by the investigator. To conserve the blood sample a special preserving agent was added to it.

21. Later, on the same day, a 5-millilitre blood sample was taken from the applicant and given to his lawyer, I.A. According to the applicant, on unspecified dates his lawyer asked several medical laboratories to examine that sample for traces of drugs, but none of them agreed to perform the tests.

22. The investigator asked the experts in charge to determine whether the applicant's blood and urine contained traces of drugs and, if so, which ones.

23. A report dated 18 January 2010, prepared by two experts, G.H. and M.A., concluded that the applicant's blood and urine contained narcotic substances such as morphinan (one of the metabolites of heroin), amphetaminil (one of the phenylalkylamine group of drugs) and flunitrazepam-M (Nor) HY (a 1,4 benzodiazepine). The analysis was conducted using the thin-layer chromatography technique, colour tests, microcrystal tests, hydrolysis and other scientific methods.

24. A separate expert report dated 22 January 2010 established that the applicant's shoe and jacket bore traces of heroin.

(b) The applicant's general health and narcology expert examination

25. On 30 December 2009 a doctor-narcologist examined the applicant in person. Blood and urine samples were again taken from him for the purposes of a general health examination. The applicant was also examined by a neuropathologist.

26. A report dated 19 January 2010, prepared by a committee composed of narcology experts, concluded that (i) the applicant's psychological state was stable, (ii) he had no health issues and was not a drug user, (iii) he did not need compulsory treatment, and (iv) there were no visible traces of drug administration on his body.

27. However, on the basis of the conclusions set out in the above-mentioned report of 18 January 2010 (see paragraph 23 above), the committee also concluded that there had been occasions when the applicant had used heroin, amphetamine and benzodiazepine; accordingly, it recommended that he be registered as a drug user, for "prophylactic" purposes.

4. Charges against the applicant

28. On 31 December 2009 the investigator charged the applicant under Article 234.1 of the Criminal Code with the illegal possession and holding of narcotic substances (without any intent to sell) in an amount exceeding the amount necessary for personal use ("illegal possession of drugs").

C. The applicant's trial

29. On 29 March 2010 the investigator prepared an indictment against the applicant, which was filed with the Garadagh District Court, following which the applicant's trial began.

30. The indictment stated, *inter alia*, that on 26 February 2010 it had been decided to initiate new criminal proceedings under Article 234.2 of the Criminal Code in order to establish the source from which the drugs found on the applicant had been obtained and to sever those proceedings from the criminal proceedings against the applicant.

1. Arguments and requests submitted by the defence to the trial court

31. At a preliminary hearing of the first-instance court, the Garadagh District Court, and during the examination of the case on the merits the applicant alleged that the drugs had been planted on him by the authorities and that the criminal case against him had been fabricated because of his journalistic activities and his case pending before the Strasbourg Court (namely the above-cited case of *Fatullayev*), and in order to force him to cooperate with the government. The applicant submitted to the first-instance court the articles that he had written and had been published in *Mediaforum* (see paragraph 9 above). He also alleged that, before the drugs had been planted on him, he had been threatened and subjected to physical attacks and provocations aimed at implicating him in certain criminal offences for which he could then be held liable (see paragraph 10 above).

32. The applicant argued in particular that (i) the alleged "operational information" indicating that he had recently "exhibited signs of drug use" had been forged and either the informants who had allegedly provided such information were purely imaginary, or, if there had indeed been any such informants, they had been participants in the scheme aimed at framing him; (ii) despite the fact that the penal facility was a high-security institution, where drugs were not readily available, the investigator in charge of the case had not even tried to question him about the source of the drugs, which demonstrated the bogus character of the criminal proceedings; (iii) an expert fingerprints examination would show that he had never touched the packages containing the drugs; and (iv) in the penal facility there would have been many possibilities for drugs to be planted in his personal belongings (for example, when he had been taking a shower or eating in the cafeteria).

33. Relying on those arguments, the applicant requested the court to examine in the same proceedings the source from which the drugs had allegedly been obtained, instead of making that question a subject of separate proceedings (see paragraph 30 above); to identify, summon and question the informants (if there had indeed been any); and to order an expert fingerprints examination of the packaging in which the drugs had been wrapped.

34. Furthermore, the applicant complained that the personal search conducted on him had taken place in the absence of a search warrant issued by a court, and that his request to be allowed to call his family and to invite his lawyer to be present during the search had been denied.

35. The applicant also alleged that the expert report of 18 January 2010 was unreliable. He argued in particular that the report contradicted the above-mentioned general health and narcology report (see paragraph 26 above) because the narcotic substances allegedly found in his blood and urine samples (see paragraph 23 above) would have had a serious impact on his psychological and physical state, whereas, according to the general health and narcology report, his psychological state had been stable, he had had no health issues and had not been a drug user (see paragraph 26 above); he accordingly argued that it was important to re-examine the blood and urine samples and to establish the level of the drugs present in them. The applicant argued that such a re-examination of the blood and urine samples would reveal that they had been tampered with.

36. He also argued that the charts annexed to the expert report of 18 January 2010 demonstrated that the level of narcotic substances found in the samples would have been lethal if that level had indeed been present in his body.

37. Furthermore, the applicant complained that under the domestic law he had no right to independently commission expert examination of his blood for traces of drugs and that none of the medical laboratories that were approached had agreed to examine the blood sample given to his lawyer, I.A. The applicant requested the court to order an expert examination of that

sample. He also requested the court to order an expert examination of his hair (including his body hair) and nails for traces of drugs. He argued that traces of narcotic substances remained in a person's hair and nails for up to two years, and that such an alternative expert examination would prove that he had not used drugs.

38. All the above-mentioned requests were dismissed by the Garadagh District Court.

39. Accordingly, the court ruled that there was no need to examine in the same set of proceedings the source from which the applicant had allegedly obtained the drugs, because the severing of the criminal proceedings under Article 234.2 of the Criminal Code (see paragraph 30 above) had "not created any difficulties in respect of the examination of the criminal proceedings against the applicant".

40. The court also declared that questioning the informants would be of no use because the information given by those individuals "had not served as a basis for the criminal proceedings against the applicant".

41. From the case-file material, it is not clear on which grounds the court dismissed the applicant's request to order an expert fingerprints examination.

42. Furthermore, the court found that there was no reason to doubt the reliability of the report of 18 January 2010. The court also stated that it had been "scientifically established" that traces of drugs remained in a person's hair only for several weeks or months and in his or her nails for up to 136 days. It therefore ruled that an expert examination of the applicant's hair and nails would be of no use because more than five months had passed since traces of drugs had been found in his blood and urine samples; furthermore, there were no technical facilities in Azerbaijan for carrying out the requested hair and nails tests. The court reached these findings after it had heard the above-mentioned expert, G.H. (see paragraphs 50-52 below).

43. As to the applicant's complaint that the personal search conducted on him had taken place in the absence of a search warrant issued by a court, the court found that the domestic law relevant to personal searches conducted by a penal facility authorities on inmates did not require such a warrant.

2. Witnesses questioned by the trial court

44. During the examination of the case by the Garadagh District Court a number of witnesses were questioned.

45. A penal facility officer, K.S., and the governor of the penal facility, A.Ag., testified that the personal search of the applicant and the search of the dormitory where he had slept had been carried out because they had received "operational information" according to which the applicant had exhibited signs of drug use.

46. A.Ag. also stated that the applicant's allegations were false. In particular, no riot had occurred in the penal facility in June 2009, and the

applicant had not been subjected to any attacks or provocations or questioned on whether or not he had been using drugs.

47. K.S. and several other penal facility officers (A.Ab., B.G., A.Ah., Fa.S., Fe.S., and E.I.), attesting witnesses I.I., Sh.S., A.B. and T.D., and inmates I.Z., G.A., F.G. and S.S. (see paragraphs 11-12 above) in their respective testimony described the personal search conducted on the applicant and the search of the dormitory in which he had slept.

48. Furthermore, K.S. and A.Ag. testified that in the premises of the penal facility it had been impossible for any third persons to have planted the drugs on the applicant. A.N., an inmate, testified that security guards had guarded the dormitories in the penal facility and that he had not heard of any third persons interfering with inmates' clothes. He also testified that there had been instances when the applicant had left his clothes outside the washing area before entering a shower room. However, other inmates, O.B., R.M. and Az.Ah., testified that the applicant had not been in the habit of leaving his clothes outside the washing area before entering the shower and had kept them inside the shower room.

49. O.B. also testified that in a private conversation with him the applicant had once said that, while he had been waiting for the Court to deliver its judgment in case of *Fatullayev* (cited above), he had felt tired and under mental pressure and would gladly use drugs if they were available, and that he had used drugs before, during his military service. O.B. also testified that he had seen the applicant under the influence of drugs in June or July 2009. O.B. declared that he knew the signs of being under drug influence because he had been a drug user himself.

50. The experts confirmed the result of their relevant reports (see paragraphs 17, 23-24 and 26-27 above).

51. In addition, addressing the applicant's arguments that the level of narcotic substances found in the samples would have been lethal if that level had indeed been present in his body, G.H., the expert, stated that the defence had misunderstood the meaning of the report of 18 January 2010 – the charts annexed to the report did not demonstrate the level of the narcotic substances found in the applicant's blood and urine samples. The charts in question only showed which narcotic substances had been detected. The experts had never been asked to determine the level of those substances.

52. In response to the defence's relevant questions G.H. also stated that some parts of the samples taken from the applicant remained in the possession of the expert agency and could still be tested; and that drugs could be detected in a person's hair for up to two years.

3. The applicant's conviction and his appeals

53. On 6 July 2010 the Garadagh District Court convicted the applicant for illegal possession of drugs, as charged. In finding the applicant guilty the court relied on the above-mentioned expert reports (see paragraphs 17, 23-24

and 26-27 above) and on most of the witness testimony (the court disregarded A.N.'s testimony that there had been instances when the applicant had left his clothes outside the washing area before entering a shower room and the expert testimony given by G.H. noted in paragraph 52 above).

54. The court also examined the applicant's articles published in *Mediaforum* (see paragraph 9) and found that the article published on 21 December 2009 "[had] not contained any specific points indicating a threat that the applicant would be [charged] again, as had been claimed by [him]" (*məqalədə təqsirləndirilən şəxsin dediyi kimi onun yenidən həbs olunması təhlükəsinə işarə olunan konkret məqamlar yoxdur*). On the basis of the testimony of the governor of the penal facility (see paragraph 46 above), the court also found that the applicant's allegations that a riot had taken place in June 2009 and that he had been subjected to attacks and provocations (see paragraph 10) were false. Furthermore, the court declared that there was no need to examine the applicant's allegations regarding the death of journalist Elmar Huseynov (ibid.) because there was no causal relationship between those allegations and the criminal case against the applicant. Consequently, the court dismissed the applicant's arguments that the drugs had been planted on him by the authorities and that the criminal case against him had been fabricated.

55. The court sentenced the applicant to two years and six months' imprisonment.

56. The applicant appealed against the judgment. He reiterated his earlier arguments and complained about the Garadagh District Court's refusal to grant his requests. It can be seen from the case-file material that he also lodged his requests again (in particular, his requests for an expert fingerprints examination and for his hair and nails to be tested for traces of drugs).

57. The applicant's appeal was examined by the Court of Appeal "without judicial investigation" (*məhkəmə istintaqını aparmadan*). On 25 January 2011 the Court of Appeal dismissed the applicant's appeal and upheld the Garadagh District Court's judgment. The appellate court also dismissed the applicant's requests on the same grounds as the trial court.

58. The applicant lodged a cassation appeal, reiterating his earlier complaints.

59. On 3 November 2011 the Supreme Court dismissed the appeal as unfounded and upheld the lower courts' judgments.

D. Search and seizure in the office of the applicant's representative

60. On 8 August 2014 criminal proceedings were instituted against Mr Aliyev, who represented the applicant before the Court. Those criminal proceedings were the subject of a separate application lodged by him with the Court (see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, 20 September 2018). On 8 and 9 August 2014 the investigating authorities seized a large

number of documents from Mr Aliyev's office, including all the case files relating to applications pending before the Court, which were in the possession of Mr Aliyev as a representative. The file relating to the present case was also seized in its entirety. The facts relating to the seizure and the relevant proceedings are described in more detail in *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 21-28, 22 October 2015).

61. On 25 October 2014 some of the seized documents were returned to Mr Aliyev's lawyer.

E. Further developments

62. The applicant was released in May 2011, following a presidential pardon freeing him from the two-and-a-half-year prison sentence that he had received for illegal possession of drugs.

63. From the material submitted to the Court it appears that as of November 2011, the above-mentioned separate criminal proceedings, initiated in order to establish the source of the drugs found on the applicant (see paragraph 30 above), were pending without any developments.

RELEVANT LEGAL FRAMEWORK AND INTERNATIONAL DOCUMENTS

64. The relevant parts of Article 37 of the Code of Criminal Procedure of 2000 ("the CCrP") provided as follows:

Article 37. Types of criminal prosecution

"37.1. Depending on the nature and severity of the offence, a criminal prosecution shall be carried out [by means of bringing] private, semi-public or public charges, in accordance with the provisions of this Code.

37.2. A criminal prosecution [by means of bringing] private charges shall take place only upon a complaint being lodged by the victim concerning offences under Articles 147 [defamation], 148 [insult], 165.1 [infringement of copyright and related rights] and 166.1 [infringement of patent and invention rights] of the Criminal Code and shall be discontinued in the event of reconciliation between the victim and the accused before the court begins its deliberations.

37.3. A criminal prosecution in the form of [the bringing of] semi-public charges shall take place upon a complaint [being lodged] by the victim or, in the circumstances provided in Article 37.5 of this Code, at the initiative of the prosecutor for offences under Articles 127, 128, 129.2, 130.2, 131.1, 132-134, 142.1, 149.1, 150.1, 151, 156-158, 163, 175-177.1, 178.1, 179.1, 184.1, 186.1, 187.1, 190.1, 197 and 201.1 of the Criminal Code.

...

37.6. In respect of other offences which are not provided in Articles 37.2. and 37.3. of this Code, a criminal prosecution shall be carried out in the form of [the bringing of] public charges."

65. The relevant parts of Article 92 of the CCrP read as follows:

Article 92. Defender

"92.9. A [defence lawyer] exercises the following rights in respect of the instances and in the manner prescribed by the present Code:

...

92.9.9. ... in the event of a criminal prosecution [by means of bringing] private charges, [the right] to obtain a report [prepared by] an expert or the opinion of a specialist, on a contractual basis;

92.9.10. to familiarise himself or herself with a decision adopted by the prosecuting authority ordering an expert examination and with the relevant expert report ..."

66. The relevant parts of Article 264 of the CCrP provided as follows:

Article 264. Principles of conducting expert examination

"264.3. [At the pre-trial stage of the proceedings,] an expert examination shall be conducted on the basis of the investigator's decision or, (in the event of a criminal prosecution [by means of bringing] private charges) on the basis of a written request lodged by the defence party. A decision ordering an expert examination shall be binding on the persons concerned."

67. The relevant parts of Article 323 of the CCrP provided as follows:

Article 323. Lodging of requests by parties to criminal proceedings prior to judicial investigation and dealing with those requests

"323.1. Before starting a judicial investigation, the presiding judge shall find out, one by one, from each party to the criminal proceedings whether or not they [plan to lodge any requests] for the following:

...

323.1.2. inviting of additional witness, expert or specialist;

323.1.3. ordering of an expert examination;

...

323.7. The court has the right, on its own initiative, ... to order an expert examination, ... as well as to render a decision excluding unacceptable documents from a court hearing."

68. The relevant parts of Article 331 of the CCrP provided as follows:

Article 331. Expert examination during court hearing

"331.1. If at the pre-trial stage an expert examination was conducted, then during the judicial investigation, the report prepared by the expert at the pre-trial stage shall be examined.

...

331.3. Having examined the expert report, the court has the right to order a repeated or additional expert examination – following a request lodged by one of the parties to the criminal proceedings or on its own initiative – after hearing each of the parties.

331.4. If during the initial investigation of the criminal case an expert examination is not ordered, then during the court proceedings the parties to the criminal proceedings may lodge a request asking [the court] to order an expert examination."

69. Extract from the "Guidelines for Testing Drugs under International Control in Hair, Sweat and Oral Fluid", issued by the United Nations Office on Drugs and Crime, 2014:

"[H]air analysis is now considered to be the most efficient tool to investigate drug-related histories, particularly when the period of use needs to be tested back to many days or even months before the sampling. On these grounds, following recent suggestions from international associations, such as the Society of Hair Testing, hair analysis can become not only a fundamental tool in forensic toxicology and medicine, but also a way to find traces of illicit drugs in subjects claiming abstinence for months before sampling. Following the success of advances in hair analysis, other "alternative biological specimens", such as sweat and oral fluid, have gained popularity as forensic specimens, being able to provide information in specific circumstances. As depicted in table 1, these alternate matrices offer different detection windows. In most instances, they show significantly different metabolic profiles when compared to traditional blood and urine testing.

Table 1. Detection windows for drugs in various biological matrices

Specimen	*Detection window*
Blood (serum)	- Several hours to 1-2 days
Urine	- Several hours to 3 days
Oral fluid	- Several hours to 1-2 days (or more for basic drugs)
Sweat (patch)	- Weeks
Hair	- Months/years ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

70. The applicant complained that the criminal proceedings against him had been in breach of Article 6 of the Convention because he had been convicted on the basis of planted and fabricated evidence, and because he had not been given an opportunity either to effectively challenge that evidence against him or to adduce evidence in his favour. The relevant part of Article 6 of the Convention reads:

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ..."

A. Admissibility

71. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

72. The applicant submitted that the main evidence against him – the drugs – had been planted on him. He argued in particular that in the penal facility there had been a number of possibilities for drugs to be placed in his personal belongings. Neither the investigator in charge of the case nor the domestic courts had investigated how he had allegedly obtained the drugs during his time in the penal facility. Furthermore, he had not been given an opportunity to effectively challenge that evidence or to adduce evidence in his favour because the relevant requests lodged by him (see paragraphs 32-33 above) had not been granted by the domestic courts.

73. The applicant also submitted that the expert report of 18 January 2010 (see paragraph 23 above), which constituted the other important evidence against him, was unreliable. He argued in particular that the report contradicted the health and narcology report (see paragraph 26 above) because the narcotic substances allegedly found in his blood and urine samples would have had a serious impact on his psychological and physical state, whereas according to his general health and narcology report, his psychological state had been stable, he had had no health issues and had not been a drug user; he furthermore argued that if the domestic courts had allowed his request that the samples be re-examined in order to determine the level of drugs in them, the results would have revealed that those samples had been tampered with. Furthermore, he had not been given an opportunity to effectively challenge the expert report of 18 January 2010 or to adduce expert evidence in support of his arguments, because, firstly, under the domestic law he, unlike the prosecution, had had no right to order expert examinations independently and, secondly, the relevant requests lodged by him (see paragraphs 35 and 37 above) had not been granted by the domestic courts.

74. Furthermore, the applicant argued that the personal search to which he had been subjected had been carried out without a search warrant issued by a court, and that his request to be allowed to call his family and to invite his lawyer to be present during the search had been refused.

75. The Government submitted that the criminal proceedings against the applicant had been fair. They argued in particular that the judgments and decisions of the domestic courts had been reasoned and based on lawful, impartial and comprehensively assessed evidence. The applicant had been able to cross-examine all witnesses on behalf of the prosecution and all the

experts, and to call his own witnesses. Even though the applicant had not been able to commission an independent examination of the blood and urine samples taken from him on 30 December 2009, his lawyer could have collected fresh samples himself and submitted them for expert examination in one of the numerous medical facilities or laboratories existing in the country.

2. The Court's assessment

(a) Applicable principles

76. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see, among many others, *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017).

77. It is not, therefore, the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question that must be answered is whether the proceedings as a whole – including the way in which the evidence was obtained – were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see, among many others, *Lisica v. Croatia*, no. 20100/06, § 48, 25 February 2010).

78. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence have been respected. In particular, it must be examined whether the applicant was given an opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, as must the circumstances in which it was obtained and whether these circumstances cast doubt on its reliability or accuracy. While no problem regarding fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see, among many others, *Bykov v. Russia* [GC], no. 4378/02, § 90, 10 March 2009). In this connection, the Court also attaches weight to whether the evidence in question was or was not decisive for the outcome of the criminal proceedings (see, among many others, *Vukota-Bojić v. Switzerland*, no. 61838/10, § 95, 18 October 2016).

79. The Court also recalls that the concept of a fair hearing within the meaning of Article 6 § 1 of the Convention includes the principle of equality of arms, which requires a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage *vis-à-vis* their opponent (see, among

many others, *Faig Mammadov v. Azerbaijan*, no. 60802/09, § 19, 26 January 2017).

80. Although Article 6 does not go as far as requiring that the defence be given the same rights as the prosecution in taking evidence, the accused should be entitled to seek and produce evidence "under the same conditions" as the prosecution. Clearly, those "conditions" cannot be exactly the same in all respects; thus, for example, the defence cannot have the same search and seizure powers as the prosecution. However, as can be seen from the text of Article 6 § 3 (d) the defence must have an opportunity to conduct an active defence – for example, by calling witnesses on its behalf or adducing other evidence (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 728, 25 July 2013).

81. The principle of equality of arms is also relevant in matters related to the appointment of experts in proceedings (see *Khodorkovskiy and Lebedev v. Russia (no. 2)*, nos. 42757/07 and 51111/07, § 499, 14 January 2020). The mere fact that the experts in question are employed by one of the parties does not suffice to render the proceedings unfair. Although this fact may give rise to apprehension as to the neutrality of those experts, such apprehension, while having a certain importance, is not decisive. What is decisive, however, is the position occupied by the experts throughout the proceedings, the manner in which they performed their functions and the way the judges assessed the expert opinion that those experts presented. In ascertaining the experts' procedural position and their role in the proceedings, the Court takes into account the fact that the opinion given by any court-appointed expert is likely to carry significant weight in the court's assessment of the issues within that expert's competence (see *Shulepova v. Russia*, no. 34449/03, § 62, 11 December 2008, and *Poletan and Azirovik v. the former Yugoslav Republic of Macedonia*, nos. 26711/07 and 2 others, § 94, 12 May 2016).

82. Within the context of expert evidence, the rules on its admissibility must not deprive the defence of the opportunity to challenge it effectively – in particular by introducing or obtaining alternative opinions and reports. In certain circumstances, refusal to allow an alternative expert examination of material evidence may be regarded as a breach of Article 6 § 1 (see *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 38 et seq., 5 April 2007, and *Matytsina v. Russia*, no. 58428/10, § 169, 27 March 2014).

83. The Court also recalls that according to established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. While courts are not obliged to give a detailed answer to every argument raised, it must be clear from the decision that the essential issues of the case have been addressed and that a specific and explicit reply has been given to the arguments which are decisive for the outcome of the case (see, among others, *Karimov and Others v. Azerbaijan*, nos. 24219/16 and 2 others, § 29, 22 July 2021). Moreover, in cases relating to interference with rights

secured under the Convention, the Court seeks to establish whether the reasons provided for decisions given by the domestic courts are automatic or stereotypical (see *Moreira Ferreira*, cited above, § 84). An issue with regard to a lack of reasoning of judicial decisions under Article 6 § 1 of the Convention will normally arise when the domestic courts ignored a specific, pertinent and important point raised by the applicant (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011; *Rostomashvili v. Georgia*, no. 13185/07, § 59, 8 November 2018; and *Zhang v. Ukraine*, no. 6970/15, § 73, 13 November 2018).

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

(i) The main issues to be examined

84. The Court notes from the outset that the applicant did not dispute, either in the domestic proceedings or before the Court, the fact that drugs had been found in his jacket and shoe. His main line of defence was the argument that the criminal proceedings against him had been fabricated and that the drugs in question had been planted on him by the authorities (see paragraphs 31-37 and 72-73 above).

85. The Court also notes that the applicant's conviction was based to a decisive degree on two pieces of evidence – namely the packages containing drugs found on the applicant during his personal search and the expert report of 18 January 2010, which stated that the blood and urine samples taken from the applicant contained traces of drugs.

86. All the other supporting evidence against the applicant was of secondary importance either because it concerned circumstances not disputed by the defence – namely the fact that drugs had been found in the applicant's jacket and shoe – or because they constituted the witnesses' personal opinions. Thus, the expert reports of 29 December 2009 and 22 January 2010 described the drugs in question and/or traces of them on the applicant's jacket and shoe (see paragraphs 17 and 24 above). On the basis of the report of 18 January 2010, the expert report of 19 January 2010 recommended that the applicant be registered as a drug user (see paragraphs 26-27 above). Witness statements given by the above-mentioned penal facility officers, attesting witnesses and inmates either simply described the moment at which drugs had been found and seized (see paragraph 47 above) or constituted their personal opinion that in the premises of the penal facility it had been impossible for drugs to be planted on the applicant by any third persons (see paragraph 48 above) and that the applicant had allegedly been seen under the influence of drugs in the past (see paragraph 49 above).

87. Consequently, the Court will examine whether the circumstances in which the drugs were found on the applicant and in which the expert report of 18 January 2010 was issued cast doubt on the reliability of those pieces of evidence, whether the applicant was given an opportunity to effectively

challenge their reliability and oppose their use in the domestic proceedings, whether he was given an opportunity to effectively adduce evidence to support his arguments, and whether the domestic courts gave sufficient reasons for their decisions in respect of the applicant's challenges to the decisive incriminating evidence and his requests for the collection of other evidence.

(ii) The manner in which the domestic authorities dealt with the reliability of the evidence regarding the finding of the drugs

88. The Court notes that, as can be seen from the case-file material, the applicant had no criminal history of being involved in drug related crimes (compare *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, § 119, 13 February 2020). His sentence of imprisonment was related to his journalistic activities (see paragraphs 6-7 above).

89. The Court also notes that the two packages containing drugs were found during the personal search conducted on the applicant, which was ordered on the basis of alleged "operational information" that he had been using drugs. However, neither the relevant report, nor any decisions taken subsequently, nor the testimony given by a penal facility officer, K.S., and the governor of the penal facility contained any specifics as regards the collection and receipt of the operational information in question (see paragraphs 11 and 45 above). Notably, despite the applicant's insistence to be allowed to question the alleged informants (see paragraph 33 above), it remained unknown how the operational information had allegedly been acquired by the penal facility authorities; nor was the source of the information (the alleged informants) identified or how that source had acquired the information (compare, *mutatis mutandis*, *Ibrahimov and Mammadov*, cited above, § 120).

90. Moreover, while the applicant was accused of possessing drugs, neither the investigator in charge nor the domestic courts tried to establish how the applicant had allegedly procured the drugs in question (compare *Ibrahimov and Mammadov*, cited above, § 130). At the time the criminal proceedings against the applicant ended in November 2011, the criminal proceedings initiated in order to establish the source of the drugs found on him remained pending without any developments (see paragraphs 30 and 43 above).

91. The Court also notes that the personal search conducted on the applicant was carried out on the premises of the penal facility – which meant that the applicant was under the complete control of the authorities. In such circumstances, the Court considers plausible the applicant's argument that there had been many possibilities for drugs to be planted in his personal belongings, including his shoe and jacket. The applicant was subjected to the search within the premises of the penal facility because he was serving a sentence of imprisonment. Consequently, the fact that the search was carried

out in the penal facility was dictated by objective circumstances, which could not be altered. Nevertheless, that fact constitutes an element to be taken into consideration by the Court in its assessment of the reliability of the decisive evidence in the present case (compare, *mutatis mutandis*, *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 53, 12 November 2015, and *Layijov v. Azerbaijan*, no. 22062/07, § 69, 10 April 2014, in which the applicants had been searched only after they had been taken into police custody and had been under the complete control of the police, and where the Court found that the police's failure without good reason to conduct a search immediately following their arrest raised legitimate concerns about the possible "planting" of evidence, in breach of Article 6 of the Convention).

92. As to the presence of attesting witnesses during the personal search of the applicant, that could not serve as a safeguard against drugs or other incriminating evidence being pre-planted in his personal belongings (see *Ibrahimov and Mammadov*, cited above, § 127). Thus, in *Ibrahimov and Mammadov* (cited above) the Court took note of observations made by a delegation to Azerbaijan from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment about a number of consistent accounts of drugs or other incriminating evidence being planted in the belongings of detained persons prior to the arrival of attesting witnesses to official searches and seizures (ibid., §§ 83 and 127). Even though the mentioned observations were made in 2016, several years later than the circumstances of the present case, the Court finds those observations relevant for the examination of the present case, considering their general nature.

93. Furthermore, the Court notes that the applicant attempted to contest the reliability of the decisive evidence against him by, *inter alia*, asking the courts to identify, summon and question the individuals who had allegedly provided the "operational information" that he had been using drugs, to examine the source from which the drugs had allegedly been obtained, and to order an expert fingerprints examination of the packaging in which the drugs had been wrapped. The applicant's requests were substantiated by important arguments pertinent to his line of defence (see paragraphs 31-33 and 84 above).

94. Nevertheless, the domestic courts refused to grant those requests without any adequate and clear reason. Rather, in some instances the courts decided in general terms that granting the applicant's requests would not contribute to the examination of the case (see paragraphs 39-40 above), and in others they simply provided no reason whatsoever for not granting them (see paragraph 43 above, concerning the applicant's request to order an expert fingerprints examination). In the Court's view, examining the issues raised by the applicant in his above-mentioned requests, in particular his request to order an expert fingerprints examination, could have shed light on the question of whether or not the drugs could have been planted on him.

95. In view of the above, the Court considers that the circumstances in which the drugs were found on the applicant cast doubt on the reliability of that decisive evidence against him. Furthermore, the applicant was deprived of the opportunity to effectively challenge the reliability of the evidence in question and to oppose its use in the domestic proceedings, and to adduce evidence in his favour. In addition, when refusing to grant the applicant's requests in that regard, the domestic courts breached his right to a reasoned decision.

(iii) The manner in which the authorities dealt with expert evidence on alleged traces of drugs in the applicant's blood and urine samples

96. The report of 18 January 2010 – which stated that the blood and urine samples taken from the applicant contained traces of drugs – was akin to incriminating evidence. It was issued following an expert examination ordered by the investigator in charge of the case (see paragraph 19 above; also compare *Stoimenov*, cited above, §§ 38-42). Therefore, the principle of equality of arms required that the applicant be afforded an opportunity to effectively challenge that evidence and to adduce counterevidence in his favour.

97. The Court notes in that regard that when blood and urine samples were taken from the applicant on the investigator's order, a blood sample of 5 millilitres was given to the applicant's lawyer (see paragraph 21 above). However, the defence was not able to make any use of that sample. Thus, according to the CCrP, the defence had no right to independently commission an expert examination in criminal proceedings on public charges (see paragraphs 64-66 above; also compare, *mutatis mutandis*, *Khodorkovskiy and Lebedev*, cited above, §§ 729-30). Furthermore, an expert examination of the blood sample for traces of drugs required a specialised complex methodology and machinery (see paragraph 23 above) and, according to the applicant, the medical laboratories, which the defence had approached, refused to perform an examination of the blood sample in question (see paragraph 21 and 37 above). Even assuming that the defence could find a biological, chemical or other laboratory capable and willing to make the requested examination, it is doubtful that such examination, commissioned by the defence and performed in an uncontrolled environment by a private expert, would have had any probative value comparable to that of an expert examination ordered by the court itself or by the prosecution. The same can also be said in respect of any other expert examinations that the applicant wanted to be conducted – namely a re-examination of the blood and urine samples taken from him on the investigator's order and an examination of his hair and nails for traces of drugs.

98. Under the CCrP (see paragraphs 67-68 above), the defence could challenge the report of 18 January 2010 by asking the domestic courts to order the above-mentioned expert examinations. However, to obtain such fresh

examinations it was incumbent on the defence to persuade the domestic courts that the report produced by the prosecution was incomplete or deficient (compare, *mutatis mutandis*, *Khodorkovskiy and Lebedev*, cited above, § 730). The applicant attempted to do so (see paragraph 35 and 37 above) and presented important and pertinent arguments to prove the necessity of alternative expert examinations. He argued in particular that the report of 18 January 2010 regarding the traces of drugs found in the blood and urine samples contradicted the general health and narcology report because the narcotic substances allegedly found in his blood and urine samples would have had a serious impact on his psychological and physical state, whereas, according to the general health and narcology report, his psychological state had been stable, he had had no health issues and had not been a drug user; he accordingly argued that it was important to re-examine the blood and urine samples and to establish the level of the drugs present in them. The applicant argued that such a re-examination of the blood and urine samples would reveal that they had been tampered with (see paragraph 35 above).

99. Nevertheless, the domestic courts refused to grant the applicant's requests, without any adequate and clear reason. The Court observes in that regard that, firstly, the domestic courts did not give any explanation as to why they had refused to order an expert examination of the blood sample given to the applicant's lawyer, apart from the trial court's general stereotypical statement that there had been no reason to doubt the reliability of the report presented by the prosecution (see paragraph 42 above). Secondly, as G.H., the above-mentioned expert, testified before the trial court, some parts of the samples taken from the applicant by order of the investigator remained in the expert agency and were suitable for testing (see paragraph 52 above). Therefore, it is not clear why the domestic courts did not order expert examinations of those remaining samples and ask experts to establish the level of the drugs in them. Thirdly, without any explanation the domestic courts refused to seek further expert opinion on the contradiction between the two reports pointed to by the applicant and, as already noted above, failed to consider at all the evidently relevant fact that the applicant was not a drug user. Fourthly, when the trial court refused to order an expert examination of the applicant's hair and nails for traces of drugs it said that an alternative expert examination would be of no use because more than five months had passed since traces of drugs had been found in the applicant's blood and urine samples. However, the domestic courts did not have regard to the fact that the expert, G.H., did not limit the "window" for detecting drugs in hair to a period of "up to five months", according to him, drugs remained detectable for up to two years (see paragraph 52 above). The Court also observes that according to the United Nations' Guidelines, the presence of drugs is detectable in hair for months or years after ingestion (see paragraph 69 above). Finally, when the trial court refused to order an expert examination of the applicant's hair and nails and stated that there were no technical means in the country to

conduct the requested tests, it did not explain the reasons why that situation should not lead to the application of the *in dubio pro reo* principle which requires that the benefit of any doubt about the reliability of existing evidence should be given to the defendant (see, *mutatis mutandis*, *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, § 232, 16 November 2017). Consequently, the domestic court did not reject the expert report of 18 January 2010, disregarding the applicant's arguments which were relevant and cast doubts about its reliability.

100. Therefore, having regard to the manner in which the domestic courts dealt with the reliability of the report of 18 January 2010 and the applicants' requests in that regard, the Court finds that the applicant was deprived through unreasoned decisions of the opportunity to put forward arguments in his defence on the same terms as the prosecution in respect of a key piece of evidence.

(c) Conclusion

101. In sum, the applicant was not given an opportunity to effectively present his main line of defence – namely the argument that the drugs in question had been planted on him by the authorities and that the criminal proceedings against him had been fabricated. Despite the consistency and seriousness of those allegations made by the applicant, the domestic courts failed to verify and investigate them, the applicant was not given an opportunity to effectively challenge the decisive evidence against him and adduce evidence in his favour. The domestic courts dismissed the applicant's procedural requests in unreasoned decisions.

102. The Court also notes that the domestic courts dismissed the applicant's above-mentioned allegations by simply relying on statements of the penal facility authorities, and failed to take into consideration any contextual evidence presented by the applicant (in particular: the history of the applicant's repeated prosecutions for his articles criticising the government; the fact that the applicant had continued his journalistic activities while he had been serving his sentence of imprisonment and could potentially be targeted for that by some public officials; and the fact that the criminal proceedings against the applicant had coincided with the examination of the above-cited case of *Fatullayev* by the Court).

103. There has accordingly been a violation of the applicant's right to a fair trial protected by Article 6 § 1 of the Convention.

104. In view of the above findings, the Court considers that there is no need to examine whether the applicant's right to fair trial was breached also by the fact that the personal search conducted on him had been carried out without a search warrant issued by a court, and by the fact that his request to be allowed to call his family and to invite his lawyer to be present during the search had been refused. There is also no need to examine whether the fact that under the domestic law the applicant, unlike the prosecution, had no right

to independently commission expert examinations violated the principle of equality of arms.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

105. On 9 September 2014 the applicant's representative, Mr I. Aliyev, lodged a new complaint on the applicant's behalf, arguing that the seizure from his office of the entire case file relating to the applicant's pending application before the Court, together with all the other files pertaining to cases in respect of which Mr Aliyev acted as a representative, had amounted to a hindrance to the exercise of the applicant's right of individual petition under Article 34 of the Convention, the relevant parts of which read as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

106. The submissions on this complaint made by the applicant and the Government were similar to those made by the parties in respect of the same complaint raised in the case of *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 57-60, 22 October 2015).

107. In *Annagi Hajibeyli* (cited above, §§ 64-79), having examined a similar complaint on the basis of similar facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention. The Court considers that the analysis and findings that it reached in the *Annagi Hajibeyli* judgment also apply to the present application and sees no reason to deviate from that finding.

108. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

109. Lastly, referring to Article 10 of the Convention and to its Article 18 taken in conjunction with Articles 6 and 10, the applicant complained that the criminal proceedings against him had been fabricated because of his journalistic activities and his case pending before the Court (namely the above-cited case of *Fatullayev*), and in order to force him to cooperate with the government. The Court considers that the above complaints fall to be examined only under Article 18 of the Convention taken in conjunction with Articles 6 and 10. Article 18 of the Convention reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

110. The Government argued that the applicant had not raised this complaint before the domestic courts and that, therefore, it was inadmissible for non-exhaustion of the available domestic remedies. As to the merits of the complaint, the Government did not make any submissions.

111. The applicant alleged that before the drugs had been planted on him he had been threatened and subjected to physical attacks and provocations aimed at implicating him in certain criminal offences for which he could then be held liable (see paragraph 10 above). He also argued that his case could not be viewed in isolation, as the authorities had frequently been using fabricated charges against their opponents, critics, "whistle-blowers" and dissenters in general. Several other journalists and activists had similarly been arrested and charged with criminal offences. The applicant listed, *inter alia*, cases in which the Court has delivered judgments – namely *Sakit Zahidov* (cited above); *Azizov and Novruzlu v. Azerbaijan*, (nos. 65583/13 and 70106/13, 18 February 2021); and *Ibrahimov and Mammadov* (cited above); and a case in which a strike-out decision based on a unilateral declaration by the Government has been adopted – namely *Rashad Ramazanov v. Azerbaijan* (dec.) ([Committee], no. 53596/15, 16 January 2020).

112. Having regard to the submissions of the parties and the Court's findings under Article 6 of the Convention (see, in particular, paragraphs 101-103 above), the Court considers that there is no need to give a separate ruling on the admissibility and merits of the complaint under Article 18 of the Convention taken in conjunction with Articles 6 and 10 (compare *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, § 262, 16 November 2017).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

114. The applicant claimed 110,000 euros (EUR) in respect of non-pecuniary damage.

115. The Government submitted that the applicant had not substantiated his claim for just satisfaction or supported it with any evidential material. They asked the Court to adopt a strict approach and to dismiss the applicant's claim.

116. The Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

117. The applicant also claimed EUR 12,000 for the costs and expenses incurred before the domestic courts and the Court.

118. The Government submitted that the applicant had not substantiated his claim for just satisfaction or supported it with any evidential material. They asked the Court to adopt a strict approach and to dismiss the applicant's claim.

119. 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 were actually and necessarily incurred and are reasonable as to quantum. Furthermore, under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017). In the present case, regard being had to the above criteria and the fact that the applicant did not submit any documents to substantiate his claim for costs and expenses, the Court rejects it.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Articles 6 and 34 of the Convention admissible;

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

3. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 18 of the Convention taken in conjunction with Articles 6 and 10;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 7 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President