



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

FIRST SECTION

CASE OF MAMMADOV (JALALOGLU) v. AZERBAIJAN

(Application no. 34445/04)

JUDGMENT

STRASBOURG

11 January 2007

FINAL

11/04/2007

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 Mammadov (Jalaloglu) v. Azerbaijan,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 7 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 34445/04) 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 Sardar Jalaloglu Mammadov (*Sərdar Cəlal oğlu Məmmədov*; “the applicant”), on 17 September 2004.

2. The applicant was represented by Mr F. Agayev, a lawyer practising in Baku. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr C. Asgarov.

3. The applicant alleged ill-treatment by the police, absence of an effective investigation and effective domestic remedies in this respect, and discrimination on the ground of his political opinion.

4. On 25 October 2005 the Court decided to grant priority to the application under Rule 41 of the Rules of Court and give notice of it to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Baku. More commonly known as Sardar Jalaloglu in political circles, he was the Secretary General

of the Democratic Party of Azerbaijan. It was one of the opposition parties that considered the presidential elections of 15 October 2003 illegitimate because of alleged falsifications.

A. The applicant's arrest

6. On 16 October 2003 a number of opposition supporters held unauthorised public manifestations at the Azadlıq Square in the centre of Baku, protesting the results of the elections. The manifestations ended with public disorder and violent clashes between the crowd and the police. The applicant claimed that he had not personally participated in these manifestations.

7. According to the applicant, on 18 October 2003, between 6 p.m. and 7 p.m., several masked police officers, armed with Kalashnikov rifles, appeared at the applicant's house, demanding that he open the door. Before the applicant could do so, three or four of them entered the applicant's apartment through a window. Without presenting an arrest warrant or any other document, the police officers handcuffed the applicant and his guest, N.J. Then the officers dragged them out of the apartment and into a police car. The applicant and N.J. were taken to the Organised Crime Unit of the Ministry of Internal Affairs (*Mütəşəkkil Cinayətlərə qarşı Mübarizə İdarəsi*; hereinafter "the OCU").

8. Thereafter, the applicant was kept handcuffed for about four hours in one of the rooms inside the OCU's building. When the applicant's lawyer arrived and attempted to find out the reasons for the applicant's arrest, the Chief of the OCU told him that the reasons would be given the next day.

B. Events following the applicant's arrival in OCU

9. On the same day, the applicant was taken to the basement of the OCU's building, which was used as a temporary detention facility. There, in the office of the warden of the detention facility, he was ordered to strip naked in the presence of several policemen. The policemen checked his body for injuries and did not notice any. He was then placed in a cell with two other detainees until the next morning.

10. The next day, on 19 October 2003 between 12 noon and 1 p.m., the applicant was taken to the Investigation Department of the Chief Prosecutor's Office and interrogated in the presence of his lawyer. After the interrogation, he was charged with "organising public disorder" and "use of violence against state officials" for his alleged role in the events of 16 October 2003. According to the applicant, he orally complained to the investigator that he had been ill-treated on the way to the OCU and after being placed in police custody.

11. At 4 p.m. on the same day the Nasimi District Court ordered the applicant's detention on remand for three months. This decision was subsequently upheld by the Court of Appeal on 28 October 2003.

12. The applicant was taken from the Nasimi District Court back to the OCU where he was kept, until 22 October 2003, in the same cell with two other detainees.

13. At around 6 p.m. on 19 October 2003 the applicant was taken to the office of the Deputy Chief of the OCU, where he was told that he would be subjected to "additional interrogation". The applicant objected, stating that the OCU officers had no competence to interrogate him after his indictment, but his objection was unsuccessful. The interrogation lasted until approximately 10 p.m. and involved questions concerning the activities of members of his political party.

14. According to the applicant, during this interrogation, he was subjected to ill-treatment in the form of, *inter alia*, beating of the soles of his feet by two masked policemen with truncheons.

C. The applicant's attempts to obtain redress for the alleged ill-treatment

15. In the morning of 20 October 2003 the applicant was visited by representatives of the International Red Cross. He complained to them that he had been ill-treated while in police custody.

16. On 21 October the applicant's lawyer sent a telegram to the Chief Prosecutor's Office, complaining that the OCU did not allow him to meet with the applicant in the detention facility on 20 and 21 October. Finally, on 22 October the applicant met with his lawyer and told him that he had been beaten by police officers in the OCU.

17. On the same day, the applicant was transferred from the OCU's detention facility to the Investigative Isolator No. 1. Upon the transfer, he was examined by the Isolator's doctors who observed injuries on his body (more specifically, two haematomas on his right calf and right heel) and made relevant notes in their records.

18. On 22 October 2003 the applicant's lawyer filed a petition with the investigator of the Chief Prosecutor's Office dealing with the applicant's case, requesting a medical examination of the applicant's injuries. In the petition, the lawyer noted that the applicant had complained about torture in the OCU's temporary detention facility and that he had personally seen injuries on the applicant's calf and foot.

19. Five days later, on 27 October, not having received a reply from the investigator, the lawyer filed a complaint with the Head of the Investigation Department of the Chief Prosecutor's Office concerning the investigator's failure to respond to his petition.

20. Following this, on 28 October the investigator ordered a medical examination and on 29 October the applicant was examined by a medical expert of the Forensic Medicine and Pathologic Anatomy Department of the Ministry of Health. According to the forensic report issued on 30 October, the expert observed the following injuries to the applicant's body: (1) a pale rosy circular bruise of 1x1 cm on the left elbow joint; (2) a yellowish haematoma of an indefinite shape measuring 5x3 cm on the upper part of the right calf; and (3) a yellowish haematoma of an indefinite shape measuring 6x5 cm on the inside of the right heel. Finding it unnecessary to determine the degree of gravity of these injuries, the expert concluded that they had been caused by a hard blunt object. The expert also commented that "[the possibility that] the injuries had been inflicted on 16 October 2003 cannot be excluded".

21. On 18 December the warden of the OCU's temporary detention facility was interrogated in connection with the applicant's complaint. He testified that, when the applicant had been brought to his detention facility on 18 October, he had been in good health and that no injuries had been observed on his body. He further testified that the applicant had not complained about any health problems upon his arrival in the OCU. He also denied the applicant's allegations of ill-treatment in the OCU's detention facility.

22. On 8 January 2004 the Head of the Investigation Department of the Chief Prosecutor's Office, after interrogating four police officers of the OCU, officially refused to institute criminal proceedings concerning the alleged ill-treatment of the applicant in the OCU's detention facility, finding that the applicant's allegations were not substantiated. The investigator noted that the police officers denied all the allegations of ill-treatment, that the forensic report did not establish conclusively that the applicant's injuries had been inflicted while in police custody, and that the applicant failed to furnish any other evidence of ill-treatment.

23. Meanwhile, on 14 December 2003 the applicant filed a separate complaint with the Nasimi District Court, complaining that he had been unlawfully arrested and tortured in police custody. Specifically, he complained that, during the interrogation in the office of the Deputy Chief of the OCU, for approximately four hours, he had been beaten with truncheons on the soles of his feet by two people in masks. He further noted that after the beating his cellmates had witnessed his injuries and provided some assistance to him. He asked the court to bring the officials concerned to criminal responsibility.

24. On 28 January 2004 the Nasimi District Court refused to examine the complaint due to lack of territorial jurisdiction, finding that complaints against the OCU officials must be filed with the Narimanov District Court.

25. On 29 January 2004 the applicant filed a complaint of the same substance with the Narimanov District Court. This court also refused to

examine the complaint due to lack of territorial jurisdiction. The matter was referred to the Court of Appeal, which decided that it was within the Nasimi District Court's territorial jurisdiction to examine the complaint.

26. Finally, on 18 February 2004 the Nasimi District Court examined the applicant's complaint concerning the unlawfulness of the Chief Prosecutor's Office's refusal to institute criminal proceedings and dismissed it as unsubstantiated. The court specifically noted that the forensic report did not rule out the possibility that the injuries could have been inflicted to the applicant during the public disorder on 16 October 2003, i.e. prior to the applicant's arrest. As such, the court did not consider this forensic report as conclusive evidence proving the applicant's beating in the OCU's detention facility. The court found that the applicant did not produce sufficient evidence to support his allegations.

27. The applicant appealed, claiming that the Nasimi District Court failed to give proper legal assessment to the evidence showing that he had been tortured in police custody. On 17 March 2004 the Court of Appeal upheld the Nasimi District Court's decision. The full decision of the Court of Appeal was posted to the applicant's lawyer on 18 March 2004. No further appeal lay against this decision under the domestic law.

28. As for the criminal proceedings instituted against the applicant for his role in organising the public disorder on 16 October 2003, on 22 October 2004 he was convicted and sentenced to three years' imprisonment. The court found that, although the applicant had not been personally present at the Azadliq Square on 16 October 2003, he was one of the organisers of the public disorder and gave instructions to his followers from his party's headquarters.

29. In March 2005 the applicant was released from serving the remainder of his prison sentence pursuant to a presidential pardon decree.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL REPORTS

A. Constitution

30. Article 46 (III) of the Constitution of the Republic of Azerbaijan provides as follows:

“No one shall be subjected to torture or ill-treatment. No one shall be subjected to degrading treatment or punishment. ...”

B. Criminal responsibility for torture and inhuman and degrading treatment

31. In accordance with the Criminal Code, torture of an individual who is under detention or otherwise deprived of his or her liberty is a crime punishable by imprisonment for a term of seven to ten years (Article 113). Infliction of physical or psychological suffering to an individual by way of systematic beating or other violent actions performed by a public official in his official capacity is a crime punishable by imprisonment for a term of five to ten years (Article 133).

32. In accordance with Article 37 of the Code of Criminal Procedure, criminal proceedings are instituted on the basis of a complaint by the victim of an alleged criminal offence.

C. Civil action against public authorities' unlawful act or omission

33. The Law *On Complaints against Acts and Omissions Infringing Individual Rights and Freedoms*, dated 11 June 1999 (hereinafter the "Law"), provides for a judicial avenue for claims against public authorities. In accordance with Article 2 of the Law, any act or omission by a public authority infringing an individual's rights or freedoms may be challenged either (a) directly before a court; or (b) before a higher (supervising) public authority. If the complaint is first filed before a supervising public authority, such authority must inform the complainant in writing, within one month of the receipt of the complaint, of the results of the examination of his or her complaint.

34. In accordance with Article 5 of the Law, a direct judicial complaint must be filed within one month from the date the complainant became aware of the infringement of his rights or freedoms. However, if the complainant has initially filed a complaint against acts or omissions of the subordinate public authority with a supervising public authority, a judicial complaint challenging the decision of the supervising authority must be filed within one month of receipt of this decision. Provided the complainant had a good reason for the filing of a complaint after expiry of the deadline, the court may still accept it.

35. According to Article 6 of the Law, the court is entitled to declare the disputed act or omission unlawful, to lift the liability imposed on the complainant or to take other measures to restore the infringed right or freedom, and to determine the liability of the public authority for its unlawful act or omission. The court's finding of an infringement of the individual rights and freedoms gives rise to a civil claim for damages against the State.

36. The Civil Code contains similar provisions. In accordance with the Civil Code, disputes between individuals and public authorities concerning

individual rights and freedoms may be the subject matter for a civil action (Articles 2 and 5). Unlawful acts or omissions of a public authority or its officials give rise to a civil claim for damages against the State (Article 22). The State's civil liability is the same as that of an ordinary legal person (Article 43).

37. The Code of Civil Procedure provides for the procedure by which an individual can sue the State for damages in civil proceedings.

D. Investigations by the European Committee for the Prevention of Torture (CPT)

38. The European Committee for the Prevention of Torture (CPT) has carried out three visits to Azerbaijan. The first visit took place in November-December 2002 and involved visits to the Investigative Isolator No. 1 as well as the detention facilities under the authority of the Ministry of Internal Affairs, including OCU's temporary detention facility. The main purpose of the second (*ad hoc*) visit in January 2004 was to collect information concerning the treatment of persons detained in relation to the events which followed the presidential election of 15 October 2003. The delegation interviewed some thirty persons held at Investigative Isolator No. 1. In addition, the delegation visited OCU's temporary detention facility. The main purpose of the third (*ad hoc*) visit in May 2005 was to examine the situation in Gobustan prison. The CPT's reports on these visits, except that of November-December 2002, have not been made public, such publication requiring the consent of the State concerned, which has not been forthcoming.

39. While the CPT report concerning the visit of November-December 2002 mentions no specific instances of ill-treatment in OCU's temporary detention facility, it notes that the delegation received numerous allegations of physical ill-treatment of persons detained by the police in the establishments under the authority of the Ministry of Internal Affairs. The types of ill-treatment alleged mainly concerned slaps, punches, kicks and blows struck with truncheons, gun butts and other hard objects. In some cases, the severity of the ill-treatment alleged – such as the infliction of electric shocks, blows struck on the soles of the feet, blows to the body while the person concerned was handcuffed in a suspended position – was such that it could be considered as amounting to torture. Further, several persons gave accounts of different forms of humiliation and threats to use physical force (including sexual violence) against them or their relatives, in order to make them confess to a crime or provide information.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained under Article 3 of the Convention that he had been ill-treated during his arrest, that he had been tortured in the OCU's temporary detention facility, and that the conditions of his further detention at the Investigative Isolator No. 1 also amounted to ill-treatment. He also complained that his allegations of ill-treatment had not been investigated effectively, as required by the procedural obligation imposed by the same Article. Article 3 of the Convention provides as follows:

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

A. Admissibility

1. As regards the alleged ill-treatment during the arrest

41. In this part of the complaint, the applicant contended that during his arrest on 18 October 2003, the police officers had knocked him down, handcuffed him, dragged him to the ground and hit him. While being transported in the car to the OCU, he was hit and verbally assaulted. In the courtyard of the OCU, he was forced to lie on the wet ground with his face down and asked questions concerning his identity. In support of his allegations, the applicant submitted statements by several family members who, with varying degree of detail and consistency, asserted that the applicant had been roughly treated by the police in his house during the arrest.

42. The Government submitted that the applicant failed to exhaust domestic remedies with regard to the part of the complaint relating to the ill-treatment during his arrest, because he failed to properly raise this complaint before the domestic authorities. The Government noted, in particular, that the applicant had not submitted his relatives' statements to any domestic authority prior to submitting them to the Court. The applicant did not comment specifically on this objection by the Government.

43. The Court finds that it is not necessary to decide whether the applicant has exhausted domestic remedies with regard to this part of the complaint because, even assuming this to be the case, it is inadmissible for the following reason.

44. The Court notes that, apart from the statements of his family members (which appear to have not been submitted to the domestic authorities for scrutiny), it does not have in its possession any other

evidence of the applicant's alleged ill-treatment by the police during the arrest. The Court also notes the applicant's allegations of beating during the arrest are rebutted by the testimony of the warden of the OCU's temporary detention facility who testified that no injuries were observed on the applicant's body upon his arrival in the OCU. The applicant himself heavily relied on this testimony in connection with the part of his complaint concerning the alleged ill-treatment in custody, and maintained that all of his injuries noted in the forensic report of 30 October 2003 had been inflicted upon him on 19 October 2003, one day after his arrest. In the light of the foregoing, and based on all the materials available in the case file, the Court considers that the evidence submitted in respect of this part of the complaint is not sufficient to enable the Court to examine the question of whether the applicant was subjected to ill-treatment during his arrest.

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

2. As regards the alleged ill-treatment in police custody

46. In this part of the complaint, the applicant claimed that, in the OCU's temporary detention facility, he had been beaten and tortured during the interrogation on 19 October 2003, threatened with rape, held in a poorly-ventilated cell, and kept hungry and without clean drinking water for five days.

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

3. As regards the conditions of detention in Investigative Isolator No. 1

48. In this part of the complaint, the applicant alleged that, during his further detention on remand in the Investigative Isolator No. 1, he had been held for 40 days in a very small cell of 1,35 metres to 2,5 metres, which was in an unhygienic condition, was not heated and had electric lights switched on throughout the day and night. He was told that this cell had been previously used for those convicts who were sentenced to death and that two such persons had actually been executed in that cell several years earlier.

49. The Government submitted that the applicant failed to exhaust domestic remedies with regard to this part of the complaint. He had not raised it before any domestic authority prior to lodging the present application with the Court.

50. The applicant submitted that there was no remedy available to him in this regard. He argued that, although the domestic law expressly prohibited torture and inhuman treatment by prison officials and provided avenues for

redress against such ill-treatment, there was no specific legal regulation of other types of ill-treatment such as the general conditions of detention. The applicant also noted that, in any event, in the light of the apparent ineffectiveness of the official investigation into his claims of torture in custody, any attempt to seek redress for the conditions of his detention would also be ineffective.

51. The Court recalls 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 (see e.g. *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 65-66).

52. The Court cannot accept the applicant's argument that there was no remedy available to him under domestic law in respect of the conditions of his detention. It notes that the *Law On Complaints against Acts and Omissions Infringing Individual Rights and Freedoms* provides for a judicial avenue for challenging any act or omission by a public authority infringing an individual's rights or freedoms. Both Article 46 of the Constitution of the Republic of Azerbaijan and Article 3 of the Convention, which is directly applicable in the domestic legal system, prohibit inhuman and degrading treatment. Therefore, relying on these provisions, the applicant could either file a complaint with the Ministry of Justice (as a supervising authority for the Investigative Isolator No. 1) or file a lawsuit directly with the domestic courts, complaining about the conditions of his detention. However, the applicant has not attempted to do so. Moreover, he has not shown convincingly that such steps were bound to be ineffective. Mere doubts about the effectiveness of a remedy are not sufficient to dispense with the requirement to make normal use of the available avenues for redress (see e.g. *Kunqurova v. Azerbaijan* (dec.), no. 5117/03, 3 June 2005).

53. It follows that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

1. Alleged ill-treatment in police custody

(a) The parties' submissions

54. The Government submitted that the applicant failed to produce any conclusive evidence showing that he had been ill-treated while in police custody. The medical expert opinion of 30 October 2003 did not exclude the possibility that the applicant suffered his injuries on 16 October 2003, i.e. prior to his arrest and during the public disorder in the aftermath of the elections. The Government also argued that in any event, according to the forensic report, the applicant's injuries did not seriously affect his health. Therefore, the alleged ill-treatment did not attain the minimum level of severity required by Article 3 of the Convention.

55. The applicant submitted that he had been subjected to ill-treatment amounting to torture whilst in the custody of the OCU. He relied on the marks on his heel, calf and elbow. He contended that no other plausible explanation for the injuries on his body had been forthcoming from the authorities. In particular, he noted that he could not have even hypothetically suffered his injuries during the events of 16 October 2003 because he simply had not been at the Azadliq Square on that day. The fact that there had been no injuries on his body when he was brought to the OCU's detention facility was attested by the facility's warden during the investigation.

56. The applicant noted that, shortly after he had been brought to the OCU, a police officer hit him several times with a truncheon in the liver area and the sides of his body. On the next day, 19 October 2003, during the interrogation in the office of the Deputy Chief of the OCU, two masked police officers, using truncheons, struck blows on the soles of his feet for a duration of approximately four hours with the intention of extracting information from him. They also occasionally hit him on other parts of his body. The beating was accompanied by threats of rape. The beating caused very serious physical pain due to which he temporarily lost the ability to walk unaided. After he was taken back to his cell by the OCU officers, his cellmates helped him to take off his socks and witnessed the bad condition of his feet.

57. The applicant submitted that rape threats continued even after the beating, when he was placed in a poorly-ventilated cell, banned from meeting his lawyer for three days, and could hear the cries of other detainees being ill-treated. Given the circumstances and environment in which these threats were made, they inflicted intense moral suffering upon him.

58. The applicant further noted that, although the beating occurred on 19 October 2003, he was only allowed to meet his lawyer and inform him about it three days later. Despite the lawyer's immediate attempt to obtain a medical examination, the examination only took place on 29 October 2003 due to the intentional delay caused by the authorities. By that time, the applicant had largely regained the ability to walk unaided, his injuries had partially healed and many smaller traces of beating had disappeared. The delay in the medical examination prevented a more accurate determination of the time of infliction of the injuries. Moreover, the applicant argued that the medical expert failed to note the full extent of his injuries because he was an employee of a state institution and, therefore, not independent.

(b) The Court's assessment

59. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see e.g. *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; and *Dikme v. Turkey*, no. 20869/92, § 89, ECHR 2000-VIII).

60. The Court reiterates that “[w]here an individual, when taken in police custody, is in good health, 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*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11; and *Selmouni*, cited above, § 87).

61. The Court observes, at the outset, that the only medical record submitted by the parties is the forensic report of 30 October 2003, issued several days after the alleged beating of the applicant. However, the Court notes that, despite having been transferred to another detention facility in the meantime, the applicant was continuously under detention, i.e. within the control of the authorities, from the date of the alleged ill-treatment until the date of issue of the forensic report.

62. As to the Government's argument that the applicant failed to present sufficient evidence of ill-treatment by the police, the Court recalls that, in assessing evidence, it has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant

inferences or of similar un rebutted 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*, judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34; and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

63. The Court notes that, while the Government disputed the applicant's allegations of ill-treatment, they did not provide any reasonable explanation as to when and how these injuries were caused. The Court cannot accept the Government's argument that the forensic report did not exclude the possibility that the applicant had sustained his injuries before his arrest. As regards the time of the injuries, the report is vaguely worded and inconclusive. It likewise does not exclude the possibility that the injuries were suffered after the applicant's arrest and when he was kept in police custody in the OCU. Accordingly, the Court finds that, although the forensic report established conclusively the presence of injuries on the applicant's body, it did not determine the exact time when they were sustained.

64. The Court notes that the applicant has repeatedly insisted, both before the domestic authorities and the Court, that he had not been present at the Azadliq Square during the events of 16 October 2003 and, therefore, could not have been injured there. However, at the time of investigation, the domestic authorities did not take any steps in order to rebut this. A mere presumption that the applicant could have been injured before his arrest, uncorroborated by any other evidence, cannot be considered as a satisfactory and convincing explanation on the part of the Government. Moreover, having regard to the nature of the injuries sustained by the applicant, in particular the haematoma on his heel caused by a blunt object, the Court considers that this is a specific type of injury which is very unlikely to be sustained during ordinary street clashes with the riot police. In this connection, the Court takes note of the fact that, at the applicant's subsequent criminal trial which took place several months later, it was established that he indeed had not been personally present at the Azadliq Square on that day.

65. Furthermore, the Court notes that the Government have not submitted any documentary proof showing that the applicant had been injured prior to his arrest, since no proper medical examination of the applicant was carried out when he was taken into custody (compare with *Doğanay v. Turkey*, no. 50125/99, § 30, 21 February 2006; and *Akkurt v. Turkey*, no. 47938/99, § 36, 4 May 2006). On the contrary, according to the unambiguous testimony of the warden of the OCU's detention facility,

given during the investigation, no signs of injuries had been observed on the applicant's body upon his check-in to the detention facility (see paragraph 21 above).

66. The Court considers that the haematoma on the applicant's right heel combined with the other bruises on his body were consistent with the application of *falaka* (beating of the soles of the feet), which the European Committee for the Prevention of Torture reported was one of the forms of ill-treatment used in the temporary detention facilities which were under the authority of the Ministry of Internal Affairs. Injuries of this type were not likely to have been caused accidentally (see *Salman*, cited above, § 113).

67. Having regard to the applicant's consistent and detailed allegations, corroborated by the forensic report, and in view of the absence of any other plausible explanation as to the origin of the injuries found on the applicant, the Court accepts that these injuries must be considered attributable to a form of ill-treatment for which the authorities were responsible.

68. As to the seriousness of the act of ill-treatment, the Court reiterates that, in determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Ireland*, cited above, pp. 66-67, § 167; and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2278-79, § 63). In addition to the severity of the treatment, there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, and which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Salman*, cited above, § 114; and *Dikme*, cited above, §§ 94-95).

69. Having regard to the nature of the ill-treatment (beating of the soles of the applicant's feet), the Court considers that it could only have been intentionally inflicted because a certain amount of preparation and exertion would have been required to carry it out. It would appear to have been administered with the aim of obtaining admissions or information from the applicant (cf. *Aksoy*, cited above, p. 2279, § 64; also compare with *Salman*, cited above, § 115, in which case the Court found that the application of *falaka* amounted to torture). The Court considers that this treatment was of such a serious and cruel nature that it can be characterised as torture.

70. In conclusion, the Court finds that there has been a violation of Article 3 of the Convention in this regard.

2. *Alleged failure to carry out an effective investigation*

(a) **The parties' submissions**

71. The Government submitted that the authorities carried out an effective official investigation into the applicant's complaint of ill-treatment. Specifically, the Government pointed out that the General Prosecutor's Office conducted a criminal investigation, during which four OCU's officers were interrogated in connection with the applicant's allegations, and found that these allegations were unsubstantiated. Furthermore, the applicant contested judicially the results of the investigation and his complaint was examined on the merits by the domestic courts.

72. The applicant submitted that neither the investigation authorities nor the domestic courts had carried out a thorough and effective investigation of his complaints. He maintained that the investigation was superficial and subject to numerous flaws. Specifically, the authorities clearly ignored the testimony of the warden of the OCU's detention facility that the applicant was in good health when he was admitted into custody. Likewise, they did not seek testimonies of any other witnesses who could confirm this fact. The domestic courts delayed the consideration of his case for more than two months and committed the same mistakes as the prosecution authorities.

(b) **The Court's assessment**

73. The Court recalls that, where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance (see paragraph 59 above), be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3290, § 102; and *Labita*, cited above, § 131). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-213, 24 February 2005; and *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-...).

74. The Court notes, at the outset, that the applicant was not able to bring his claim of ill-treatment immediately to the attention of the authorities because he was not allowed to see his lawyer for three days after the beating. The matter was first brought to the attention of the authorities when his lawyer demanded a medical examination on 22 October 2003. However, this request was not handled with sufficient diligence, as no action was taken in this regard until the lawyer complained to the prosecutor, five days later, about the failure to arrange for a medical examination. Even after this, it took two more days for the medical examination to be carried out. The Court notes, in this regard, that allegations of torture in police custody are extremely difficult for the victim to substantiate if he or she has been isolated from the outside world, without access to doctors, lawyers, family or friends who could provide support and assemble the necessary evidence (see *Aksoy*, cited above, p. 2286, § 97). The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including *inter alia* forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injury or the person responsible will risk falling foul of this standard (see *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)). The Court therefore considers that the failure to secure the forensic evidence in a timely manner was one of the important factors contributing to the ineffectiveness of the investigation in the present case. A timely medical examination could have enabled the medical expert to reach a more definitive conclusion as to the time of infliction and cause of the injuries.

75. Furthermore, the ensuing criminal investigation in the present case was not satisfactory. The investigation authorities limited themselves to studying the forensic report and questioning four police officers who had been in contact with the applicant in the OCU. No other witnesses were interrogated. In this connection, given that the finding of the applicant's ill-treatment could entail criminal responsibility of the OCU officials, it does not strike the Court as unusual that the interrogated police officers denied the allegations of ill-treatment. Nevertheless, the investigator took the denial of the police officers at face-value and refused to institute criminal proceedings, despite the applicant's statements and his undisputed bodily injuries.

76. Based on this limited investigation, the investigator merely presumed that the applicant must have received those injuries during the events of 16 October 2003, relying on a highly inconclusive statement in the forensic report stating that such a possibility could not be excluded. The investigator, however, failed to take into account the fact that the forensic report, likewise, did not exclude the possibility that those injuries could have been inflicted after the applicant's arrest. In effect, this amounted to shifting onto the applicant the burden to prove his allegations of

ill-treatment. However, as has been stated above, in cases where a person is found to be injured while in custody, the burden of proof rests on the authorities to provide a satisfactory and convincing explanation as to the cause of the injuries (see paragraphs 60 and 62 above).

77. The Court further notes that the investigation authorities, in reaching their decision not to institute criminal proceedings, totally failed to take into account the unambiguous statement of the warden of the OCU's temporary detention facility who testified that the applicant had been in good health upon his arrival in the OCU. At no stage of the proceedings did the authorities establish that the warden's testimony was unreliable. This testimony alone could have led the investigator to conclude that the applicant's injuries had been inflicted in custody.

78. Moreover, the applicant consistently claimed that he had not been present at the Azadliq Square during the events of 16 October 2003 and, therefore, could not have suffered his injuries there. However, at the time of the investigation, the authorities did not take any steps to verify this information, such as to interrogate any witnesses who could confirm the applicant's absence at the Azadliq Square. They failed to seek testimonies of any other witnesses (such as the applicant's family members, neighbours, or any other persons who had been in contact with the applicant before his arrest), who could testify as to whether the applicant had already been injured prior to his arrest. Neither did they seek to interrogate the applicant's cellmates in OCU who had seen him immediately after the beating.

79. Having regard to these numerous flaws and omissions, the Court finds that no effective investigation was carried out into the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention on this account.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

80. The applicant complained that he had been denied an effective remedy in respect of his Convention complaint of ill-treatment in police custody. He relied on Article 13 of the Convention, which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

81. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

82. The parties' submissions were the same in substance as those concerning the procedural aspect of Article 3 of the Convention.

83. The Court recalls that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. As a general rule, if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see e.g. *Kudla v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; and *Menesheva*, cited above, § 74).

84. However, the scope of the State's obligation under Article 13 varies depending on the nature of the applicant's complaint, and in certain situations the Convention requires a particular remedy to be provided. Thus, in cases of suspicious death or ill-treatment, given the fundamental importance of the rights protected by Articles 2 and 3, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Aksoy*, cited above, pp. 2286 and 2287, §§ 95 and 98; and *Assenov and Others*, cited above, p. 3293, § 117).

85. On the basis of the evidence put forward in the present case, the Court has found that the authorities were responsible for the injuries sustained by the applicant while in police custody of the OCU. The applicant's complaints to the domestic authorities in this regard were based on the same evidence and were therefore "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52). The authorities thus had an obligation to carry out an effective investigation into his allegations against the police officers.

86. For the reasons set out above, the Court found that the domestic investigation of the applicant's claim was not sufficiently thorough and effective. Likewise, the domestic courts, which reviewed the result of the criminal investigation, simply endorsed the investigator's opinion that the applicant's claim was unsubstantiated without attempting to independently assess the facts of the case and, in essence, committed exactly the same flaws and omissions as those committed by the investigator during the criminal investigation.

87. Therefore, having regard to the finding that no effective investigation was carried out in the present case, the Court finds that the applicant has been denied an effective domestic remedy in respect of the ill-treatment by the police. Consequently, there has been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

88. The applicant complained that he had been tortured and otherwise ill-treated because of his political opinion and affiliation to an opposition party. He was thus discriminated against, contrary to the prohibition contained in Article 14 of the Convention, which reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

89. The Government argued that the applicant had not exhausted domestic remedies because he had not raised his discrimination complaint before any domestic authority. In any event, the Government maintained that the applicant had not suffered any discrimination.

90. The applicant reiterated his complaint and argued that he was not required to exhaust any separate domestic remedies in connection with it.

91. Even assuming that the applicant has exhausted the domestic remedies in connection with this complaint, the Court considers that he has not submitted such evidence of discrimination which would enable the Court to examine the question of whether there has been a violation of Article 14 in the present case. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. Article 41 of the Convention provides:

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

A. Damage

1. Pecuniary damage

93. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage. He claimed that the beating in custody resulted “in irreversible consequences for the rest of his life”. He still suffered from post-traumatic pains in his feet and legs and had to seek regular medical aid. In support of his claims, he submitted recent medical statements (issued in 2006) prescribing to him such medical measures as physiotherapy, massage and medication treatment.

94. The Government argued that the applicant failed to submit any evidence of pecuniary damage.

95. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. Specifically, it is not clear from the submitted medical statements that the applicant's current health problems stem directly from the beating inflicted upon him during his custody in 2003. Moreover, although these statements prescribe certain medical treatment to the applicant, they do not specify the duration, intensity or cost of such treatment. Finally, the applicant has neither submitted any evidence showing that he has actually undergone any medical treatment since the time of his release from custody, nor any evidence showing the cost of such treatment. The Court therefore rejects the applicant's claim in respect of pecuniary damage.

2. Non-pecuniary damage

96. The applicant claimed EUR 400,000 in respect of non-pecuniary damage. He argued that the ill-treatment in custody caused him serious moral suffering.

97. The Government noted that the amount claimed was unjustified and excessive.

98. Given the finding that the applicant suffered torture in police custody and that the domestic investigation into his complaints was ineffective, the Court considers that this cannot be compensated solely by the finding of a violation. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 10,000 in respect of moral damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

99. The applicant also claimed EUR 100 for postal expenses, EUR 890 for the costs and expenses incurred before the domestic courts and EUR 890 for those incurred before the Court. He submitted only the proof of postal expenses in the amount of 46 United States dollars (USD) (approximately EUR 37). He has not submitted any proof of costs and expenses incurred before the domestic courts.

100. The Government did not make any comments with regard to these costs and expenses.

101. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court will award the postal expenses in the amount justified by the applicant, i.e. EUR 37. As to the costs and

expenses in the domestic proceedings, having regard to the facts of the case, the Court considers that, although the applicant failed to submit any evidence in respect of these costs and expenses, it is reasonable to award the amount claimed by the applicant. The Court also considers it reasonable to award the amount claimed by the applicant for costs and expenses for the proceedings before the Court. Accordingly, the Court awards the sum of EUR 1,817 covering costs under all heads, plus any tax that may be chargeable on this amount.

C. Default interest

102. The Court considers it appropriate that the default interest 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 the alleged ill-treatment in custody and lack of effective domestic remedies admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention as regards the ill-treatment in police custody;
3. *Holds* that there has been a violation of Article 3 of the Convention as regards the lack of effective investigation into the applicant's allegations of ill-treatment;
4. *Holds* that there has been a violation of Article 13 of the Convention;
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 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 1,817 (one thousand eight hundred and seventeen euros) in respect of the costs and expenses, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;
 - (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;

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

Done in English, and notified in writing on 11 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President