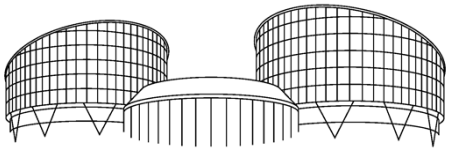

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF FARZALIYEV v. AZERBAIJAN

(Application no. 29620/07)

JUDGMENT

Art 6 § 2 • Presumption of innocence • Applicant, neither charged nor aware of criminal investigation until after its discontinuation, ordered to pay compensation for "crime" in civil proceedings brought shortly thereafter • Applicant primary suspect in criminal proceedings discontinued as statute barred • Civil claim lodged by prosecuting authorities on the basis of procedure requiring the existence of a "criminal charge" • Applicant "substantially affected" by conduct of authorities, having regard to case-specific sequence of interconnected events considered as a whole and relatively close temporal proximity of events in question • Civil proceedings being "direct consequence" of discontinued criminal investigation and thus falling within ambit of Art 6 § 2
Art 6 § 1 (civil) • Fair hearing • Breach of applicant's right to a reasoned judgment • Domestic courts' failure to give a specific and express reply to applicant's arguments potentially decisive for the outcome of the case

STRASBOURG

28 May 2020

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 Farzaliyev v. Azerbaijan,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having regard to:

the application 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 Bejan Ibrahim oglu Farzaliyev (*Becan İbrahim oğlu Fərzəliyev* – "the applicant"), on 8 May 2007;

the decision to give notice of the application to the Azerbaijani Government ("the Government");

the parties' observations;

Having deliberated in private on 28 April 2020,

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

INTRODUCTION

The applicant alleged that his rights to a fair trial and presumption of innocence pursuant to Article 6 §§ 1 and 2 of the Convention had been breached in the domestic civil compensation proceedings.

THE FACTS

1. The applicant was born in 1946 and lives in Ankara, Turkey. The applicant was represented by Mr I. Aliyev, a lawyer based in Azerbaijan.

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

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

4. In the early 1990s the applicant served as Prime Minister of the Nakhchivan Autonomous Republic ("the NAR"), an autonomous entity within the Republic of Azerbaijan. By the time of the events giving rise to the present application, he had not held any public positions for years and had been living in Turkey since 1993.

I. CRIMINAL PROCEEDINGS

5. On 9 November 2005, on the basis of an application by the Cabinet of Ministers of the NAR, the Nakhchivan prosecutor's office instituted criminal proceedings under Articles 179.2.1 (embezzlement by a group of people), 179.3.2 (embezzlement in very large amounts) and 308 (abuse of official powers) of the Criminal Code of the Republic of Azerbaijan in respect of an incident involving alleged embezzlement of public funds from the budget of the NAR that had taken place in November and December 1991 and February 1992. It was alleged that State funds had been allocated for the purchase of several helicopters in a transaction involving a private company, however those helicopters had never actually been delivered and the money had instead been embezzled. The decision to institute criminal proceedings stated, *inter alia*, as follows:

> "Following an enquiry, it was established that on 1 November 1991 former Minister of Health of the [NAR], [F.J.], and [a businessman, A.M.] concluded a contract of sale concerning six helicopters ... with the purpose of embezzling State property in significant amounts. Based on that contract, [the applicant], by way of abuse of his official authority, [arranged for the transfer of various amounts of money from the budgets of various State bodies to the bank account of A.M.'s private company, and thus] embezzled State funds. Therefore, criminal proceedings under Articles 308.1, 179.2.1 and 179.3.2 of the Criminal Code must be instituted and an investigation carried out."

6. During the investigation, the prosecuting authorities questioned eight people, including F.J. and A.M. They attempted to question the applicant as well, in the capacity of a witness, by issuing an order to attend, but were unable to do so because the applicant was abroad. It is not clear what practical steps, if any, they took in order to ensure his appearance for questioning. The prosecuting authorities also examined other material, including an accounting expert report.

7. According to the documents in the case file, the final version of the events established by the prosecution authorities was that in 1991 F.J. and A.M., who had been acquainted for a long time, had concluded two contracts concerning delivery by 28 December 1991 of helicopters to be purchased by A.M.'s company in Ukraine. If delivery had not been possible by that date, the money had had to be returned to the budget. Based on those contracts, following several orders on the part of the applicant a total amount of 11,750,000 Soviet Union roubles (SUR) had been transferred to A.M.'s company in several instalments. Ultimately, A.M. had not been able to purchase the helicopters. The following year, the amount of SUR 7,450,000 was returned to the State budget by wire transfer. As to the remaining SUR 4,300,000, A.M. promised to return it in cash. In February 1992, on the insistence of the applicant, he allegedly gave the cash to some unknown people sent to him by the applicant. However, that money was never returned to the State budget.

8. On 21 January 2006 the Nakhchivan prosecutor's office discontinued the criminal proceedings in accordance with Article 75.1.3 of the Criminal Code without having formally charged anyone with a criminal offence, owing to the expiry of the twelve-year criminal prescription period applicable to the type of the criminal offence under investigation. The decision to discontinue the proceedings stated, *inter alia*, as follows:

> "As it has been proved by the investigation material, [the applicant], having abused his official authority ..., embezzled [SUR 4,300,000 in February 1992 following a State purchase transaction in the amount of SUR 11,750,000 that he had authorised in November and December 1991], he ought to be charged as an accused person under Articles 308.1, 179.2.3, 179.2.1, 179.3.2 of the Criminal Code. However, he must be absolved from criminal liability owing to the expiry of the criminal prescription period under Article 75.1.3 of the Criminal Code ...
>
> **Decided:**
>
> 1. In accordance with the findings made in the descriptive part of the decision, [the applicant], [F.J.] and [A.M.] are to be absolved of criminal liability owing to the expiry of the criminal prescription period under criminal case no. 62602 and the proceedings in the criminal case are to be discontinued ..."

9. The applicant was not aware of the institution and subsequent discontinuation of the criminal investigation at the time those decisions were taken. It appears that he might have first become aware of those decisions sometime between February and May 2006, after a civil claim had been lodged against him by the prosecuting authorities and during the examination of the civil claim by the first-instance court (see paragraphs 11 and 12 below).

10. In 2006 and 2007, the applicant challenged, unsuccessfully, the decision to discontinue the criminal proceedings before the prosecution authorities and courts, arguing that it had been taken in breach of various requirements of domestic law. His first complaint in this regard was made on 25 September 2006 to the Nakhchivan prosecutor's office, and subsequently he complained to the Prosecutor General's Office and the courts. In those complaints, he argued, among other things, that his procedural rights had been breached because he had not been informed of the criminal proceedings instituted against him and had never been questioned. He further argued that the criminal proceedings should have been discontinued on the grounds of a lack of *corpus delicti*.

II. CIVIL CLAIM AGAINST THE APPLICANT

11. On 16 February 2006 the Nakhchivan prosecutor's office, relying on Articles 179 to 183 of the Code of Criminal Procedure ("the CCrP"), applied to the Nasimi District Court with a civil claim against the applicant, F.J. and A.M. under the procedure provided by the CCrP for "lodging a civil claim within the framework of criminal proceedings", asking the court to

order these individuals to compensate the State for the embezzlement they had allegedly committed in 1991 and 1992. In their claim the Nakhchivan prosecutor's office noted that "it had been proved" by the evidence collected by the investigation that the defendants had committed embezzlement of State funds in large amounts, but that they had been "absolved" of criminal liability owing to the expiry of the prescription period. The prosecutor's office further noted that, although the criminal proceedings had had to be discontinued for this reason, the defendants still had an obligation to compensate the State for "the crime". They also mentioned that, according to Article 179.4 of the CCrP, the periods for lodging a civil claim provided for by civil law and other fields of law did not apply to civil claims lodged within the framework of criminal proceedings. In support of the claim, the prosecutor's office submitted the documentary material and witness depositions contained in the criminal file.

12. At a hearing held in the applicant's absence but with the participation of his lawyers, the Nasimi District Court examined the defendants' statements, a number of documents from the criminal case file and heard evidence from two witnesses.

13. In particular, the applicant, in his submissions made through his lawyer, noted that there had been inconsistencies in A.M.'s and F.J.'s statements as to how and on whose initiative the contracts had been concluded, and argued that the transactions had been initiated by A.M. and F.J. themselves. The applicant accepted that he had issued ministerial orders on transferring of money from the State budget to A.M.'s company, but argued that those orders had been based on the earlier negotiations conducted and the contracts signed by F.J. and A.M. He further noted that he had not been in any way involved in the process of returning the money to the State budget in 1992 because by that time (since 24 February 1992) he had no longer been Prime Minister.

14. A.M. stated, *inter alia*, that he had first spoken about the purchase of helicopters with F.J., and that he had subsequently been contacted by the applicant, who approved the signing of the contracts. Following the inability of his company to deliver the helicopters, in February 1992 two people had visited him on behalf of the applicant and told him that the applicant had demanded that the money be returned in cash. A.M. had given them only the part of the money that he had had available in cash – SUR 4,300,000 – while they had signed and given him a receipt. A.M. stated that he could not present a copy of that receipt, because his company had been dissolved in 1994 and he had not kept any of its financial records. As to the remaining SUR 7,450,000, it had been returned to the budget by wire transfer.

15. F.J. stated, *inter alia*, that it had been the applicant who had first contacted him in 1991 about the planned purchase of helicopters and had instructed him to sign two contracts of sale with A.M.'s company. He had not been involved with the financial aspects of the transactions, which had

been handled by the applicant. After A.M.'s failure to deliver the helicopters, A.M. had returned part of the money in cash to the applicant's associates. F.J. had further stated that, since he had left the office of Minister of Health in 1992, he did not know most of the details concerning the return of the money.

16. The court also examined the documents in the case file, including the contracts for purchase of helicopters, the ministerial orders signed by the applicant as Prime Minister concerning transfers of various amounts to A.M.'s company (there were a total of three transfers from various State-owned accounts), and the payment orders confirming those transfers. It also examined an expert report concerning the current value in Azerbaijani manats (AZN) of the original amount in Soviet Union roubles, adjusted for inflation.

17. The court also heard witness evidence from N.I., a former Minister of Finance of the NAR, and S.H., a former chief accountant at the Ministry of Finance of the NAR. N.I. stated, *inter alia*, that, pursuant to the applicant's ministerial order, in November 1991 he had dealt with only one of the transfers to A.M.'s company in the amount of SUR 7,450,000. The applicant had instructed him to secure additional funds to be transferred to A.M.'s company, but he had refused to do so, stating that he would not be in a position to make any further transfers until the delivery of the helicopters paid for by the first transfer. N.I. furthermore stated that, although there had been two other transfers made in December 1991 for the total amount of SUR 4,300,000, he had not known about them, because during the month of December 1991 he had been first dismissed from and then reinstated to his position as Minister of Finance in quick succession, while those two transfers had been made during the intervening period. After reinstatement, in May 1992 he arranged for the return by A.M. of SUR 7,450,000 by wire transfer to the State budget. He did not know about the remaining SUR 4,300,000.

18. S.H. stated that, of the total amount originally transferred to A.M.'s company, SUR 7,450,000 had eventually been returned by wire transfer to the State budget, while the remaining SUR 4,300,000 had never been returned.

19. By a judgment of 8 May 2006, the Nasimi District Court allowed the claim of the Nakhchivan prosecutor's office in respect of the applicant and A.M., and dismissed the claim in the part relating to F.J., finding that the latter was not responsible for the embezzlement. It ordered the applicant and A.M. to pay, jointly, the amount of AZN 2,327,059 (approximately 2,025,000 euros (EUR) at the material time) in respect of the damage caused as a result of the criminal offence of embezzlement. It also ordered them to pay the court fees in the amount of AZN 19.80. In its judgment, the court stated, *inter alia*, the following:

> "... It has been determined that ... [SUR] 4,300,000, equivalent to [AZN] 2,327,059, ... was embezzled. Even though [the defendants] were absolved of criminal liability by way of discontinuation of the criminal proceedings ... owing to the expiry of the prescription period, the damage caused as a result of the criminal offence has not been compensated. Therefore, the court considers that [the applicant and A.M.] should jointly pay [AZN] 2,327,059 ... to the Nakhchivan Autonomous Republic."

20. In appeals lodged with the higher courts, the applicant disputed the factual findings of the court and argued that the evidence collected in the case file of the discontinued criminal proceedings should not have been referred to by the civil court pursuant to rules of the civil procedure.

21. In particular, he complained that the first-instance court had assessed the factual circumstances incorrectly and had not duly examined the inconsistencies in the other defendants' statements. He argued that, as Prime Minister at the relevant time, issuing orders to allocate State funds on the basis of the contracts concluded by the Minister of Health had been part of his official duties and that he should not be held criminally liable for those orders. He denied any knowledge about or involvement in what had eventually happened to the money transferred on the basis of those orders.

22. He also complained that, in the absence of a final judgment resulting in a criminal conviction, the civil court had erred in finding him liable for committing a criminal offence and ordering him to pay compensation. He further argued that the civil court had referred to the prosecution's statement of facts of the alleged criminal offence and had accepted those facts as having been proved, in the absence of any such finding by a court in a criminal trial, thus committing a "serious procedural violation".

23. He furthermore argued that, even though there had no longer been any criminal proceedings against him owing to the discontinuation decision, the Nakhchivan prosecutor's office had unlawfully brought a civil claim under Articles 179 et seq. of the CCrP. According to the applicant, even though it had been clear that the prescription period under criminal law had expired, the criminal proceedings had been knowingly instituted in 2005 in a belated manner with the sole purpose of artificially "reviving the claim period" for civil claims lodged under criminal-procedure law. The applicant argued that the admissibility of the civil claim should have been examined under the relevant provisions of civil law, under which all the statutes of limitations had long expired for any types of civil claims.

24. Following appeals by the applicant, on 21 July 2006 the Court of Appeal and on 13 December 2006 the Supreme Court upheld the Nasimi District Court's judgment mainly repeating its reasoning. The higher courts did not expressly respond to the applicant's arguments raised in his appeals.

25. The applicant subsequently attempted to have the case reopened and reviewed by the Plenum of the Supreme Court and the Constitutional Court, but his attempts were unsuccessful.

RELEVANT LEGAL FRAMEWORK

26. Article 63 of the Constitution provides as follows:

Article 63. Presumption of innocence

"I. Everyone has a right to presumption of innocence. Everyone charged with a criminal offence shall be presumed innocent until proved guilty in accordance with the law and until a final court verdict in this connection enters into legal force.

II. A person reasonably suspected of being guilty cannot be presumed guilty.

III. A person charged with a criminal offence cannot be required to prove his or her innocence.

IV. Unlawfully obtained evidence cannot be used in administering justice.

V. No one may be presumed guilty of a criminal offence in the absence of a court verdict."

27. The relevant provisions of the CCrP provide as follows:

Article 91. Accused person

"91.1. An accused person is an individual charged with a criminal offence by a decision taken by an investigator, prosecutor or court.

..."

Chapter XIX
Civil claim within the framework of criminal proceedings
Article 179. Law applicable to a civil claim

"179.1. A civil claim within the framework of the criminal proceedings is lodged, proved and decided in accordance with the rules established in the provisions of this Code.

179.2. Where the rules of the civil-procedure law are not contrary to the principles of criminal procedure and where this Code does not provide for rules required for the proceedings concerning the civil claim, application of the provisions of the civil-procedure law is allowed.

179.3. The decision in respect of the civil claim is taken in accordance with the provisions of civil law and other fields of law, dependng on the subject matter of the claim.

179.4. Any period for lodging a claim provided for in the civil law and other fields of law does not apply to a civil claim lodged within the framework of criminal proceedings."

Article 180. Importance of the enforcable court judgment or decision in respect of the civil claim

"...

180.2. If a person does not lodge a civil claim within the criminal proceedings, he or she shall be entitled to lodge a civil claim in civil proceedings.

180.3. If a civil claim lodged within the framework of the criminal proceedings is left unexamined by the court, the claim can be later lodged under the rules of civil procedure."

Article 181. Persons who have the right to lodge a civil claim

"...

181.6. During the criminal proceedings the prosecutor shall lodge and argue a civil claim in order to protect State property or defend the rights of an individual entitled to lodge a civil claim who is unable to defend his or her legal interests personally.

...

181.7. Within the framework of criminal proceedings a prosecutor lodges and defends a claim against the accused person or a person who could be held liable for the actions of the accused person in the following cases:

181.7.1. on the basis of an application by a State entity, company or organisation for the defence of State interests;

..."

Article 183. Lodging of a civil claim

"183.1. During the course of the criminal proceedings, a civil claim may be lodged at any time between the beginning of the prosecution and the beginning of the [trial] court's examination of the case ...

183.2. Within the framework of criminal proceedings a civil claim is lodged against an accused person or a person who could be held materially liable for the actions of the accused person.

..."

Article 187. The jurisdiction of a civil claim

"187.1. Regardless of the amount of the civil claim, it shall be examined by the court dealing with the criminal case or other prosecution material, in conjunction with that case or material.

187.2. During the criminal proceedings the court shall include its decision on the civil claim in its [criminal] judgment [*hökm*]."

28. Pursuant to Article 75.1.3 of the Criminal Code, the criminal prescription period in respect of "serious crimes" is twelve years from the date of the criminal offence. No person can be held liable in respect of that offence after the expiry of this period. In accordance with Article 75.2, the prescription period is calculated from the day the criminal offence was committed to the moment the judgment on criminal conviction takes effect.

29. Under Article 373 of the Civil Code, the general period for lodging a civil claim is a maximum of ten years, and can be shorter depending on the type of the claim and the civil-law relations giving rise to it. In accordance with Article 377.1 of the Civil Code, subject to certain exceptions, the period of limitation starts running from the day a person became aware or should have become aware of a violation of his or her right. A civil court

accepts the claim for examination irrespective of the expiry of the limitation period (Article 375.1 of the Civil Code). The court applies the statute of limitations only on application by a party to the dispute made before the delivery of a judgment. The expiry of the limitation period is grounds for a decision to reject the claim (Article 375.2 of the Civil Code).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained of the unfairness of the civil proceedings. He submitted that the domestic courts had misapplied the domestic law and had incorrectly assessed the evidence, that their judgments had not been properly reasoned and that the higher courts, in particular, had not taken into account his arguments. He relied on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing...by [a] tribunal ..."

A. Admissibility

31. The Court notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

32. The applicant reiterated his complaint and the arguments he had raised in his appeals before the domestic courts.

33. The Government submitted that the higher-instance courts which had examined the applicant's complaints had found that norms of substantive and procedural law had not been violated in the applicant's case.

2. The Court's assessment

34. The Court reiterates that, under Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk*

v. Switzerland, 12 July 1988, §§ 45-46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is not the Court's task to take the place of the domestic courts and it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018).

35. The Court also reiterates that, in view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal (see *Carmel Saliba v. Malta*, no. 24221/13, § 65, 29 November 2016, with further references).

36. According to the Court's 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. Without requiring a detailed answer to every argument advanced by the complainant, this obligation to give reasons presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017; *Cihangir Yıldız v. Turkey*, no. 39407/03, § 42, 17 April 2018; and *Orlen Lietuva Ltd. v. Lithuania*, no. 45849/13, § 82, 29 January 2019). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz*, cited above, § 26).

37. Turning to the present case, the Court observes that the applicant consistently raised a number of arguments in his appeals (see paragraphs 20-24 above). Among other things, he complained that the civil claim against him had been lodged and admitted in breach of the relevant substantive and procedural rules. In particular, he argued that the Nakhchivan prosecutor's office had unlawfully brought "a civil claim within the framework of the criminal proceedings" under Articles 179 et seq. of the CCrP after the discontinuation of the criminal proceedings which, according to him, had been "knowingly instituted with the sole purpose of reviving the claim period". The applicant submitted that Article 179.4 of the CCrP was not applicable in this case and that the civil claim should have been examined under the relevant provisions of civil law, under which all the statutes of limitations had long expired for any types of civil claims. He argued that, for these reasons, the claim should have been dismissed.

38. The Court observes in this connection that a civil claim within the framework of the criminal proceedings could be lodged against an accused person or a person who could be held materially liable for the criminal actions of the accused (see Articles 181.7 and 183.2 of the CCrP in

paragraph 27 above) at any stage "during the course of the criminal proceedings" starting from the beginning of the prosecution until the beginning of the trial (see Article 183.1 of the CCrP in paragraph 28 above). Such a civil claim was to be examined by the trial court hearing the criminal case from which the civil claim stemmed (see Article 187 of the CCrP in paragraph 27 above). Any periods for lodging a civil claim provided for by civil law and other fields of law did not apply to claims lodged under this procedure (see Article 179.4 of the CCrP in paragraph 28 above). It therefore appears that Article 179.4 of the CCrP precluded defendants in criminal proceedings from raising an objection that the civil claim lodged within the framework of those criminal proceedings was time-barred under civil law. However, in the applicant's case, there were no active criminal proceedings pending against him at the time the civil claim was lodged. The claim was lodged with and examined by the civil court. This was done despite the clear language of the CCrP, according to which a civil claim could be lodged on the basis of the CCrP only within the criminal procedure, before the court examining the criminal charges. Thus, the applicant's submissions concerning the lack of a lawful basis for the court's acceptance of that claim for examination under the procedure established by the CCrP for "civil claims within the framework of criminal proceedings" and concerning the inapplicability of Article 179.4 of the CCrP were potentially decisive for the outcome of the case, as they might have led to dismissal of the claim.

39. The Court notes that it is not its task under Article 6 of the Convention to examine whether the applicant's submissions were well-founded and it falls to the national courts to determine questions of that nature. However, it is not necessary for the Court to conduct such an examination in order to conclude that the submissions were in any event relevant and, as noted above, potentially decisive for the outcome of the case (compare *Ruiz Torija v. Spain*, 9 December 1994, § 30, Series A no. 303-A). Therefore, they required a specific and express reply. However, the domestic courts did not provide any response to them in their judgments. In such circumstances, it is impossible to ascertain whether the courts did not examine the applicant's submissions at all, or whether they assessed and dismissed them and, if so, what were their reasons for so deciding.

40. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's right to a reasoned judgment has been breached. Having reached that conclusion, the Court considers that it is unnecessary to examine the applicant's further submissions concerning this complaint.

41. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ARTICLE 6 § 2 OF THE CONVENTION

42. The applicant complained that the domestic courts in the civil proceedings had breached his right to presumption of innocence by declaring him guilty of having committed a criminal offence. He relied on Article 6 § 2 of the Convention, which reads as follows:

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

A. Admissibility

1. Applicability of Article 6 § 2

43. The Court must firstly determine whether Article 6 § 2 of the Convention applies in the circumstances of the present case. The parties did not expressly comment on its applicability.

44. The Court notes that the impugned civil proceedings were instituted after the criminal proceedings involving the applicant had been discontinued. The applicant had never been formally charged as an "accused" within the meaning of domestic law (see Article 91 of the CCrP in paragraph 27 above) in the framework of the discontinued criminal proceedings and did not become aware of those proceedings until after their discontinuation, when the prosecuting authorities had lodged a civil claim under the provisions of the CCrP on "civil claims within the framework of criminal proceedings". Given such circumstances, the questions to be answered in the present case are, firstly, whether the discontinued criminal proceedings involved the applicant as a person "charged with a criminal offence" within the meaning of the Convention and, if so, secondly, whether the subsequent civil proceedings, which are the object of the applicant's grievances raised in the present complaint, fell within the ambit of Article 6 § 2.

45. As expressly stated in the terms of the Article itself, Article 6 § 2 applies where a person is "charged with a criminal offence". The Court has repeatedly emphasised that, within the meaning of Article 6 § 2, this is an autonomous concept and must be interpreted according to the three criteria set out in its case-law, namely the classification of the proceedings in domestic law, their essential nature, and the degree of severity of the potential penalty (see, among other authorities, *Allen v. the United Kingdom* [GC], no. 25424/09, § 95, ECHR 2013, with further references). A "criminal charge", within the autonomous meaning of Article 6 of the Convention, exists from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him. It is the actual occurrence of the first of the aforementioned events,

regardless of their chronological order, which triggers the application of Article 6 in its criminal aspect (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, §§ 110-11, 12 May 2017, with further references; see also *Allenet de Ribemont v. France*, 10 February 1995, § 37, Series A no. 308, for a similar approach adopted specifically in the context of Article 6 § 2).

46. The Court has previously held that Article 6 § 2 was applicable to subsequent "linked" proceedings in cases where the preceding criminal investigations had been discontinued without suspects having been formally charged under domestic law and brought to trial, having found that, within the autonomous meaning of that provision, those applicants were considered to have been "charged with a criminal offence" in the discontinued proceedings (see, for example, *Vanjak v. Croatia*, no. 29889/04, §§ 12-15, 36 and 41, 14 January 2010, where criminal proceedings against a suspect were discontinued owing to insufficient evidence that he had committed a criminal offence, and *Vulakh and Others v. Russia*, no. 33468/03, §§ 6-8 and 33, 10 January 2012, where criminal proceedings were instituted against the applicants' relative as one of the suspects but discontinued before he could be charged as a result of his committing suicide when he had learned about the arrests of two other suspects).

47. As noted above, it is true that in the present case no formal decision charging the applicant with the criminal offences was taken under the relevant provisions of the CCrP. However, the decision of 9 November 2005 to institute criminal proceedings expressly designated the applicant as one of the primary suspects with regard to the offences of embezzlement and abuse of official power (see paragraph 5 above). The authorities intended to question him, albeit at that stage in the formal capacity of a witness, but clearly in connection with their suspicion that he had committed those offences (see paragraph 6 above). As expressly stated in the prosecuting authorities' decision of 21 January 2006, following the investigation, the authorities considered that the applicant should be formally charged under Articles 308.1, 179.2.3, 179.2.1, 179.3.2 of the Criminal Code, all of which provided for prison sentences in the event of a finding of guilt, but they were precluded from doing so owing to the expiry of the criminal prescription period (see paragraph 8 above). Lastly, the prosecuting authorities lodged a civil claim under the provisions of the CCrP on the procedure for "civil claims within the framework of criminal proceedings". As discussed in paragraph 39 above, that procedure required, *inter alia*, the existence of a "criminal charge", as it could be lodged only against an "accused" person or a person who could be held materially liable for the criminal actions of the accused (and, in the present case, as noted above, the authorities considered that the applicant should have been charged as an "accused").

48. For the purposes of the Court's assessment of the applicability of Article 6 § 2, it is not the Court's task to examine whether the prosecuting

authorities' procedural decisions and actions were in compliance with the requirements of the domestic law. The question before it is whether the applicant was a person "charged with a criminal offence" within the autonomous meaning of Article 6 § 2 of the Convention. In order to answer that question, the Court is compelled to look behind the appearances and investigate the realities of the situation before it (see *Batiashvili v. Georgia*, no. 8284/07, § 79, 10 October 2019). It notes once again that it is true that the applicant was never formally charged with a criminal offence in the discontinued criminal proceedings and that he became aware of the allegations made against him in those proceedings only sometime between February and May 2006 (see paragraph 10 above), after the civil claim under the CCrP had been lodged against him on 16 February 2006, less than a month after their discontinuation on 21 January 2006. However, having regard to the case-specific sequence of closely inter-connected events, described in paragraph 48 above, considered as a whole, as well as to the relatively close temporal proximity between the relevant events in question, the Court considers that, in the particular circumstances of the present case, the combined effect of the authorities' actions taken as a result of a suspicion against the applicant was that his situation was "substantially affected" by the conduct of the authorities (compare, *mutatis mutandis*, *Batiashvili*, cited above, § 94) and that therefore, for the purposes of the present complaint, he must be considered as a person "charged with a criminal offence" within the autonomous meaning of Article 6 § 2.

49. As to the subsequent civil proceedings brought against the applicant, the Court reiterates that the scope of Article 6 § 2 is not limited to pending criminal proceedings against an applicant, and can apply to judicial decisions taken after such proceedings were concluded either by way of discontinuation or acquittal (see *Allen*, cited above, §§ 98-102, for the summary of the earlier case-law in that connection). Such subsequent judicial decisions fall within the scope of Article 6 § 2 when, by virtue of the domestic legislation and practice, they are linked to the criminal proceedings and constitute "consequences and necessary concomitants of", or "a direct sequel to", the conclusion of the criminal proceedings (ibid., §§ 99-100). Following discontinuation of criminal proceedings the presumption of innocence requires that the lack of a person's criminal conviction be preserved in any other proceedings of whatever nature (ibid., § 102, with further references).

50. In *Allen*, the Court has clarified that, whenever the question of the applicability of Article 6 § 2 arises in the context of subsequent proceedings, the applicant must demonstrate the existence of a link between the concluded criminal proceedings and the subsequent proceedings. Such a link is likely to be present, for example, where the subsequent proceedings require examination of the outcome of the prior criminal proceedings and, in particular, where they oblige the court to analyse the criminal judgment, to

engage in a review or evaluation of the evidence in the criminal file, to assess the applicant's participation in some or all of the events leading to the criminal charge, or to comment on the subsisting indications of the applicant's possible guilt (see *Allen*, cited above, § 104).

51. In the present case, the Court considers that the subsequent civil proceedings were linked to the discontinued criminal proceedings, and it has not been argued otherwise. The civil compensation claim was brought against the applicant by the prosecution authorities on behalf of the State under the provisions of the CCrP on "civil claims within the framework of criminal proceedings". In their claim, the prosecution authorities relied on the evidence collected by the investigation, arguing that the defendants, including the applicant, had committed embezzlement of State funds in large amounts but could not be held criminally liable owing to the expiry of the prescription period, and requested the court to order these individuals to compensate the State for the "embezzlement". Accordingly, under the relevant legislation and practice as applied by the domestic authorities and courts in the present case, the civil proceedings were the "direct consequence" of the criminal investigation. Moreover, the statements made by the court allegedly imputing criminal liability on the applicant, which the Court will assess below when examining the merits of the complaint, also created a link with the criminal proceedings.

52. For these reasons, Article 6 § 2 is applicable in the present case.

2. Exhaustion of domestic remedies

53. The Government argued that the applicant had failed to exhaust domestic remedies in respect of this complaint. In particular, the Government noted that the applicant had failed to raise in his appeals with the Court of Appeal and the Supreme Court the issues concerning the alleged violation of his presumption of innocence.

54. The applicant disagreed arguing that he had raised the issues concerning the alleged violation of his presumption of innocence in his appeals.

55. The Court observes that it is true that, in his appeals, the applicant did not expressly refer to a breach of his right to presumption of innocence or expressly rely on Article 6 § 2 of the Convention or any specific domestic provisions protecting the presumption of innocence. However, the Court reiterates that Article 35 § 1 requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body "at least in substance" (see, among other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014, with further references). This means that if the applicant has not relied on the provisions of the Convention, he or she must have raised arguments to the same or like effect on the basis of domestic law, in order to have given the national courts the

opportunity to redress the alleged breach in the first place (see, among other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018). It is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, he or she must actually complain (expressly or in substance) of it in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, 10 December 2013).

56. In his appeals to the higher courts the applicant complained that, in the absence of any final judgment resulting in a criminal conviction, the civil court had erred in finding him liable for committing a criminal offence and ordering him to pay compensation. He complained that the civil courts had referred to the prosecution's statement of facts of the alleged criminal offence and accepted those facts as having been proved, in the absence of any such finding by a criminal court in a criminal trial, thus committing a "serious procedural violation" (see paragraph 22 above). The Court considers that the above submissions raised the substance of the complaint before the higher courts. Even though the applicant's arguments lacked the appropriate legal references, they were based on domestic law. It ought to have been clear to the higher courts from those submissions that the applicant was complaining about, among other things, a breach of the presumption of innocence.

57. In view of the above considerations, the Court finds that the applicant has raised the complaint in substance before the domestic courts and has exhausted the domestic remedies. It therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies.

3. Absence of other grounds of inadmissibility and conclusion

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

B. Merits

1. The parties' submissions

59. The applicant argued that, notwithstanding the discontinuation of the criminal proceedings, by ordering him to pay compensation for the damage caused by a criminal offence of which he had not been convicted, and by the wording used in their judgments, the domestic courts had violated his right to the presumption of innocence.

60. The Government did not comment in detail on the merits of the complaint.

2. The Court's assessment

61. The presumption of innocence will be violated if, without the accused's having previously been proved guilty in accordance with the law and, in particular, without his or her having had the opportunity to exercise his or her rights of defence, a judicial decision concerning him or her reflects an opinion that he or she is guilty. This may be so even in the absence of any formal finding; it suffices that there is some reasoning suggesting that the court regards the accused as guilty (see *Allen*, cited above, § 120, ECHR 2013, and *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62).

62. In cases involving civil compensation claims lodged by victims, regardless of whether the criminal proceedings ended in discontinuation or acquittal, the Court has emphasised that while exoneration from criminal liability ought to be respected in civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, if the national decision on compensation were to contain a statement imputing criminal liability to the respondent party, this would raise an issue falling within the ambit of Article 6 § 2 of the Convention (see *Allen*, cited above, § 123; *Ringvold v. Norway*, no. 34964/97, § 38, ECHR 2003-II; *Y v. Norway*, no. 56568/00, §§ 41-42, ECHR 2003-II (extracts); and *Diacenco v. Romania*, no. 124/04, §§ 59-60, 7 February 2012).

63. Without protection to ensure respect for the acquittal or the discontinuance decision in any other proceedings, the fair-trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation and the way in which that person is perceived by the public (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 314, 28 June 2018, with further references).

64. The language used by the decision-maker is of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2. Extra care ought to be exercised when formulating the reasoning in a civil judgment after the discontinuation of criminal proceedings (see *Fleischner v. Germany*, no. 61985/12, §§ 64 and 69, 3 October 2019). While use of some unfortunate language may not necessarily be incompatible with Article 6 § 2 depending on the nature and context of the particular proceedings, the Court has found that the presumption of innocence was violated in situations where the civil courts held that it was "clearly probable" that the applicant had committed a criminal offence or expressly indicated that the available evidence was sufficient to establish that a criminal offence had been committed (see *Allen*, cited above, §§ 125-26, with further references to the relevant precedents, including *Y v. Norway*, cited above, § 46, and *Diacenco*, cited above, § 64). When assessing the impugned statements, the Court must determine their

true sense, having regard to the particular circumstances in which they were made (see *Bikas v. Germany*, no. 76607/13, § 46, 25 January 2018).

65. Turning to the present case, the Court observes that by its decision of 21 January 2006 the Nakhchivan prosecutor's office discontinued the criminal proceedings owing to the expiry of the twelve-year criminal prescription period applicable to the type of criminal offence under investigation. The applicant was never tried for that offence by a court competent to determine questions of guilt under criminal law.

66. The Court furthermore observes that by its judgment of 8 May 2006 the Nasimi District Court ruling on the civil claim stated that an amount of AZN 2,327,059 had been "embezzled" and that, even though the defendants had been absolved of criminal liability by way of discontinuation of the criminal proceedings owing to the expiry of the prescription period, "the damage caused as a result of the criminal offence" was not compensated (see paragraph 19 above).

67. The Court considers that the wording employed by the Nasimi District Court reflected an unequivocal opinion that a criminal offence had been committed and that the applicant was guilty of that offence, even though the applicant had never been convicted of that offence and had never had the opportunity to exercise his rights of defence in a criminal trial.

68. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's right to the presumption of innocence has been breached.

69. There has accordingly been a violation of Article 6 § 2 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 1 of Protocol No. 1 to the Convention

70. The applicant complained that the domestic judgment ordering him to pay compensation for the damage caused as a result of the criminal offence of embezzlement, of which he had not been convicted, had been in breach of his rights under Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

71. The Government argued that the applicant had failed to exhaust domestic remedies in respect of this complaint, because he had failed to raise in his complaints lodged with the higher courts the issues concerning the alleged violation of his right to peaceful enjoyment of his possessions. The applicant disagreed with the Government's objection.

72. As to the merits, the applicant submitted that the Nasimi District Court had allowed the civil claim lodged by the Nakhchivan prosecutor's office without any legal basis. The Government submitted that the norms of substantive and procedural law had not been violated in the applicant's case.

73. Having regard to its findings in respect of Article 6 §§ 1 and 2 of the Convention above, the parties' submissions, and the particular circumstances of the case, the Court considers that there is no need to give a separate ruling on the admissibility and merits of this complaint in the present case (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

B. Complaint under Article 6 of the Convention in respect of the discontinuation of the criminal proceedings

74. Lastly, the applicant complained, under Article 6 of the Convention, of alleged procedural irregularities in the decision to discontinue the criminal proceedings and of the unfairness of the proceedings whereby he challenged its lawfulness.

75. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

78. The Government contested the amount claimed as excessive.

79. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 4,700 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

80. The applicant claimed EUR 4,000 for legal fees incurred before the Court, EUR 100 for postal expenses, and EUR 600 for translation costs.

81. The Government argued that, given the amount of the actually relevant submissions made by the lawyer, the claims in respect of legal fees were not reasonable as to quantum and excessive. They further argued that the claim in respect of postal costs had not been properly substantiated by relevant supporting documents and that the claims in respect of translation costs were excessive and not reasonably incurred in connection with some of the translated documents.

82. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads, to be paid directly into the bank account of the applicant's representative.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 §§ 1 and 2 of the Convention concerning the civil proceedings admissible and the complaint under Article 6 concerning the discontinuation of the criminal proceedings inadmissible;

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

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

4. *Holds* that that it is not necessary to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 to 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, the following amounts:

(i) EUR 4,700 (four thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, to be paid directly into the bank account of the applicant's representative;

(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 28 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Deputy Registrar	President