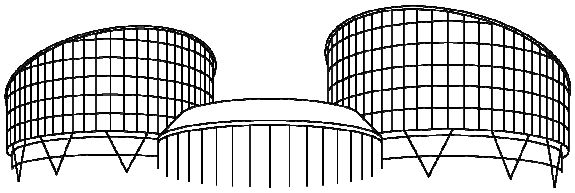

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NAJAFLI v. AZERBAIJAN

(Application no. 2594/07)

JUDGMENT

STRASBOURG

2 October 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Najafli v. Azerbaijan,

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

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 2594/07) 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 Ramiz Huseyn oglu Najafli (*Ramiz Hüseyn oğlu Nəcəfli* – "the applicant"), on 12 December 2006.

2. The applicant was represented by Mr I. Aliyev, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that he had been beaten up by the police during the dispersal of a demonstration and that the domestic authorities had failed to investigate this incident effectively.

4. On 7 January 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Baku.

A. The alleged ill-treatment

6. The applicant was a journalist and the editor-in-chief of a newspaper named *Boz Qurd*.

7. On 9 October 2005 a number of opposition parties held an unauthorised demonstration in Baku. The applicant, together with five other journalists, was present at the demonstration to report on the events. The applicant was not wearing a special blue vest identifying him as a journalist, but he was wearing a journalist badge on his chest.

8. During the dispersal of the demonstration by the police, the applicant and his colleagues were beaten up and received various injuries. According to the applicant, he told the police officers that he was a journalist and asked them to stop. The applicant was hit on the head and lost consciousness following his beating.

9. The applicant was taken to hospital the same day. On 26 October 2005 he received a medical certificate with a diagnosis of closed cranio-cerebral trauma, concussion and soft-tissue damage to the crown of the head.

10. On 10 July 2006 the applicant obtained a medical certificate from Baku City Polyclinic no. 19. That certificate indicated that the applicant had been registered as a patient diagnosed with closed cranio-cerebral trauma and concussion, and that his condition required long-term treatment.

B. The criminal proceedings

11. The six journalists who had been beaten up on 9 October 2005 lodged a joint criminal complaint. On 9 November 2005 the Sabail District Police Department instituted criminal proceedings under Article 132 (beating) of the Criminal Code. On 22 December 2005 the case was re-qualified under Article 163 (obstruction of the lawful professional activity of journalists) of the Criminal Code and transferred to the Sabail District Prosecutor's Office.

12. On 12 January 2006 the applicant was questioned by the investigator in charge of the case. The applicant stated that he had been beaten with truncheons by a group of police officers while he was observing the demonstration as a journalist. The applicant also stated that he did not know the police officers who had hit him, although he did know the police officers who were in charge of the police unit. The applicant submitted a photo of an officer (A.V.) who was the head of the Riot Police Regiment of the Baku Police Office. The applicant's version of the events was also confirmed by statements from two other journalists, E.M. and N.A., who were present at the relevant time at the place of the incident.

13. According to the Government, on 28 January 2006 the investigator ordered a forensic examination of the applicant, but the applicant did not

appear for this examination. No copy of any decision in this respect was submitted by the Government to the Court. The applicant alleged that he had not been informed of this decision by the investigator.

14. By a letter of 2 February 2006, the investigator in charge of the case requested the Sabail District Police Department to identify the police officers who had hit the applicant. In reply to the investigator's letter, on 25 February 2006 the Head of the Sabail District Police Department wrote that they had not been able to identify the relevant police officers, however they would continue to take measures in this respect and inform the investigator of any result.

15. On 1 March 2006 the investigator heard A.V., who denied involvement in the applicant's beating. A.V. stated that neither he nor the police officers under his supervision had done anything unlawful to the applicant in his presence.

16. On 9 March 2006 the Sabail District Prosecutor's Office investigator issued a decision suspending the criminal proceedings until the perpetrators of the beating had been identified. The investigator relied on the fact that the police officers allegedly involved in the applicant's beating had not been identified. As to A.V.'s alleged involvement, the investigator relied on A.V.'s statements, noting that the latter had not carried out any unlawful actions against the applicant.

17. The applicant was not provided with any information concerning the criminal investigation until May 2006. On 9 May 2006 the applicant contacted the Sabail District Prosecutor's Office investigator and inquired about the state of the proceedings. The investigator informed him that the criminal investigation had been suspended on 9 March 2006, but did not provide the applicant with a copy of the decision suspending the investigation.

18. On 12 May 2006 the applicant lodged a complaint with the Sabail District Court. He complained that the investigator had failed to provide him with a copy of the decision suspending the investigation, thus making it impossible for him to lodge a proper complaint against it. He also asked the court to quash this decision and remit the case for investigation. He insisted, in particular, that the group of police officers who had hit him had been under A.V.'s command, and that the photo of A.V. taken at the time of the incident had been submitted to the police.

19. On 26 May 2006 the Sabail District Court dismissed the applicant's complaint, finding that the decision suspending the investigation had been lawful and had been sent to the applicant on 9 March 2006. The decision was silent as to A.V. and his alleged role in the applicant's beating. It appears that the court did not hear any witness at the hearing.

20. On 1 June 2006 the applicant lodged an appeal reiterating his previous complaints. In particular, he argued that the suspension of the investigation, for which the reason given was that it was impossible to

identify the policemen who had beaten him, was wrong, and that the investigation authorities knew who the perpetrators were. In this connection, he noted that he and other journalists had specifically identified A.V., who was present at the scene of the incident at the relevant time.

21. On 13 June 2006 the Court of Appeal dismissed the applicant's appeal and upheld the Sabail District Court's decision of 26 May 2006.

C. The civil proceedings

22. On 9 November 2006 the applicant lodged a separate civil action against the Ministry of Internal Affairs, asking for compensation for pecuniary and non-pecuniary damage caused by his beating on 9 October 2005. He relied on Articles 3, 10 and 11 of the Convention.

23. On 20 November 2006 the Sabail District Court refused to admit the action for non-compliance with the formal requirements. The court held that the applicant had failed, in particular, to provide a forensic report showing the cause of the injuries and had not supplied a copy of any document showing that a police officer had been found responsible for the applicant's beating. The court also noted that the applicant had failed to identify actual individuals, rather than the Ministry of Internal Affairs in general, as defendants.

24. On 6 December 2006 the applicant appealed against the first-instance court's inadmissibility decision, reiterating his previous complaints.

25. On 26 January 2007 the Court of Appeal upheld the Sabail District Court's decision of 20 November 2006.

26. On 14 June 2007 the Supreme Court upheld the decisions of the lower courts.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

27. Article 46 (III) of the Constitution of the Republic of Azerbaijan reads as follows:

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

B. Law on Police of 28 October 1999

28. Police officers may use special equipment when, *inter alia*, it is considered that a person who is behaving dangerously may cause damage to himself or people around him (Article 26.II). "Special equipment" is defined

as truncheons, arm-restraining instruments, tear gas, rubber bullets, water cannons and other means (Articles 1). Physical force, special equipment or firearms may be used when absolutely necessary in a manner proportionate to the danger posed. The police authorities must carry out an inquiry into every incident involving the use of physical force, special equipment or firearms, and must issue a pertinent opinion on its lawfulness (Article 26.VII). Unlawful use of force by a police officer entails the officer's responsibility under the relevant legislation (Article 26.IX).

29. Police officers may use physical force, special equipment or firearms only in the event of absolute necessity or necessary self-defence, after all other means of coercion have failed to produce the required result, and depending on the gravity of the offence and the character of the offender (Article 27.I.1). Anyone injured as a result of the use of physical force, special equipment or firearms must be provided with the necessary medical aid (Article 27.I.5). The police officer must report to the relevant police authority, in writing, on the occasions he or she used physical force, special equipment or firearms (Article 27.I.7). The relevant prosecutor must also be informed of any such use of force within twenty-four hours (Article 27.I.8).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained that he had been beaten up by police and that the domestic authorities had failed to carry out an effective investigation capable of identifying and punishing the police officers responsible. Article 3 of the Convention reads as follows:

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

A. Admissibility

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

B. Merits

1. Alleged ill-treatment of the applicant by the police officer

(a) The parties' submissions

32. The Government submitted that they could not state whether the applicant had been subjected to ill-treatment by the police, as there was no court decision in this respect. The Government further submitted that the demonstration of 9 October 2005 had been unauthorised and that the police were entitled to have recourse to use of force to disperse an unlawful demonstration. Accordingly, the use of force by the police could not be considered ill-treatment in the instant case.

33. The applicant submitted that he had been beaten up by a group of police officers led by A.V., and that they had used excessive force against him without any justification. In this connection he relied on the medical certificate of 26 October 2005, witness statements from two journalists, and the photo of A.V. taken at the scene of the incident.

(b) The Court's assessment

34. The Court reiterates that 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 *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

35. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. Assessment of this minimum level depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92).

36. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nevertheless, where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Muradova v. Azerbaijan*, no. 22684/05, § 99, 2 April 2009, and *Avşar v. Turkey*, §§ 283-84, cited above).

37. The Court considers that the applicant has been able to produce sufficiently strong evidence supporting the fact that he was subjected to the use of force by the police. In particular, the applicant produced a medical certificate of 26 October 2005, which stated that he had been admitted to hospital on 9 October 2005 and had been diagnosed with closed cranio-cerebral trauma, concussion and soft-tissue damage to the crown of head. He also produced two photos of himself taken immediately after he had been beaten. The fact that the applicant had been subjected to a beating and had received serious injuries on 9 October 2005 was in itself never placed in doubt by the investigating authorities, in particular in the Sabail District Prosecutor's Office decision of 9 March 2006 suspending the investigation. As to the applicant's claim that the injuries had been inflicted by police, it should be noted that he received those injuries during a police operation forcibly dispersing the demonstration of 9 October 2005. He produced statements from two witnesses supporting his version of the events, and a photo confirming A.V.'s presence at the scene of the incident. The evidence produced before the Court is sufficiently strong and consistent to establish at least a presumption that the applicant was beaten with truncheons by police officers during the dispersal of the demonstration. In the Court's opinion, neither the Government in their submissions, nor the domestic authorities in their decisions, provided a convincing rebuttal of this presumption.

38. The Court will consequently examine whether the use of force against the applicant was excessive. In this respect, the Court attaches particular importance to the circumstances in which force was used (see *Güzel Şahin and Others v. Turkey*, no. 68263/01, § 50, 21 December 2006, and *Timtik v. Turkey*, no. 12503/06, § 49, 9 November 2010). When a person is confronted by police or other agents of the State, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is in principle an infringement

of the right set forth in Article 3 of the Convention (see *Kop v. Turkey*, no. 12728/05, § 27, 20 October 2009, and *Timtik*, cited above, § 47).

39. The Court considers that it has not been shown that the recourse to physical force against the applicant was made strictly necessary by his own conduct. It is undisputed that the applicant did not use violence against the police or pose a threat to them. It has not been shown that there were any other reasons justifying the use of force. Therefore, the Court cannot but conclude that the use of force was unnecessary, excessive and unacceptable.

40. The Court finds that the injuries sustained by the applicant establish the existence of serious physical pain and suffering. The applicant suffered a cranio-cerebral trauma and concussion, which required long-term medical treatment. The ill-treatment and its consequences must have also caused the applicant considerable mental suffering, diminishing his human dignity. In these circumstances, the Court considers that the ill-treatment complained of was sufficiently serious to attain a minimum level of severity falling within the scope of Article 3 and to be considered as inhuman and degrading treatment.

41. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb.

2. Alleged failure to carry out an effective investigation

(a) The parties' submissions

42. The Government submitted that the domestic authorities conducted an effective investigation of the applicant's allegations of ill-treatment. In particular, the Government noted that following the applicant's complaint on 9 November 2005 the domestic authorities instituted criminal proceedings. The investigator heard the applicant, two witnesses and A.V. and took all appropriate actions to identify those who had beaten the applicant. Moreover, the investigator ordered a forensic examination for 28 January 2006, at which the applicant failed to appear.

43. The applicant submitted that the domestic authorities failed to carry out an effective investigation of his allegations of ill-treatment. He noted that the domestic authorities had ignored all the evidence that he had been beaten by the police. He also submitted that he had not been informed of any decision by the investigator of 28 January 2006 ordering a forensic examination.

44. The parties were also in disagreement as to whether the applicant had been informed in timely fashion of the investigator's decision of 9 March 2006 suspending the investigation. The Government submitted a copy of this decision, signed by the applicant with the remark that he disagreed with it, and a copy of a letter from the investigator, dated 9 March 2006, notifying of this decision and addressed to the applicant among others. The applicant maintained that he had not been informed of

that decision until May 2006, and that the documents submitted by the Government had failed to indicate the date when a copy of the decision had been made available to the applicant; nor had they shown that he had been informed of it in timely fashion.

(b) The Court's assessment

45. Where an individual raises an arguable claim that he or she has been seriously ill-treated by 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, 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*, cited above, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

46. For an investigation required by Articles 2 and 3 of the Convention to be effective, those responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only that there must be no hierarchical or institutional connection with those implicated in the events, but that there must also be independence in practical terms (see *Boicenco v. Moldova*, no. 41088/05, § 66, 11 July 2006; *Kolevi v. Bulgaria*, no. 1108/02, § 193, 5 November 2009; and *Oleksiy Mykhaylovych Zakharkin v. Ukraine*, no. 1727/04, § 66, 24 June 2010).

47. Furthermore, investigations of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness statements and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of those responsible will risk falling foul of this standard.

48. The notion of an effective remedy in respect of allegations of ill-treatment also entails effective access for the complainant to the investigation procedure (see *Assenov and Others*, cited above, § 117). There must be an element of public scrutiny of the investigation or its results sufficient to secure accountability in practice, maintain public confidence in

the authorities' adherence to the rule of law, and prevent any appearance of collusion in or tolerance of unlawful acts (see *Kolevi,* cited above, § 194).

49. The Court observes that following the applicant's claim of ill-treatment, on 9 November 2005 the Sabail District Police Department instituted criminal proceedings under Article 132 (beating) of the Criminal Code. On 22 December 2005 the case was re-qualified under Article 163 (obstruction of the lawful professional activity of journalists) of the Criminal Code and transferred to the Sabail District Prosecutor's Office. However, the applicant's complaint was not handled with sufficient diligence, as no relevant procedural steps were taken until 12 January 2006, the date the applicant was questioned, more than three months after the incident.

50. Likewise, even assuming that, as the Government claimed, the investigator ordered a forensic examination on 28 January 2006, this was also done belatedly, two months and seventeen days after the beginning of the criminal inquiry and three months and seventeen days after the incident. In this connection, the Court also notes that, in any event, the Government did not submit a copy of the investigator's decision requiring a forensic examination, nor did they produce any documentary evidence that the applicant had actually been informed of the investigator's decision requiring a forensic examination, even assuming that there was such a decision.

51. In this connection, having regard to the material in its possession and the parties' submissions, the Court notes that there are serious doubts that the applicant had been given effective access to the investigation procedure at all times and that he had been informed of all the procedural steps in a timely manner.

52. Having noted the above, the Court will now turn to what it considers the most problematic aspect of the investigation conducted in the present case. The Court has repeatedly stressed that the procedural obligation under Articles 2 and 3 requires an investigation to be independent and impartial, both in law and in practice (see paragraph 46 above). The Court notes that the Sabail District Prosecutor's Office, which was formally an independent investigating authority and which conducted the investigation in the present case, requested the Sabail District Police Department to carry out an inquiry with the aim of identifying those who had allegedly ill-treated the applicant. As such, the investigating authority delegated a major and essential part of the investigation – identification of the perpetrators of the alleged ill-treatment – to the same authority whose agents had allegedly committed the offence. In this respect, the Court finds it of no real significance that, while the alleged perpetrators were officers of the Riot Police Regiment of the Baku Police Department, it was another police department which was requested to carry out the investigation. What is important is that the investigation of alleged misconduct potentially engaging the responsibility of a public authority and its officers was carried out by those agents'

colleagues, employed by the same public authority. In the Court's view, in such circumstances an investigation by the police force of an allegation of misconduct by its own officers could not be independent in the present case (compare, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 295-96, ECHR 2007-II; *Aktaş v. Turkey*, no. 24351/94, § 301, ECHR 2003-V (extracts); and *McKerr*, § 128, cited above).

53. The Sabail District Police Department's inquiry yielded no results and was "unable" to identify the police officers in question. In this connection the Court notes that the material in the case file does not contain any evidence such as documents relating to the actual steps taken by the police investigators.

54. The Sabail District Prosecutor's Office investigator proceeded to rely on the Sabail District Police Department's "no result" report, and merely suspended the proceedings without taking any further action. In the Court's view, the investigating authority (the Sabail District Prosecutor's Office) was fully competent to take, and should have been entirely capable of taking, independent, tangible and effective investigative measures aimed at identifying the culprits, such as obtaining a list of the members of the Riot Police Regiment engaged in the dispersal operation, questioning all the police officers involved, identifying and questioning other witnesses (those on the demonstration, bystanders, and so on), holding face-to-face confrontations of witnesses where necessary, attempting to reconstruct the chronology of the events, and so on. None of this was done by the investigator independently. Nor did the investigating authorities, the domestic courts, or the Government provide any plausible explanation for the failure to do so.

55. The applicant was also deprived of the opportunity to effectively seek damages in civil proceedings, as the civil courts refused to admit his civil claim, citing as a reason his inability to name specific police officers as defendants. The Court notes that in practice this requirement amounted to an insurmountable obstacle for the applicant, since the identification of those police officers was the task of the criminal investigation, which in the present case was ineffective and lacked independence.

56. The foregoing considerations are sufficient to enable the Court to conclude that the investigation of the applicant's claim of ill-treatment fell short, for the reasons noted above, of the requirements of Article 3 of the Convention. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

57. Relying on Articles 10 and 11 of the Convention, the applicant complained that he had been ill-treated by police with the aim of preventing

him from carrying out his journalistic activity and that his right to freedom of peaceful assembly had been violated.

58. The Court notes that, as it appears from the applicant's own submissions, he was not a participant of the unauthorised demonstration, but was present there to report on it in his capacity of a journalist. In such circumstances, the Court considers that the complaint should be examined under Article 10 only, as this provision is *lex specialis* in so far as the circumstances of the present case are concerned. Article 10 of the Convention provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

59. The Government submitted that the applicant had failed to exhaust domestic remedies. In particular, the applicant's civil complaint was rejected by the domestic courts for non-compliance with the procedural requirements relating to lodging a lawsuit. The Government argued that the applicant could have remedied the procedural shortcomings found by the domestic courts in his civil complaint and re-submitted it to the court, but he had failed to do so.

60. The applicant submitted that his civil claim had been lodged properly, that he had correctly indicated the Ministry of Internal Affairs as the defendant, and that he had lodged a correct number of copies of the claim enclosed together with all the relevant documents in his possession.

61. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should

be had to remedies which are inadequate or ineffective (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports of Judgments and Decisions* 1996-IV).

62. The Court notes that the applicant lodged a civil claim complaining, *inter alia*, of a violation of his rights under Article 10 of the Convention (see § 22 above and, *a contrario*, *Rizvanov v. Azerbaijan*, no. 31805/06, § 73, 17 April 2012). This claim was not admitted for a number of formal reasons, such as the applicant's alleged failure to submit a copy of a forensic report and to identify specific individuals as defendants. However, the Court reiterates that, in the circumstances of the present case, it was practically impossible for the applicant to comply with these requirements owing to the ineffectiveness of the criminal investigation in procuring forensic evidence and identifying the police officers responsible for the applicant's beating. As such, those requirements relied on by the domestic courts constituted, in essence, an insurmountable obstacle for examination of the merits of the applicant's complaint in the civil proceedings. In such circumstances, the Court considers that the applicant has done all what could have been expected of him to exhaust domestic remedies.

63. For these reasons, the Court rejects the Government's objection. It further 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

64. The Government submitted that the applicant was not a participant of the demonstration, but that he was "observing" it. They noted that, during the demonstration, the applicant had not been wearing a special blue vest identifying him as a journalist, which would have enabled the law-enforcement authorities to distinguish him from demonstration participants. The Government further submitted that the demonstration had been unlawful and that the police had been entitled to have recourse to appropriate use of force to disperse the demonstration and detain persons who failed to comply with lawful police orders. Therefore, the Government noted that "the applicant's alleged beating could have taken place in [the] circumstances" where police officers, in the absence of a blue vest, had difficulty in distinguishing the applicant from the demonstration participants, against whom they were entitled to use force. The police had no intention to interfere with the applicant's journalistic activity or prevent him from reporting on the demonstration.

65. The applicant submitted that, although he had not been wearing a blue vest, he was wearing a badge on his chest clearly identifying him as a journalist. He noted that witnesses had confirmed this fact. Moreover, while he was being beaten by the police, he repeatedly told them that he was a

journalist. Lastly, the applicant argued that, contrary to the Government's submissions, the use of force by the police at the demonstration was in any event unlawful and unjustified.

66. The Court has repeatedly stressed the pre-eminent role of the press in a democratic State governed by the rule of law (see the *Castells v. Spain*, 23 April 1992, § 43, Series A no. 236; *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 63, Series A no. 239; *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports* 1996-II; *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298; and *Fatullayev v. Azerbaijan*, no. 40984/07, § 88, 22 April 2010). It is incumbent on the press to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. This undoubtedly includes, like in the present case, reporting on opposition gatherings and demonstrations which is essential for the development of any democratic society. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see, among other authorities, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216, and *The Sunday Times v. the United Kingdom (no. 2)*, 26 November 1991, § 50, Series A no. 217).

67. It is undisputed that the applicant was present at the place of demonstration to report on the event; that is, he was doing his journalistic work. As established above, the applicant was subjected to use of force in breach of Article 3 of the Convention, despite not having conducted himself in a manner that would make use of force necessary. Although the applicant was not wearing a special vest, he was wearing a journalist's badge on his chest and also specifically told the police officers that he was a journalist. Thus, the Court cannot accept the Government's argument that police officers had been unable to determine that the applicant was a journalist.

68. The Court notes that public measures preventing journalists from doing their work may raise issues under Article 10 (see, *mutatis mutandis*, *Gsell v. Switzerland*, no. 12675/05, § 49 et seq., 8 October 2009). Turning to the present case, the Court notes that it cannot be disputed that the physical ill-treatment by State agents of journalists while the latter are performing their professional duties seriously hampers their exercise of the right to receive and impart information. In this regard the Court notes the Government's argument that there was no actual intention to interfere with the applicant's journalistic activity as such. However, irrespective of whether there was such intention in the present case, what matters is that the journalist was subjected to the unnecessary and excessive use of force, amounting to ill-treatment under Article 3 of the Convention, despite having made clear efforts to identify himself as a journalist who was simply doing his work and observing the event. Accordingly, the Court considers that there has been an interference with the applicant's rights under Article 10 of the Convention.

69. Furthermore, the Court finds that this interference was not justified under paragraph 2 of Article 10. It was not shown convincingly by the Government that it was either lawful or pursued any legitimate aim. In any event, it is clear that such interference as in the present case could not be considered as "necessary in a democratic society".

70. There has accordingly been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

71. The applicant complained that the domestic courts' refusal to admit his civil action had been wrongly substantiated and breached his right of access to court.

72. The relevant part of Article 6 of the Convention reads as follows:

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

73. Having regard to the finding of a violation of the procedural aspect of Article 3 (and, in particular, the findings in paragraph 55 above), and noting that the present complaint concerns essentially the same matters, the Court considers that it is not necessary to examine whether this case raises an issue Article 6 of the Convention. Therefore, the Court rejects this part of the application pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 800 euros (EUR) in compensation for pecuniary damage for the cost of his medical treatment, and EUR 16,500 in compensation for pecuniary damage for lost earnings. He also claimed EUR 10,000 compensation for pecuniary damage for his treatment abroad.

76. The Government contested the claim, noting that the applicant had failed to substantiate his allegation.

77. The Court points out that under Rule 60 of the Rules of the Court any claim for just satisfaction must be itemised and submitted in writing,

together with the relevant supporting documents or receipts, failing which the Court may reject the claim in whole or in part.

78. In the present case, even assuming that there is a causal link between the damage claimed and the violations found, the Court observes that the applicant did not submit any documentary evidence supporting this claim. In particular, he did not submit any receipts, prescriptions or any other documents certifying his expenses for medical treatment, or an employment contract or other documents certifying his income.

79. For the above reasons, the Court rejects the applicant's claims in respect of pecuniary damage.

2. Non-pecuniary damage

80. The applicant claimed EUR 10,000 in compensation for non-pecuniary damage.

81. The Government contested the amount claimed as unsubstantiated and excessive.

82. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 10,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

83. The applicant claimed EUR 1,000 for costs and expenses incurred before the domestic courts in the criminal proceedings and EUR 1,600 for the civil proceedings. He also claimed EUR 2,700 for costs and expenses incurred before the Court. In support of his claim, he submitted several contracts for legal services rendered in the proceedings before the domestic courts and the Court. According to these contracts, the amounts due were to be paid in the event that the Court found a violation of the applicant's rights. The applicant also claimed EUR 1,750 for translation expenses and EUR 200 for postal expenses.

84. The Government considered that the claim was unsubstantiated and excessive. In particular, the Government submitted that the applicant had failed to produce all the necessary documents in support of his claims and that the costs and expenses had not actually been incurred, because the amount claimed had not yet been paid by the applicant.

85. 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 3,000 covering costs under all heads.

C. Default interest

86. 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 Articles 3 and 10 of the Convention 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 by the police;

3. *Holds* that there has been a violation of Article 3 of the Convention as regards the lack of effective investigation of the applicant's allegations of ill-treatment;

4. *Holds* that there has been a violation of Article 10 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, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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 2 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Nina Vajić President