



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

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FIRST SECTION

**CASE OF TEBIETI MÜHAFIZE CEMİYİYETİ AND ISRAFILOV
v. AZERBAIJAN**

(Application no. 37083/03)

JUDGMENT

STRASBOURG

8 October 2009

FINAL

10/05/2010

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan,
The European Court of Human Rights (First Section), sitting as a
Chamber composed of:

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 17 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 37083/03) 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 Tebieti Mühafize Cemiyeti (*Təbiəti Mühafizə Cəmiyyəti* – “the Association”), an association with its headquarters in Baku, and an Azerbaijani national, Mr Sabir Israfilov (the Association and Mr Israfilov together are referred to as “the applicants”), on 8 October 2003.

2. The applicants, who had been granted legal aid, were 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 applicants alleged, in particular, that the dissolution of the Association had infringed their right to freedom of association, guaranteed under Article 11 of the Convention.

4. By a decision of 8 November 2007, the Court declared the application admissible.

5. The applicants and the Government each filed observations on the merits (Rule 59 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The Association is a non-profit-making non-governmental organisation (NGO), now dissolved, which was active between 1995 and

2002. The application was lodged by its former Chairman, Mr Sabir Israfilov, who was born in 1948 and lives in Baku.

A. The Association's objects and management structure

7. The Association was registered by the Ministry of Justice on 25 August 1995 and acquired the status of a legal entity.

8. Clause 1.1 of the Association's Charter defined it as an independent, charitable public organisation with voluntary membership, conducting its activities within the framework of the laws of the Republic of Azerbaijan on public associations, other applicable laws and its own Charter.

9. According to clause 1.2 of the Charter, the main objects of the Association were:

“... in the circumstances of the present-day environmental crisis, to develop the environmental culture and awareness of the various strata of the country's population, to organise a public movement for a clean environment in Azerbaijan, to give impetus to the process of effective resolution of environmental protection problems, and to strive permanently to promote the measures necessary to create a healthier environment.”

10. According to the Charter, the Association's governing bodies consisted of the Congress (the general assembly of members), the Central Council (the management board elected by the general assembly for a five-year term), the Central Supervisory Commission (a body of internal control elected by the general assembly for a five-year term), and various local bodies. Clause 4.8 of the Charter provided that the Congress, as the general assembly of members, was the Association's supreme governing body and would convene once every five years.

11. Since the date of its establishment and State registration, and until August 2002, the Association had not convened a general assembly of its members.

12. It appears that, on 9 July 1997, about two years after the Association's State registration, the Ministry of Justice sent a letter to the Association, noting that the latter had committed certain breaches of the domestic law and the Association's own Charter. The exact content of that letter is not clear from the materials available in the case file.

B. Warnings issued by the Ministry of Justice

13. On 14 August 2002 the Ministry of Justice commenced an inspection of the Association's activities.

14. On 10 September 2002 the Ministry issued a warning to the Association in accordance with section 31.2 of the Law on non-governmental organisations (public associations and foundations) of 13 June 2000), applicable at the material time (“the NGO Act”). The

Ministry stated that the Association's activities did not comply with the requirements of its own Charter and the domestic law. It was noted that a general assembly of the Association's members had not been convened within the five-year period specified in its own Charter. Moreover, in any event, this provision of the Charter was itself incompatible with the domestic law, as section 25.2 of the NGO Act required that the supreme governing body of a public association – the general assembly of members – was to be convened at least once every year. The Ministry requested that, within ten days, the Association take measures to remedy the above-mentioned breach and inform the Ministry of the measures taken.

15. In reply, Mr Israfilov informed the Ministry that, in fact, a general assembly of members had taken place on 26 August 2002. It appears that, among other things, the Association's general assembly decided to establish a working group in order to bring the Association's Charter into conformity with the current legislation.

16. Having examined the documents relating to the general assembly meeting of 26 August 2002, on 3 October 2002 the Ministry of Justice issued a new warning to the Association (which constituted a second warning issued in 2002). It noted that the general assembly of 26 August 2002 had been convened in violation of numerous provisions of the domestic law. The Ministry noted, *inter alia*, that not all members of the Association had been properly informed about the general assembly and thus had been unable to participate in it, and that the Association's local branches had not been equally represented at the assembly. Generally, the current membership records had not been properly kept and it was impossible to determine the exact number and identity of members. Local branches of the Association had not held any regular local assemblies of members and, in fact, functioned as regional offices directly governed by the head office in an administrative and hierarchical manner, whereas in a genuine public association ordinary members should be able to directly participate in its management. The Ministry again demanded that, within ten days, information be submitted as to the steps taken to remedy these breaches.

17. It appears that the Association disagreed with the above findings in its correspondence with the Ministry and took no action in response to this second warning.

18. Finally, on 28 October 2002 the Ministry issued a third warning, stating that it had not received any information from the Association as to compliance with the prior two warnings. In addition to reiterating the remarks contained in the prior warnings, the Ministry noted that the Association also engaged in an activity prohibited by law. Specifically, the domestic law (namely, the NGO Act, the Law on environmental protection of 8 June 1999 and the Law on entrepreneurial activity of 15 December

1992) prohibited public associations from interfering with the activities of private businesses. In this connection, the Ministry noted:

“However, contrary to these legal requirements, the Association ... attempts to collect money from State organs and commercial organisations in the guise of membership fees, regularly conducts [unlawful] inspections at economic enterprises and draws up [environmental compliance] reports, and engages in other illegal acts interfering with the rights of entrepreneurs ...”

19. As it had done previously, the Ministry demanded that, within ten days, the Association submit information as to the steps taken to remedy the situation. The Association did not react.

C. Dissolution of the Association

20. In December 2002 the Ministry lodged an action with the Yasamal District Court, seeking an order for dissolution of the Association. The Association, represented by Mr Israfilov, lodged a counterclaim, contending that the Ministry’s warnings had been unlawful and unsubstantiated.

21. On 7 March 2003 the Yasamal District Court dismissed the Association’s counterclaim and granted the Ministry’s request, ordering the Association’s dissolution.

22. Specifically, in respect of the Ministry’s request for dissolution, the court heard oral submissions by the Association’s members and the officials of the Ministry of Justice’s Department of State Registration of Legal Entities, reviewed the content of the Ministry’s three warning letters issued in 2002 and examined the correspondence between the Association and the Ministry. The court also examined six internal reports by various officials of the Ministry of Justice concerning the results of the inspection of the activities of the Association’s various local branches. According to these reports, most of the inspected branches had not held regular local assemblies of members and had not maintained proper records of members and membership fees. One of these reports stated that, according to “information obtained” during the inspection, the Association’s branch in the Tovuz region carried out illegal environmental inspections and engaged in other illegal activities.

23. Based on the above materials, the court found that, despite the early warning issued on 9 July 1997 (the content of which was not specified in the judgment), the Association had continued to commit breaches of domestic law on an even more systematic basis, which had led to the issuance by the Ministry of Justice of the three warning letters in 2002. The court noted that the Association’s Charter had not been brought into compliance with the domestic law on public associations, which required that a general assembly of members be held no less than once a year. In any event, even the five-year period for convening a general assembly, as required by the Association’s Charter, had not been complied with. The

court further found that the Ministry's findings concerning numerous irregularities during the general assembly meeting of 26 August 2002, as well as breaches of law in the general functioning of the Association, constituted a basis on which to dissolve the Association for systematic failure to comply with the domestic law.

24. Furthermore, again based on the above-mentioned oral testimonies of the Ministry officials and their inspection reports, the court noted that the Association had frequently overstepped the limits of the scope of its activities as defined in its Charter and permitted by law, by interfering with the competence of the relevant State authorities. In particular, it was noted that the Association's local branches had attempted to carry out unlawful environmental inspections on the premises of various State and commercial enterprises and collect membership fees from them, issued reports on these enterprises' compliance with environmental standards, and engaged in other actions interfering with the activities of commercial entities. The court found that, by engaging in such actions, the Association had violated the rights of other persons and attempted to misappropriate powers of a State regulating authority.

25. The court further noted that, in accordance with the NGO Act, the issuance of three warnings by the Ministry of Justice constituted a basis for an association's dissolution if the latter did not take any measures to remedy the shortcomings in its activities. The court therefore ordered that the Association be dissolved.

26. The Association appealed, claiming that the provisions of the NGO Act were vague and imprecise, giving the Ministry a wide discretion to interfere with public associations' activities and to issue warnings even for minor irregularities in their activities. The Association also argued that the Yasamal District Court's factual findings concerning its activities had been incorrect and unsupported by any evidence.

27. On 4 July 2003 the Court of Appeal dismissed the appeal and upheld the Yasamal District Court's judgment.

28. By a final decision of 29 October 2003, the Supreme Court upheld the lower courts' judgments.

29. The Association's State registration certificate was revoked and the Association was dissolved.

II. RELEVANT DOMESTIC LAW

A. Civil Code of 2000

30. Article 59 of the Civil Code provides:

Article 59 – Dissolution of a legal entity

“59.2. A legal entity may be dissolved: ...

59.2.3. By a court order, if the legal entity engages in activities without the required permit (licence) or in activities prohibited by law, or if it otherwise commits repeated or grave breaches of law, or if a public association or foundation systematically engages in activities that are contrary to the aims set out in its by-laws, as well as in other cases provided by law.

59.3. A request to dissolve the legal entity under the grounds specified in Article 59.2 of this Code may be lodged by the relevant State authority or local self-administration authority, to which the right to lodge such a request is granted by law.
..."

B. The NGO Act

31. Section 1 of the NGO Act provides:

Section 1 – Objectives of this Law

“1.1. This Law regulates the relations concerning the establishment and functioning of public associations and foundations.

1.2. The definition of ‘non-governmental organisation’ in this Law includes public associations and foundations.

1.3. This Law determines the rules for the establishment, activity, reorganisation and dissolution of non-governmental organisations, as well as their functioning, management, and relations with government bodies.

1.4. This Law does not apply to political parties, trade unions, religious organisations, local self-administration authorities and non-governmental organisations which are regulated by other laws.”

32. Under section 2, a public association is defined as an NGO established on the initiative of several individuals and/or legal entities associated on the basis of common interests in pursuing the objectives set out in the association’s by-laws, which does not engage in profit-making as a primary aim of its activity and which does not distribute any profit between its members.

33. Chapter IV (sections 22-24) regulates issues related to the activities and property of NGOs. In particular, under section 22.1, an NGO may engage in any type of activity which is not prohibited by the laws of the Republic of Azerbaijan and which is not contrary to the aims of the organisation as set out in its charter.

34. Chapter V (sections 25-27) contains rules on the management of NGOs. Section 25.1 provides that the internal structure of a public association, the powers of its governing bodies, their formation procedure and term of office and the rules on decision-making and representing the association shall be regulated by the public association’s charter, subject to the conditions set out in the NGO Act and other relevant legal provisions. In particular, the supreme governing body of a public association is the general assembly of members, to be convened not less than once a year, upon the initiative of the associations’s executive body, one of its founders or one

third of its members (sections 25.2-25.3). The general assembly decides upon, *inter alia*, the following issues: (1) adoption of and amendments to the association's charter; (2) use of the association's property; (3) election of the association's other governing bodies and early termination of their office; and (4) approval of the annual report, among other publications (section 25.5). The founders and members of the public association must be informed of the date and place of the general assembly at least two weeks in advance. Amendments to the association's charter may be made only if the quorum of more than half of the association members is present. Decisions are adopted by a majority of votes of the participating members. Each member has one vote (section 25.6). It is required to keep written minutes of the general assembly, which shall be signed by the assembly's president and secretary and, if necessary, distributed to all members (section 25.7).

35. Section 31 provides:

Section 31 – Liability of a non-governmental organisation

“31.1. A non-governmental organisation that breaches the requirements of this Law shall be liable in accordance with the laws of the Republic of Azerbaijan.

31.2. If a non-governmental organisation commits actions incompatible with the objectives of this Law, the relevant executive authority [the Ministry of Justice] may issue a written warning to the organisation and give an instruction to remedy such breaches.

31.3. A non-governmental organisation may judicially challenge such warning or instruction.

31.4. If a non-governmental organisation receives, within one year, more than two written warnings or instructions to remedy the breaches of law, such organisation may be dissolved pursuant to a court order.”

C. Other legal provisions

36. Section 4 of the Law on environmental protection of 8 June 1999 provides, *inter alia*, that the carrying out of environmental monitoring and audits is within the competence of the relevant State authorities. Sections 7 and 73 of the Law on environmental protection define the rights and obligations of NGOs in the field of environmental protection. The essence of the NGOs' rights, within the meaning of these provisions, is the civic defence of environmental rights, encouraging public debate on environmental issues and alerting the relevant State regulatory authorities to any environmental hazard or breach of the applicable environmental standards. The range of NGOs' rights in this field does not include a right to conduct formal environmental inspections or enforce relevant environmental norms or standards.

37. Likewise, section 7 of the Law on ecological safety of 8 June 1999 vests rights in NGOs, *inter alia*, to make proposals on ecological safety to

the relevant State authorities and alert the latter to breaches of environmental laws. NGOs are not vested with a right to enforce environmental laws.

38. Section 5.2 of the Law on entrepreneurial activity of 15 December 1992 prohibits political parties and NGOs from interfering with entrepreneurial activities.

III. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

39. The following are extracts from Recommendation CM/Rec(2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe:

“ ...

44. The legal personality of NGOs can only be terminated pursuant to the voluntary act of their members – or in the case of non-membership-based NGOs, its governing body – or in the event of bankruptcy, prolonged inactivity or serious misconduct.

...

46. The persons responsible for the management of membership-based NGOs should be elected or designated by the highest governing body or by an organ to which it has delegated this task. The management of non-membership-based NGOs should be appointed in accordance with their statutes.

47. NGOs should ensure that their management and decision-making bodies are in accordance with their statutes but they are otherwise free to determine the arrangements for pursuing their objectives. In particular, NGOs should not need any authorisation from a public authority in order to change their internal structure or rules.

48. The appointment, election or replacement of officers, and ... the admission or exclusion of members should be a matter for the NGOs concerned. ...

...

67. The activities of NGOs should be presumed lawful in the absence of contrary evidence.

68. NGOs can be required to submit their books, records and activities to inspection by a supervising agency where there has been a failure to comply with reporting requirements or where there are reasonable grounds to suspect that serious breaches of the law have occurred or are imminent.

...

70. No external intervention in the running of NGOs should take place unless a serious breach of the legal requirements applicable to NGOs has been established or is reasonably believed to be imminent.

...

72. In most instances, the appropriate sanction against NGOs for breach of the legal requirements applicable to them (including those concerning the acquisition of legal personality) should merely be the requirement to rectify their affairs and/or the imposition of an administrative, civil or criminal penalty on them and/or any

individuals directly responsible. Penalties should be based on the law in force and observe the principle of proportionality.

...

74. The termination of an NGO ... should only be ordered by a court where there is compelling evidence that the grounds specified in paragraph 44 ... above have been met. Such an order should be subject to prompt appeal.”

IV. COMPARATIVE LAW

40. A comparative study of the relevant legislation of 25 out of 47 member States of the Council of Europe shows that an NGO can be membership-based or non-membership-based and can take a variety of legal forms applicable in the domestic legal order, such as an association, foundation, trust, charity or even company. A key factor in determining the level of scrutiny and control that an NGO will be subjected to is whether the body concerned is legally incorporated and enjoys legal personality. Normally, unincorporated associations enjoy a much wider scope of self-management and are not interfered with unless they conduct activities which are illegal or prejudicial to public order. Legally incorporated NGOs, on the other hand, are often subject to more narrowly delimited rules and may be dissolved or face other sanctions in the event of non-compliance.

41. It appears that in a number of States an NGO can, in certain circumstances, be dissolved either, specifically, for failure to conduct its internal management in accordance with the requirements of domestic law or, more generally, for failure to comply with its own charter. Countries within this category include: (i) Austria, where an association can be dissolved by a decision of a competent public authority if, *inter alia*, it exceeds its field of activity or if it no longer fulfils its own statutory rules; (ii) the Czech Republic, where foundations, endowment funds and public benefit corporations can be dissolved by a court for failure to comply with their charter or the domestic law (however, associations cannot be dissolved for failure to conduct their internal management); (iii) Finland, where a court may on the basis of an action brought by the relevant public authority or an association member dissolve an association if it acts substantially against the law or substantially against the purpose defined for it in its rules; (iv) Hungary, where the courts may declare the dissolution of a civil society organisation if it has failed to operate for at least one year, or the number of its members is permanently below the number determined by law; (v) Italy, where the competent governmental authorities may dissolve foundations in the event that they are not conducted in a lawful manner and in conformity with their by-laws; (vi) Luxembourg, where associations may be dissolved for failure to comply with the objectives which they have assumed, or if they have gravely contravened their constitutive statute or the law; and foundations can be dissolved if they are no longer able to pursue the object

for which they were created; (vii) Malta, where a voluntary organisation may be struck off the register of voluntary organisations and/or issued with a suspension order potentially permanently suspending all or part of its activities, if the organisation in question is not complying with the provisions of its statute or the relevant domestic law; (viii) the Netherlands, where a regional court can dissolve an association or foundation, *inter alia*, if its statutes do not fulfil the requirements of the law or if it acts substantially contrary to its own Articles; (ix) Poland, where the courts can, in situations where associations are found to be acting contrary to the law or infringing the provisions of their own charter, order their dissolution; (x) Romania, where the relevant law provides that an association's failure to convene its general assembly or board of directors for more than one year results in its *de jure* dissolution; (xi) Russia, where an association may be dissolved if it repeatedly and seriously violates the requirements of the applicable domestic law; (xii) Slovakia, where courts can decide to dissolve non-profit organisations, foundations, non-investment funds and associations for contraventions of the applicable domestic law as regards their internal management; and (xiii) Turkey, where the Civil Code provides that associations can be dissolved for, *inter alia*, failure to compose the internal bodies required by law, hold their first general assembly meetings within the time-limits prescribed by law or to hold subsequent general assembly meetings regularly.

42. In a number of other member States an NGO may not be subject to involuntary dissolution for failure to conduct its internal management in accordance with the requirements of the domestic law or its charter (although the authorities may dissolve an NGO, *inter alia*, if it engages in illegal activities or if its goals and acts violate the public order). Countries within this category include Bulgaria, the United Kingdom (England and Wales), Estonia, France, Germany, Ireland, Latvia, Portugal, Slovenia, Spain, Sweden and Ukraine.

43. As for the range of alternative sanctions (apart from involuntary dissolution) that may be imposed on NGOs for various types of contraventions, such sanctions include: (i) fines (Austria, Malta, Russia, Slovakia, Slovenia, Turkey and Ukraine); (ii) suspension of activities (Finland, Hungary, Malta, Russia, Slovakia, Turkey and Ukraine); (iii) the invalidity of a decision taken in contravention of the organisation's internal charter or applicable domestic law (Estonia, Hungary, Italy, Latvia and Poland); (iv) the dismissal of administrators (Italy and, in respect of foundations, Luxembourg); and (v) being struck off a special register and withdrawal of associated privileges such as tax benefits (Bulgaria, England and Wales (loss of charitable status), Ireland, Portugal and Spain).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

44. The applicants complained that the forced dissolution of the Association had violated their right to freedom of association under Article 11 of the Convention, which provides as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. The parties' submissions

45. The Government maintained that the interference with the applicants' freedom of association was prescribed by the domestic law, which was both accessible and foreseeable. The Association's acts and omissions, which had led the Ministry of Justice to issue its warnings, were clearly in breach of the legal requirements applicable to non-commercial legal entities, including public associations. The possibility of an association's dissolution, as a consequence of such breaches, was also prescribed in the domestic law and was foreseeable. In this connection, the Government noted that, in the event of an association's continuing failure to bring its activities into compliance with the domestic law following at least three warnings by the Ministry of Justice issued within one calendar year, forced dissolution was the only sanction available under the domestic law applicable at the relevant time.

46. The Government submitted that the interference pursued the legitimate aim of “protection of the rights and freedoms of others”, such as the rights of the Association's own members who had been deprived of their right to participate in the Association's management, as well as third persons affected by the Association's unlawful activities.

47. Lastly, the Government maintained that the interference had been necessary in a democratic society. The Association's activities had been in breach of the domestic law for an extended period of time (at least since the time of issuance of the first warning in 1997) and, within that period, despite repeated warnings, it had not taken any steps to remedy the

situation. In such circumstances, there had been a “pressing social need” justifying the interference with the applicants’ rights.

48. The applicants argued that the interference was not prescribed by law, because the Law on non-governmental organisations (public associations and foundations) (“the NGO Act”), being vague and imprecise, gave the Ministry of Justice an unlimited discretion to issue warnings to public associations without specifying clearly the scope of such discretion. This situation allowed the Ministry to request dissolution of an association for anything that it deemed to be a breach of the requirements of the NGO Act, even if it was relatively minor. Therefore, the NGO Act was not formulated with sufficient precision, which made it impossible to foresee, to a reasonable degree, the specific actions (or omissions) that could entail the forced dissolution of the Association.

49. The applicants maintained that the Ministry’s remarks concerning the alleged breaches of the legal requirements concerning the Association’s management were unsubstantiated. In particular, the Association’s general assembly had been convened on 26 August 2002. It had been carried out in accordance with the requirements of the Association’s Charter and the domestic law. All the members of the Association had been duly informed about the general assembly in advance; thus, their right to participate in the Association’s management had been respected. As for the Ministry’s remark that the Association’s local branches had not been equally represented, the applicants noted that this was baseless and nonsensical as the number of members in each branch was not equal and therefore it was impossible to ensure equal representation.

50. The applicants further argued that the remaining accusations against the Association, namely that it had engaged in unlawful acts contrary to its main objects of activity, were completely unsubstantiated and lacked any evidence. Neither the Ministry of Justice nor the domestic courts had ever even named which enterprises’ or persons’ rights had been infringed by the Association’s allegedly unlawful activities. There had been no complaint lodged by any third persons claiming that the Association had attempted to illegally collect money from them “in the guise of membership fees” or conducted unlawful environmental “inspections” of their enterprises. It had not been shown which specific persons affiliated to the Association had engaged in these activities. Moreover, while such unlawful activities entailed criminal liability under the domestic law, not a single Association member or any other person affiliated to it had ever been charged with a criminal offence in connection with these allegations.

51. For the above reasons, the applicants concluded that the order for the Association’s dissolution had been arbitrary as there had been no compelling grounds for such interference with their freedom of association. Even if the Association had committed some breaches of the rules concerning internal management of public associations, the interference in

the present case had been disproportionate to the aims pursued and, therefore, not necessary in a democratic society.

B. The Court's assessment

1. General principles in the Court's case-law on freedom of association

52. The right to form an association is an inherent part of the right set forth in Article 11 of the Convention. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others v. Greece*, 10 July 1998, § 40, *Reports of Judgments and Decisions* 1998-IV).

53. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, ECHR 2004-I; *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 61, ECHR 2006-XI; and *Zhechev v. Bulgaria*, no. 57045/00, § 35, 21 June 2007).

2. Whether there was interference

54. It was undisputed by the parties that the Association's dissolution amounted to an interference with the applicants' exercise of their right to freedom of association. The Court shares the same view.

3. *Whether the interference was justified*

55. Such an interference will constitute a breach of Article 11 unless it was “prescribed by law”, pursued one or more legitimate aims under paragraph 2 and was “necessary in a democratic society” for the achievement of those aims.

(a) “Prescribed by law”

56. The expressions “prescribed by law” and “in accordance with the law” in Articles 8 to 11 of the Convention not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among many other authorities, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I).

57. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (see, among many other authorities, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI).

58. It is, however, not possible to attain absolute rigidity in the framing of laws, and many of them are inevitably couched in terms which, to a greater or lesser extent, are vague. The level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question and the field it is designed to cover (see *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 31, ECHR 1999-VIII).

59. It was undisputed by the applicants that there was a basis in the domestic law for the sanction imposed (section 31 of the NGO Act) and that the law in question was accessible. The applicants, however, argued that it did not comply with the “quality of law” requirement as it was so vague that it was not foreseeable as to its effects.

60. Section 31.4 of the NGO Act provided for a possibility of dissolution of an association by a court order in the event the association received, within the same calendar year, more than two written warnings by the regulating authority (the Ministry of Justice). The Court, therefore, accepts

that the sanction imposed on the Association had a clear basis in the domestic law and that this law was accessible.

61. However, as to the issue of foreseeability, the Court notes that the provisions of the NGO Act were far from being precise as to what could be a basis for warnings by the Ministry of Justice that could ultimately lead to an association's dissolution. Section 31.2 of the NGO Act empowered the Ministry of Justice to warn NGOs, including public associations, if their activities were deemed to be "incompatible with the objectives" of the NGO Act. Under section 1 of the NGO Act, its "objectives" included, *inter alia*, the general regulation of the principles and rules for the establishment, management and scope of activities of public associations. This definition, in essence, appeared to encompass an unlimited range of issues related to an association's existence and activity.

62. The Court agrees with the applicants that the above provisions are worded in rather general terms and may give rise to extensive interpretation. The Government have not submitted any examples of domestic judicial cases which would provide a specific interpretation of these provisions. In such circumstances, the NGO Act appears to have afforded the Ministry of Justice a rather wide discretion to intervene in any matter related to an association's existence. This situation could render it difficult for associations to foresee which specific actions on their part could be qualified by the Ministry as "incompatible with the objectives" of the NGO Act.

63. The situation was exacerbated by the fact that involuntary dissolution was the only sanction available under the domestic law against associations engaging in activities "incompatible with the objectives" of the NGO Act. In the Court's view, this is the most drastic sanction possible in respect of an association and, as such, should be applied only in exceptional circumstances of very serious misconduct. Therefore, the domestic law should delimit more precisely the circumstances in which this sanction could be applied.

64. The Court also notes that the NGO Act contained no detailed rules governing the scope and extent of the Ministry of Justice's power to intervene in the internal management and activities of associations, or minimum safeguards concerning, *inter alia*, the procedure for conducting inspections by the Ministry or the period of time granted to public associations to eliminate any shortcomings detected (see also paragraph 77 below), thus providing sufficient guarantees against the risk of abuse and arbitrariness.

65. The above considerations, in themselves, give a strong indication that the provisions of the NGO Act did not meet the "quality of law" requirement, which would be sufficient for a finding of a violation of Article 11 on the basis that the interference was not prescribed by law. The Court notes, however, that these questions are in this case closely related to

the broader issue of whether the interference was necessary in a democratic society. The Court considers that, in the circumstances of the present case, respect for human rights requires it to examine the latter issue as well. In view of this, as well as in view of its analysis in paragraphs 70 to 91 below, the Court does not find it necessary to decide whether the wording of the NGO Act's relevant provisions met the "quality of law" requirement within the meaning of Article 11 § 2 of the Convention.

(b) Legitimate aim

66. For the purposes of further analysis, the Court is prepared to accept the Government's view that the interference had the aim of "protecting the rights and freedoms of others".

(c) "Necessary in a democratic society"

(i) General principles

67. The Court reiterates that the exceptions to freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a "pressing social need"; thus, the notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable". In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see, among other authorities, *Gorzelik and Others*, cited above, § 95, and *Sidiropoulos and Others*, cited above, § 40).

68. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (*ibid.*; see also *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports* 1998-I, and *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, § 62, 19 January 2006).

(ii) *Application of these principles to the present case*

69. The Court notes that the domestic authorities, and the Government in their pleadings, relied on two groups of arguments as grounds justifying the interference (see paragraphs 23-24 above). That being so, the Court will examine these grounds in turn.

(α) Breach of the legal requirements on internal management

70. Under this ground for the Association's dissolution, the Ministry of Justice and domestic courts found, *inter alia*, that the Association had failed to convene a general assembly of members for around seven years, that the equal representation of members had not been ensured at the general assembly eventually convened on 26 August 2002, and that the Association had not kept proper membership records.

71. With regard to one of these findings, it is undisputed in the present case that the Association had not convened a general assembly of its members for around seven years, from August 1995 to August 2002. It therefore breached the requirements of its own Charter, which required the general assembly to be convened at least once every five years, and the domestic law, which required it to be convened at least once every year. As for the other findings, the situation is far less clear and the Court will have regard to them below.

72. In general, the Court accepts that, in certain cases, the States' margin of appreciation may include a right to interfere – subject to the condition of proportionality – with freedom of association in the event of non-compliance by an association with reasonable legal formalities applying to its establishment, functioning or internal organisational structure (see, *mutatis mutandis*, *Ertan and Others v. Turkey* (dec.), no. 57898/00, 21 March 2006). In this respect, the Court notes that, in so far as the domestic corporate law is concerned, private persons' freedom of association does not preclude the States from laying down in their legislation rules and requirements on corporate governance and management and from satisfying themselves that these rules and requirements are observed by the incorporated entities. In fact, the domestic laws of many member States of the Council of Europe provide for such rules and requirements, with varying degrees of regulation (see paragraphs 40-43 above). The Court does not see a problem *per se* in that Azerbaijani law provided for certain formal requirements concerning corporate legal forms (together with associated internal management structures) which associations had to satisfy in order to be eligible for State registration as a non-profit-making legal entity.

73. Therefore, as to the formal requirement that public associations have certain governing bodies and, more specifically, periodically convene a general assembly of members, the Court does not consider this to constitute, in itself, an undue interference with freedom of association. This

requirement serves to ensure, *inter alia*, the right of association members to directly participate in the management and activities of the association. Moreover, the Court considers that this requirement, together with other rules concerning the rights of members and internal control and management mechanisms, are normally designed to prevent any possible abuse of the legal status and associated economic privileges enjoyed by non-commercial entities.

74. Turning to the specific circumstances of the present case, the Court considers it necessary to assess whether the domestic authorities' findings concerning the alleged breaches of the legal requirements on internal management were well-founded and, as such, sufficient to justify the sanction imposed. Having made that assessment, the Court is not convinced, for the following reasons, that there existed compelling reasons justifying the interference in question and that this interference was proportionate to the legitimate aim pursued.

75. At the outset, the Court stresses that, indeed, the Association's failure to convene a general assembly of its members for around seven years constituted a wanton disregard of the requirements not only of the domestic law, but also of its own Charter. Moreover, by the time of its dissolution, the Association had failed to even bring its Charter into conformity with the basic legal requirements applicable under the NGO Act which, by then, had been in force for around two years. Having committed these breaches, the Association clearly put itself in a situation where it risked sanctions. Accordingly, in the light of the considerations in paragraphs 72 to 74 above, the Court cannot find that it was inappropriate for the domestic authorities to react to these breaches and to ensure that the basic formal requirements of the domestic law on corporate management be observed.

76. Nevertheless, in assessing whether the authorities' subsequent decision to apply the sanction of involuntary dissolution was justified and proportionate, it cannot be overlooked that the Association actually attempted to rectify the problem by convening a general assembly on 26 August 2002, even prior to the Ministry of Justice's first warning of 10 September 2002. Due account should have been taken of this intention when deciding upon the necessity of the interference with the Association's rights in the present case. The Association should have been given a genuine chance to put matters right before being dissolved.

77. While the Court has accepted that, initially, the authorities correctly reacted to the breach of the requirement to convene a general assembly once a year, it observes that, subsequently, the focus of the accusations against the Association shifted to other "breaches". In particular, having been informed about the general assembly of 26 August 2002, the Ministry was not satisfied with its "lawfulness" and followed up its initial warning with another two warnings issued in a relatively short timespan, on each occasion allowing the Association a ten-day period in which to take measures to

eliminate the alleged breaches of law. The Court notes, firstly, that these ten-day periods appear to have been set arbitrarily. This problem stems from the fact that the NGO Act allowed the Ministry unlimited discretion in this respect (see paragraph 64 above). Secondly, there was no explanation in the warning letters as to what specific measures taken by the Association would be deemed as acceptable by the Ministry. Having regard to the nature of the Ministry's remarks, the Association was most likely expected to convene a new general assembly. However, under the domestic law, the process of convening a general assembly required at least two weeks (see paragraph 34 above). In such circumstances, it is difficult to see how the Association could be expected to eliminate the "breaches of law" within the ten-day period set by the Ministry. This raises a legitimate concern as to whether the Association was given a genuine chance to rectify its affairs before it had to face the sanction of dissolution.

78. As to the substance of the second and third warnings, it was noted, in generalised terms, that not all members of the Association had been properly informed of the general assembly of 26 August 2002, that the Association's local branches had not been equally represented at the assembly, and that the current membership records had not been properly maintained. The Court sees little justification for the Ministry of Justice to interfere with the internal workings of the Association to such an extent, especially in the absence of any complaints by Association members concerning these matters. For example, in so far as the question of representation of local branches is concerned, the domestic law did not appear to directly regulate this matter. The Court considers that it should be up to an association itself to determine the manner in which its branches or individual members are represented in its central governing bodies. Likewise, it should be primarily up to the association itself and its members, and not the public authorities, to ensure that formalities of this type are observed in the manner specified in the association's charter. The Court considers that, while the State may introduce certain minimum requirements as to the role and structure of associations' governing bodies (see paragraph 73 above), the authorities should not intervene in the internal organisational functioning of associations to such a far-reaching extent as to ensure observance by an association of every single formality provided by its own charter.

79. The Court further observes that, while the Ministry of Justice was vested with authority to initiate an action for the dissolution of the Association, it was for the domestic courts to decide whether it was justified to apply this sanction. They were therefore required to provide relevant and sufficient reasons for their decision (see paragraph 68 above). In the present case, that requirement first and foremost obliged the domestic courts to verify whether the allegations made against the Association by the Ministry of Justice were well-founded. This, however, has not been done in the

present case. It appears that the only evidence assessed by the courts were the submissions of the parties, correspondence between the Association and the Ministry of Justice, and the reports of the Ministry of Justice officials concerning the results of their inspection of the Association's activities. Having heard the parties, the courts relied on the findings of the officials of the Ministry of Justice and accepted them at their face value as constituting true facts, without an independent judicial inquiry. Specifically, there is no indication in the domestic judgments that the courts had ever attempted to evaluate the merit of the Ministry's factual findings by independently examining such evidence as the minutes of the general assembly of 26 August 2002, the Association's membership records, documents relating to the organisational structure of the Association's branches, and so on.

80. Having regard to the above, the Court considers that, while it is undisputed that for around seven years the Association was in breach of the legal requirement to regularly convene a general assembly of members, the authorities did not give due weight to its attempt to rectify the problem by convening a general assembly on 26 August 2002. As to the other alleged breaches committed by the Association ("unlawfulness" of the general assembly of 26 August 2002, deficiencies in membership records, among other things), neither the domestic authorities, nor the Government in their observations before the Court, have been able to prove with any sound evidence that these breaches did indeed take place and, if so, whether they constituted a compelling reason for the interference in question.

81. It therefore follows that, in respect of this ground for the interference (breaches by the Association of the domestic legal requirements on internal management), the reasons adduced by the national authorities to justify it were not relevant and sufficient. In such circumstances, the Court considers that the respondent State failed to demonstrate that the interference met a pressing social need.

82. Moreover, the interference did not, in any event, comply with the "proportionality" requirement. In this connection the Court considers that the nature and severity of the sanction imposed are factors to be taken into account when assessing the proportionality of the interference (see, *mutatis mutandis*, *Mahmudov and Agazade v. Azerbaijan*, no. 35877/04, § 48, 18 December 2008). In the present case, forced dissolution was the only sanction available under the domestic law in respect of public associations found to have breached the requirements of the NGO Act and, accordingly, this sanction could be applied indiscriminately without regard to the gravity of the breach in question. The Court considers that a mere failure to respect certain legal requirements on internal management of NGOs cannot be considered such serious misconduct as to warrant outright dissolution. Therefore, even if the Court were to assume that there were compelling reasons for the interference, it considers that the immediate and permanent dissolution of the Association constituted a drastic measure disproportionate

to the legitimate aim pursued. Greater flexibility in choosing a more proportionate sanction could be achieved by introducing into the domestic law less radical alternative sanctions, such as a fine or withdrawal of tax benefits (see paragraph 43 above for examples of alternative sanctions available in other member States of the Council of Europe).

83. In sum, the Court finds that the order to dissolve the Association on the ground of the alleged breaches of the domestic legal requirements on internal management of NGOs was not justified by compelling reasons and was disproportionate to the legitimate aim pursued.

(β) Engagement in “activities prohibited by law”

84. Under this ground for the Association’s dissolution, the Ministry of Justice and the domestic courts found that the Association had engaged in activities in which non-commercial organisations were prohibited to engage by law. In particular, the Association was accused of having attempted to collect money from State organs and commercial organisations in the guise of membership fees, conducted unlawful inspections at various organisations, and engaged in “other illegal acts interfering with the rights of entrepreneurs” (see paragraphs 18 and 24 above).

85. The Court observes at the outset that, while it appears that at least some of the above allegations, if proven, would entail criminal responsibility of the Association’s managers or members implicated in the alleged unlawful actions, no criminal proceedings have ever been instituted in connection with these allegations. This fact is, in itself, indicative of lack of sound evidence supporting the authorities’ findings.

86. The Court further notes that neither the third warning of the Ministry of Justice, in which the above allegations were made, nor the Ministry’s submissions to the domestic courts in connection with its request to dissolve the Association contained any specific evidence proving these allegations. Moreover, the allegations themselves were extremely vague, briefly worded and offered little insight into the details of the alleged illegal activities.

87. The domestic courts accepted the above allegations as true, without any independent judicial inquiry and without examining any direct evidence of the misconduct alleged. The Yasamal District Court had regard only to the content of the Ministry’s third warning letter, heard evidence from the head of the Ministry’s Department of State Registration of Legal Entities (who merely reiterated the content of the third warning letter), and examined an internal inspection report of a Ministry of Justice official, which mentioned, in very brief terms, that the Association’s branch in the Tovuz region engaged in some illegal activities (see paragraph 22 *in fine* above).

88. However, neither the submissions of the Ministry of Justice officials nor the Yasamal District Court’s judgment itself ever mentioned who specifically (that is, which person affiliated to the Association) had

attempted to unlawfully collect money in the guise of membership fees. It was never mentioned when exactly these attempts were made, and from which specific State organ or commercial organisation the money was unlawfully collected. No direct victims or other witnesses of this misconduct were examined in court, no written complaints were examined, and no other direct evidence was produced. Likewise, no evidence was produced or examined as to when exactly, by which directly responsible individuals, and in which specific organisations the alleged “unlawful inspections” had been carried out. Lastly, there was no explanation at all as to what was specifically meant by “other illegal acts interfering with the rights of entrepreneurs”.

89. Put simply, the fact of the Association’s alleged engagement “in activities prohibited by law” was unproven. In such circumstances, the domestic courts’ decision to dissolve the Association on this ground is, in the Court’s view, nothing short of arbitrary.

90. The Government have likewise failed to submit any explanation as to the specific details of the Association’s allegedly unlawful activities or any evidence of such unlawful activities.

91. In sum, the Court considers that no justification has been provided by the domestic authorities or the Government for the Association’s dissolution on this ground.

(γ) Conclusion

92. Having regard to the above analysis, the Court concludes that the interference was not “necessary in a democratic society”. There has accordingly been a violation of Article 11 of the Convention.

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

93. The applicants complained that the domestic courts’ findings were unsupported by sufficient evidence. Article 6 § 1 provides:

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

94. Having regard to the analysis in respect of a violation of Article 11 above, the Court considers that it is not necessary to examine separately essentially the same or similar arguments under Article 6 § 1 of the Convention (compare *Linkov v. the Czech Republic*, no. 10504/03, § 50, 7 December 2006, and *Tunceli Kültür ve Dayanışma Derneği v. Turkey*, no. 61353/00, § 37, 10 October 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicants claimed 100,000 euros (EUR) in respect of pecuniary damage, arguing that as a result of the Association’s dissolution it had been unable to receive grants and donations for several years.

97. The Government observed that the applicants had not submitted any documentary justification for this claim.

98. The Court notes that the amount claimed is hypothetical and constitutes nothing more than the applicants’ estimation unsupported by any evidence or convincing arguments. In such circumstances, the Court cannot speculate as to the amount of any contributions the Association might have received had it not been dissolved. The Court therefore rejects the claim in respect of pecuniary damage.

2. Non-pecuniary damage

99. The applicants claimed EUR 20,000 in compensation for non-pecuniary damage caused by the dissolution of the Association.

100. The Government considered that this amount was unjustified and argued that the finding of a violation would constitute sufficient reparation in respect of any non-pecuniary damage suffered.

101. The Court considers that the Association’s founders and members must have suffered non-pecuniary damage as a consequence of the Association’s dissolution, which cannot be compensated solely by the finding of a violation. Ruling on an equitable basis, the Court awards the Association the sum of EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. This sum is to be paid to Mr Sabir Israfilov, who will be responsible for making it available to the Association.

B. Costs and expenses

102. The applicants claimed EUR 2,050 for legal fees incurred in the domestic proceedings, EUR 2,315 for legal fees incurred in the proceedings before the Court and EUR 750 for translation costs. In support of these claims, they submitted two contracts for legal services provided by

Mr Intigam Aliyev, and a contract for translation services. All of the contracts stipulated that the amounts due were to be paid in the event that the Court found a violation of the applicants' rights.

103. The Government argued that the claims were unsubstantiated because the amounts claimed had not been paid by the applicants and therefore were not actually incurred.

104. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see *The Sunday Times v. the United Kingdom (no. 1)* (Article 50), 6 November 1980, § 23, Series A no. 38).

105. The Court notes that, in support of the part of the claim corresponding to legal fees incurred in the domestic proceedings, the applicants submitted a contract purporting to show that Mr Aliyev either provided legal advice or represented the Association in the domestic proceedings. However, having regard to the materials in the case file (including the domestic courts' decisions and the Association's appeals), the Court observes that in the courts of general jurisdiction the Association was represented neither by Mr Aliyev, nor by any other lawyer. Therefore, there is no basis to accept this part of the claim. Mr Aliyev represented the Association only in its subsequent unsuccessful attempt to have the case reviewed by the Constitutional Court. However, taking into account that the latter was not a remedy which the applicants were required to exhaust (see, for example, *Ismayilov v. Azerbaijan*, no. 4439/04, §§ 39-40, 17 January 2008), the Court considers that the expenses related to lodging the constitutional complaint were not "necessarily incurred". For these reasons, the Court rejects the applicants' claim in the part relating to legal fees incurred in the domestic proceedings.

106. As to the legal fees incurred in the Convention proceedings, the Court notes that, in the contract for legal services signed with Mr Aliyev, the work to be done by the lawyer was broken down into separate stages and the total amount of fees was broken down accordingly for each stage. Among others, the contract stipulated specific amounts to be paid for the lawyer's work in connection with "submissions on friendly settlement", "assistance in friendly settlement negotiations" and "participation in oral hearings". As there have been no formal friendly settlement proposals or oral hearings in the present case, the part of the total amount covering this portion of the claimed legal fees must be rejected. As for the remainder of the claim, the Court notes that, although the applicants have not yet actually paid the legal fees, they are bound to pay them pursuant to a contractual obligation to Mr Aliyev. Accordingly, in so far as Mr Aliyev is entitled to seek payment of his fees under the contract, the legal fees were "actually incurred".

107. Likewise, the applicants are under a contractual obligation to pay for the translation expenses. However, taking into account the total amount of documents actually translated in the present case, the Court considers that the claim in respect of the translation expenses is excessive and therefore only a partial award can be made under this head.

108. Having regard to the above reasons, the Court awards the applicants a global sum of EUR 2,000 in respect of costs and expenses, less the sum of EUR 850 received in legal aid from the Council of Europe, plus any tax that may be chargeable to the applicants on that sum.

C. Default interest

109. 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. *Holds* that there has been a violation of Article 11 of the Convention;
2. *Holds* that there is no need to examine separately the complaint under Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 new Azerbaijani manats at the rate applicable at the date of settlement:
 - (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), less EUR 850 (eight hundred and fifty euros) granted by way of legal aid, plus any tax that may be chargeable to the applicants, 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President