



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

FIFTH SECTION

CASE OF FARIZ AHMADOV v. AZERBAIJAN

(Application no. 40321/07)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • Handwritten waiver of the right to legal assistance, in the absence of lawyer and in breach of domestic procedural requirement, not incompatible in the circumstances • Knowing and voluntary waiver, with conviction based on a whole body of consistent evidence

STRASBOURG

14 January 2021

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 Fariz Ahmadov v. Azerbaijan,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Latif Hüseyinov,
Lado Chanturia,
Mattias Guyomar, *judges*,

and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the application against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Azerbaijani national, Mr Fariz Alam oglu Ahmadov (*Fariz Aləm oğlu Əhmədov* - “the applicant”), on 21 August 2007;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaint concerning Article 6 of the Convention;

the information about the applicant’s death on 13 October 2015 and the wish of his mother, Ms Gulbahar Ahmadova, to continue the proceedings before the Court in his stead;

the parties’ observations;

Having deliberated in private on 1 December 2020,

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

INTRODUCTION

1. The application concerns the alleged unfairness of the criminal proceedings against the applicant for the illegal sale of drugs. In particular, relying on Article 6 of the Convention, the applicant alleged that the domestic courts had based his conviction on inadmissible evidence.

THE FACTS

2. The applicant, Mr Fariz Ahmadov, was an Azerbaijani national who was born in 1971 and at the time of the events in question lived in Mingachevir. He was represented before the Court by Mr I. Aliyev, a lawyer based in Azerbaijan.

3. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Əsgərov.

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

5. The applicant was working as a waiter at a tearoom in Mingachevir.

6. On 7 March 2005 R.S. was arrested by the police in Mingachevir. At the police station 0.24 grams of marijuana were found on him. He told the police that he had obtained the marijuana from A.S.

7. On the same day, A.S. was arrested in connection with the above allegation and stated that he had bought the drugs from the applicant.

8. On 8 March 2005 the criminalistics laboratory of the Ministry of Internal Affairs issued an investigation note (*təhqiqat arayışı*) stating that the substance, which had been taken from R.S. during the search and submitted for testing, contained marijuana.

9. The applicant was arrested on 8 March 2005 at approximately 8 p.m. According to the arrest record compiled by the chief investigation officer of the Mingachevir City Police Office (“the city police”), the applicant was apprised of his rights, including the right to have a lawyer of his own choosing or provided by the State, to remain silent, and to refrain from making self-incriminatory statements. The applicant stated in a hand-written declaration that he waived his right to be legally assisted and that he chose to defend himself.

10. On 10 March 2005 the applicant was charged under Article 234.2 of the Criminal Code (the illegal preparation, possession, purchase and transportation of drugs with intent to sell drugs, or the illegal sale of drugs). On the same day, the Mingachevir City Court ordered the applicant’s pre-trial detention for a period of two months.

11. On 10 March 2005 the applicant was questioned by an investigation officer of the city police. Before being questioned he was apprised of his rights, including the right to be represented and not to incriminate himself. The applicant signed a handwritten document in which he acknowledged that the pertinent legal provisions of the Code of Criminal Procedure had been explained to him, that he waived his right to be assisted by a lawyer, and that he chose to defend himself personally. A report describing in detail the procedural rights of accused persons was compiled by the investigation officer and signed by him, the applicant and a State-funded lawyer appointed by the investigation officer.

12. During the questioning that followed immediately thereafter, which was conducted without the presence of a lawyer, the applicant stated that on 7 March 2005 A.S. had approached him at the tearoom where he had worked and asked him to help to purchase marijuana. He had refused to do so, but a few minutes later he had noticed some animal manure lying on the floor of the backroom and had put it into a cigarette, which he had then given to A.S. without receiving in return any money from the latter.

13. According to the record of the applicant’s questioning on 10 March 2005, he had been previously convicted in 1994 for hooliganism and in 1997 for selling drugs.

14. On 10 March 2005 a face-to-face confrontation was held between the applicant and A.S. According to the record of the confrontation, A.S. stated

that on 7 March 2005 at the tearoom he had given the applicant 10,000 Azerbaijani manats (AZM – approximately 1.5 euros (EUR) at the time) and, in exchange, he had obtained from him a cigarette filled with marijuana. The applicant challenged A.S.'s submissions, stating that A.S. had come to the tearoom that day with R.S., and that A.S. had asked him for some drugs. However, he had informed A.S. that he did not have any drugs for sale. The applicant also stated that he had given A.S. some manure in a cigarette but that he had not received AZM 10,000 for that. The confrontation was held in the absence of a lawyer, as the applicant had already waived his right to a lawyer and had chosen to defend himself.

15. On 22 March 2005 the investigation officer commissioned an expert's report, which confirmed that the substance that had been taken from R.S. during the search and submitted for testing contained marijuana.

16. On 5 April 2005 the applicant appointed a lawyer of his own choosing.

17. The applicant's detention was subsequently twice extended by decisions delivered by the Mingachevir City Court on 4 May and 1 July 2005.

18. On 18 May 2005 the applicant's lawyer lodged an application with the Mingachevir city prosecutor's office ("the prosecutor's office") asking for an investigation into the applicant's allegation that he had been deprived of the right to legal assistance by signing a waiver in the absence of any lawyer.

19. On 5 August 2005 a new face-to-face confrontation was held between the applicant and A.S. According to the record of the confrontation, A.S. stated that he had received from the applicant merely some manure in a cigarette, for which he had not paid him AZM 10,000. The applicant confirmed A.S.'s assertion, reiterating that he had not given him any drugs. That confrontation was held in the presence of the applicant's lawyer.

20. According to the record of a separate testimony given by A.S. on the same day to the investigation officer of the city police, without the presence of the applicant and his lawyer, A.S. affirmed that he had bought a cigarette filled with marijuana – not manure – from the applicant. When asked why he had made a different statement during the confrontation, A.S. replied that he had been afraid of the applicant causing him bodily harm.

21. In the meantime, by means of a blood test conducted on 4 June 2005 it was established that the applicant did not use drugs habitually.

22. On an unspecified date a bill of indictment against the applicant was sent to the Mingachevir City Court.

23. On 22 September 2005 the applicant's lawyer lodged an application with the Mingachevir City Court seeking the discontinuation of the criminal proceedings against the applicant and the remittal of the criminal case to the prosecutor's office for fresh investigation. He alleged, *inter alia*, that a State-funded lawyer had not been present when the applicant had signed a waiver of his right to legal assistance before the holding of the face-to-face confrontation between the applicant and A.S. 10 March 2005; rather, the

applicant's lawyer had in fact countersigned the relevant report (see paragraphs 11 and 14 above) on a later occasion.

24. The applicant's lawyer lodged an objection with the appellate court against the judges of the Mingachevir City Court; on 7 October 2005 the appellate court decided to remit the case to the Goranboy District Court.

25. At a preliminary hearing held on 29 November 2005 the Goranboy District Court discontinued the criminal proceedings against the applicant and remitted the criminal case to the prosecutor's office for fresh investigation. Having considered the fact that the applicant's handwritten waiver of the right to legal assistance had been signed only by him and the evidence submitted by the applicant's lawyer – namely, a different copy of the report compiled by the investigator on 10 March 2005 not bearing the signature of the State-funded lawyer – the court found that, in the circumstances, it had not been established beyond reasonable doubt that the investigating authority had duly respected the applicant's right to legal assistance. The court also held that the applicant should remain in detention, pending the renewed investigation.

26. On 28 December 2005 A.S. was again questioned by the investigation officer of the city police in the presence of his lawyer. He reiterated his previous assertion that he had bought a cigarette filled with marijuana from the applicant in exchange for payment of AZM 10,000, and had then passed it on to R.S. The applicant and his lawyer were not present.

27. On 29 December 2005 a bill of indictment against the applicant was sent to the Goranboy District Court. The applicant argued before that court that the criminal case against him had been fabricated and that he had not sold any drugs to A.S.

28. In the meantime, A.S. died. The trial court therefore read out one of his pre-trial statements (without indicating which one), which affirmed that on 7 March 2005 he had bought from the applicant a cigarette filled with drugs, in order to pass it on to R.S.

29. In turn, R.S. stated before the court that when they had been at the tearoom he had given AZM 10,000 to A.S. in order for him to buy some drugs. A.S. had then approached the applicant and had handed over the money to the latter in exchange for one cigarette filled with drugs, which A.S. had then passed to R.S.

30. On 30 May 2006 the Goranboy District Court found the applicant guilty under Article 234.2 of the Criminal Code and sentenced him to three and a half years' imprisonment.

31. The finding of guilt was based, *inter alia*, on the following evidence:

- (i) a written statement by A.S. (the date of which was unspecified) read out in the courtroom and the oral testimony given by R.S. during the trial;
- (ii) the record of the face-to-face confrontation between the applicant and A.S. held on 10 March 2005, according to which A.S. had stated that on 7 March 2005 he had obtained from the applicant a

- cigarette filled with drugs in exchange for AZM 10,000 (see paragraph 14 above);
- (iii) the written record of the statement that A.S. had made during the face-to-face confrontation between him and the applicant held on 5 August 2005 in the presence of the applicant's lawyer, when A.S. had confirmed that the applicant had given him a cigarette filled with manure, which he had then passed on to R.S. (see paragraph 19 above);
- (iv) a record of a crime-scene reconstruction conducted on 20 April 2005 in the presence of attesting witnesses but in the absence of the applicant, at which R.S. had (a) affirmed that it had been the applicant who had taken his money from A.S. and had given to A.S. the drugs later discovered on him (that is to say discovered on R.S.), and (b) shown investigators the exact location within the tea house where the transaction had taken place;
- (v) the expert's report dated 22 March 2005 (see paragraph 15 above);
- (vi) oral testimony given during the trial by several other witnesses – namely police officers and attesting witnesses.

32. The applicant appealed against the trial court's judgment, challenging, *inter alia*, the admissibility of the evidence. In particular, he complained that the trial court had unlawfully relied on the confrontation of 10 March 2005, which had been held in violation of his right to be properly legally assisted, as A.S. had changed his previous submissions during the subsequent confrontation of 5 August 2005. He also submitted that at the hearing R.S. had stated that he had not seen from whom A.S. had bought the drugs.

33. On 25 August 2006 the Court of Appeal dismissed the applicant's appeal, holding that the first-instance court's judgment had been lawful and substantiated. The Court of Appeal did not examine the applicant's specific complaints.

34. On 20 September 2006 the applicant lodged a cassation appeal, essentially reiterating his previous complaints. The applicant added that the trial court's reliance on the confrontation of 10 March 2005 had been unlawful, because that evidence should have been considered as inadmissible following the decision of the Goranboy District Court of 29 November 2005 (see paragraph 25 above).

35. On 19 December 2006 the Supreme Court upheld the Court of Appeal's judgment. The Supreme Court found that although the applicant had alleged that his and A.S.'s pre-trial statements had been obtained against their will and under pressure from the police, neither of them had lodged a similar complaint during the investigation. Therefore, the evidence collected during the investigation could not be considered as unlawfully obtained; consequently, the applicant's allegation was rejected as inadmissible.

36. The applicant died on 13 October 2015.

RELEVANT LEGAL FRAMEWORK

37. The relevant provisions of the Code of Criminal Procedure (“the CCrP”) read as follows:

Article 19. Right to have legal assistance and to defend himself

“...

19.4. The authority conducting criminal proceedings shall ensure that the suspect or the accused has been provided with the following rights in the circumstances and in the manner defined by this Code:

19.4.1. [An arrested person shall have the right to] defend himself with the assistance of a lawyer from the moment of his arrest or detention, or – in the case of a suspect – prior to his first round of questioning or – in the case of an accused person – [from the moment that he is] officially charged;

...”

Article 92. Defence lawyer

“... 92.12. Any waiver signed by a suspect or accused person of his right to [appoint] defence counsel shall be recorded. An inquirer [*təhqiqatçı* – an officer involved in the pre-investigation inquiry], an investigator, a prosecutor or a court shall accept [such a] waiver of the right to defence counsel only if the suspect or accused person voluntarily submits the waiver in the presence of defence counsel or a lawyer who is to be appointed as defence counsel ...”

Article 125. Admissibility of evidence

“...

125.2. Information, documents and other items shall not be admitted as evidence in a criminal case under the following circumstances:

125.2.1. in the event that a violation of the individual and civil constitutional rights and freedoms or of other requirements of this Code may impair or deprive the parties to criminal proceedings of their rights guaranteed by law, or if the limitation thereof renders the evidence untrustworthy or in some way casts doubt upon its reliability;

125.2.3. if they have been obtained in violation of the defence rights of the suspect or the accused person ...;

...”

Article 299. Preliminary hearing

“...

299.4. The following matters shall be decided on at the preliminary hearing:

...

299.4.3. the exclusion of inadmissible evidence from the trial;

...”

THE LAW

I. PRELIMINARY ISSUE

38. The Court notes at the outset that the applicant died after lodging the application and that his mother has expressed her wish to continue the proceedings before the Court. It has not been disputed that the applicant's mother is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise. However, for reasons of convenience, the text of this judgment will continue to refer to Mr Fariz Ahmadov as "the applicant", even though his mother is today to be regarded as having the status of applicant before the Court (see *Isayeva v. Azerbaijan*, no. 36229/11, § 62, 25 June 2015, and *Aslanov v. Azerbaijan* [Committee], no. 35402/07, § 42, 15 November 2018).

II. ALLEGED UNFAIRNESS OF THE PROCEEDINGS, IN VIOLATION OF ARTICLE 6 OF THE CONVENTION

39. The applicant complained that the criminal proceedings against him had been unfair, since the domestic courts had unlawfully based his conviction on the face-to-face confrontation of 10 March 2005 between him and A.S., which had been held in the absence of a defence lawyer. He relied on Article 6 of the Convention. The Court considers that it is appropriate to examine the applicant's complaint under Article 6 §§ 1 and 3 (c) of the Convention, the relevant part of which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

A. Admissibility

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

B. Merits

1. The parties' submissions

41. The applicant submitted that the only evidence that had been used against him had been collected at the preliminary-investigation stage, during the face-to-face confrontation between him and A.S. held on 10 March 2005. The domestic courts had accepted that that confrontation had been conducted in a manner that had been in violation of his defence rights in that he had not been assisted by a lawyer. Although it was true that he had signed a waiver of his right to be assisted by a lawyer, that waiver had been signed without the presence of a lawyer, even though that was a requirement under the relevant rules on criminal procedure. Therefore, any subsequent decision convicting him on the basis of that impugned evidence had to be considered as unlawful.

42. Moreover, in a further face-to-face confrontation between him and A.S. held on 5 August 2005 in the presence of his lawyer, A.S. had stated that he had merely obtained from him some manure contained in a cigarette, for which he had not paid him any money. Nevertheless, the domestic courts had ignored that evidence and had failed to assess it.

43. The Government conceded that the applicant had not been provided with legal assistance from the moment of his arrest; however, they submitted that that deficiency had been remedied by the trial court's order of 29 November 2005 that the criminal proceedings against the applicant be discontinued and that the criminal case be remitted for fresh investigation. On 5 April 2005 the applicant had been provided with a lawyer of his own choosing, who had then participated in all the investigative procedures conducted in respect of the applicant – including the face-to-face confrontation with A.S. held on 5 August 2005.

44. The Government argued that the applicant's conviction had been based on corroborating evidence. A.S. had given consistent testimony, stating that on 7 March 2005 he had paid the applicant AZM 10,000 and that in exchange he had obtained marijuana from him. A.S. had first volunteered that information during his face-to-face confrontation with the applicant on 10 March 2005, and had confirmed it when he had been questioned on 2 June 2005. Although during the second confrontation held on 5 August 2005 A.S. had retracted his previous testimony, at the separate questioning held on the same date he had repeated his previous statements and had said that he had changed his statement during the confrontation because he had been afraid of the applicant causing him bodily harm. Lastly, A.S. had again repeated his incriminating statement on 26 December 2005 during the new investigation ordered by the trial court on 29 November 2005.

45. The Government furthermore argued that A.S.'s pre-trial statements had been corroborated by R.S.'s testimony. At the hearing R.S. had stated that he had clearly seen the applicant receiving money from A.S. and giving

him in return a cigarette filled with drugs, which A.S. had then passed on to him.

46. The Government also submitted that the applicant's statements had been inconsistent. During the pre-trial stage he had insisted that he had given A.S. a cigarette filled with manure, whereas at the trial he had stated that he had not given anything to A.S. and that his previous statements about giving him manure had been made with a view to deceive.

47. In support of their submission, the Government provided copies of the reports of A.S.'s questioning dated 2 June, 5 August and 26 December 2005, and the transcript of the trial court's hearing held on 23 May 2006.

2. The Court's assessment

48. In the present case the applicant complained that the domestic courts had unlawfully admitted evidence obtained in a confrontation held at the pre-trial stage without his being assisted by a lawyer, and had based his conviction on that evidence. Both in his complaints to the domestic authorities and to the Court he acknowledged that in the course of the first questioning he had signed a waiver of his right to be assisted by a lawyer, but insisted that he had done so without the presence of a lawyer.

49. While the signature of a State-funded lawyer appointed by the investigator for the applicant figured on one of the available copies of the report of the applicant's questioning on 10 March 2005, the Court takes note of the Goranboy District Court's decision delivered on 29 November 2005 in response to the applicant's complaint concerning the circumstances in which the face-to-face confrontation of 10 March 2005 had been conducted and acknowledging that there existed another copy of the same report which did not bear such a signature and finding that the applicant's right to legal assistance, as protected under domestic law, had not been respected on that latter date (see paragraphs 11, 23 and 25 above). The Court furthermore notes that the Government in their submission also accepted that the applicant had not been provided with legal assistance from the moment of his arrest (see paragraph 43 above). The Court will therefore proceed to examine the applicant's complaint on the basis of the understanding that the confrontation of 10 March 2005 between the applicant and A.S. had been held without legal counsel defending the applicant, after he had signed, earlier on the same day and in the absence of a lawyer, a waiver of his right to counsel.

50. In that regard the Court observes that under Article 92.12 of the CCrP, for a waiver of the right to legal representation to be valid, that waiver must have been submitted in the presence of defence counsel (see Article 92.12 of the CCrP in paragraph 37 above).

51. According to the Court's settled case-law, the right to be assisted by a lawyer applies throughout and until the end of the questioning by the police – including when the statements taken are read out and the suspect is asked to confirm and sign them, as the assistance of a lawyer is equally important at

this point of the interview. The lawyer's presence and active assistance during questioning by police is an important procedural safeguard aimed at, among other things, preventing the collection of evidence through methods of coercion or oppression in defiance of the will of the suspect, and at protecting the freedom of a suspected person to choose whether to speak or to remain silent when questioned by the police (see *Akdağ v. Turkey*, no. 75460/10, § 45, 17 September 2019). The right to a lawyer also applies in the context of a confrontation between the accused and a third party, for example a witness or a co-accused (see *Beuze v. Belgium* [GC], no. 71409/10, § 135 (b), 9 November 2018).

52. The Court further reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving, of his own free will – either expressly or tacitly – the entitlement to the guarantees of a fair trial. That also applies to the right to legal assistance. However, if it is to be effective for Convention purposes, such a waiver must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. Such a waiver need not be explicit, but it must be voluntary and constitute a knowing and intelligent relinquishment of a right. Before an accused can be said to have implicitly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be. Moreover, the waiver must not run counter to any important public interest. It follows that a waiver of the right to a lawyer – a fundamental right among those listed in Article 6 § 3, which together constitute the notion of a fair trial – must be strictly compliant with the above requirements (see, as regards waiver, *Simeonovi v. Bulgaria* [GC], no. 21980/04, §§ 115 and 122-28, ECHR 2017 (extracts), with further references, and, as regards the general approach to fairness of criminal proceedings, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, §§ 249-74, ECHR 2016).

53. The Court has held that compliance with the requirements of a fair trial must be examined in each case, having regard to the development of the proceedings as a whole, and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be excluded that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Ibrahim and Others*, cited above, § 251). Those considerations also hold true for the validity of a waiver of the entitlement to the guarantees of a fair trial, as what constitutes a valid waiver cannot be the subject of a single unvarying fact but must depend on the individual circumstances of the particular case (see, *mutatis mutandis*, *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 117-18, 18 December 2018).

54. Turning to the circumstances of the present case, the Court first observes that the applicant's waiver was set out by him in handwriting and that he never disputed the fact that he wrote it. The Court also notes that

throughout the pre-trial investigation the applicant did not complain or claim in any other way that the waiver and his statements had been obtained against his will and under pressure from the police. Furthermore, he did not allege that he had been induced to waive his right to counsel. Likewise, he did not make any such complaints or allegations to the Court. Nor did the applicant ever argue – either in the proceedings before the domestic courts or in his application to the Court – that he had not understood the meaning of the waiver of his right to be assisted by a lawyer. On this latter point the Court observes that the applicant had two previous convictions and that, therefore, is unlikely to have been unaware of the benefits of being defended by a lawyer.

55. The Court, therefore, considers that the fact that the relevant domestic law provided that a lawyer must be present at the time when a waiver is made and that, apparently, this procedural requirement was not observed in the applicant's case, cannot be said, on its own, to have rendered the waiver incompatible with the right to a fair trial under Article 6 of the Convention. Having regard to the findings of the preceding paragraph, the Court concludes that the applicant in the present case waived his right to be legally assisted in a knowing manner and voluntarily.

56. As regards the applicant's complaint that the domestic courts had unlawfully admitted evidence obtained not in compliance with the requirements of the domestic law and had based his conviction on that evidence (see paragraph 48 above), the Court reiterates that while its duty, according to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, it is not the function of this Court to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed the rights and freedoms protected by the Convention (see, among many other authorities, *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, § 45, and *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 160, ECHR 2015).

57. The Court further reiterates that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules regarding the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Bykov v. Russia* [GC], no. 4378/02, §§ 88-93, 10 March 2009, and *Gäfgen v. Germany* [GC], no. 22978/05, §§ 162-65, ECHR 2010). It is not, therefore, the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question that must be answered is whether the proceedings as a whole – including the way in which the evidence was obtained – were fair (see *Gäfgen*, cited above, and *Belugin v. Russia*, no. 2991/06, § 67, 26 November 2019).

58. In the circumstances of the present case, the violation of the procedural requirement providing for presence of a lawyer at the time when

a waiver had been made before the confrontation of 10 March 2005 cannot be considered as having had the effect of seriously prejudicing the overall fairness of the criminal proceedings against the applicant. There is no indication or allegation – either during the domestic proceedings or in his application to the Court – that in the absence of a lawyer the applicant had made self-incriminating statements that he would later retract or change. On the contrary, he consistently denied all the charges against him and advanced his version of events, as he also did during the subsequent proceedings (compare *Trymbach v. Ukraine*, no. 44385/02, § 64, 12 January 2012 and *Zinchenko v. Ukraine*, no. 63763/11, § 89, 13 March 2014). While it is true that the privilege against self incrimination is not confined to actual confessions or to remarks which are directly incriminating and that for statements to be regarded as self-incriminating it is sufficient for them to have substantially affected the accused's position (see *Beuze*, cited above, § 178), in the present case, both during the domestic appeal proceedings and in his application to the Court, the applicant's grievance was limited to the assertion that the evidence obtained in the confrontation held on 10 March 2005 had been admitted in violation of domestic law (see paragraphs 32, 34 and 39 above), without advancing any arguments to indicate the existence of any specific prejudice caused by the lack of a lawyer's involvement in that particular confrontation.

59. The Court also notes that the applicant actively participated at all stages in the criminal proceedings: notably, he challenged before the prosecutor's office the actions of the investigator; he complained of the partiality of the initial trial court; following an application lodged by his lawyer, the criminal proceedings against him were discontinued and the criminal case was remitted to the prosecutor's office for fresh investigation; he was able to present his own version of events; and his defence lawyer contested the evidence against him (see paragraphs 18, 23-25 and 27 above).

60. Furthermore, contrary to the applicant's submissions, his conviction was not based exclusively on the statement given by A.S. on 10 March 2005 but on a whole body of consistent evidence. The Court observes that the national courts, in convicting the applicant, noted that throughout the entire proceedings the applicant had consistently stated that A.S. had attempted to purchase marijuana from him in order to pass it on to a third person and that he had given a cigarette to A.S. (see paragraphs 12 and 14 above). Moreover, there was no dispute that the same cigarette had been passed to R.S. Whereas the applicant claimed that the cigarette had been filled with manure, the national courts – on the basis of the oral testimony given by R.S. (see paragraph 29 above) and corroborated by A.S. (see paragraphs 14, 19, 26 and 30 above), and the results of forensic expert examinations of the substance contained in that cigarette (see paragraphs 8 and 15 above) – concluded that it had been filled with marijuana and that the applicant's actions constituted a criminal offence punishable under the relevant article of the Criminal Code.

61. The higher courts did not find any prejudice caused by the lack of a lawyer's involvement in the confrontation of 10 March 2005, either. In particular, in its decision endorsing the findings of the lower courts, the Supreme Court held that the statements made by the applicant and A.S. during the pre-trial stage could not be considered as having been unlawfully obtained because throughout the investigation neither of them had raised any complaint that they had been forced to make their statements (see paragraph 35 above).

62. In sum, having examined the proceedings as a whole, the Court sees no grounds for finding that they were unfair and that the decisions of the national courts were arbitrary or otherwise contrary to Article 6 of the Convention.

63. In the light of the above considerations, the Court concludes that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

III. REMAINING COMPLAINTS

A. Alleged violations of Article 6 in respect of the presumption of the applicant's innocence and the length of the proceedings

64. The applicant furthermore complained that the "reasonable time" requirement had not been respected by the domestic authorities and that his right to be presumed innocent had been violated.

65. The Court notes that the applicant failed to substantiate these allegations. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

66. Accordingly, this part of the application is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 5 of the Convention

67. The applicant also complained that his pre-trial detention had been unlawful.

68. The Court points out that the date of the "final decision" for the purposes of Article 35 § 1 of the Convention in connection with a period of pre-trial detention is to be taken as the date on which the charge is determined by a court at first instance, not the date on which a conviction becomes effective (see *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 61, 12 November 2015).

69. In the present case, the applicant was convicted on 30 May 2006 (see paragraph 30 above) and the six-month time-limit concerning his Article 5

complaint started running on that date. Given the fact that the application was lodged with the Court on 21 August 2007, this complaint was submitted out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds* that the applicant's mother has standing to continue the present proceedings in the applicant's stead;
2. *Declares* the complaint under Article 6 §§ 1 and 3 (c) of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

Done in English, and notified in writing on 14 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President