CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 5117/03
by Farida KUNQUROVA
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 23 June 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs S. BOTOUCHAROVA,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 16 July 2002,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Farida Mehmanovna Kunqurova, is an Azerbaijani national who was born in 1974 and lives in Baku. She is represented before the Court by Mr E. Osmanov, a lawyer practising in Baku.

A. The circumstances of the case

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

1. Institution of criminal proceedings

The applicant's father is of Azeri ethnic origin, while her deceased mother was Jewish. The applicant lived with her stepmother (of Armenian ethnic origin) and daughter.

On 6 March 2001 the applicant's stepmother and her neighbour, Z.A., got involved in a brawl resulting from a minor conflict. The applicant intervened on her stepmother's side and engaged in a fight with Z.A. This fight resulted in light bodily injuries to both parties. According to the applicant, she did not use any type of weapon during the fight.

On 16 March 2001 Z.A. filed a complaint with the police of the assault by the applicant and also alleged that, a few minutes after the fight, the applicant returned with a knife and threatened to kill her. The investigatory authorities indicted the applicant with "intentional infliction of physical injuries" under Article 132 of the Criminal Code. Following an indictment hearing, on 26 July 2001 the Sabail District Court suspended the proceedings under Article 132 of the Criminal Code, and ordered additional investigation of the facts. The purpose of the additional investigation was to disclose whether the applicant used a knife during the fight, which would be a basis for charging the applicant with an offence more serious than that under Article 132 of the Criminal Code.

While the additional investigation was pending, the case was removed to the Nasimi District Court upon Z.A.'s petition. On 20 December 2001, the Nasimi District Court reviewed the investigation materials and, once again, suspended the proceedings under Article 132 of the Criminal Code and ordered additional investigation of the facts.

2. Administrative proceedings

In early 2002, the applicant participated in a number of public political demonstrations together with members of the Democratic Party of Azerbaijan.

On 24 April 2002, at about 11:00 a.m., several police officers came to the applicant's apartment and "invited" her to follow them to a police station for a "conversation." The applicant resisted and the police officers took her to the police station by force. At the station, they issued a "protocol on administrative offence" (*inzibati xəta barədə protokol*), accusing the applicant of the contempt of their lawful order to follow them to the police office for interrogation concerning a complaint filed against her by a neighbour. According to the applicant, this accusation was false. On the same day, the applicant was brought before a judge of the Sabail District

Court, who sentenced the applicant to an immediate ten-day "administrative detention" for contempt of the police under Article 310.1 of the Code on Administrative Offences (*İnzibati Xətalar Məcəlləsi*). She was found guilty of resisting the "lawful orders" of the police and making disrespectful statements about the Azerbaijani law and law-enforcement authorities.

While the applicant was serving her administrative sentence, her lawyer filed an appeal against the Sabail District Court's decision of 24 April 2002. He argued that the police officers had abused their authority by taking the applicant to the police office by force and issuing a fabricated accusatory statement against her. There was no lawful ground for convicting the applicant for contempt of the police, because the police officers had entered the applicant's apartment without any arrest warrant, or summons to attend the police office, and arrested her without any lawful reason. On 2 May 2002, the Court of Appeal upheld the Sabail District Court's decision, without replying to the applicant's arguments. In accordance with the domestic law on administrative procedure, no appeal lied against the Court of Appeal's decision concerning an administrative offence.

3. Detention on remand and conviction

In connection with the criminal proceedings concerning the applicant's fight with Z.A., on 25 April 2002 the investigator of the Sabail District Police Office issued an indictment act, accusing the applicant of having committed a crime of "hooliganism" under Articles 221.1 and 221.3 of the Criminal Code. The indictment act was announced to the applicant on the same day. However, she refused to sign it.

On the same day, the Head of the Sabail District Police Office mentioned in an interview to a journalist that the applicant was under administrative detention and that criminal proceedings were pending against her under the charge of committing an act of hooliganism against her neighbour.

Based on the indictment act of 25 April 2002, on 26 April 2002 the Sabail District Court issued an order on the applicant's detention on remand pending trial. On 1 May 2002 the applicant and her lawyer were invited to examine the case file in the presence of an interpreter.

Upon the expiry of the applicant's ten-day "administrative detention" on 3 May 2002, she was transferred to the Baku City Detention Centre No. 1 where she was detained on remand pursuant to the detention order of 26 April 2002 until the criminal trial in the Nasimi District Court concerning her fight with Z.A.

On 17 July 2002 the Nasimi District Court delivered its judgment concerning the applicant's case. The court found the applicant guilty of "hooliganism with the use of weapons" under Article 221.3 of the Criminal Code and sentenced her to three years of imprisonment in a penitentiary institution of general regime.

At the hearings preceding the judgment, the court heard testimonies of several witnesses, mostly the applicant's neighbours, who testified that they had seen the applicant beat Z.A. and use a knife threatening to kill her. The applicant refused to testify. The court allegedly refused to hear the witnesses who were going to testify in the applicant's favour. In addition, the court did not examine as material evidence the knife allegedly used by the applicant.

Upon the applicant's appeal, on 12 September 2002 the Court of Appeal upheld the district court's judgment. On 22 July 2003 the Supreme Court upheld the lower courts' judgments.

4. The applicant's treatment in prison

On 26 June 2002, when the applicant was being held in the Detention Centre No. 1, she was allegedly beaten by prison officers, which caused bruising of various parts of her body.

After the conviction, on 19 September 2002 the applicant was transferred to serve her sentence in a general-regime prison for female convicts. According to the applicant, shortly after her arrival, she was beaten several times by the prison officers. On one occasion, she was allegedly beaten while handcuffed. After one of the beatings she was placed in a single cell for inmates subjected to disciplinary penalties.

Neither the applicant nor her lawyer requested an official medical examination after the alleged acts of ill-treatment by the prison officers. However, the applicant wrote a complaint letter to the Ministry of Justice's Chief Directorate for Execution of Court Judgments (hereinafter “CDECJ”), which was responsible for supervision of the penitentiary system. Representatives of CDECJ carried out an internal investigation into the applicant's complaints of ill-treatment. Having interrogated the prison officers concerned as well as a number of the applicant's fellow prison convicts, on 11 November 2002 CDECJ issued a report in which it found that the applicant's allegations had been false, because there was no evidence proving that she had been beaten by prison officers. Relying on the witness testimonies, CDECJ noted that the applicant herself repeatedly violated the disciplinary rules and often acted in a rude manner towards prison officers and other convicts. CDECJ also found that the incident involving the applicant's handcuffing had indeed taken place, but that the applicant had been handcuffed lawfully in accordance with Article 78.2 of the Code on Execution of Punishments (*Cəzaların İcrası Məcəlləsi*), due to her undisciplined behaviour and violation of the internal order of the prison.

In November 2002, the prison director requested the Khatai District Court to transfer the applicant from the female prison to a high security prison because of the applicant's alleged bad behaviour, regular violation of internal disciplinary rules, and insulting actions towards prison officers. According to the applicant, these accusations were fabricated. On 11 November 2002 the Khatai District Court satisfied this request and

ordered applicant's transfer to the Gobustan High Security Prison for a period of three months. The Gobustan Prison generally hosts prisoners serving life sentence for grave crimes. In addition, according to the applicant, she was the only female prisoner ever held there.

On 10 May 2004 the President issued a pardon decree releasing the applicant from serving the remainder of her prison sentence. She was released from the prison on the same day.

B. Relevant domestic law

1. Legislation on execution of punishments

The Code on Execution of Punishments prohibits inhuman and degrading treatment of prisoners. Any compulsory disciplinary measures may be used by the prison administration only in cases prescribed by law (Article 10). The Code provides for a procedure by which a prisoner can complain about alleged violations of his rights and freedoms in the prison (Articles 10 and 14). The supervision of the functioning of the penitentiary institutions is performed by the Ministry of Justice of the Republic of Azerbaijan.

2. Criminal responsibility for torture and inhuman and degrading treatment

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

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

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

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

the receipt of the complaint, about the results of the examination of his or her complaint.

In accordance with Article 5 of the Law, a direct judicial complaint must be filed within one month from the date the complainant became aware of the infringement of his rights or freedoms. However, if the complainant has initially filed a complaint against acts or omissions of the subordinate public authority with a supervising public authority, a judicial complaint challenging the decision of the supervising authority must be filed within one month of receipt of this decision. If the complainant has missed the complaint period for a good reason, the court may accept the belated complaint.

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

The Civil Code contains similar provisions. In accordance with the Civil Code, disputes between individuals and public authorities concerning individual rights and freedoms may be a subject matter of a civil action (Articles 2 and 5). Unlawful acts or omissions of a public authority or its officials give rise to a civil claim for damages against the State (Article 22). The State's civil liability is the same as that of an ordinary legal person (Article 43).

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

4. Code on Administrative Offences

Article 310. Malicious resistance to a lawful order of a police or military officer

"310.1. Malicious resistance to a lawful order of a police or military officer upon the latter's performance of their duties on protection of the public order – entails an imposition of a fine in the amount of twenty to twenty-five conventional financial units; or, if such a measure is deemed inadequate taking into account the circumstances of the case and the offender's personality, an administrative detention for a term of up to fifteen days."

5. Criminal Code

Article 221. Hooliganism

"221.1. Hooliganism [is defined as] intentional actions, gravely violating the public order, expressing a manifest disrespect toward the society, accompanied by use of, or

threat to use, violence against individuals, as well as by destruction or damage of others' property ...

221.3. Hooliganism committed with the use of a weapon or objects utilised as a weapon, - is punishable by the deprivation of liberty for a term of three to seven years."

COMPLAINTS

1. The applicant complained under Article 3 of the Convention, alleging that she had been beaten and otherwise hurt and humiliated while in detention and in prison, and that she had been transferred to a high security prison for dangerous criminals.

2. The applicant complained under Article 5 § 1 of the Convention that her ten-day "administrative detention" for contempt of the police had been unlawful, because she had not committed this administrative offence.

3. With regard to the criminal proceedings, the applicant complained:

(a) under Article 5 § 2 of the Convention that, after the expiry of the ten-day "administrative detention," she had not been promptly informed of the reasons of her further detention and of the charge against her;

(b) under Article 6 § 1 of the Convention that her trial had not been public because she had not been allowed to make tape recordings at the trial and the press had not been allowed into the courtroom;

(c) under Article 6 § 2 of the Convention that, before the trial, the Head of the Sabail District Police Office had made a public statement declaring her guilty of a criminal act;

(d) under Article 6 § 3 (a), (b) and (d) of the Convention that she had not been informed of the nature of the accusation against her in the language she understood best (Russian), had not been allowed adequate time to prepare her defence, and that the court had not given due consideration to the testimonies of witnesses testifying on her behalf; and

(e) under Article 7 § 1 of the Convention that she had been convicted for a more serious crime under Article 221.3 of the Criminal Code, whereas the court should have applied Article 132 of the Criminal Code, providing for a less severe penalty. She alleged that the court applied the improper provision of domestic criminal law as a result of unfair proceedings and improper assessment of evidence.

4. The applicant further complained that her freedom of expression under Article 10 of the Convention and her freedom of assembly under Article 11 of the Convention had been violated by the allegedly unlawful arrest, detention and conviction, all of which took place after her involvement in political demonstrations.

5. Next, the applicant complained that, in violation of Article 13 of the Convention in conjunction with Article 6 of the Convention, all the remedies before national authorities in her case were ineffective. The entire case was fabricated and she was convicted of a crime she had never committed.

6. Finally, invoking Article 14 of the Convention, the applicant complained that she was discriminated against by the national authorities on the basis of her political opinion and ethnic origin (specifically, her stepmother's Armenian origin).

THE LAW

A. As to the alleged ill-treatment

The applicant complained that the conditions of her detention and the way she had been treated in the prison gave rise to a violation of Article 3 of the Convention, which provides as follows:

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

The Government submitted that the applicant had not exhausted the domestic remedies available to her. The Government pointed out that the applicant had at her disposal several remedies. Firstly, in accordance with the Code on Execution of Punishments (*Cəzaların İcrası Məcəlləsi*), she could have filed a complaint about the conditions of her detention with the Ministry of Justice, the body responsible for the supervision of penitentiary institutions. Secondly, she could have filed a criminal complaint concerning the alleged ill-treatment in the prison under the relevant provisions of the Criminal Code. Thirdly, she could have filed, with the relevant district court, a civil claim for compensation for the alleged ill-treatment, relying on Article 3 of the Convention, which is directly applicable in the domestic legal system, as well as on the relevant provisions of the domestic law concerning abuse of power by public officials.

The applicant submitted that she had filed a complaint with CDECJ, which had conducted an allegedly flawed investigation and concluded that her allegations were false. However, because she believed that the authorities' approach to her complaints was biased, she was not required to additionally file a criminal complaint or a civil compensation claim. The applicant acknowledged that such remedies were available to her under the domestic law, but contended that in practice they would be ineffective and that any attempt to seek redress through these remedies would be futile.

The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing the States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with this rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52).

In the present case, the applicant has complained to CDECJ, which conducted an internal investigation into the matter. CDECJ, as a subdivision of the Ministry of Justice, was an authority supervising the activities of the penitentiary institution where the applicant was serving her prison term. The investigation resulted in a formal report of 11 November 2002, which concluded that the applicant's allegations were false. The Court, however, cannot conclude that, by merely complaining to the public authority supervising the penitentiary system, the applicant has fulfilled the requirement of exhaustion of domestic remedies. Having regard to the relevant provisions of the domestic law, and more specifically to Articles 2 and 5 of the Law *On Complaints against Acts and Omissions Infringing Individual Rights and Freedoms*, the Court notes that the decision of a supervising public authority concerning a complaint on infringement of individual rights and freedoms by a subordinate public authority could be challenged in the domestic courts. Therefore, the findings of the investigation conducted by CDECJ were open for further review in course of civil proceedings in a district court. The applicant could have also filed a criminal complaint with a public prosecutor requesting to institute criminal proceedings against the prison officers who had allegedly ill-treated her.

In this regard, the applicant does not dispute that, under the domestic law, it was open to her to file a complaint with a prosecutor's office requesting to carry out a criminal investigation, or to bring an action for damages against the allegedly unlawful acts of the prison administration, during which the authorities could conduct a medical examination and record the injuries, if any. However, the applicant has not made any steps to bring her complaint to the attention of the mentioned authorities either immediately following the alleged ill-treatment or after the internal investigation conducted by CDECJ. Moreover, she has not shown convincingly that such steps were bound to be ineffective. Mere doubts about the effectiveness of a remedy are not sufficient to dispense with the requirement to make normal use of the available avenues for redress (*see* e.g. *Kemerov v. Bulgaria* (dec.), no. 44041/98, 2 September 2004).

Therefore, the Court finds that, because the applicant did not attempt to seek redress at the domestic level by making use of the remedies available to her, this complaint must be rejected for non-exhaustion of the domestic remedies under Article 35 §§ 1 and 4 of the Convention.

B. As to the administrative detention for contempt of the police

The applicant complained under Article 5 § 1 of the Convention that her ten-day administrative detention for contempt of the police was unlawful. Because the complaint relates not only to the applicant's arrest and delivery to the police station, but also to the judicial proceedings resulting in the applicant's conviction and "administrative detention," the Court considers that the complaint falls partially also within the ambit of Article 6 of the Convention. Article 5 § 1 of the Convention provides as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court; ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

Article 6 of the Convention provides as follows:

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

The Government maintained that the applicant had been subject to a lawful detention after conviction by a competent court under Article 5 § 1 (a) of the Convention. The sanction was imposed on the applicant in accordance with the Code on Administrative Offences after a court hearing concerning the applicant's contempt of the police.

The applicant submitted that her arrest had not been in accordance with a procedure prescribed by law and that the Sabail District Court's decision on administrative detention had been arbitrary. On 24 April 2002 she was taken to the police station without any lawful ground. She was not presented with any summons to appear before an investigator. Moreover, the police officers did not even clearly explain to her the reasons for taking her to the police station for a "conversation." After she had been brought to the police station, the police officers accused her of having resisted their lawful orders contrary to Article 310.1 of the Code on Administrative Offences, an offence she had not committed. She was brought before a judge who immediately sentenced her to "administrative detention," basing his decision exclusively on the record of an administrative offence prepared by

the police officers, and without properly checking the circumstances of the incident and the lawfulness of the police's actions. In this respect, the applicant contends that she had been denied a fair hearing and a right to court. During the events of 24 April 2002, she could hardly understand the reasons for her arrest by the police as well as the reason for her conviction by the Sabail District Court. The subsequent hearing at the Court of Appeal, where the applicant was represented by her lawyer, was held in the absence of the applicant despite her lawyer's petition for her attendance.

The Court considers, in the light of the parties' submissions, that this part of the application raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. The Court concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

C. As to the complaints relating to the criminal proceedings

1. The applicant complained under Article 5 § 2 of the Convention that, after the expiry of the ten-day "administrative detention," she had not been promptly informed of the reasons of her further detention and of the charge against her. Article 5 § 2 of the Convention provides as follows:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

The Government submitted that the applicant had failed to exhaust the domestic remedies, because she had never raised this complaint before the domestic courts. The Government further submitted that, in any event, she had been aware of the fact that the criminal proceedings had been instituted against her on 26 March 2001. She was first interrogated with regard to those proceedings on 4 May 2001. Thereafter, she has been interrogated several more times. On 25 April 2002, when she was under administrative detention, an indictment act was announced to the applicant in the presence of a lawyer and interpreter. Accordingly, the Government maintained that the announcement of the indictment act to the applicant on 25 April 2002 had brought to her attention the reasons for her subsequent detention on remand.

The applicant reiterated that she had not been promptly informed about the reasons for her detention on remand.

At the outset, the Court observes that, technically, during the period from 24 April 2002 to 3 May 2002 the applicant was detained on the basis of her conviction for an administrative offence of contempt of police. From 4 May 2002 onward she was detained on remand in connection with the separate

criminal proceedings pending against her. This complaint concerns the applicant's detention on remand starting from 4 May 2002.

The Court considers, even assuming that the applicant has exhausted the domestic remedies, that the complaint is inadmissible for the following reasons.

Article 5 § 2 of the Convention contains the elementary safeguard that any person arrested should know why he or she is being deprived of his liberty. Any person arrested must be informed, in simple, non-technical language, of the essential legal and factual grounds for the arrest (see *D.D. v. Poland* (dec.), no. 29461/95, 5 October 2000). Whether the content and promptness of the information conveyed were sufficient must be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, § 40).

The Court notes that the criminal proceedings were instituted against the applicant on 26 March 2001, whereas the order on her detention was issued on 26 April 2002 and she was actually detained on remand starting from 4 May 2002. She has been interrogated as a suspect several times prior to her detention. On 25 April 2002 the indictment act was orally announced to her in the presence of her lawyer and interpreter. The Sabail District Court's detention order was announced to the applicant on 26 April 2002 and she was provided with a copy of this order. On 1 May 2002 the applicant and her lawyer examined the case file in the presence of an interpreter. In such circumstances, the Court finds that the applicant has been promptly informed of the essential grounds for her detention on remand.

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

2. The applicant complained under Article 6 of the Convention that her trial had not been public, that presumption of her innocence had been violated by a police statement in the media, that she had not been informed of the nature of the accusation against her in the language she understood (Russian), that she had not been allowed adequate time to prepare her defence, and that the court had not given due consideration to the testimonies of witnesses testifying on her behalf. Article 6 of the Convention provides, in the relevant part:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence; ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

The Government submitted that the applicant had not exhausted the domestic remedies, because she had failed to raise in substance any of the above complaints before the appellate and cassation courts.

The applicant submitted that generally the domestic remedies in Azerbaijan were "useless" and ineffective and, therefore, it would be futile to raise these complaints in substance before the appellate and cassation courts.

The Court recalls that Article 35 of the Convention normally requires that the complaints intended to be made subsequently in Strasbourg should have been made to the domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in the domestic law (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, § 34). Even if the domestic courts were able, or even obliged, to examine the case of their own motion under the Convention, this cannot have dispensed an applicant from relying on the Convention in those courts or from advancing arguments to the same or like effect before them, thus drawing their attention to the problem the applicant intended to submit subsequently, if need be, to the institutions responsible for European supervision (see e.g. *Ahmet Sadık v. Greece*, judgment of 15 November 1996, *Reports* 1996-V, § 33).

It is true that the applicant filed an appeal against the Nasimi District Court's judgment of 17 July 2002 with the Court of Appeal and, subsequently, with the Supreme Court. Having examined the applicant's submissions before the Court of Appeal and the Supreme Court, the Court notes that her appeals were limited to the merits of the case. Specifically, she challenged the district court's assessment of evidence and claimed absence of *corpus delicti* in her actions for which she had been convicted. However, none of the complaints under Article 6 of the Convention that the applicant has raised before this Court had been raised in substance either before the Court of Appeal or before the Supreme Court.

Moreover, the applicant has not provided the Court with any plausible explanation for the failure to raise her complaints in substance before the domestic courts. To this effect, the Court reiterates that the applicant's general belief that the remedies were "useless" and ineffective, unsupported by any convincing evidence, is not a plausible reason for failure to make use of the available domestic remedies.

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

3. The applicant complained that, in violation of Article 7 § 1 of the Convention, she had been convicted for an offence more serious than that she had actually committed and, consequently, a heavier penalty had been imposed on her. Article 7 § 1 provides as follows:

> "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

The Court recalls that Article 7 of the Convention does not merely prohibit retroactive application of the criminal law to the detriment of the accused; it also confirms, in a more general way, the principle of the statutory nature of offences and punishment (*nullum crimen, nulla poena sine lege*). The Court's supervisory function, therefore, is to make sure that, at the moment when the accused person performed the act which led to his or her subsequent criminal conviction, there was in force a legal provision which made that act punishable and that the punishment imposed did not exceed the limits set out by that provision (see e.g. *Trojanowski and Rogosz v. Poland* (dec.), no. 32731/96, 30 November 1999).

The Court notes that the applicant has not adduced any argument which would indicate that she was convicted for an act that did not constitute a criminal offence, or given a penalty heavier than the one that was applicable, at the time the criminal acts were committed. On the contrary, the Court observes that she was convicted on the basis of Article 221.3 of the Criminal Code, effective from 1 September 2000 and applicable at the material time. It notes that the sentence which was imposed on her did not exceed the limits fixed by this provision. Therefore, the Court finds that the applicant's complaint under Article 7 § 1 of the Convention is unsubstantiated.

It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

D. As to the other complaints

Having examined the applicants' remaining complaints (cf. complaints nos. 4, 5 and 6) in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning the lawfulness of the administrative detention (Articles 5 and 6 of the Convention);

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President