



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

FIRST SECTION

CASE OF NAMAT ALIYEV v. AZERBAIJAN

(Application no. 18705/06)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

08/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Namat Aliyev v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 18705/06) 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 Namat Faiz oglu Aliyev (*Namət Faiz oğlu Əliyev* – “the applicant”), on 20 April 2006.

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

3. The applicant alleged, in particular, that the election in his electoral constituency had not been free and fair and that his right to stand for election, as guaranteed by Article 3 of Protocol No. 1 to the Convention, had been infringed due to the relevant authorities' failure to effectively address his complaints concerning election irregularities.

4. On 7 November 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Baku.

6. The applicant stood for the elections to the Milli Majlis (Parliament) of 6 November 2005 as a candidate of the opposition bloc Azadliq, a coalition formed for electoral purposes by the Popular Front Party of Azerbaijan, with which the applicant was affiliated, together with a number of other opposition parties. He was registered as a candidate by the Constituency Electoral Commission (“the ConEC”) for the single-mandate Barda City Electoral Constituency no. 93.

7. The constituency was divided into forty-two electoral precincts, with one polling station in each precinct. There were a total of eighteen candidates running for election in this constituency. The applicant was the only candidate nominated by Azadliq in that constituency.

8. According to the ConEC protocol drawn up after election day, one of the applicant's opponents, Z.O., a member of the Motherland Party, obtained the highest number of votes cast in the constituency. Specifically, according to the ConEC protocol, Z.O. received 5,816 votes (41.25%), the applicant received 2,001 votes (14.19%), and a third candidate received 1,821 votes (12.92%). The total number of votes cast for each of the remaining candidates was substantially lower.

A. The applicant's claims concerning alleged irregularities on election day

9. On 7 and 8 November 2005 the applicant submitted identical complaints to the ConEC and the Central Electoral Commission (“the CEC”), in which he claimed, *inter alia*, that:

- (i) the local executive and municipal authorities, as well as heads of state-funded institutions and organisations, interfered in the election process in favour of Z.O. prior to and during election day (in the form of openly campaigning in his favour and coercing voters to vote for him);
- (ii) Z.O.'s supporters (mostly State officials of various sorts) intimidated voters and otherwise attempted to influence voter choice in polling stations;
- (iii) in several polling stations, observers were harassed or excluded from the voting area by the police;
- (iv) some citizens residing in relevant election precincts were unable to exercise their right to vote due to the authorities' failure to include them in relevant voters lists; and
- (v) there were instances of multiple voting and ballot-box stuffing in different polling stations.

10. In support of his claims, the applicant submitted to the CEC originals of more than 30 affidavits (*akt*) of election observers, audio tapes and other evidence documenting specific instances of irregularities complained of. Some examples of the evidence presented are summarised below.

11. The ten-minute audio recording contained interviews with a number of unidentified voters, who stated, *inter alia*, that prior to election day

directors of governmental institutions and public organisations (such as public schools and libraries) located on the territory of the constituency had held staff meetings with the specific purpose of instructing their staff to vote for Z.O., threatening them with salary cuts if Z.O. did not win the election.

12. In an affidavit signed by them, seven observers in Polling Station no. 1 stated, *inter alia*, that twenty-five voters had voted twice, however the chairman of the Precinct Electoral Commission (“the PEC”) for this polling station had taken no action when this matter was brought to his attention.

13. Seven observers in Polling Station no. 11 noted, *inter alia*, that the director of a public school where the polling station was located had openly intervened in the election process and interfered with the functions of the PEC without any objection by PEC members. Also, the same school director instructed a police officer to forcibly exclude one of the observers from the polling station.

14. Three observers in Polling Station no. 14 noted, *inter alia*, that a certain named State official had actively interfered in the election process by openly campaigning in favour of Z.O. on the premises of the polling station, asked voters to vote for him and brought groups of unregistered voters to the polling station to vote for Z.O.

15. Eight observers in Polling Station no. 16 witnessed one incident of ballot-box stuffing by a PEC member.

16. An affidavit signed by six observers and candidates' representatives in Polling Station no. 31 stated that, at 7 p.m., when the vote-counting began, all of the observers had been forced out of the polling station premises by the police on the instruction of the PEC chairman. In the absence of the observers, a few hundred false ballots were illegally added into Z.O.'s total vote count in the polling station. According to a separate affidavit signed by observers from the same polling station, the PEC chairman and representatives of the executive and municipal authorities interfered in the election process and instructed voters to vote for Z.O. According to another affidavit, there were also several irregularities in the voter lists in this polling station.

17. Three observers in Polling Station no. 41 noted, *inter alia*, that commission members had illegally added several additional ballots during the vote-counting.

18. In their affidavits, observers from Polling Stations nos. 7, 12, 13, 15, 29, 30 and 37 documented similar incidents of alleged illegal campaigning in favour of Z.O., ballot-box stuffing and other forms of tampering with ballots, and irregularities with voter lists. A number of observers also noted that voting booths in some polling stations were of inadequate standard.

B. Reaction of the electoral commissions

19. According to the applicant, neither the ConEC nor the CEC replied to his complaints.

20. According to the Government, the applicant's complaint was examined by the ConEC. As it appears from the documents submitted by the Government, following receipt of the applicant's complaint, the ConEC demanded explanations from the chairmen and members of the relevant PECs in connection with the applicant's allegations. In reply, about twenty PEC chairmen and members submitted brief handwritten statements (some of them as short as one or two sentences), or "explanatory notes" ("*izahat*"), all signed on 21 November 2005. All these notes stated in general terms that the election process in their respective polling stations had gone smoothly and without any irregularities, undue pressure on voters or any other breaches of the electoral law, and that any allegations by the applicant to the contrary were false.

21. On 23 November 2005 the ConEC rejected the applicant's complaint. Without any elaboration on details of the applicant's specific allegations, it decided that they were unsubstantiated. At the same time, however, the ConEC confirmed that the condition of the voting booths in Polling Station no. 37 and "some other" (unidentified) polling stations had been poor. This finding did not entail any consequences for the official election results in those polling stations or in the constituency as a whole.

22. On the same day, 23 November 2005, the CEC issued its final protocol approving the overall election results in the country (with the exception of a few electoral constituencies) and submitted it, together with relevant documents, to the Constitutional Court for review and approval of the election results. The election results for Barda City Electoral Constituency no. 93 were among those approved by the CEC, confirming Z.O. as the winner in this constituency.

23. According to the country-wide results, the ruling Yeni Azerbaijan Party again won the majority of seats in the Milli Majlis.

C. Court proceedings

24. On 25 November 2005 the applicant lodged an action with the Court of Appeal, asking the court to invalidate the CEC's final protocol in the part relating to the election results in Barda City Electoral Constituency no. 93. In addition to restating all of his complaints made previously to the electoral commissions, he also complained of specific instances of discrepancies and inconsistencies in the PEC protocols which served as a basis for compiling the election results in the constituency as a whole. In particular, he noted a significant discrepancy in the PEC protocol for Polling Station no. 11, in which certain numbers did not add up correctly. As a result, more than 700

blank ballots out of more than 1,000 blank ballots originally issued to the PEC appeared to be “missing” (the protocol indicated that 313 persons had voted in that polling station, but only eleven of the remaining blank ballots were indicated as “unused” and formally “cancelled”, with no explanation as to what happened to the remaining more than 700 blank ballots). The same was the case with the PEC protocol for Polling Station no. 13, where more than 600 blank ballots were unaccounted for. Similar discrepancies were also allegedly found in PEC protocols for five other polling stations. The applicant claimed that these “missing” blank ballots had been sneaked out and illegally used for ballot-box stuffing in favour of Z.O. in various other polling stations.

25. The applicant argued that, due to all these irregularities, it was not possible to determine the true opinion of the voters in his constituency. He also complained that the CEC had failed to examine his complaint of 7 November 2005. In support of his claims, the applicant submitted copies of the same evidence previously submitted to the CEC, including photocopies of the observers' affidavits and copies of audio material.

26. On 28 November 2005 the Court of Appeal dismissed the applicant's claims as unsubstantiated. The court did not consider the photocopies of the affidavits as admissible evidence, noting that in accordance with the Code of Civil Procedure (“the CCP”) either the originals or notarised copies of those affidavits should have been submitted. Specifically, most of the reasoning contained in the Court of Appeal's judgment was limited to the following:

“According to Article 14.2 of the CCP ..., the court shall examine and rely on only the evidence submitted by the parties.

According to Article 77.1 of the same Code, each party must prove any allegations which it makes in support of its claims and objections.

Based on the material in the case file and the parties' submissions, [the applicant's] claim against [the CEC] ... cannot be upheld. The alleged incidents concerning Barda City Electoral Constituency no. 93, as described in the claim, did not take place. Documents attached to the claim are photocopies and no originals or notarised copies of documents have been submitted. [As such,] affidavits attached to the claim cannot be admitted as evidence. On the other hand, the alleged omission of a significant number of voters from voting lists has not been proved by the material in the case file.

In such circumstances, the court considers that [the applicant's] claim against [the CEC] ... must be dismissed.”

27. On 30 November 2005 the applicant lodged a further appeal with the Supreme Court, reiterating his claims. He also noted that he had submitted the originals of the documentary evidence to the CEC on 7 November 2005 and argued that the Court of Appeal had failed to take this fact into account.

28. On 1 December 2005 the Supreme Court dismissed the applicant's appeal on the same grounds as the Court of Appeal's judgment of

28 November 2005. As to the originals of the documentary evidence allegedly submitted to the CEC, the Supreme Court noted that the applicant had failed to submit any evidence proving that he had ever applied to the CEC with a complaint. The reasoning in the Supreme Court's decision was as follows:

“According to Article 77.1 of the CCP ..., each party must prove any allegations which it makes in support of its claims and objections.

[The applicant] has not presented any convincing evidence capable of proving the allegations forming the basis of his claim. The photocopies of affidavits attached to his claim were not admitted as convincing evidence by the Court of Appeal in a lawful and justified manner, as they had not been notarised.

Moreover, the case materials contain no documents confirming that the applicant had applied to the electoral commissions under the procedure specified in Article 112 of the Electoral Code.

Although at the oral hearing the applicant claimed that he had submitted the originals of the affidavits to the CEC, he has not submitted to the court any evidence showing that he had [actually] applied to the CEC.

However, according to Articles 89 and 90 of the CCP ..., originals or duly certified copies of evidence should be submitted to courts. The applicant has not complied with this rule.

According to Article 416 of the CCP ..., the court of cassation instance verifies whether the court of appellate instance has correctly applied substantive and procedural law.

The court considers that the Court of Appeal has correctly applied the relevant law and correctly reached the conclusion that the claim was unsubstantiated. There is no ground for quashing the [Court of Appeal's] judgment.”

29. On the same day, 1 December 2005, the Constitutional Court confirmed the election results in the majority of the electoral constituencies, including Barda City Electoral Constituency no. 93.

II. RELEVANT DOMESTIC LAW

A. Electoral Code

30. The following are the relevant provisions of the Electoral Code as effective at the material time.

1. Electoral commissions: system, composition and decision-making procedure

31. Elections and referenda are organised and carried out by electoral commissions, which are competent to deal with a wide range of issues relating to the electoral process (Article 17). There are three levels of electoral commissions: (a) the Central Electoral Commission (“the CEC”); (b) constituency electoral commissions (“the ConEC”); and (c) precinct (polling station) electoral commissions (“the PEC”) (Article 18.1).

32. Each electoral commission at every level has a chairperson and two secretaries who are elected by open voting by members of the relevant electoral commission. The chairperson of each electoral commission at every level must be a representative of the political party holding the majority of parliamentary seats in the Milli Majlis. One of the secretaries must be a representative of the political parties holding the minority of parliamentary seats, and the other one a representative of “independent” members of parliament who are not formally affiliated with any political party (hereafter also referred to as “the non-partisan members of parliament”) (Article 19.3).

33. Meetings of electoral commissions at every level are convened either by the chairperson or by at least one third of the relevant commission's members (Article 19.5). A quorum for meetings of any electoral commission is at least two-thirds of its members (Article 19.10). The qualified majority vote of two-thirds of the members who are in attendance is required for adoption of decisions of any commission at any level (Articles 28.2, 34.3 and 39.3).

34. The CEC consists of eighteen members who are elected by the Milli Majlis. Six members of the CEC are directly nominated by and represent the political party holding a majority of seats in the Milli Majlis, six members are nominated by and represent the non-partisan members of parliament, and six members are nominated by and represent all the political parties holding a minority of parliamentary seats. Out of the six nominees representing the non-partisan members of parliament, two candidates are nominated “in agreement” with the “interested parties”: one of the nominees is agreed by the representatives of the majority party and the other is agreed by the representatives of the minority parties (Article 24).

35. Each ConEC consists of nine members who are appointed by the CEC. Three members of the ConEC are nominated by the CEC members representing the parliamentary majority party, three members are nominated by the CEC members representing the parliamentary minority parties, and three members are nominated by the CEC members representing the non-partisan members of parliament. Local branches of the relevant political parties may suggest candidates to ConEC membership for nomination by the CEC members representing the relevant parties. Out of the three candidates nominated by the CEC members representing the non-partisan

members of parliament, two candidates are nominated “in agreement” with the “interested parties”: one of the nominees is agreed with the CEC members representing the parliamentary majority party and the other is agreed with the CEC members representing the parliamentary minority parties (Article 30).

36. Each PEC consists of six members appointed by the relevant ConEC. Two members of the PEC are nominated by the ConEC members representing the parliamentary majority party, two members are nominated by the ConEC members representing the parliamentary minority parties, and two members are nominated by the ConEC members representing the non-partisan members of parliament. Local branches of the relevant political parties may suggest candidates for PEC membership for nomination by the ConEC members representing the relevant parties. As to candidates for PEC membership nominated by the ConEC members representing the non-partisan members of parliament, these candidates may also be suggested to the relevant ConEC members by voters or voters' initiative groups. These candidates must be citizens of the Republic of Azerbaijan who permanently reside within the territory of the relevant electoral constituency (Article 36).

2. Examination of electoral disputes

37. Candidates and other affected persons may complain about decisions or actions (or omissions to act) violating electoral rights of candidates or other affected persons, within three days after publication or receipt of such decisions or occurrence of such actions (or omissions) or within three days after an affected person has become aware of such decisions or actions (or omissions) (Article 112.1).

38. Such complaints can be submitted directly to a higher electoral commission (Article 112.2). If a complaint is first decided by a lower electoral commission, a higher electoral commission may quash its decision or adopt a new decision on the merits of the complaint or remit the complaint for a new examination (Article 112.9). Decisions or actions (or omissions to act) of a ConEC may be appealed to the CEC, and decisions or actions (or omissions to act) of the CEC may be appealed to the appellate court (Article 112.3).

39. If the examination of the complaint reveals a suspicion that a criminal offence has been committed, the relevant prosecuting authority can be informed thereof. The CEC must adopt a reasoned decision in this regard. The relevant prosecution authority must examine this information within a three-day period (Article 112.4).

40. In cases stipulated in the Electoral Code, the courts are empowered to quash decisions of the relevant electoral commissions, including decisions concerning voting results and election results (Article 112.5).

41. While examining requests to invalidate the election of a specific candidate, the relevant electoral commission has a right to hear submissions of citizens and officials as well as obtain required documents and materials (Article 112.8).

42. The relevant electoral commission shall adopt a decision on any complaint submitted during the election period and deliver it to the complainant within three days of receipt of the complaint, except for complaints submitted on election day or the day after election day, which shall be examined immediately (Article 112.10).

43. Complaints concerning decisions of electoral commissions shall be examined by courts within three days (unless the Electoral Code provides for a shorter period). The period for lodging an appeal against a court decision is also three days (Article 112.11).

44. Persons illegally interfering with the election process and otherwise violating electoral rights of voters and candidates may bear criminal, civil or administrative responsibility under the Criminal Code, the Civil Code or the Code of Administrative Offences (Article 115).

3. Vote-counting, tabulation and approval of election results

45. After the count of votes in a polling station at the end of the election day, the PEC draws up an election protocol (in three original copies) documenting the results of the voting in the polling station (Articles 106.1-106.6). One copy of the PEC protocol, together with other relevant documents, is then submitted to the relevant ConEC within twenty-four hours (Article 106.7). The ConEC verifies whether each PEC protocol and documents attached to it comply with the law and whether there are any inconsistencies (Article 107.1). After submission of all PEC protocols, the ConEC tabulates, within two days of election day, the results from different polling stations and draws up a protocol (in three original copies) reflecting the aggregate results of the vote in the constituency (Articles 107.2 -107.7). One copy of the ConEC protocol, together with other relevant documents, is then submitted to the CEC within two days of election day (Article 107.4). The CEC verifies whether the ConEC protocols comply with the law and whether they contain any inconsistencies (Article 108.1) and draws up its own final protocol reflecting the results of the elections in all constituencies (Article 108.2).

46. The Constitutional Court reviews and approves the results of the elections (Article 171.1). For this purpose, the CEC reviews the ConEC protocols, together with other relevant documents, during a period of no more than twenty days after election day, and then submits them to the Constitutional Court within forty-eight hours (Article 171.2).

47. Within ten days of receipt of the above documents, the Constitutional Court reviews, with the assistance of experts, whether they

are in accordance with the requirements of the Electoral Code. If necessary, this ten-day period may be extended (Article 171.3).

B. Code of Civil Procedure

1. Written evidence

48. A civil court examines and relies only on evidence submitted by the parties (Article 14.2).

49. Each party to the civil proceedings must submit evidence proving the facts forming the basis of their claims and objections (Article 77.1). In disputes concerning invalidation of acts of the State, administrative and other authorities, the burden of proving the facts forming the basis of such acts falls upon the relevant authority (Article 77.2). In the event that the examination of the case on the basis of the evidence available in the case file is impossible, the court may request the parties to submit additional evidence (Article 77.3).

50. Written evidence must be submitted to courts either in original or in duly certified copies. If only a part of a document is relevant to the case under examination, a certified extract must be submitted (Article 89.3).

2. Proceedings concerning electoral disputes

51. Chapter 25 of the CCP sets out rules for examination of applications concerning the protection of electoral rights (or a right to participate in a referendum). According to Article 290, such applications shall be submitted directly to the appellate courts in accordance with the procedure established by the Electoral Code.

52. Applications concerning the protection of electoral (referendum) rights shall be examined within three days of receipt of the application, except for applications submitted on election day or the day after election day, which shall be examined immediately (Article 291.1). The court shall hear the case in the presence of the applicant, a representative of the relevant electoral commission and any other interested parties. Failure by any of these parties to attend the hearing after due notification shall not preclude the court from examining and deciding the case (Article 291.2).

53. The appellate court's decision can be appealed to the higher court (the court of cassation) within three days. This appeal shall be examined within three days, or immediately if submitted on election day or the next day. The decision of the court of cassation is final (Article 292).

III. RELEVANT INTERNATIONAL DOCUMENTS

A. Code of Good Practice in Electoral Matters

54. The relevant excerpts from the Code of Good Practice in Electoral Matters (Guidelines and Explanatory Report) (CDL-AD (2002) 23 rev), adopted by the European Commission for Democracy Through Law (“the Venice Commission”) at its 51st and 52nd sessions (5-6 July and 18-19 October 2002), read as follows:

“GUIDELINES ON ELECTIONS

...

3. Procedural guarantees

3.1. Organisation of elections by an impartial body

a. An impartial body must be in charge of applying electoral law.

b. Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.

c. The central electoral commission must be permanent in nature.

d. It should include:

i. at least one member of the judiciary;

ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.

It may include:

iii. a representative of the Ministry of the Interior;

iv. representatives of national minorities.

e. Political parties must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality may be construed strictly or on a proportional basis...

...

h. It is desirable that electoral commissions take decisions by a qualified majority or by consensus.

...

3.3. An effective system of appeal

a. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.

b. The procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.

...

d. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.

e. The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.

f. All candidates and all voters registered in the constituency concerned must be entitled to appeal. ...

g. Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).

h. The applicant's right to a hearing involving both parties must be protected.

i. Where the appeal body is a higher electoral commission, it must be able ex officio to rectify or set aside decisions taken by lower electoral commissions.

...

EXPLANATORY REPORT

...

3.1. Organisation of elections by an impartial body

68. Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results.

69. In states where the administrative authorities have a long-standing tradition of independence from the political authorities, the civil service applies electoral law without being subjected to political pressures. It is therefore both normal and acceptable for elections to be organised by administrative authorities, and supervised by the Ministry of the Interior.

70. However, in states with little experience of organising pluralist elections, there is too great a risk of government's pushing the administrative authorities to do what it

wants. This applies both to central and local government - even when the latter is controlled by the national opposition.

71. This is why *independent, impartial electoral commissions* must be set up from the national level to polling station level to ensure that elections are properly conducted, or at least remove serious suspicions of irregularity.

...

3.3. An effective system of appeal

92. If the electoral law provisions are to be more than just words on a page, failure to comply with the electoral law must be open to challenge before an appeal body. This applies in particular to the election results: individual citizens may challenge them on the grounds of irregularities in the voting procedures. It also applies to decisions taken before the elections, especially in connection with the right to vote, electoral registers and standing for election, the validity of candidatures, compliance with the rules governing the electoral campaign and access to the media or to party funding.

93. There are two possible solutions:

- appeals may be heard by the ordinary courts, a special court or the constitutional court;

- appeals may be heard by an electoral commission. There is much to be said for this latter system in that the commissions are highly specialised whereas the courts tend to be less experienced with regard to electoral issues. As a precautionary measure, however, it is desirable that there should be some form of judicial supervision in place, making the higher commission the first appeal level and the competent court the second.

...

95. Appeal proceedings should be as brief as possible, in any case concerning decisions to be taken before the election. On this point, two pitfalls must be avoided: first, that appeal proceedings retard the electoral process, and second, that, due to their lack of suspensive effect, decisions on appeals which could have been taken before, are taken after the elections. In addition, decisions on the results of elections must also not take too long, especially where the political climate is tense. This means both that the time limits for appeals must be very short and that the appeal body must make its ruling as quickly as possible. Time limits must, however, be long enough to make an appeal possible, to guarantee the exercise of rights of defence and a reflected decision. A time limit of three to five days at first instance (both for lodging appeals and making rulings) seems reasonable for decisions to be taken before the elections. It is, however, permissible to grant a little more time to Supreme and Constitutional Courts for their rulings.

96. The procedure must also be simple, and providing voters with special appeal forms helps to make it so. It is necessary to eliminate formalism, and so avoid decisions of inadmissibility, especially in politically sensitive cases.

...

99. Standing in such appeals must be granted as widely as possible. It must be open to every elector in the constituency and to every candidate standing for election there to lodge an appeal. A reasonable quorum may, however, be imposed for appeals by voters on the results of elections.

100. The appeal procedure should be of a judicial nature, in the sense that the right of the appellants to proceedings in which both parties are heard should be safeguarded.

101. The powers of appeal bodies are important too. They should have authority to annul elections, if irregularities may have influenced the outcome, i.e. affected the distribution of seats. This is the general principle, but it should be open to adjustment, i.e. annulment should not necessarily affect the whole country or constituency – indeed, it should be possible to annul the results of just one polling station. This makes it possible to avoid the two extremes – annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small. In zones where the results have been annulled, the elections must be repeated.

102. Where higher-level commissions are appeal bodies, they should be able to rectify or annul ex officio the decisions of lower electoral commissions.”

B. The Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Election Observation Mission Final Report on the Parliamentary Elections of 6 November 2005

55. The following are the relevant excerpts from this report, published in Warsaw, Poland on 1 February 2006:

“III. POLITICAL BACKGROUND

...

The 6 November 2005 elections to the Milli Majlis of Azerbaijan were the third parliamentary elections held in Azerbaijan since independence in 1991, but the first conducted after the adoption of the 2002 constitutional amendments, which eliminated the proportional list component of parliamentary elections. All 125 members of Parliament are now elected in single seat constituencies, in a single round of voting.

The CEC registered 48 political parties and blocs for the 6 November elections. The New Azerbaijan Party (YAP), currently chaired by President Ilham Aliyev, has held a dominant position in government since 1993. On the opposition side there were two main blocs: 'New Politics' (YeS), formed by the Movement for National Unity, the National Independence Party of Azerbaijan, the Civil Forum for the Sake of Azerbaijan, the Azerbaijan Social Democratic Party as well as other political parties and NGOs, and 'Azadliq' ('Freedom'), which was formed by the parties Musavat, the Popular Front of Azerbaijan (APFP) and the Azerbaijan Democratic Party (ADP).

Another party, which fielded candidates in over 60 constituencies, was the opposition Liberal Party of Azerbaijan.

...

V. ELECTION ADMINISTRATION

The election was administered by a three-tiered system of election commissions ... There are 125 constituency election commissions and 5,137 polling station election commissions. All election commissions have a 2/3 requirement for quorum and for adopting decisions.

The transitional method of composition of election commissions continued to be problematic, as it favored the incumbent authorities and undermined confidence in the independence of the election administration. Election commissions are formed according to a complex formula, and in essence, pro-government parties have a majority in all election commissions sufficient to make all decisions. Moreover, the chairpersons of all election commissions were nominated by the parliamentary majority.

The CEC held regular meetings open to media and observers, and most decisions were published and available on its website. The CEC met most deadlines of the Election Code regarding technical preparations for the elections. An extensive voter education effort was conducted through the media.

A number of aspects of the CEC's performance were problematic, however, including processing of complaints and appeals, ensuring the uniform implementation of the Election Code by ConECs and PECs, and organization of military voting. Observers reported uncertainty and confusion on the interpretation and application of some legal and procedural issues by ConECs and PECs.

A number of election commissions operated in a transparent and collegial manner, and a few issued warnings to candidates or officials for violating the law. However, during the pre-election period, commission members nominated by opposition parties in some constituencies claimed that they were in a number of instances not informed of ConEC meetings, denied access to key documents and had little influence on the decision-making process. The OSCE/ODIHR EOM [Election Observation Mission] was able to verify some of these claims.

...

VII. CAMPAIGN

...

The general campaign environment was characterized by the fact that the ruling YAP party dominated government and most district administrations, including the election commissions.

...

The campaign was undermined by numerous cases of interference of local executive authorities in the election process, with widespread evidence that such interference either favored candidates associated with the incumbents or disadvantaged opposition candidates. ... [M]any candidates and campaign staff were harassed during the course of their campaign activities, for example, while meeting with voters, displaying posters or distributing leaflets.

...

The EOM received a number of reports from citizens, particularly from the regions, regarding heads of schools, hospitals and State-owned companies who collected signatures that allegedly obliged staff to vote for selected candidates. The OSCE/ODIHR EOM also received reports of intimidation and coercion of school staff, students and parents to attend campaign events, predominantly in favor of YAP candidates.

The 11 May and 25 October presidential decrees acknowledged many such issues and provided instructions to state and local executive bodies, with a view to ensuring that the parliamentary elections be conducted in full compliance with the Election Code. While the decrees addressed some of the shortcomings observed by the OSCE/ODIHR EOM, the overall lack of meaningful implementation undermined their objectives.

...

IX. COMPLAINTS AND APPEALS PRIOR TO ELECTION DAY

In its 2003 Final Report, OSCE/ODIHR recommended that the CEC enact clear regulations governing the consideration of complaints and appeals. Similarly, it was recommended that safeguards be instituted to ensure that local executive authorities do not interfere in the electoral process or direct the work of the election commissions. These recommendations were not implemented and this had a significant and detrimental effect on the election complaints process.

The Election Code envisages most complaints being filed with election commissions, but the law also allows complaints to be lodged with the superior election commission, with decisions in all cases to be made within a three-day deadline. In a large number of cases, candidates lodged complaints directly with the CEC, by-passing the respective ConEC even where the ConEC had not yet brought a decision on the respective complaint. This indicated a lack of confidence in the neutrality of the constituency commissions. The CEC formally registered all such complaints, but in the vast majority of cases merely returned them to the relevant ConEC for its decision, even where the ConEC had already made a prior decision.

In many cases, ConECs did not decide complaints within the three-day deadline or issue an interim decision. Although some ConECs did try to adjudicate complaints in a transparent way, a number of ConECs addressed complaints belatedly and superficially. There were cases in which ConECs claimed not to have received complaints, when it was clear they had done so, did not sanction PEC officials who had discriminated against candidates, failed to notify candidates or observers when complaints were discussed or simply ignored complaints. ... In numerous cases, commission chairpersons were clearly biased in favor of YAP or pro-government

candidates, and complaints from opposition or independent candidates in these constituencies did not receive impartial adjudication.

Overall, the failure of election commissions, and subsequently in some instances the prosecutors, to address or rectify serious violations by local executive authorities and candidates had a marked and negative impact on the election process. Although some ConECs did issue written warnings to candidates and local executive officials, most violations during the campaign were allowed to take place without effective sanction. This further reduced confidence of candidates in the fairness of the process.

...

XIII. ELECTION DAY

A. Voting

For the election on 6 November, 5,053 polling stations were established to serve voters across Azerbaijan. IEOM observers visited over 2,600 polling stations throughout the country. Voter turnout as reported by the CEC was 42.2 per cent, which is significantly lower than in previous general elections. Most IEOM observer teams reported that polling stations generally opened without delay. However, serious deviations from correct opening procedures, including failure to establish and announce the total amount of ballots and invalidate de-registration cards, took place in a number of polling stations. The opening was assessed as 'bad' or 'very bad' in 14 per cent of polling stations visited.

Overall, IEOM observers assessed voting positively in 87 per cent of polling stations visited, while voting was assessed negatively in a considerable 13 per cent of polling stations visited, indicating systemic problems and/or irregularities. Voting was conducted in a generally calm atmosphere, although tension was reported at 14 per cent of polling stations visited. Serious violations of procedures included the presence of unauthorized persons, mainly representatives of local executive authorities, in 9 per cent of polling stations visited. Some of these persons were observed interfering in the work of the election commission or attempting to influence voter choice. The IEOM observed intimidation and attempts to influence voter choices in 6 per cent of polling stations visited. Other serious problems included cases of ballot box stuffing and inconsistent application of voter card rules, which was observed in one third of polling stations visited. Group or family voting remained an issue, as it was observed in 19 per cent of visits. Although relatively few people voted by mobile voting procedures, IEOM observers noted some cases in which more votes were cast than there were applications for ballots.

Inking procedures, in particular the checking of voters' fingers for ink, were not properly followed in 11 per cent of polling stations visited, with several PECs not applying the inking procedure at all. ...

Candidate representatives and non-partisan domestic observers were present in nearly all polling stations visited (97 per cent). However, there were observations of candidate representatives and PEC members being expelled or dismissed from polling stations in some cases. The IEOM observed local executive officials and observers of YAP candidates interfering in or directing the process, or otherwise attempting to influence voters.

...

B. Counting

IEOM observer teams were present at the count in 231 polling stations. The conduct of the election day process deteriorated sharply during the count. IEOM observers assessed the ballot counting process as bad or very bad in 41 per cent of counts observed.

IEOM observers noted a wide range of serious violations during the count, including tampering with results protocols (12 per cent), result protocols not completed with ink (14 per cent), intimidation of observers (16 per cent) and unauthorized persons directing the process (14 per cent). Key procedures were not followed by more than one third of PECs. In some polling stations, the IEOM observed attempts by PEC members to inflate the vote for a selected candidate by swapping ballot papers from one stack to another. Candidate representatives or opposition-nominated PEC members were expelled from the count in a number of cases. In some cases, the count was interrupted and the process significantly delayed, in breach of the law. In several cases, protocols were not completed in the presence of observers, were left blank, or were not taken directly to the ConEC. The results protocols were not posted as required by law in 55 per cent of the counts observed. Observers reported that entitled persons received the signed and stamped copies of the protocol in only 83 per cent of the polling stations observed.

C. Tabulation of Results

The tabulation of results at constituency level was, overall, assessed as bad or very bad in 34 per cent of the 90 ConECs visited. Tabulation procedures were not followed consistently, and the organization of the work was assessed as poor or very poor in 21 per cent of cases observed. Several ConECs accepted empty or only partly completed protocols (including protocols completed with pencil) and did not take action against PEC chairs or members completing or changing protocols at the ConEC. ...

XV. COMPLAINTS AND APPEALS AFTER ELECTION DAY

A. Adjudication of Complaints by the CEC

On and after election day, the CEC received and registered more than 1,000 complaints but did not address most of these complaints. Complaints that did receive attention were not considered transparently or in accordance with the law.

Although the law requires the CEC to decide on all complaints, the CEC failed to fully meet this legal obligation. ...

The CEC did not inform complainants on consideration of their complaints at the CEC session, and complainants were not granted the right to give explanations or present new evidence. Moreover, the CEC did not conduct a formal investigation or review of complaints at its sessions. Instead an individual commission member, as a rule a member representing the voting majority, investigated the complaint and reported on his or her findings. These reports did not give other CEC members

complete information on the complaint. Notwithstanding the large number of complaints, the CEC met infrequently and completed its final protocol without considering all pending complaints. ...

...

B. Adjudication of Appeals by the Court of Appeal and the Supreme Court

The adjudication of post-election disputes in the courts largely disregarded the legal framework, and fell short of internationally accepted norms. In total, the Court of Appeal received 71 appeals and complaints in the post-election period. The Supreme Court received nine appeals during the post-election period until 23 November. The OSCE/ODIHR EOM observed eight hearings in the Court of Appeal and seven hearings in the Supreme Court. In most cases, complaints and appeals were either dismissed without consideration of the merits or rejected as groundless by both the Court of Appeal and the Supreme Court. ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

56. Relying on Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicant complained that, in the electoral constituency where he stood as a candidate in the parliamentary elections, there had been a number of serious irregularities and breaches of electoral law which had made it impossible to determine the true opinion of voters and thus had infringed his right to stand as a candidate in free elections. The domestic authorities, including the electoral commissions and courts, had failed to duly examine his complaints and to investigate his allegations concerning the mentioned irregularities and breaches of electoral law. He also argued that one of the reasons for this failure was the method of composition of electoral commissions at all levels, which allegedly placed the majority of votes within each commission under the control of the ruling political forces and made the commissions prone to take politically-motivated decisions disadvantaging opposition candidates.

57. Having regard to the special features of the present case, the Court considers that this complaint falls to be examined only under Article 3 of Protocol No. 1 to the Convention and that no separate examination is necessary under Article 13. Article 3 of Protocol No. 1 reads as follows:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

A. Admissibility

58. The Government argued that the applicant had not exhausted domestic remedies in respect of the part of the complaint relating to the method of composition of the electoral commissions. They argued that the applicant could have raised this issue before the domestic courts, but he had failed to do so.

59. The applicant argued that the remedy suggested was ineffective.

60. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). The Court further emphasises that the domestic remedies must be “effective” in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI). The Court is not persuaded by the Government's arguments. The Government failed to provide explanation as to how a complaint to the domestic courts concerning the method of composition of electoral commissions, made during the electoral process, could provide the applicant with adequate and timely redress. Within the framework of the appeal system for election-related complaints, the Court of Appeal and the Supreme Court were competent (at least theoretically under the domestic law) to hear appeals against decisions of electoral commissions concerning a wide variety of electoral matters. However, it appears that the relevant courts had no competence to alter the method of composition of electoral commissions, which was prescribed in detail by the Electoral Code, and especially so in the midst of the electoral process. The Government have not suggested any other form of redress that could have possibly been provided by the domestic courts and that could be considered adequate. For these reasons, the Government's objection must be dismissed.

61. Furthermore, the Court considers that the complaint, as a whole, is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

62. The Government submitted that the elections at Barda City Electoral Constituency no. 93 had been conducted in accordance with the requirements of the Electoral Code. The Government argued that the documents submitted by the applicant (mainly observers' affidavits), allegedly proving the irregularities in the constituency, had been in fact compiled only by the applicant's supporters and representatives in various polling stations. In any event, the allegations made by the applicant in reliance on those affidavits contained either "general expressions" or referred to types of alleged infringements which could not seriously affect the election results. They were frequently of speculative nature rather than referring to specific facts. The alleged breaches of electoral law were insignificant and concerned minor local incidents and, thus, did not have a substantial impact on the conduct of the election in the constituency as a whole. The Government argued that, in any event, the difference between the official total numbers of votes received by the winning candidate and the applicant (5,816 votes against 2,001) had been so significant that, even if the applicant could prove that the irregularities alleged by him had indeed taken place, they could not have affected the ultimate result of the election.

63. Further, relying on *Babenko v. Ukraine* ((dec.), no. 43476/98, 4 May 1999), the Government argued that, taking into account the existence of the domestic authorities' decisions concerning the essence of the applicant's claims, the Court should limit itself to examining only whether those decisions were arbitrary.

64. In this respect, the Government maintained that there were effective remedies available at the domestic level which were capable of providing redress for the kind of election-related matters the applicant complained of. The relevant domestic authorities and courts had duly examined the applicant's complaints and found them unsubstantiated. Contrary to the applicant's claim that the electoral commissions had ignored his complaints, the ConEC actually examined them and even demanded explanations from the relevant PECs. Although the ConEC found that the conditions of some voting areas in some polling stations had indeed been poor, all the applicant's remaining allegations were found to be groundless and untrue. The applicant's subsequent appeals to the domestic courts were not supported by admissible or sufficient evidence and therefore the courts had correctly dismissed his complaints as unsubstantiated.

65. As to the method of composition of electoral commissions, the Government argued that the commissions were composed on a parity basis that did not allow any political force to obtain control over the decision-making process within any commission at any level. They noted

that the parliamentary majority party could only directly nominate one-third of the members of each commission, while the majority of at least two-thirds of commission members' votes was required by law for adoption of any commission decisions. Although by law every chairperson of every commission was elected from among the representatives of the ruling party, this did not affect the decision-making process within the commission as the chairperson did not possess a decisive or tie-breaking vote. The Government concluded that electoral commissions were generally independent and impartial and that, in any event, there could have been no lack of impartiality in the present case, as the applicant's opponent, Z.O., was not even a member of the ruling party.

66. The applicant submitted that he had been unable to benefit from an environment in which elections were free and fair and that the relevant State authorities had not duly reacted to the existence of numerous infringements of the electoral law in his constituency. He reiterated his allegations concerning specific instances of alleged irregularities that had taken place in his constituency and maintained that the sheer scale of these irregularities undermined the free expression of the opinion of the people voting in the constituency. In support of his arguments, the applicant also relied heavily on a number of reports by international organisations and mass media sources which contained general criticism of the various aspects of the parliamentary elections of 6 November 2005 in Azerbaijan.

67. The applicant further maintained that those irregularities prejudiced the outcome of the election. Had all his allegations been examined and assessed fairly, his corrected official vote total would have actually been higher than that of Z.O. and he would have won the election.

68. The applicant argued that he had been unable to obtain an effective examination of his election-related complaints. Again, relying heavily on excerpts from various reports and recommendations concerning the elections of 6 November 2005 prepared by various observation missions, he argued that, in general, there had been many shortcomings in how the existing mechanism for addressing election-related complaints functioned in practice. As to his specific case, he argued that he had presented sufficient evidence to the domestic electoral commissions and courts in support of his claims, but the latter had used formal grounds in order to avoid examining the essence of his complaints and had not given him an opportunity to submit duly certified copies of the relevant evidence, if this was deemed absolutely necessary.

69. Lastly, the applicant claimed that in reality the majority of members of every electoral commission at every level were either the direct nominees of the ruling party or "persons supporting the ruling party". The applicant appeared to imply (without clearly stating it) that commission members formally nominated by non-partisan members of parliament were usually, in practice, pro-ruling-party persons, albeit not formally affiliated with the

ruling party. The applicant also claimed that, although Z.O. was a member of the Motherland Party, this party was politically very close to the ruling Yeni Azerbaijan Party. That is why, in his opinion, the ruling party was in favour of him winning the election against the opposition candidates.

2. *The Court's assessment*

70. Article 3 of Protocol No. 1 appears at first sight to differ from the other rights guaranteed in the Convention and Protocols, as it is phrased in terms of the obligation of the High Contracting Party to hold elections which ensure the free expression of the opinion of the people rather than in terms of a particular right or freedom. However, the Court has established that it guarantees individual rights, including the right to vote and to stand for election (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 46-51, Series A no. 113). The Court has consistently highlighted the importance of democratic principles underlying the interpretation and application of the Convention and emphasised that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (*ibid.*, § 47; see also *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 58, ECHR 2005-IX).

71. The rights bestowed by Article 3 of Protocol No. 1 are not absolute. There is room for “implied limitations” and Contracting States have a wide margin of appreciation in the sphere of elections (see *Mathieu-Mohin and Clerfayt*, cited above, § 52; *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I; and *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV). It is, however, for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with. In particular, it has to satisfy itself, among other things, that the conditions in which individual rights are exercised in the course of the electoral process do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness (see *Mathieu-Mohin and Clerfayt*, cited above, § 52, and *Gitonas and Others v. Greece*, 1 July 1997, § 39, *Reports of Judgments and Decisions* 1997-IV). Such conditions must not thwart the free expression of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage (see *Hirst (no. 2)*, cited above, § 62).

72. Furthermore, the object and purpose of the Convention, which is an instrument for the protection of human rights, requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see, among many other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 33, *Reports* 1998-I; *Chassagnou and Others v. France*

[GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III; and *Lykourazos v. Greece*, no. 33554/03, § 56, ECHR 2006-VIII). In the case of *Podkolzina v. Latvia*, the Court stated that the right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, would only be illusory if one could be arbitrarily deprived of it at any moment. Consequently, while it is true that States have a wide margin of appreciation when establishing eligibility conditions in the abstract, the principle that rights must be effective requires that the eligibility procedure contain sufficient safeguards to prevent arbitrary decisions (see *Podkolzina v. Latvia*, no. 46726/99, § 35, ECHR 2002-II). Although originally stated in connection with the conditions on eligibility to stand for election, the principle requiring prevention of arbitrariness is equally relevant in other situations where the effectiveness of individual electoral rights is at stake (see, *mutatis mutandis*, *Kovach v. Ukraine*, no. 39424/02, § 55, ECHR 2008-...).

73. Lastly, the Court has also had an occasion to emphasise that it is important for the authorities in charge of electoral administration to function in a transparent manner and to maintain impartiality and independence from political manipulation (see *The Georgian Labour Party v. Georgia*, no. 9103/04, § 101, 8 July 2008).

74. In the present case, the Court will first have regard to the Government's argument that the difference in the official vote totals received by Z.O. and the applicant was so significant that, even if the applicant's allegations concerning some election irregularities in various polling stations were true, it would not affect the ultimate result of the election. The Court cannot accept this argument. In order to arrive at the conclusion proposed by the Government, it is first necessary to separately assess the seriousness and magnitude of the alleged election irregularity prior to determining its effect on the overall outcome of the election. However, in the present case, the question whether this has been done in a diligent manner is a major point of contention between the parties in the context of the present complaint and, therefore, cannot escape the Court's review.

75. Moreover, in any event, what is at stake in the present case is not the applicant's right to win the election in his constituency, but his right to stand freely and effectively for it (compare *The Georgian Labour Party*, cited above, § 121). The applicant was entitled under Article 3 of Protocol No. 1 to stand for election in fair and democratic conditions, regardless of whether ultimately he won or lost. In the present case, Article 3 of Protocol No. 1 requires the Court not to ascertain merely that the election outcome as such was not prejudiced, but to verify that the applicant's individual right to stand for election was not deprived of its effectiveness and that its essence had not

been impaired. For these reasons, the Government's above argument must be dismissed.

76. Turning to the assessment of the substance of the applicant's complaint under the Convention, the Court notes that the applicant complained of numerous instances of irregularities and breaches of electoral law which had allegedly taken place prior to and during election day in numerous polling stations in his electoral constituency. In doing so, he essentially reiterated the detailed claims he had made before the domestic authorities (see paragraphs 9-18 and 24 above). He maintained that due to these irregularities in themselves, as well as the domestic authorities' failure to duly address them, the election in his constituency had not been free and democratic and the official election results had not reflected the real opinion of voters.

77. As for the applicant's claims concerning the specific instances of alleged irregularities, the Court notes that, although the evidence presented by the applicant in support of his claims can be considered strong (see paragraphs 78-79 below), in the circumstances of the present case it is not in a position to assume a fact-finding role by attempting to determine whether all or part of these alleged facts had taken place and, if so, whether they had amounted to irregularities capable of thwarting the free expression of the opinion of the people. Owing to the subsidiary nature of its role, the Court must be cautious in taking on the function of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Moreover, the Court is not required under the Convention to verify whether any alleged irregularity had amounted to a breach of Azerbaijani electoral law (see *I.Z. v. Greece*, no. 18997/91, Commission decision of 28 February 1994, Decisions and Reports 76-B, p. 65, at p. 68). Again, the Court reiterates that its task under Article 3 of Protocol No. 1 is rather to satisfy itself, from a more general standpoint, that the respondent State has complied with its obligation to hold elections under free and fair conditions and ensured that individual electoral rights were exercised effectively.

78. That being said, the Court cannot but acknowledge the seriousness of the claims made by the applicant before the domestic authorities. In particular, he complained of unlawful interference in the election process by local executive authorities, undue influence on voter choice, several instances of ballot-box stuffing, harassment of observers, irregularities in electoral rolls and obvious discrepancies in PEC protocols showing a possible failure to account for as many as thousands of "unused" blank ballots. The Court considers that these types of irregularities, if duly confirmed to have taken place, were indeed potentially capable of thwarting the democratic nature of the elections. The Court further notes that the applicant's allegations were based on the relevant evidence, which consisted mainly of affidavits signed by official observers, who gave fact-specific accounts of the alleged irregularities witnessed by them. The Court also has

regard to the Final Report of the OSCE/ODIHR Election Observation Mission concerning the elections of 6 November 2005 (see paragraph 55 above), which indirectly corroborates the applicant's claims. While this report did not contain any information relating exclusively to the applicant's constituency, it gave a general account of the most frequent problems identified during the election process. The problems identified were similar to almost all of the applicant's specific allegations and, while not observed in most of the constituencies, appeared nonetheless to have been quite common.

79. In the light of the above considerations, and having regard to the material in the case file, the Court considers that the applicant has put forward a very serious and arguable claim disclosing an appearance of a failure to hold free and fair elections in his constituency.

80. The Court reiterates the approach taken by it in the *Babenko* case (cited above) where, having satisfied itself that there had been no arbitrariness in the conclusions reached by a domestic court which had examined the applicant's specific claims concerning breaches of electoral law and established that they had not prejudiced the elections, the Court accepted and relied on the domestic court's conclusions in its analysis of the applicant's complaint under Article 3 of Protocol No. 1. It was emphasised in that case that, where complaints of election irregularities had been addressed at the domestic level, the Court's examination should be limited to verifying whether any arbitrariness could be detected in the domestic court procedure and decisions.

81. In this connection, having regard to the principles developed by its case-law on Article 3 of Protocol No. 1 (see paragraphs 70-73 above), the Court considers that the existence of a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections. Such a system ensures an effective exercise of individual rights to vote and to stand for election, maintains general confidence in the State's administration of the electoral process and constitutes an important device at the State's disposal in achieving the fulfilment of its positive duty under Article 3 of Protocol No. 1 to hold democratic elections. Indeed, the State's solemn undertaking under Article 3 of Protocol No. 1 and the individual rights guaranteed by that provision would be illusory if, throughout the electoral process, specific instances indicative of failure to ensure democratic elections are not open to challenge by individuals before a competent domestic body capable of effectively dealing with the matter.

82. The Azerbaijani law provided for a system of examination of individual election-related complaints and appeals, consisting of electoral commissions of different levels, whose decisions could be appealed subsequently to the Court of Appeal and further to the Supreme Court. The applicant made use of this system. It remains to be seen whether the

examination of the applicant's claims by the electoral commissions and courts was effective and devoid of arbitrariness.

83. According to the applicant, the electoral commissions did not even reply to his complaints. The Government, however, presented proof that his complaint had been examined by the ConEC. However, having regard to the documents submitted by the Government, the Court notes that, while the ConEC took as long as sixteen days to deliver its decision (which was considerably longer than the three-day time-limit provided by the Electoral Code), it did nothing more than request written explanations from the relevant PEC chairmen and members. Given that the confirmation of these allegations could potentially entail responsibility on the part of these PEC officials for the election irregularities, it is not surprising that all of them simply denied any wrongdoing using the most general wording. For this reason, and having regard to their content, the Court is not convinced that these statements were particularly helpful in determining the factual accuracy of the applicant's claims. Nevertheless, the ConEC appeared to have relied exclusively on the statements of PEC officials in deciding to dismiss the applicant's complaint, without explaining why these statements were considered to be more reliable than the much more detailed and fact-specific evidence presented by the applicant. In fact, no reason was offered by the ConEC in support of its finding that the applicant's claims were "unsubstantiated". There is no indication that any detailed assessment of the substance of the applicant's allegations was attempted or that any genuine effort was made to determine the validity of his claims (contrast *Babenko*, cited above, where a domestic court examined each specific allegation of election irregularity in detail and assessed its effect on the election).

84. As for the complaint lodged directly with the CEC, the Court notes that the applicant has submitted documentary evidence proving that his complaint was received by the CEC on 8 November 2005. However, it appears that the CEC indeed ignored the applicant's complaint and left it unexamined. This is despite Article 112.2 of the Electoral Code, which provided an opportunity to lodge any election-related complaints directly with a "superior electoral commission", which term appeared to include the CEC. The Court again refers to the OSCE/ODIHR report, which noted that "in the vast majority of cases" the CEC merely transmitted individual complaints to the relevant ConECs without examining them, and that it "did not address most of [the] complaints" it received on and after election day. In the instant case, no explanation has been forthcoming from the Government as to the reasons for the CEC's failure to deal with the applicant's complaint despite the requirements of the Electoral Code.

85. The applicant's subsequent appeals lodged with the Court of Appeal and the Supreme Court were not addressed adequately either. In particular, both courts relied on extremely formalistic reasons to avoid examining the

substance of the applicant's complaints, finding that he had not submitted duly certified copies of the relevant observers' affidavits and that he had not attached to his cassation appeal documentary proof that he had indeed applied to the CEC. It is not the Court's task to assess whether, from the standpoint of the domestic law, the domestic courts were correct to apply so strictly the civil procedure rules on admissibility of written evidence to a case giving rise to election-related issues which normally fall within the realm of public law. In the circumstances of the present case, however, the Court finds that such a rigid and overly formalistic approach was not justified under the Convention.

86. In this respect, the Court recalls the Venice Commission's Code of Good Practices in Electoral Matters, which cautions against excessive formalism in examination of election-related appeals, in particular where the admissibility of appeals is concerned (see paragraph 54 above).

87. As mentioned above, the Court considers that the applicant was able to put forward an arguable claim disclosing an appearance of a potentially serious violation of electoral rights and this claim was supported by relevant argumentation and evidence. This evidence included copies of observers' affidavits which appeared to be *prima facie* authentic. Although the applicant did not submit to the courts notarised copies of those affidavits, he claimed at the oral hearing in the Supreme Court that he had submitted the originals to the CEC. In such circumstances, the Court finds it puzzling that the domestic courts did not attempt to request the CEC to confirm whether it was in possession of those originals or to otherwise establish the authenticity of those affidavits. At the very least, the courts should have allowed the applicant an opportunity to supplement his written submissions with any additional evidence deemed necessary (such as documentary proof that he had indeed applied to the CEC).

88. The Court considers that, in order to ensure the State's compliance with its positive obligation under Article 3 of Protocol No. 1 to hold free elections, the domestic courts dealing with the present case, having been called upon to decide on an arguable claim concerning election irregularities, should have reacted by taking reasonable steps to investigate the alleged irregularities without imposing unreasonable and excessively strict procedural barriers on the individual complainant. What was at stake in those proceedings was not only the alleged infringement of the applicant's individual rights but also, on a more general level, the State's compliance with its positive duty to hold free and fair elections. Therefore, even assuming that the courts in the present case might have been unable to decide the case solely on the basis of the evidence submitted by the applicant, the material put before them was nevertheless strong enough to require them to take additional steps to obtain more information and verify the accuracy of the applicant's allegations which cast doubt on the free and fair character of the elections in his constituency.

89. Moreover, in any event, not all of the applicant's allegations were based on those observers' affidavits. His complaint also mentioned other alleged serious irregularities, including apparent inconsistencies in several PEC protocols disclosing potential large-scale tampering with ballots on the PEC level. In terms of initial evidence necessary for examination of this specific issue, the courts had to do nothing more than request the electoral commissions to submit those protocols to them for an independent examination. If such examination indeed revealed inconsistencies, a more thorough assessment of their impact on the election results would be necessary. However, the relevant court decisions were silent in respect of this part of the applicant's complaint.

90. The Court acknowledges that, owing to the complexity of the electoral process and associated time-restraints necessitating streamlining of various election-related procedures, the relevant domestic authorities may be required to examine election-related appeals within comparatively short time-limits in order to avoid retarding the electoral process. For the same practical reasons, the States may find it inexpedient to require these authorities to abide by a set of very strict procedural safeguards or to deliver very detailed decisions. Nevertheless, these considerations may not serve to undermine the effectiveness of the appeal procedure, and it must be ensured that a genuine effort is made to address the substance of arguable individual complaints concerning electoral irregularities and that the relevant decisions are sufficiently reasoned. In the present case, however, the conduct of the electoral commissions and courts and their respective decisions revealed an appearance of lack of any genuine concern for the protection of the applicant's right to stand for election.

91. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's complaints concerning election irregularities were not effectively addressed at the domestic level and were dismissed in an arbitrary manner.

92. In view of the conclusion reached in the above paragraph, the Court finds that it is not necessary for the purposes of the present case to further examine the applicant's arguments concerning the method of composition of the electoral commissions.

93. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 14 of the Convention

94. In conjunction with the above complaint, the applicant complained that during the entire election process he, as an opposition candidate, had

been discriminated against due to his political affiliation and had not been allowed to run for election under equal conditions with the candidates affiliated with the incumbent party. He relied on Article 14, which provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

95. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

96. However, having regard to its above finding in relation to Article 3 of Protocol No. 1, the Court considers that it is not necessary to examine whether in this case there has been a violation of Article 14.

B. Article 6 of the Convention

97. The applicant complained under Article 6 of the Convention that the domestic judicial proceedings had been unfair and arbitrary. Article 6 of the Convention provides, in its relevant part, as follows:

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

98. The Court notes that the proceedings in question involved the determination of the applicant's right to stand as a candidate in the parliamentary elections. The dispute in issue therefore concerned the applicant's political rights and did not have any bearing on his “civil rights and obligations” within the meaning of Article 6 § 1 of the Convention (see *Pierre-Bloch v. France*, 21 October 1997, § 50, *Reports* 1997-VI; *Cherepkov v. Russia* (dec.), no. 51501/99, ECHR 2000-I; *Ždanoka v. Latvia* (dec.), no. 58278/00, 6 March 2003; and *Mutalibov v. Azerbaijan* (dec.), no. 31799/03, 19 February 2004). Accordingly, this Convention provision does not apply to the proceedings complained of.

99. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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*

101. The applicant claimed 22,500 new Azerbaijani manats (AZN) in respect of various expenses related to his electoral campaign, such as expenses for publication of his campaign advertisement, salaries paid to his campaign staff, renting office space for his election headquarters, etc.

102. The Government noted that the applicant failed to support this claim with any documentary evidence. They further argued that campaign expenses could not be claimed as pecuniary damage and that, in any event, part of each candidate's campaign expenses were borne by the State in accordance with the domestic law.

103. The Court notes that the present application was about the applicant's right to stand for election. It cannot be assumed that, had the applicant's right not been infringed, he would necessarily have won the election in his constituency and become a member of parliament. Therefore, it cannot be speculated that the expenditure on his electoral campaign was a pecuniary loss (compare *The Georgian Labour Party*, cited above, § 150). As no causal link has been established between the alleged pecuniary loss and the violation found, the Court dismisses the applicant's claim under this head.

2. *Non-pecuniary damage*

104. The applicant claimed AZN 200,000 in respect of non-pecuniary damage caused by the infringement of his electoral rights.

105. The Government argued that the amount claimed was excessive and considered that finding of a violation of the Convention would constitute sufficient just satisfaction in itself.

106. The Court considers that the applicant suffered non-pecuniary damage which cannot be compensated solely by the finding of the violation of Article 3 of Protocol No. 1. Ruling on an equitable basis, the Court awards him the sum of 7,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

107. The applicant claimed AZN 2,000 for legal fees incurred in the proceedings before the Court, AZN 1,500 for translation expenses and AZN 1,000 for postal expenses. In support of his claims, he submitted a contract for legal services rendered in the proceedings before the Court and a contract for translation services. Both contracts stipulated that the amounts due were to be paid in the event that the Court found a violation of the applicant's rights.

108. The Government argued that the costs and expenses related to the legal and translation services had not actually been incurred, because the amounts claimed had not been paid by the applicant. They further argued that, in any event, the contract for legal services provided for excessive legal fees and included certain types of services which were not needed or expected in this case. As for the postal expenses, the Government noted that this part of the claim was unsupported by any evidence.

109. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that, although the applicant has not yet actually paid the legal fees and translation costs, he was bound to pay them pursuant to a contractual obligation. Accordingly, in so far as the lawyer and translator are entitled to seek payment of their fees under the contract, those fees were "actually incurred". However, taking into account the amount of legal work done in the present case and the total amount of material actually translated, the Court considers that the claims in respect of both the legal fees and translation expenses are excessive and therefore can be satisfied only partially. Furthermore, the Court notes that the applicant failed to support his claim for postal expenses with any documentary evidence and therefore no sum can be awarded in respect of those expenses.

110. Regard being had to the above, the Court considers it reasonable to award the sum of EUR 1,600 covering costs under all heads, plus any tax that may be chargeable to the applicant on that sum.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of Protocol No. 1 to the Convention and Article 14 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 14 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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 on the date of settlement:
 - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President