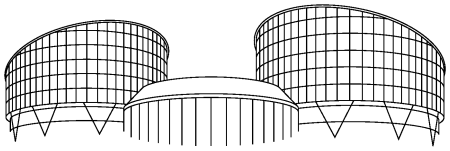

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GAHRAMANLI AND OTHERS v. AZERBAIJAN

(Application no. 36503/11)

JUDGMENT

STRASBOURG

8 October 2015

FINAL

08/01/2016

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

In the case of Gahramanli and Others v. Azerbaijan,

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

András Sajó, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Dmitry Dedov, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 36503/11) 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 three Azerbaijani nationals, Mr Fuad Ali oglu Gahramanli (*Fuad Əli oğlu Qəhrəmanlı*), Mr Zalimkhan Adil oglu Mammadli (*Zəlimxan Adil oğlu Məmmədli*) and Mr Namizad Heydar oglu Safarov (*Namizəd Heydər oğlu Səfərov*) ("the applicants"), on 1 June 2011.

2. The applicants were represented by Mr H. Hasanov, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged, in particular, that the election in their electoral constituency had not been free and fair owing to numerous instances of electoral fraud and that their right to stand for election had been infringed due to the relevant authorities' failure to effectively address their complaints concerning election irregularities.

4. On 9 December 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1975, 1957 and 1955 respectively and live in Baku.

6. The applicants stood as candidates for the opposition parties in the parliamentary elections of 7 November 2010 in the single-mandate Khatai First Electoral Constituency No. 33. Mr Fuad Gahramanli was nominated by the coalition of the Popular Front and Musavat parties, Mr Zalimkhan Mammadli by the Classic Popular Front Party and Mr Namizad Safarov by the Karabakh electoral bloc.

7. The constituency was divided into thirty-five electoral precincts, with one polling station in each precinct. It is apparent that there were a total of eight candidates running for election in the constituency.

8. According to the official election results, Mr H.M., the candidate nominated by the ruling Yeni Azerbaijan Party, won the election with 9,805 votes. Mr Zalimkhan Mammadli finished second with 1,893 votes, Mr Fuad Gahramanli third with 1,571 votes and Mr Namizad Safarov last with 157 votes.

A. The applicants' complaints concerning alleged irregularities on election day

9. On 10 November 2010 the applicants, together with one other candidate, jointly lodged nearly identical complaints with the Constituency Electoral Commission (the "ConEC") and the Central Electoral Commission (the "CEC"). They complained that the election results had not reflected the true opinion of the voters because there had been numerous instances of electoral fraud and irregularities on election day, and they requested the annulment of the election results in their constituency. They alleged that:

(a) In all the constituency polling stations, employees of the Khatai District Executive Authority and people affiliated with Mr H.M. had, in an organised manner, brought a number of persons not registered as voters into constituency polling stations to cast voting ballots;

(b) There had been instances of ballot-stuffing in numerous polling stations;

(c) The number of ballots cast in all the polling stations had been more than three times higher than the number of voters who had come to cast votes in all the polling stations;

(d) In one polling station, observers and consultative members of precinct electoral commissions ("PECs") (commission members with no voting rights) had been prevented from participating in the vote-counting process.

10. The applicants also requested that their presence be ensured at the commission hearings concerning their complaints.

11. In support of their allegations, the applicants submitted to the electoral commissions more than a hundred statements (*akt*) made by

election observers documenting specific instances of the irregularities complained of.

12. The applicants submitted copies of approximately fifty of the above-mentioned statements to the Court concerning alleged irregularities in Polling Stations nos. 4, 5, 6, 9, 10, 11, 13, 14, 16, 18, 19, 20, 21, 23, 24, 25, 28, 29, 30, 33, 34 and 35. Some examples of those statements are summarised below.

13. Two observers in Polling Station no. 34 claimed to have witnessed an incident of ballot-box stuffing by two PEC members. They noted that, although fewer than 240 voters had been counted throughout the day, a total of 534 ballots had been found in the ballot box and officially counted.

14. Three observers in Polling Station no. 9 witnessed an incident where the PEC chairman had given a stack of several pre-marked ballots to a voter, who then accidentally dropped them on the floor near the ballot box. Despite this, the ballots were gathered up and put into the ballot box in plain view of all those present. In a separate statement, the same three observers noted two other incidents of similar ballot-box stuffing allegedly initiated by the PEC chairman.

15. Three observers in Polling Station no. 19 noted that, although a total of only 259 voters had been counted throughout the day, the number of ballots found inside the ballot box at the end of the day had exceeded 400.

16. One consultative member of the PEC and two observers in Polling Station no. 18 noted that they had been prevented from standing at a place where they could observe, in an unobstructed manner, the checking of voters' forefingers for election ink. This had presumably been done by persons in charge in the precinct,

17. Three observers in Polling Station no. 25 noted that, although a total of only 235 voters had been counted throughout the day, 496 ballots had been found in the ballot box. The ballot box contained clumps of ballots, suggesting that ballot-box stuffing had taken place.

18. Observers in a number of other polling stations had also noted similarly significant differences between the numbers of ballots in the ballot boxes and the numbers of voters who had been observed casting votes throughout the day.

B. Examination of the complaint by the CEC

19. According to the applicants, they did not receive any reply from the ConEC and their complaint had been examined by the CEC only.

20. On 13 November 2010 the CEC extended the statutory three-day period for examining the complaint for an indefinite period of time, noting that "additional enquiries" were required.

21. On 21 November 2010, R.I., the member of the CEC's expert group who had been charged with dealing with the complaint delivered his opinion, stating that the complaint should be dismissed as unsubstantiated.

22. By a decision of 21 November 2010, the text of which was essentially a repetition of the opinion delivered by the expert R.I., the CEC dismissed the applicants' complaint as unsubstantiated. It appears that the applicants were not present at the CEC hearing.

23. In its decision, the CEC noted that the applicants should first have taken their complaints to the relevant PECs. They could then have appealed against the decisions of the various PECs to the ConEC, and only then should they have complained to the CEC, whereas – in breach of the above procedure – they had applied directly to the CEC. The CEC nevertheless decided to examine the complaint on the merits.

24. As to the merits of the complaint, the CEC found, in particular, that "the majority of the observers' statements [as submitted by the applicants] were of a general character and did not reflect the principle that an observation must be based on fact". It furthermore found that a number of the statements contained an assessment of the alleged irregularity based solely on observers' "subjective opinions". As an example of this, the CEC mentioned the statement of three observers from Polling Station no. 25 (see paragraph 17 above).

25. Furthermore, the CEC noted that the information in the observers' statements which the applicants submitted – of which there were more than hundred – was refuted by the statements of over one hundred other observers from "all thirty-five polling stations" who had not registered any breaches of electoral law that could affect the election results. According to the CEC, some of those observers represented the opposition. In particular, the CEC mentioned the names of a number of observers from Polling Stations nos. 3, 4, 6, 8, 9 and 15 who, according to the CEC, "had confirmed that no breaches of the electoral legislation had been observed". Moreover, the CEC noted that PEC members in all the polling stations had stated that, on election day, they had not received any statements or complaints by any observer or candidate concerning any election irregularities and that the election process in their respective polling stations had been lawful and conducted under adequate conditions.

26. In conclusion, the CEC found that the examination of the written evidence refuted the allegations made by the applicants and that no grounds for invalidating the election results could be established.

C. Court proceedings

27. On 25 November 2010 the applicants, together with one other candidate, lodged an appeal against the CEC decision with the Baku Court of Appeal. In the appeal, they reiterated the complaints made to the CEC

about the alleged irregularities on election day. They also complained that – contrary to the requirements of Article 112-1.7 of the Electoral Code – their presence at the CEC hearing had not been ensured and that the CEC had deliberately not investigated the serious allegations of electoral fraud and irregularities.

28. By a judgment of 26 November 2010 the Baku Court of Appeal dismissed the applicants' appeal, mostly reiterating the CEC's reasoning. In particular, it noted that the applicants and their observers had not immediately complained of the alleged irregularities directly to the relevant PECs on election day. It furthermore found that the CEC had properly investigated the allegations and had found that they had been refuted by a number of other observers representing various political parties, including opposition parties, who had stated that no serious irregularities had taken place in any polling station.

29. A copy of the Baku Court of Appeal's judgment was made available to the applicants on 30 November 2010.

30. In the meantime, on 22 November 2010 the CEC had sent its final election results record and other relevant documents for review and final approval by the Constitutional Court. On 29 November 2010 the Constitutional Court confirmed the country-wide election results, including the election results in the applicants' constituency, as final.

31. On 1 December 2010 the applicants lodged an appeal with the Supreme Court against the Baku Court of Appeal's judgment. They reiterated the complaints and arguments raised before the CEC and the Baku Court of Appeal. They also complained of the following:

(a) as to the CEC's and the appellate court's remark that the irregularities allegedly observed on election day had not been communicated to the PECs immediately on that same day, the applicants noted that it had been precisely the conduct of the PECs – which had created a hostile environment for opposition observers and had themselves been largely responsible for those irregularities – that had made it impossible or difficult for the applicants and their observers to attempt to deal with the irregularities at the PEC level;

(b) both the CEC and the Baku Court of Appeal had given more weight to the statements of pro-Government observers, which had assessed the election process positively, than to those of the applicants' observers. The CEC and the Baku Court of Appeal did not explain the reasons for doing so. Moreover, while the CEC noted that positive statements about the conduct of the election had been made even by some observers from opposition parties, the applicants claimed the CEC had simply fabricated the existence of such statements by purported pro-opposition observers.

32. On 6 December 2010 the Supreme Court dismissed the applicant's appeal, agreeing with the lower court's reasoning. It also added that the applicants' appeal and the Baku Court of Appeal's judgment had to be

assessed in the light of Article 63.4 of the Law on the Constitutional Court, which stated that the Constitutional Court's decisions were final and could not be subject to quashing, amendment or official interpretation by any authority or person. In this regard, the Supreme Court reasoned as follows:

> "The results of the [parliamentary] elections of 7 November 2010 were recognised as valid by [the CEC's] election results record of 22 November 2010 and the candidates elected as members of parliament from all 125 electoral constituencies were determined.
>
> The aforementioned results record was approved by the CEC decision of 22 November 2010, and [on the same date] the final election results record, together with the [ConEC] results records and additional documents, were submitted to the Constitutional Court for verification and approval of the election results.
>
> By a decision of the Plenum of the Constitutional Court on the results of the [parliamentary] elections of 7 November 2010 ..., dated 29 November 2010, the CEC's final results record of 22 November 2010 was deemed compliant with the requirements of Articles 100.2, 100.12, 108.2 and 171.2 of the Electoral Code of the Republic of Azerbaijan, and the election results concerning 125 electoral constituencies, including Khatai First Electoral Constituency no. 33, were approved, that decision becoming final at the moment of its delivery.
>
> It follows from that decision that the Constitutional Court did not establish any circumstances that may have taken place during the voting or the determination of the election results that could have prevented the establishing of the will of the voters in Khatai First Electoral Constituency no. 33.
>
> Taking into account the fact that the aforementioned decision [of the Constitutional Court] is final and not subject to quashing, amendment or official interpretation by any authority or person, the court considers that the judgment of the appellate court [dismissing the applicants' complaints] must be upheld."

II. RELEVANT DOMESTIC LAW

A. Electoral Code

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

33. 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 (CEC); (b) constituency electoral commissions (ConECs); and (c) precinct (polling station) electoral commissions (PECs) (Article 18.1).

34. 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 National Assembly. 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 (Article 19.3).

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

36. The CEC consists of eighteen members who are elected by the National Assembly. Six members of the CEC are directly nominated by and represent the political party holding a majority of seats in the National Assembly, six members are nominated by and represent members of parliament who are not affiliated with any political party (independents), and six members are nominated by and represent all the remaining political parties holding a minority of parliamentary seats. Out of the six nominees representing the independent 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).

37. 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 members of parliament who are not affiliated with any political party. 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 members of parliament who are not affiliated with any political party, 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).

38. 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 members of parliament who are not affiliated with any political party. 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 members of parliament who are not affiliated with any political party, 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

39. Candidates and other interested parties may complain about decisions or actions (or omissions to act) violating the electoral rights of candidates or other interested parties within three days of the publication or receipt of such decisions or the occurrence of such actions (or omissions) or within three days of an interested party having become aware of such decisions or actions (or omissions) (Article 112.1).

40. Such complaints may 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 fresh examination (Article 112.9). Decisions or actions (or omissions to act) of a ConEC may be appealed against to the CEC, and decisions or actions (or omissions to act) of the CEC may be appealed against to the appellate court (Article 112.3).

41. 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).

42. While examining requests for annullment of the election of a specific candidate, the relevant electoral commission has the right to hear submissions from citizens and officials as well as to obtain the requisite documents and evidential material (Article 112.8).

43. 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 the receipt of such complaint, except for complaints submitted on election day or the day after election day, which shall be examined immediately (Article 112.10).

44. For the purposes of investigating complaints concerning breaches of electoral rights, the CEC shall create an expert group consisting of nine members (Article 112-1.1).

45. If a complainant expresses a wish to participate in the hearing of an electoral commission examining his complaint, he or she must be informed of the time and place of the hearing one day in advance (Article 112-1.7).

46. 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).

47. 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

48. After the counting of votes in a polling station at the end of election day, the PEC draws up an election results record (*protokol*), in three original copies, documenting the results of the voting in the polling station (Articles 106.1-106.6). One copy of the PEC results record, 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 results record and documents attached to it comply with the law and whether there are any inconsistencies (Article 107.1). After submission of all the PEC results records, the ConEC tabulates, within two days of election day, the results from the different polling stations and draws up a results record, in three original copies, reflecting the aggregated results of the vote in the constituency (Articles 107.2 -107.7). One copy of the ConEC results record, 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 results records comply with the law and whether they contain any inconsistencies (Article 108.1) and draws up its own final results record reflecting the results of the elections in all constituencies (Article 108.2).

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

50. Within ten days of receipt of the above documents the Constitutional Court determines, 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. Law on the Constitutional Court

51. Article 63.4 of the Law on the Constitutional Court states:

"A decision of the Plenum of the Constitutional Court shall be final and cannot be cancelled, changed or officially interpreted by any organ or official."

III. RELEVANT INTERNATIONAL DOCUMENTS

A. Code of Good Practice in Electoral Matters

52. 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:

"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 7 November 2010 (Warsaw, 25 January 2011) ("the OSCE Report")

53. The relevant excerpts from the OSCE Report read as follows:

"IV. ELECTION SYSTEM AND THE LEGAL FRAMEWORK

A. ELECTION SYSTEM

Parliamentary elections are conducted under a majoritarian system. Members of parliament are elected in 125 single-mandate constituencies for a five-year term, in one round of voting. The candidate who obtains the highest number of votes is considered elected. ...

...

V. THE ELECTION ADMINISTRATION

The 7 November parliamentary elections were administered by a three-tiered system of election administration, headed by the 18-member CEC. There are 125 ConECs and 5,175 PECs. These election commissions are permanent bodies appointed for a five-year term. Members of the CEC are elected by parliament, ConECs are appointed by the CEC, and PECs by the relevant ConECs.

...

According to the Election Code, the composition of all election commissions reflects the representation of political forces in the parliament: three equal quotas are reserved for members nominated by the parliamentary majority (i.e. YAP), parliamentarians elected as independent candidates, and the parliamentary minority (defined as the remaining political parties represented in the parliament).

This formula remains highly contentious, since in practice it establishes the domination of the election administration by pro-government forces, which have a decisive majority in all commissions. Moreover, the chairpersons of all election commissions are by law nominees of the parliamentary majority. This domination undermines confidence in the independence and impartiality of election administration bodies and does not ensure that they enjoy public confidence. The OSCE/ODIHR and the Venice Commission have repeatedly recommended that the formula be revised in a manner which would ensure that election commissions are not dominated by pro-government forces and enjoy public confidence, in particular the confidence of political parties contesting the elections. This recommendation has not been addressed.

...

OSCE/ODIHR EOM LTOs assessed the performance of ConECs as generally efficient and professional as far as the technical preparations of the election process were concerned. However, they expressed serious concerns regarding the impartiality of ConECs, which generally appeared to favor YAP candidates or incumbent independent candidates. The lack of impartiality of ConECs became particularly apparent during the candidate registration process and in the handling of electoral disputes by ConECs.

...

XIV. ELECTION DAY

While election day was generally calm and peaceful, international observers reported a high occurrence of serious irregularities and procedural violations, including ballot box stuffing. ...

A. OPENING AND VOTING

...

Overall, international observers assessed voting positively in 89 per cent of polling stations visited, while voting was assessed negatively in a considerable 11 per cent of the 1,247 polling stations visited (127 polling stations), indicating systemic irregularities. The most widely observed procedural violations during voting concerned inking, an important safeguard against multiple voting. In 12 per cent of polling stations visited, not all voters were checked for traces of invisible ink; in 8 per cent, not all voters were marked with ink. Twenty-three PECs where voting was observed did not check voters for ink at all, and 12 PECs did not ink any voters. International observers reported from seven polling stations that voters who had already been inked were nonetheless allowed to vote. ...

International observers noted a series of identical signatures on the voter list in 100 of the polling stations visited, and ballot box stuffing in a significant 63 cases. Group voting was observed in 7 per cent of polling stations visited, proxy voting in 2 per cent, and multiple voting in 1 per cent. In 25 polling stations visited, voters were allowed to vote although they were not able to produce any of the prescribed identity documents. ...

In 7 per cent of polling stations visited, not all voters marked their ballots in secret. International observers also noted 12 cases where one person was "assisting" numerous voters, potentially undermining the secrecy of the vote. ...

International observers reported 65 instances of tension in and outside polling stations, 20 attempts to influence for whom voters should cast their ballots, and 9 cases of intimidation of voters. They also noted instances of campaigning or the presence of campaign material in the vicinity of and inside polling stations. Unauthorized persons were identified in 79 polling stations and interfered in or directed the process in 19 instances.

Proxies of candidates, parties and electoral blocs were present in 91 per cent of polling stations visited, and domestic non-party observers, in 56 per cent. ... International observers noted some cases where observers and proxies were expelled from polling stations and received reports of them being pressured, detained or physically assaulted. Regrettably, international observers were restricted in their observation in 114 polling stations.

B. COUNTING

While 105 of the 152 counts observed were evaluated positively, observers assessed the vote count negatively in a 47 instances (32 per cent), a significantly high number. In 14 cases, the number of ballots in the mobile or stationary ballot box was higher than the number of signatures on the voter list or the written requests for mobile voting, and 31 ballot boxes contained clumps or stacks of ballots, suggesting that ballot box stuffing had occurred earlier. In a few cases, the PEC counted the ballots in a different room. Election results were tampered with in 13 polling stations.

Significant procedural errors and omissions were reported from over one quarter of counts observed. A considerable number of PECs did not perform basic reconciliation procedures required by law, such as counting and entering into the protocols the number of voters' signatures on the voter lists (61 cases), of DVCs [de-registration voting card] retained (25 cases), or of requests for mobile voting (25 cases). Twenty-eight PECs did not cancel unused ballots after the end of voting, and 33 did not place spoiled ballots in a separate envelope. Fifty-one PECs did not enter all figures from the reconciliation procedures in the draft protocol before opening the ballot boxes, and 41 did not crosscheck them for mathematical consistency. In five polling stations where the count was observed, ballot box seals were not intact when the boxes were opened, and in 13 cases, their serial numbers did not match those entered in the draft protocol during the opening of the polling station.

Ballot validity was not always determined in a reasonable and consistent manner (16 and 14 cases, respectively), with PECs not voting on the validity of disputed ballots in 42 of the counts observed. In 31 counts observed, not everybody present was able to see clearly how ballots had been marked, and in 12 instances, PEC members or observers were not allowed to examine ballots upon request. In 48 counts observed, the data established was not announced before being entered into the draft protocol. In ten polling stations, unauthorized persons were present during the count, and in six, such persons interfered in or directed the process. Persons other than PEC members were seen participating in the count in 12 polling stations. ...

...

XVI. POST-ELECTION COMPLAINTS AND APPEALS

A. ADJUDICATION OF POST-ELECTION COMPLAINTS BY THE CEC

The CEC reviewed, up to 22 November, over 120 complaints, 73 of which requested the invalidation of results in 50 constituencies. Plaintiffs cited grave irregularities such as ballot stuffing, multiple voting and proxy voting, in particular in military polling stations, voting by unauthorized persons, interference and pressure by executive officials, obstruction of observers, breaches of the law during the vote count and the tabulation of results, and discrepancies between PEC and ConEC protocols. They also requested the prosecution of officials and individuals who allegedly committed electoral offences.

The CEC review of complaints lacked due process and transparency; the investigation was conducted solely by one member of the expert group to whom the case was assigned and whose opinion was presented only briefly and was always adopted unquestioningly by the majority of CEC members. The substance of the complaints was not discussed during the CEC sessions. Instead of attempting to ascertain the authenticity of the dispute, it invoked formalistic reasons to deny a thorough examination of the complaints. On one occasion, the CEC debated whether a complaint should be discussed on its merits, because there was a difference between the plaintiff's signature on the complaint and the signature on his ID, while no effort was made to contact the plaintiff. Some complaints were dismissed on the grounds that there were differences in the signatures of observers who signed several statements on violations and because the CEC estimated that observers could not have visited a certain number of polling stations within the time indicated in the statements.

Documents which had been submitted as evidence, such as PEC protocols, were not examined or discussed during the sessions, under the pretext that they were not the originals. In response to complaints alleging that groups of people were carried around by buses and voted multiple times, the CEC chairperson stated during a

session that the CEC only investigates events inside polling stations and that all else does not concern the CEC. Plaintiffs attended the sessions where their complaints were being reviewed only on very few occasions and complained that they were given very short notice before the session. They also claimed that PECs and ConECs in several instances refused to accept their complaints. Even though ConECs at times sent their decisions by mail, with delivery to the plaintiffs taking several days, the CEC dismissed the subsequent appeal on the grounds that they were submitted past the three-day legal deadline.

...

B. ADJUDICATION OF APPEALS BY THE COURTS

Over 60 appeals against CEC decisions were lodged with the Baku Court of Appeal, all of which were dismissed. The court upheld all CEC decisions without proper investigation of the appellants' arguments. The court in all but a few cases did not call and did not examine testimonies of witnesses suggested by the appellants. The reasons why the court did not call witnesses and hear testimonies were not indicated in the decisions, even though the Code of Civil Procedures clearly states that the section of a court decision which is motivating the decision should mention the reasons for refusal to accept any evidence referred to by the persons participating in a case.

Requests by appellants to have original documents which they had previously submitted to the CEC returned to them were routinely refused. In one case, the appellant requested the court to oblige the CEC to provide the footage from the video camera installed in a polling station as evidence. The CEC lawyer claimed that the video recordings were in the archive and could not be submitted. The Court did not address the request either during the hearing or in its decision. Results protocols certified by PECs which were different from those posted on the CEC website were presented during hearings but were not taken into account by the court, which accepted the CEC's explanation that after recounts no discrepancies were found.

The OSCE/ODIHR EOM is aware of approximately 30 cases that were reviewed by the Supreme Court. Requests to the court by the OSCE/ODIHR EOM for information regarding election-related cases went unanswered. The court did not address the shortcomings and deficiencies in the adjudication of complaints by the CEC and the Baku Court of Appeal and dismissed all appeals. Attorneys of the appellants claimed they were given notice of only an hour or two before the hearings. Overall, the courts failed to provide effective remedy and on occasions even failed to comply with domestic legislation.

C. COMPILATION AND ADOPTION OF THE FINAL RESULTS PROTOCOL

The CEC compiled and sent to the Constitutional Court the final protocol of the election results on 22 November, even before the deadlines for challenging CEC decisions in the courts had expired. The protocol was signed by 17 out of 18 CEC members. The Constitutional Court validated the election results by a final decision on 29 November, when cases were still pending before the Baku Court of Appeal and deadlines for challenging Court of Appeal's decisions to the Supreme Court had not expired. This effectively deprived stakeholders of the opportunity to exercise their constitutional right to seek legal redress."

C. Explanatory memorandum by Mr Pedro Agramunt and Mr Tadeusz Iwiński, co-rapporteurs, to Resolution 2062 (2015) of the Parliamentary Assembly of the Council of Europe, "The functioning of democratic institutions in Azerbaijan"

54. The following are extracts from the explanatory memorandum:

"**4. Elections**

...

27. Concerning the Electoral Code, in March 2008, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Venice Commission prepared a joint interim opinion on the draft amendments to the Code. The [National Assembly] adopted the amendments on 2 June 2008. Another Venice Commission and OSCE/ODIHR joint opinion was adopted in June 2008 on the adopted amendments to the Electoral Code. Since then, the Electoral Code was further amended in June 2010, April 2012 and April 2013, but key issues were not tackled, in particular the reform of the composition of the electoral administration, which lacks independence.

28. In their previous report on "The honouring of obligations and commitments by Azerbaijan" of 20 December 2012 the then co-rapporteurs expressed concern over the fact that previous Venice Commission recommendations had not been addressed. The biggest concerns were about the composition of the Central Electoral Commission and territorial electoral commissions, candidate registration, observers, the electoral roll and its accuracy, as well as the complaints and appeals procedure. Since then, the electoral code has not been amended to improve the composition of the electoral administration and candidates' and voters' registration, despite the Venice Commission recommendations:

29. The Central Electoral Commission is appointed by parliament: one third of its members are proposed by the majority, one third by the minority and the last third by independent members of parliament. Although this could be seen as an appropriate system in theory, in practice, this formula provides pro-government forces with a decisive majority and results in a lack of commission members from the opposition. [Footnote: "... See also former election reports and joint Venice Commission and OSCE/ODIHR opinions issued in 2008, 2005, 2004 and 2003, in which it has been repeatedly stated, departing from the experience in past elections, commission members appointed by theoretically "independent" sections of the parliament or small parties tend, in reality, to vote in line with the governing party – see, among others, CDL-AD(2003)015, CDL-AD(2004)016rev, CDL-AD(2005)029 and CDL-AD(2008)011."] By law, all chairpersons of all electoral commissions are nominated by the parliamentary majority. Constituency electoral commissions are appointed by the Central Electoral Commission, and precinct electoral commissions are appointed by the relevant constituency electoral commissions. In view of the above, the composition of the commissions is detrimental to the independence of the electoral administration and thus undermines confidence in the electoral process.

...

32. ... The importance of independence in the composition of electoral commissions has ... repeatedly been highlighted by the Venice Commission, which recommends that central electoral commissions include at least one member of the judiciary. These

conclusions were subsequently reflected in the opinion of the Venice Commission on the draft amendments to the Electoral Code of the Republic of Azerbaijan."

THE LAW

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

55. Relying on Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicants complained that, in the electoral constituency where they had run for the parliamentary election, 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 had thus infringed their right to stand as candidates in free elections. The domestic authorities, including the electoral commissions and courts, had failed to properly examine their complaints and to investigate their allegations concerning the aforementioned irregularities and breaches of electoral law. In particular, the examination of their appeal by the Supreme Court had been deprived of all effectiveness because the election results had already been approved by the Constitutional Court. They also argued that the structural composition of the electoral commissions at all levels – dominated by pro-government political forces as they were – had allowed electoral fraud to be committed by commission members to the detriment of opposition candidates and had been one of the reasons for the failure to effectively investigate it.

56. 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:

"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

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

B. Merits

1. The parties' submissions

58. The Government submitted that the domestic legislation provided for an effective mechanism for the examination by the ConECs, the CEC, an appellate court and the Supreme Court of election-related complaints.

59. As to the structural composition of the electoral commissions, the Government noted that at all three levels the commission members represented the three categories of political forces represented in the parliament: the majority party, the independents and the remaining (minority) parties. As each of these forces is represented equally by one-third of commission members, the existing system ensured that no political force was in a dominant position compared to the other two.

60. The Government argued that the applicants' electoral complaint had been comprehensively and thoroughly examined by the electoral commissions and the courts in accordance with the requirements of the Electoral Code and other applicable legislation. The complaint had first been examined by a member of the CEC expert group who had produced an opinion before the CEC hearing. The CEC decision had been substantiated. The CEC had received statements from "a great number of observers ... representing various political parties, including the applicants' [own] political parties", which did not support the applicants' allegations. On the basis of those statements, the CEC had decided that the applicants' allegations were groundless.

61. Lastly, the Government noted that applicants had been duly informed of the Baku Court of Appeal hearing and that two of them had attended it and had been heard by the court. Two of the applicants were also present at the Supreme Court hearing. As to the effectiveness of the examination of the appeal by the Supreme Court, the Government noted that the Supreme Court had not merely "mechanically referred" to the Constitutional Court's decision approving the election results, but had also comprehensively examined all the relevant legal points of the appeal.

62. The applicants argued that the electoral commissions had not been independent but had operated under the influence and control of the Government, with the aim of creating various unfair advantages for the pro-Government candidates. While at first sight it might appear that representatives of the ruling party formally held only one-third of the seats in each electoral commission, in reality the remaining commission members – representing both the independents and the parliamentary-minority parties – were also pro-ruling-party and had followed the instructions of the authorities. Moreover, by law, the chairperson of every electoral commission at each level was nominated by the parliamentary-majority party. Thus, in practice, the system allowed the pro-government forces to effectively dominate in each electoral commission.

63. The applicants claimed that the relevant PECs had not only failed to address on the spot the irregularities that had allegedly taken place, but that the "majority of the violations of the law" had been actively encouraged by them. Despite this, the CEC had referred to statements by chairpersons and members of the relevant PECs – in which the existence of irregularities was denied – as a basis for rejecting the applicants' complaints. It had also relied chiefly on the statements of observers representing pro-government political parties and "governmental NGOs". The CEC had not explained why those statements were considered to constitute more reliable evidence than the applicants' observers' statements documenting the alleged irregularities. It had not questioned any of the applicants' observers.

64. According to the applicants, the Baku Court of Appeal's judgment had lacked reasoning because it had failed to address the applicants' arguments concerning the alleged irregularities and the unfairness of the CEC's examination of those arguments.

65. They also claimed that the Supreme Court had examined the applicants' appeal in a superficial manner and had, moreover, dismissed it partly on the basis of an extraneous reason, namely the fact that the Constitutional Court had already approved the election results. Moreover, the premature approval of the election results by the Constitutional Court, which had taken place before the period for the applicants' appeal to the Supreme Court had expired, reduced the overall effectiveness of the appeal to the Supreme Court as a remedy.

2. The Court's assessment

(a) General principles

66. Article 3 of Protocol No. 1 enshrines a principle that is characteristic of an effective political democracy and is accordingly of prime importance in the Convention system (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no. 113). This Article would appear at first to differ from the other provisions of the Convention and its Protocols, as it is phrased in terms of the obligation of the High Contracting Parties to hold elections under conditions 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 (ibid., §§ 46-51).

67. The Court has consistently highlighted the importance of the democratic principles underlying the interpretation and application of the Convention and has 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 (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 58, ECHR 2005-IX). Nonetheless, those rights are not absolute. There is room

for "implied limitations", and Contracting States are given a margin of appreciation in this sphere (see *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I; *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV; and *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II). However, in the last resort it is for the Court to determine whether or not the requirements of Article 3 of Protocol No. 1 have been complied with. It must satisfy itself that the conditions imposed on the rights to vote and to stand for election do not curtail those rights to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Mathieu-Mohin and Clerfayt*, cited above, § 52). In particular, any conditions imposed 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).

68. 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 of Judgments and Decisions* 1998-I; *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III; and *Lykourezos v. Greece*, no. 33554/03, § 56, ECHR 2006-VIII). 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 be merely 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*, cited above, § 35). This 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).

69. The Court has established that the existence of a domestic system for the 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 (see *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 81, 8 April 2010).

70. The Court has also emphasised 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 *Georgian Labour Party v. Georgia*, no. 9103/04, § 101, ECHR 2008) and for their decisions to be sufficiently well reasoned (see *Namat Aliyev*, cited above, §§ 81-90).

(b) Application of those principles to the present case

71. In the present case, the Court notes that the applicants complained of numerous instances of irregularities and breaches of electoral law which had allegedly taken place during election day in various polling stations in their electoral constituency. They maintained that, due to the irregularities themselves as well as the domestic authorities' failure to address them adequately, the election in their constituency had not been free and democratic and the official election results had not reflected the real opinion of the voters.

72. As for the applicants' claims concerning the specific instances of alleged irregularities, the Court is not in a position to assume a fact-finding role by attempting to determine whether all or some of these alleged irregularities had taken place and, if so, whether they had amounted to irregularities capable of thwarting the free expression of the people's opinion. Owing to the subsidiary nature of its role, the Court needs to be wary in assuming the function of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case. The Court's 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 has ensured that individual electoral rights were exercised effectively (see *Namat Aliyev*, cited above, § 77).

73. That said, the Court considers that the applicants have put forward a very serious and "arguable" claim disclosing an apparent failure to hold free and fair elections in their constituency. In particular, they complained, *inter alia*, of unlawful interference in the election process by electoral commission members, undue influence on voter choice, obstruction of observers, and numerous instances of ballot-box stuffing. The Court considers that these types of irregularities, if duly confirmed as having taken place, were indeed potentially capable of thwarting the democratic nature of

the elections. The Court further notes that the applicants' allegations were based on relevant evidence, consisting mainly of statements written and signed by observers who gave first-hand accounts of the alleged irregularities witnessed by them. The Court is also cognisant of the OSCE Report (see paragraph 53 above), which indirectly corroborates the applicants' claims. While this report did not contain any details relating specifically to the applicants' constituency, it gave a general account of the most frequent problems identified during the election process, which were similar to those alleged by the applicants.

74. Since such a serious and arguable claim has been lodged by the applicants, the respondent State is under an obligation to provide a system for undertaking an effective examination of the applicants' complaints. Azerbaijani law did indeed provide for a system consisting of electoral commissions at different levels, whose decisions could subsequently be appealed against to the Court of Appeal and then further to the Supreme Court. The applicants duly made use of this system and it remains to be seen whether, in practice, the examination of the applicants' claims was effective and devoid of arbitrariness.

75. As for the examination of the applicants' complaint by the CEC, the Court takes due note, at the outset, of the applicants' argument that the electoral commissions, in general, lacked impartiality owing to their structural composition. In particular, one-third of the members of each commission at all levels, including the CEC, were nominated by or on behalf of the parliamentary-majority party. In addition, another member, nominally representing independent members of parliament formally unaffiliated with any political party, was appointed "in agreement" with the majority party. Thus, seven out of eighteen CEC members, four out of nine members of each ConEC, and three out of six members of each PEC were either directly or indirectly appointed by the ruling party. In addition, chairmen of all commissions at all levels were appointed from among the members nominated by the ruling party. Pro-ruling-party forces thus had a relative majority *vis-à-vis* the representatives of any other political force in electoral commissions at every level, including the CEC which examined the applicants' complaint in the present case. While, at least at CEC level, this majority was not sufficient to automatically secure the qualified majority of at least two-thirds of the attendant members' votes required for a decision (see paragraph 35 above), the Court takes note of the reports that commission members appointed by theoretically "independent" sections of the parliament or some small parties tended, in reality, to vote in line with the governing party (see paragraph 54 above).

76. Both the OSCE/ODIHR and the Venice Commission have opined that the above-mentioned structural composition of electoral commissions gave rise, in practice, to the domination of the election administration by pro-government forces and gave them a decisive majority in all

commissions. Both the OSCE/ODIHR and the Venice Commission repeatedly recommended that the existing formula be revised in a manner which would eliminate such domination by pro-government forces; however, this recommendation has not so far been addressed.

77. The above assessment and recommendations must be taken seriously in the context of elections in Azerbaijan, which have previously been assessed by reputable international observers as falling short of a number of democratic standards. In this connection, it should be noted that the Court itself has examined various election-related issues in a number of cases against Azerbaijan that have involved arbitrary decisions by electoral commissions in relation to opposition-oriented candidates (see, among others, *Namat Aliyev*, cited above; *Kerimova v. Azerbaijan*, no. 20799/06, 30 September 2010; *Mammadov v. Azerbaijan (no. 2)*, no. 4641/06, 10 January 2012; *Hajili v. Azerbaijan*, no. 6984/06, 10 January 2012; *Khanhuseyn Aliyev v. Azerbaijan*, no. 19554/06, 21 February 2012; and *Karimov v. Azerbaijan*, no. 12535/06, 25 September 2014).

78. Although there can be no ideal or uniform system guaranteeing checks and balances between the different State powers or political forces within a body of electoral administration, the Court shares the view that the proportion of pro-ruling-party members in all electoral commissions in Azerbaijan, including the CEC, is currently particularly high (compare, *mutatis mutandis*, *Georgian Labour Party*, cited above, § 106). The Court reiterates that, ultimately, the *raison d'être* of an electoral commission is to ensure the effective administration of free and fair voting in an impartial manner, which is achievable by virtue of a structural composition that guarantees its independence and impartiality but which would become impossible to achieve if the commission were to become another forum for political struggle between various political forces (ibid., § 108).

79. However, the Court considers that the present case, in isolation, does not require it to determine whether or not the method actually implemented for the structuring of the Azerbaijani electoral commissions – and in particular the CEC – was in itself compatible with the respondent State's undertaking under Article 3 of Protocol No. 1. Nevertheless, having regard to the above considerations in the context of electoral complaints lodged by opposition candidates in general, the Court finds that the method in question was one of the systemic factors contributing to the ineffectiveness of the examination by the CEC of the applicants' election-related complaint in the present case. It falls to the Committee of Ministers to supervise, in the light of the information provided by the respondent State, the execution of the Court's judgment and to follow up on the implementation of general measures and evolution of the system of electoral administration in line with the Convention requirements. In this connection, the Court considers that an effort by the respondent State envisioning a reform of the structural composition of the electoral commissions should be encouraged with the

aim of improving the effectiveness of examination of individual election-related complaints.

80. Turning to the manner in which the applicants' particular case was examined, the Court finds, for the following reasons, that the material in the case file and the Government's submissions do not demonstrate that an adequate and comprehensive assessment of evidence was carried out by the CEC or that any genuine effort was made to determine the validity of the applicants' claims.

81. In particular, the Court observes that, despite the requirement of Article 112-1.7 of the Electoral Code (see paragraph 45 above) and the applicants' express request to this effect, the applicants' presence at the CEC hearing was not ensured, thus depriving them of the possibility of arguing their position and challenging the opinion of the CEC expert group member, R.I. In fact, it appears that the CEC may not even have held a genuine hearing, as in practice it routinely adopted an expert group member's opinion unquestioningly, without discussing the substance of the complaints (see, in this respect, the OSCE Report at paragraph 53 above).

82. It does not appear that the CEC gave adequate consideration to the observers' statements concerning the alleged irregularities that were submitted by the applicants as evidence in support of their complaint. None of those observers was called to be questioned and no further investigation was carried out in respect of their allegations. In particular, many of the observers claimed that there had been serious discrepancies between the numbers of voters attending various polling stations and the numbers of ballots found inside the ballot boxes. However, it has not been shown that the CEC expert group took any steps to actually investigate this matter. One obvious step would have been to review the attendance lists in the affected polling stations and examine whether the relevant numbers were consistent. Instead, the CEC presented somewhat dubious reasons for discrediting those statements. For example, the Court notes that the CEC described the statement made by three observers in Polling Station no. 25 as their "subjective opinions" (see paragraph 24 above), when it was clear that the statement in question did not contain any opinions but was rather a first-hand observation including specific factual information requiring further investigation as to its veracity (see paragraph 17 above).

83. The CEC referred, in general terms, to statements collected from some other observers denying any irregularities and argued that those statements refuted the applicants' allegations. However, these purported statements were described by the CEC in a very vague manner and none was made available to the applicants or produced by the Government before the Court. No reasonable or convincing explanation was given by the CEC as to why the statements by those "other observers" were given more weight or considered more reliable than the evidence of a similar type presented by the applicants, which also consisted of observers' statements.

84. Moreover, the CEC referred to some explanations by unnamed PEC members denying any irregularities (see paragraph 25 above). Given that confirmation of the applicants' allegations could potentially entail responsibility on the part of the PEC officials in question for election irregularities, it is not surprising that they would deny any wrongdoing. For this reason, the Court is not convinced that in the present case those explanations could be particularly helpful in determining the factual accuracy of the applicants' claims (compare *Namat Aliyev*, cited above, § 83).

85. The above shortcomings were not remedied by the domestic courts either. The Baku Court of Appeal merely reiterated and upheld the CEC's findings, and copied its reasoning, without conducting an independent examination of the arguments raised or addressing the applicants' complaints about the shortcomings in the CEC procedure.

86. As for the appeal before the Supreme Court, it was deprived of all effectiveness by the action of the Constitutional Court in approving the country-wide election results while the period afforded by law to the applicants for lodging an appeal with the Supreme Court was still pending. By the Supreme Court's own admission, it was no longer able to take any decision affecting the election results in the applicant's constituency because they had already been approved as final by the Constitutional Court. The upshot of this situation was that the domestic legal system allowed the Constitutional Court to finalise the entire election process, including the election results, while the applicants were still in the process of seeking redress for alleged breaches of their electoral rights in their constituency through the existing appeal system – which was specifically designed for dealing with electoral disputes. The Constitutional Court's decision deprived the remedy available to the applicants of all prospect of success and rendered the entire system for examining individual election-related complaints futile and illusory in the applicants' case. Moreover, despite knowing of a number of pending individual complaints challenging the fairness of the election procedure and the lawfulness of the election results in particular constituencies, the Constitutional Court prematurely confirmed the country-wide election results as lawful, as if the outcomes of the pending proceedings were not important for the comprehensive assessment of the parliamentary elections as a whole.

87. Based on the above, the Court finds that the conduct of the electoral commissions and courts – including the Constitutional Court – in the present case, and their respective decisions, reveal an apparent lack of any genuine concern for combatting the alleged instances of electoral fraud and protecting the applicants' right to stand for election. The applicants' serious and arguable complaints concerning election irregularities were not effectively addressed at domestic level. The avenue of redress available to and pursued by the applicants was rendered futile by the Constitutional

Court's premature confirmation of the election results as final while the applicants' appeal was still pending.

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

89. In conjunction with the above complaint, the applicants complained that candidates nominated by opposition parties, like themselves, had been discriminated against – by various means – by all the State executive authorities, electoral commissions, courts and Government-controlled media throughout the entire electoral process.

They relied on Article 14, which provides:

> "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."

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

91. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicants claimed 30,000 euros (EUR) each in respect of various expenses related to their electoral campaign.

94. The Government argued that there was no causal link between the alleged violation and the damage claimed.

95. The Court notes that the applicants' claims are not itemised and are not supported by any evidence. In any event, it does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

2. Non-pecuniary damage

96. The applicants claimed EUR 100,000 each in respect of non-pecuniary damage caused by the infringement of their electoral rights.

97. The Government argued that the amounts claimed were excessive and pointed out that in earlier comparable cases against Azerbaijan, awards in respect of non-pecuniary damage had not exceeded EUR 7,500.

98. Ruling on an equitable basis, the Court awards each applicant the sum of EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

99. The applicants also claimed, jointly, EUR 2,000 for legal fees incurred in the domestic proceedings and the proceedings before the Court. In support of this claim, they submitted their contract with Mr H. Hasanov, their lawyer.

100. The Government noted that, even though the above-mentioned contract stipulated legal fees for representation in the domestic proceedings, Mr H. Hasanov had not in fact represented the applicants in the domestic proceedings but only before the Court. The Government therefore asked the Court to reject that part of the claim relating to the legal fees incurred in the domestic proceedings.

101. 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. In the present case, the Court notes that it has not been demonstrated that Mr H. Hasanov represented the applicants in the domestic proceedings. Having regard to the documents in its possession, the Court rejects the part of the claim relating to costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 850 to all three applicants jointly for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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 the complaint under Article 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani new manats at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to each applicant, in respect of non-pecuniary damage;
      (ii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicants, to all three applicants jointly, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	András Sajó
Deputy Registrar	President