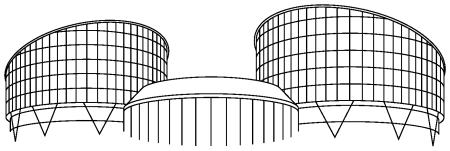

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KARIMOV v. AZERBAIJAN

(Application no. 12535/06)

JUDGMENT

STRASBOURG

25 September 2014

FINAL

25/12/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Karimov v. Azerbaijan,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 2 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 12535/06) 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 Hasan Huseyn oglu Karimov (*Həsən Hüseyn oğlu Kərimov* – "the applicant"), on 22 March 2006.

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

3. The applicant alleged in particular that, in the electoral constituency where he had run as a candidate in the 2005 parliamentary elections, the organisation and conduct of the election process in several polling stations created exclusively for military voters and detainees had not complied with the requirements of Article 3 of Protocol No. 1 to the Convention.

4. On 3 September 2008 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Baku.

6. The applicant was deputy chairman of the Popular Front Party. He stood in the elections to the National Assembly of 6 November 2005 as a

candidate of the opposition bloc Azadliq. He was registered as a candidate by the Constituency Electoral Commission ("the ConEC") for the single-mandate Sabail Electoral Constituency no. 29.

7. There were a total of thirty-two polling stations in the constituency, twenty-nine of which were ordinary polling stations. Polling Station no. 30 was set up on the premises of a temporary detention centre so that persons detained there could vote. Polling Stations nos. 31 and 32 were set up shortly before the elections exclusively for military servicemen belonging to two military units stationed within the constituency. Those military units were permanently stationed in the Bayil and Badamdar suburbs of Baku.

8. According to the minutes of the ConEC meeting of 29 September 2005, a copy of which was submitted by the Government, on that date the ConEC decided, *inter alia*, to appoint members to the precinct (polling station) electoral commissions ("the PEC") for Polling Stations nos. 31 and 32. It appears from the minutes that five out of six members of each PEC in question were military officers or personnel of those military units, with the exception of one member nominated to each PEC by an opposition party. In each PEC, three of the five "military members" were nominated by the ruling party. According to the applicant, prior to the proceedings before the Court, he had never been provided with the full text of the minutes of the ConEC meeting of 29 September 2005.

9. The official election results in the constituency showed that the applicant had received an overall total of 3,454 votes and finished in second place. Of those votes, 3,301 had been cast in Polling Stations nos. 1 to 29 and 153 had been cast in Polling Stations nos. 30, 31 and 32.

10. The winning candidate (M.) received an overall total of 3,661 votes. Almost half of those, a total of 1,816 votes, had been cast in Polling Stations nos. 30, 31 and 32. Of those, 1,369 votes, which constituted over a third of his total vote count, had been cast in the polling stations (nos. 31 and 32) created exclusively for military voting (779 and 590 votes respectively).

11. On 8 November 2005 the applicant lodged a complaint with the Central Electoral Commission ("the CEC") alleging a number of violations of electoral law in his constituency. He requested that the election results in Polling Stations nos. 30, 31 and 32 be invalidated. He complained, *inter alia*, of the following:

(a) that the setting up of Polling Stations nos. 31 and 32 exclusively for military voting was in breach of Article 35.5 of the Electoral Code, which required that military servicemen should vote in ordinary polling stations and which stipulated that special military polling stations should be set up only in exceptional circumstances. In this case, there were no such exceptional circumstances and the personnel of each military unit in question should have voted in one or more of the several ordinary polling stations already located within very short walking distances of their barracks;

(b) that the PECs of Polling Stations nos. 31 and 32, consisting mostly of military officers, had acted as if they were accountable to the Ministry of Defence and not the superior electoral commissions, and that two of the duly appointed PEC members, nominated by the opposition, had been denied access to the polling stations;

(c) that in the three "closed" polling stations (nos. 30, 31 and 32) the elections had been unfair, and military servicemen and detainees had voted under coercion. It was noted by observers in Polling Stations nos. 31 and 32 that high-ranking military officers had pressured military servicemen to vote for M. Similarly, undue pressure had been put on detainees in Polling Station no. 30. As a result, M. received about as many votes in those three "closed" polling stations as in all twenty-nine of the other (ordinary) polling stations of the constituency (where he had clearly lost to the applicant by a large margin), which allowed him to pull slightly ahead in the overall vote count. The results of the voting in the three "closed" polling stations and their effect on the election clearly showed that the election had been rigged in favour of the candidate supported by the ruling party.

12. In support of the above complaints, the applicant submitted copies of written observations made by several observers at those polling stations.

13. On 21 November 2005 the CEC issued a decision invalidating the election results in Polling Stations nos. 20 and 21 of Sabail Electoral Constituency no. 29, having found that the electoral law had been breached in those polling stations. It did not provide any details as to the exact nature of those breaches. That decision did not affect the overall election results in the constituency. The CEC's decision did not mention the applicant's complaints concerning Polling Stations nos. 30, 31 and 32.

14. On 24 November 2005 the applicant lodged an appeal against the CEC decision, reiterating the complaints that he had made before the CEC. During the Court of Appeal hearing, a representative of the CEC argued generally, without addressing any of the applicant's factual arguments in detail, that the elections in Polling Stations nos. 30, 31 and 32 had been lawful and that there were no grounds for invalidating the votes cast in those polling stations.

15. On 26 November 2005 the Court of Appeal dismissed the applicant's complaint, finding that he had failed to substantiate his allegations. In particular, the judgment read as follows:

> "Under Article 14.2 of the CCP, the court may examine, and rely on, only the evidence submitted by the parties.
>
> Despite the requirement of the above-mentioned Article, the claimant, H.H. Karimov, and his counsel, [S.T.], have not been able to produce before the court any reliable evidence in support of the allegations made in the claim.
>
> Under Article 77.1 of the CCP, each party must prove the facts to which it refers as a basis for its claims and objections.

> Under Article 217.4 of the same Code, the court may rely in its judgment only on the evidence examined at the court hearing.
>
> Having regard to the above, the court does not find any grounds for upholding the claim and rejects as unsubstantiated [the applicant's] claim against [the CEC] requesting the invalidation of the election results in Polling Stations nos. 30, 31 and 32 of Sabail Electoral Constituency no. 29 ..."

16. The applicant appealed to the Supreme Court, reiterating his complaints.

17. On 30 November 2005 the Supreme Court dismissed the appeal, essentially on the same grounds as the Court of Appeal.

18. On 1 December 2005 the Constitutional Court confirmed the election results in the majority of the electoral constituencies, including Sabail Electoral Constituency no. 29.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL REPORTS

A. Electoral Code of the Republic of Azerbaijan

19. 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). A more detailed summary of the system of electoral commissions and their composition and decision-making procedures is provided in *Namat Aliyev v. Azerbaijan* (no. 18705/06, §§ 31-36, 8 April 2010).

20. Under Article 35.2, as in force at the material time, polling stations (election precincts) are set up by the relevant ConEC, in agreement with the relevant executive authority and municipality, taking into account the need to provide maximum convenience for voters as well as the local and other circumstances. If a polling station is to be set up immediately prior to a specific election or a referendum, this must be done at least fifty days before election day. The ConEC decision on the setting up of a polling station must indicate the precise boundary of the precinct (if the polling station is located on the territory of a settlement, the precise street names and building numbers must be indicated).

21. Article 35.5 of the Electoral Code, as in force at the material time, provided as follows:

> "35.5. Military servicemen shall vote in ordinary polling stations. The Central Electoral Commission shall determine the rules on transporting conscripted citizens of the Republic of Azerbaijan to polling stations. A polling station may be set up on the premises of a military unit located outside a settlement only if more than one hour is required to transport the military servicemen to a regular polling station by public

transport and if the total number of military servicemen exceeds fifty. In such cases, the polling station shall be set up within the period defined by Article 35.2 of this Code; in exceptional cases, pursuant to a decision of the relevant Constituency Electoral Commission, such a polling station shall be set up by a commander of the military unit at least five days prior to election day. Military personnel serving in frontier units and military servicemen situated in zones of military conflict, as well as military servicemen serving in special-regime conditions shall vote in polling stations established within their respective military units. In polling stations set up in accordance with this Article, it shall be ensured that all members of the Precinct Electoral Commission and superior electoral commissions, registered candidates and their representatives, authorised representatives of political parties and electoral blocs of political parties, and observers have unimpeded access to the electoral commission's working room and the voting room in accordance with the rules provided in this Code."

B. Code of Good Practice in Electoral Matters

22. 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

...

3.2. Freedom of voters to express their wishes and action to combat electoral fraud

...

xi. military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station; ...

...

EXPLANATORY REPORT

...

3.2.2.2. Military voting

41. Where servicemen cannot return home on polling day, they should preferably be registered at polling stations near their barracks. Details of the servicemen concerned are sent by the local command to the municipal authorities who then enter the names in the electoral list. The one exception to this rule is when the barracks are too far from the nearest polling station. Within the military units, special commissions should be set up to supervise the pre-election period, in order to prevent the risk of superior officers' imposing or ordering certain political choices.

..."

C. 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 (Warsaw, 1 February 2006)

23. The relevant excerpts from the report read as follows:

"The Election Code provides that military voting should take place in regular polling stations and should be conducted in special military polling stations set up only 5 days before election day only under exceptional circumstances. However, instead of being regarded as an exception, the creation of special military polling stations appeared to be the practice. The CEC delegated the responsibility for organization and conduct of military voting to the Ministry of Defence, resulting in a non-transparent process. The voting pattern in military polling stations differed significantly from that of ordinary polling stations with respect to turnout figures and the outcome of the vote. ...

Over 71,000 voters voted in the 110 PECs that the EOM [Election Observation Mission] was able to identify as dedicated to military voters. The average turnout in these PECs was approximately 88 per cent, as compared to the approximately 42 per cent turnout overall. In 34 of the military PECs, the winning candidate in that constituency obtained over 80 per cent of the vote. In 23 of the military PECs, there was both turnout higher than 95 per cent and more than 80 per cent of the vote for the winning candidate in that constituency.

...

XVI. RECOMMENDATIONS

...

C. ELECTION ADMINISTRATION

...

13. The authorities should respect the legal provisions for military voting. Only in the exceptional cases, and when the location of the unit is at a substantial distance from populated areas, should the CEC grant permission to establish a polling station in a military unit. The election administration should retain responsibility for the organization and conduct of military voting.

14. Where PECs are formed in military units in the exceptional case, members should not be military personnel, conscripts or members of their family. PEC members should be appointed by the same procedure as all other PECs. ..."

THE LAW

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

24. The applicant complained that, in the electoral constituency where he had stood for election, Polling Stations nos. 31 and 32 set up exclusively

for military servicemen had breached the requirements of the electoral law. He further complained that there had been serious irregularities in the three "closed" polling stations, including the two mentioned above and Polling Station no. 30 set up in the detention facility. In particular, the electoral process had not been transparent, some PEC members had not been allowed to enter the PEC premises, and undue pressure had been applied on detainees and military personnel voting in those polling stations. Lastly, he complained of a number of irregularities that were not specific to the above-mentioned polling stations, including that the authorities had breached his electoral rights by interfering with his electoral campaign, and that other candidates had conducted unlawful campaigns. Article 3 of Protocol No. 1 to the Convention 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

25. The Court notes that this 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

26. The Government submitted that the special military polling stations, in particular nos. 31 and 32, had been set up in accordance with Article 35.5 of the Electoral Code, because each of the military units in question had more than a thousand military servicemen and, as such, fell within the exception justifying the setting up of special polling stations within those units. As for Polling Station no. 30, the Government submitted that, had a special polling station not been set up within Detention Facility no. 1, it would have been impossible to ensure the detainees' right to vote.

27. The Government submitted that all members of the PECs of Polling Stations nos. 30, 31 and 32 had been appointed by decision of the ConEC and that there had been no interference by the Ministry of Defence or other Government authorities in the process of creating those precincts or their PECs. Nor had the high-ranking officers of the military units interfered with the electoral process. Those officers who had been appointed as members of the PECs had merely fulfilled their duties as PEC members. All interested parties, including the candidates, their representatives, commission

members and observers, had been granted unlimited access to the facilities used by the relevant PECs.

28. As to the applicant's assertion that two duly appointed PEC members had not been allowed to enter the premises of the military units where the PEC facilities were located, the Government submitted that the individuals whose names had been mentioned by the applicant (Mr A.O. and Mr R.S.) had not been members of the PEC. The Government relied in this respect on the minutes of the ConEC meeting of 29 September 2005, which made no mention of those individuals as PEC members for the relevant polling stations.

29. The applicant argued that Polling Stations nos. 30, 31 and 32 had been set up in breach of the requirements of the electoral law. All three polling stations had been set up only a few days before election day, whereas Article 35.2 of the Electoral Code stipulated that electoral precincts (polling stations) had to be set up at least fifty days prior to election day. Moreover, the applicant had never been provided with the full set of the relevant documents concerning the setting up of those polling stations, including the ConEC decisions on the creation and composition of the relevant PECs.

30. The applicant further argued that Polling Stations nos. 31 and 32 had been set up as special polling stations for military servicemen, in breach of the requirements of Article 35.5 of the Electoral Code. Both military units in question were stationed within a populated settlement and located within five minutes' walking distance of ordinary polling stations in Bayil and Badamdar; as such, they did not qualify for any exceptions justifying the setting up of special military polling stations. The military personnel serving in those units should have voted in ordinary polling stations already set up in accordance with the Electoral Code. The unlawful creation of special polling stations exclusively for those military units led to a situation where voting was conducted on the premises of the military units, under the supervision of high-ranking officers in closed, non-transparent conditions. The election result was "falsified in favour of the candidate [M.], who was backed by the ruling party". In particular, military servicemen were specifically instructed and pressured by superior officers to vote for M., resulting in his victory in the election mainly on the strength of votes received in the polling stations in question.

31. As to the minutes of the ConEC meeting of 29 September 2005 submitted by the Government, the applicant claimed that the ConEC had never provided him with that document, despite his requests, and that he had seen it for the first time during the proceedings before the Court. Therefore, he doubted its authenticity, arguing that there existed a Government practice of "compiling documents afterwards or changing the texts of documents" at a later date.

32. The applicant further submitted that the authorities had unlawfully interfered with his pre-election campaign. In particular, on several occasions his meetings with voters had been disrupted by the police or otherwise impeded on the instruction of the local executive authorities. The opposition gatherings in which he had participated had been violently dispersed. The Ministry of Sport, Youth and Tourism had organised a charity concert at which it had openly conducted propaganda in favour of M. There had been a number of other measures aimed at ensuring unfair election conditions for opposition candidates, including the applicant.

33. Lastly, the applicant submitted that the CEC and the domestic courts had handled his complaints in respect of the above in an arbitrary and ineffective manner.

2. The Court's assessment

34. Article 3 of Protocol No. 1 enshrines a characteristic principle 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 will 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).

35. The Court has consistently highlighted the importance of the 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 (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). The margin of appreciation is also wide as regards the choice of electoral system (see *Mathieu-Mohin and Clerfayt*, cited above, § 54). There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into its own democratic vision (see *Hirst (no. 2)*, cited above, § 61).

36. 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; it has to satisfy itself that the conditions imposed on the right to vote and to

stand for election do not curtail the rights in question 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).

37. For the purposes of applying Article 3 of Protocol No. 1, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the "free expression of the opinion of the people in the choice of the legislature" (see *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 111, ECHR 2008). Furthermore, since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent State and within Contracting States generally and respond, for example, to any emerging consensus as to the standards to be achieved (see, *mutatis mutandis*, *Glor v. Switzerland*, no. 13444/04, § 75, ECHR 2009).

38. In the present case, the applicant complained of a number of alleged irregularities in Sabail Electoral Constituency no. 29, where he had stood for election in the 2005 parliamentary elections. The Court will first examine the part of the complaints relating to the "military voting" in Polling Stations nos. 31 and 32, which it considers to be the focal issue of the present case.

39. At the outset, the Court takes note of the Venice Commission's Code of Good Practices in Electoral Matters, which stresses that military servicemen should preferably vote in ordinary polling stations and notes that safeguards should be put in place to prevent "the risk of superior officers imposing or ordering certain political choices". The Court agrees that such a risk cannot be taken lightly. It cannot be ignored 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; see, among others, *Seyidzade v. Azerbaijan*, no. 37700/05, 3 December 2009; *Namat Aliyev v. Azerbaijan*, no. 18705/06, 8 April 2010; *Kerimova v. Azerbaijan*, no. 20799/06, 30 September 2010; and *Orujov v. Azerbaijan*, no. 4508/06, 26 July 2011).

40. In particular, the Court has had regard to the observations made in the Final Report of the OSCE/ODIHR Election Observation Mission

regarding the military voting in the 2005 parliamentary elections. The observers noted that special military polling stations had been set up in the absence of the requisite exceptional circumstances. They also noted that the election procedures in those polling stations had lacked transparency because the electoral authorities had delegated responsibility for the organisation and conduct of military voting to the Ministry of Defence. It was also noted in the report that, statistically, the voter turnout and the voting pattern in those special polling stations differed significantly from those in the ordinary polling stations, with both the voter turnout and the number of votes for the winning candidate being much higher (see paragraph 23 above). While not conclusive, those figures strongly suggest that, in those polling stations, the electoral process and the expression by voters of their opinion might not have been free.

41. Having taken note of the above, the Court will now assess the applicant's complaint in the present case that Polling Stations nos. 31 and 32 were set up in breach of the requirements of the domestic electoral legislation and that the electoral process in those polling stations was not free and transparent.

42. As noted above, Article 3 of Protocol No. 1 is phrased differently from the other provisions of the Convention and its Protocols – in terms of the obligation of the High Contracting Parties, rather than guaranteeing a specific right or freedom (see paragraph 34 above). Unlike other provisions of the Convention, such as Article 5, Articles 8 to 11, or Article 1 of Protocol No. 1, the text of this provision does not contain an express reference to the "lawfulness" of any measures taken by the State. However, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and its Protocols (see, among many other authorities, *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III). This principle entails a duty on the part of the State to put in place a legislative framework for securing its obligations under the Convention in general and Article 3 of Protocol No. 1 in particular, and to ensure that its public officials charged with executing those obligations do not act outside the law, but exercise their powers in accordance with the applicable legal rules.

43. While the Court is not required under Article 3 of Protocol No. 1 to verify whether every particular alleged irregularity amounted to a breach of domestic 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), its task is nevertheless 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 (see *Namat Aliyev*, cited above, § 77). In this connection, the Court considers that in cases where it is alleged that the breach of the domestic legal rules was such that it seriously undermined the

legitimacy of the election as a whole, Article 3 of Protocol No. 1 requires it to assess whether such a breach has taken place and has resulted in a failure to hold free and fair elections. In doing so, the Court may have regard to whether an assessment in this respect has been made by the domestic courts; if it has been made, the Court may confine its own review to whether or not the domestic courts' finding was arbitrary (see, *mutatis mutandis*, *I.Z. v. Greece*, cited above, and *Babenko v. Ukraine* (dec.), no. 43476/98, 4 May 1999). In the present case, however, the Court has to proceed without having the benefit of being able to review the domestic courts' assessment, as no such assessment has been made (see more on this in paragraph 49 below).

44. The Court observes that according to the rule established by Article 35.5 of the Electoral Code, military personnel were to vote in ordinary polling stations, set up within the relevant electoral precincts in accordance with Article 35.2 of the Code. There were only two exceptions to that rule, where the creation of special polling stations for military servicemen was allowed. Those exceptions were provided for in the third and fifth sentences of Article 35.5 (see paragraph 21 above). It is undisputed by the parties that the second exception – established in the fifth sentence of Article 35.5 of the Electoral Code, concerning military personnel serving in frontier units, zones of military conflict and in special-regime conditions – did not apply to the military units in the present case. However, the Government argued that the military units in question fell within the first exception, because there were more than a thousand military servicemen in each unit.

45. In this connection, the Court notes that, in order for the first exception to apply, the following conditions were required by Article 35.5 of the Electoral Code: (i) the unit had to be located outside a populated settlement; (ii) the travel time by public transport to the closest ordinary polling station had to exceed one hour; and (iii) the total number of servicemen in the unit had to exceed fifty. It is clear from the wording of Article 35.5 that all of the above conditions had to be met for the exception to apply; in other words, those three conditions were cumulative and not alternative. The Court notes that the Government have not submitted any domestic court decisions interpreting this provision otherwise. In any event, the Court does not see how this provision could be interpreted differently, as that would essentially defeat the purpose of the general rule established in the first sentence of Article 35.5.

46. In the present case, the total number of personnel serving in each of the two military units in question exceeded fifty. However, it is undisputed that both units in question were located within a populated settlement (in the Bayil and Badamdar suburbs of Baku) and within a short walking distance from the established ordinary polling stations. It follows that, in relation to the military personnel serving in both of these units, two of the three

cumulative conditions required by the first exception stipulated by Article 35.5 of the Electoral Code were not satisfied.

47. Having regard to the above, the Court cannot but conclude that the creation of special polling stations for military voting in the applicant's electoral constituency, namely Polling Stations nos. 31 and 32, was in breach of Article 35.5 of the Electoral Code, which required that, in the absence of exceptional circumstances, military servicemen should vote in ordinary polling stations. Accordingly, the entire election process in Polling Stations nos. 31 and 32, including the creation of the PECs, the electoral rolls and the voting, did not comply with the requirements of the Electoral Code on the organisation of the election process at precinct level. It follows that the elections in Polling Stations nos. 31 and 32 were conducted outside the applicable legal framework and were therefore illegitimate.

48. The fact that the "voting results" from those polling stations were then taken into account by the electoral authorities and aggregated with the legitimate votes cast in other polling stations, with a significant impact on the overall election result, was in breach of the integrity of the entire election process in the applicant's constituency.

49. Furthermore, there is no doubt that this situation was not the result of a mistake made somewhere along the way by the electoral authorities. The circumstances of the case and the observations made in the OSCE/ODIHR report show that there was a deliberate practice of organising military voting in breach of the requirements of the Electoral Code. The existence of such a practice was further demonstrated by the manner in which the applicant's complaints were handled by the domestic electoral authorities and courts in the present case. The CEC's approach was to ignore the applicant's complaint that Polling Stations nos. 31 and 32 had been created unlawfully, while the domestic courts rejected his complaint without examining its substance and by stating merely that the applicant had failed to present "reliable evidence" in support of it. Having regard to the nature of the matter complained of, such a response by the domestic courts can only be assessed as contrived and designed to avoid upholding the law and stating the obvious: that the electoral authorities had conducted the elections in breach of the procedure prescribed by the Electoral Code. The applicant's complaint aptly disclosed the apparent breach of the requirements of Article 35.5 of the Electoral Code by merely pointing to the existing and undisputed facts; the Court finds it impossible to see what other "reliable evidence" he could have been expected to submit to show that there were no lawful grounds for creating special polling stations for military voting. Having regard to the foregoing, the Court considers that the conduct of the electoral commissions and courts in the present case and their respective decisions revealed an apparent lack of genuine concern for upholding the rule of law and protecting the integrity of the election (compare *Namat Aliyev*, cited above, § 90).

50. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to hold the election in the applicant's constituency in accordance with the requirements of Article 3 of Protocol No. 1 to the Convention.

51. This finding makes it unnecessary to further examine the applicant's complaints about various specific aspects of the election process in Polling Stations nos. 31 and 32, in particular challenging the authenticity of the minutes of the ConEC meeting of 29 September 2005 submitted by the Government, the procedure for the formation of the electoral commissions in those two military units, the composition of those commissions, the lack of transparency in their functioning, and their alleged subordination to the Ministry of Defence. Moreover, in view of the above finding, the Court also considers it unnecessary to examine the applicant's further complaints of irregularities in Polling Station no. 30 and other alleged irregularities in his electoral constituency.

52. 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 6 of the Convention

53. The applicant complained, under Article 6 of the Convention, that the domestic judicial proceedings had been unfair and arbitrary.

54. The Court notes that the proceedings in question involved matters relating to the applicant's right to stand as a candidate in the parliamentary elections. The dispute at issue therefore concerned the applicant's political rights and had no 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. 52278/00, 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.

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

B. Articles 13 and 14 of the Convention

56. Relying on Article 13 of the Convention and without advancing any particular arguments concerning the circumstances of the present case, the applicant challenged, in general terms, the effectiveness of the entire system

of examination of election-related appeals and criticised the manner in which the domestic authorities had handled hundreds of complaints lodged with them in connection with the 2005 elections.

57. Relying on Article 14 of the Convention and, again, without advancing any particular arguments concerning the relevant circumstances of the present case, the applicant noted that during the elections the opposition candidates and parties had been denied equal conditions *vis-à-vis* the ruling party and its candidates.

58. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed compensation for loss of the earnings he would have received in the form of a member of parliament's salary had he been elected to the National Assembly, calculated at a monthly rate of 1,365 Azerbaijani new manats (AZN) for a period of five years. He further claimed a total of AZN 25,500 for loss of the useful effect of the funds spent on his election campaign as well as the costs of the medical treatment he had had to receive for the injuries sustained during the dispersal by the police of one of his meetings with voters in September 2005.

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

62. As to the claim in respect of loss of a member of parliament's salary, the Court considers it speculative to assume that the applicant would have necessarily won the election had the violation found in the present case not taken place (compare, for example, *Hajili v. Azerbaijan*, no. 6984/06, § 68, 10 January 2012).

63. As to the remainder of the claim, the Court does not discern any causal link between the violation found and the pecuniary damage alleged.

64. For the above reasons, the Court rejects the claim in respect of pecuniary damage.

2. Non-pecuniary damage

65. The applicant claimed AZN 20,000 in respect of non-pecuniary damage.

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

67. The Court considers that the applicant suffered non-pecuniary damage which cannot be compensated solely by the finding of a 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

68. The applicant also claimed AZN 1,800 for legal fees in the domestic proceedings, an unspecified amount for legal fees in the proceedings before the Court, AZN 1,200 for translation costs in the proceedings before the Court, and AZN 1,000 for postal expenses.

69. The Government argued that the claims were excessive and unreasonable and that they were also either fully or partially unsubstantiated.

70. 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.

71. As to the claim in respect of the legal fees in the domestic proceedings, the Court notes that, in support of this claim, the applicant submitted a copy of the contract signed on 10 November 2006 with Mr Intigam Aliyev, the lawyer representing the applicant before the Court. However, according to the documents in the case file, Mr Aliyev did not represent the applicant at any point in the domestic proceedings. Moreover, the Court notes that this contract was signed almost a year after the relevant domestic proceedings had been completed (ending with the final decision by the Supreme Court on 30 November 2005). For these reasons, the Court rejects this part of the claim.

72. As to the claim in respect of the legal fees in the proceedings before the Court, although the applicant did not specify the exact amount of the claim, he submitted a copy of the contract with Mr I. Aliyev specifying various amounts to be paid to the representative for the work done at various stages of the proceedings. Having regard to the contract and the amount of work done, the Court considers it reasonable to award the

applicant EUR 2,000 for legal fees incurred in the proceedings before the Court.

73. As to the claim in respect of translation costs, the applicant submitted a copy of a contract with a translator for a total of AZN 1,200. However, having regard to the amount of material that reasonably required translation in the present case and that was actually translated, the Court notes that it is significantly less than the total volume of the translation indicated in the contract. Therefore, the Court considers it reasonable to award EUR 500 in this respect.

74. As to the postal expenses, the applicant only submitted proof of expenses in the amount of approximately EUR 44 and, therefore, that is the amount that should be awarded.

75. In sum, regard being had to the above, the Court awards a total of EUR 2,544 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

76. 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 complaint under Article 3 of Protocol No. 1 to 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*

(a) that the respondent State is to pay the applicant, 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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,544 (two thousand five hundred and forty-four 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;

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

Done in English, and notified in writing on 25 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President