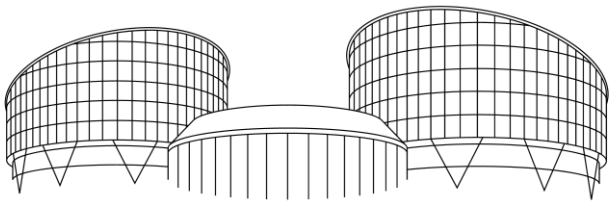

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KERIMLI AND ALIBEYLI v. AZERBAIJAN

(Applications nos. 18475/06 and 22444/06)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

04/06/2012

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

In the case of Kerimli and Alibeyli v. Azerbaijan,

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

Nina Vajić, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in two applications (nos. 18475/06 and 22444/06) 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 two Azerbaijani nationals, Mr Ali Amirhuseyn oglu Kerimli (*Əli Əmirhüseyn oğlu Kərimli* – "the first applicant") and Mr Gulamhuseyn Surkhan oglu Alibeyli (*Qulamhüseyn Surxan oğlu Əlibəyli* – "the second applicant"), on 28 April and 19 May 2006 respectively.

2. The applicants were 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 applicants alleged, in particular, that the invalidation by the Constitutional Court of the parliamentary elections in their respective electoral constituencies had infringed their electoral rights under Article 3 of Protocol No. 1 to the Convention.

4. On 3 September 2008 (application no. 22444/06) and 21 October 2008 (application no. 18475/06) the President of the First Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Both applicants live in Baku. They are well-known opposition politicians. The first applicant served as a member of parliament until the elections of 2005. Both applicants stood for the elections to the National Assembly (Milli Majlis) of 6 November 2005 as candidates of the opposition bloc Azadliq.

A. Election results in the first applicant's electoral constituency

6. The first applicant was registered as a candidate by the Constituency Electoral Commission ("the ConEC") for the single-mandate Surakhany Second Electoral Constituency no. 31. There were a total of twenty-eight polling stations in the constituency.

7. On 7 November 2005 representatives of the Azadliq bloc applied to the Central Election Commission ("the CEC") with several complaints claiming that, during election day, there had been numerous violations of the electoral law to the advantage of the pro-governmental candidate, and requesting that the election results for the entire constituency be invalidated.

8. On 8 November 2006 the CEC invalidated the election results in ten polling stations of Surakhany Second Election Constituency no. 31 owing to infringements of electoral law in those polling stations. The CEC did not invalidate the election results for the entire constituency.

9. Subsequently, the CEC published, on its official website, the preliminary results of the elections in Surakhany Second Election Constituency no. 31 based on the results of the vote in the eighteen remaining polling stations, naming the applicant as the winner with 3,549 votes in total, his closest contender having obtained 3,515 votes.

B. Election results in the second applicant's electoral constituency

10. The second applicant ran for election in the single-mandate Jalilabad-Masalli-Bilesuvar Electoral Constituency no. 69.

11. After an official tabulation of election results by the ConEC on 6 November, the ConEC drew up an official record of election results (*səsvermənin nəticələrinə dair protokol*) which stated that the applicant had received a total of 4,264 votes in the constituency. His closest contender had received 3,575 votes. The ConEC record named the applicant as the winner.

12. The ConEC record of results was submitted to the CEC for approval.

C. The CEC's final record of election results

13. The CEC's final record of election results (*seçkilərin ümumi yekunları haqqında protokol*) named the first applicant as the elected candidate in Surakhany Second Electoral Constituency no. 31 and the second applicant as the elected candidate in Jalilabad-Masalli-Bilesuvar Electoral Constituency no. 69.

14. As for the country-wide results, the CEC invalidated the election results in four electoral constituencies and approved the results in 121 constituencies, including both applicants' constituencies.

15. On 23 November 2005 the CEC record of results, together with the ConEC record of results and other documents, was submitted to the Constitutional Court for review and approval.

D. Invalidation by the Constitutional Court of the election results for the applicants' constituencies

16. By a decision of 1 December 2005, the Constitutional Court approved the election results in 115 electoral constituencies only and invalidated the results in the remaining six constituencies. The decision stated, in the relevant part:

> "In its letter of 30 November 2005 to the Constitutional Court, the Prosecutor General's Office indicated that it had received, from the [CEC] and relevant [ConECs], a total of 72 applications concerning breaches of the electoral law of an allegedly criminal nature during the elections to the National Assembly. As a result of an examination of these applications, 11 criminal cases have been instituted [against a number of registered candidates and election officials in a number of constituencies, including] chairmen and members of 10 polling station electoral commissions of Surakhany Second Electoral Constituency no. 31 for falsification of electoral documents [and] 4 members of the [ConEC] of Jalilabad-Masalli-Bilesuvar Electoral Constituency no. 69 for abuse of official authority.
>
> Following the examination of the documents submitted by the [CEC], including additional documents requested by the Constitutional Court, as well as the opinion of the commissioned specialists, 115 out of 121 [ConEC] results records [*"protokollar"*] which formed the basis for the [CEC results record] should be considered to be in accordance with the requirements of the Electoral Code.
>
> As for the remaining 6 (six) constituencies, [including] Surakhany Second Electoral Constituency no. 31 [and] Jalilabad-Masalli-Bilesuvar Electoral Constituency no. 69 ..., the election results in these constituencies should not be approved because the results records of [the ConECs] of these constituencies do not meet the requirements of the Electoral Code. ...
>
> ... the Plenum of the Constitutional Court decides:
>
> 1. To approve the election results in [115 listed constituencies].

2. Not to approve the election results in ... Surakhany Second Electoral Constituency no. 31, Jalilabad-Masalli-Bilesuvar Electoral Constituency no. 69 [and four other constituencies].

3. This decision shall enter into force at the moment of its delivery. ...”

17. The Constitutional Court ordered repeat elections on 13 May 2006 for all the constituencies in which the results had been invalidated.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Azerbaijan

18. Article 86 provides as follows:

Article 86. Review and approval of results of elections to the National Assembly of the Republic of Azerbaijan

“The accuracy of election results shall be reviewed and approved by the Constitutional Court of the Republic of Azerbaijan in the manner specified by law.”

B. Electoral Code

19. After the votes in a polling station have been counted at the end of election day, the Polling Station Electoral Commission (“the PEC”) draws up an official record of election results (in three original copies) documenting the results of the vote in the polling station (Articles 106.1-106.6). One copy of the PEC record, together with other relevant documents, is then submitted to the relevant ConEC within twenty-four hours (Article 106.7). The ConEC verifies whether the PEC record complies with the law and whether it contains any inconsistencies (Article 107.1). After submission of all PEC records, the ConEC tabulates, within two days of election day, the results from the different polling stations and draws up a record reflecting the aggregate results of the vote in the constituency (Article 107.2). One copy of the ConEC record of results, together with other relevant documents, is then submitted to the CEC within two days of election day (Article 107.4). The CEC checks whether the ConEC records comply with the law and whether they contain any inconsistencies (Article 108.1) and draws up its own final record reflecting the results of voting in all constituencies (Article 108.2).

20. If within four days of election day the CEC discovers mistakes, impermissible alterations or inconsistencies in the records of results (including the accompanying documents) submitted by ConECs, the CEC may order a recount of the votes in the relevant electoral constituency (Article 108.4).

21. Upon review of a request to invalidate the outcome of an election, an electoral commission has a right to hear submissions from citizens and officials and to obtain the necessary documents and materials (Article 112.8).

22. In the event of the discovery of irregularities aimed at assisting candidates who were not ultimately elected, such irregularities cannot be a basis for the invalidation of the election results (Article 114.5).

23. The ConEC or CEC may invalidate the election results in an entire single-mandate constituency if election results in two-fifths of polling stations, representing more than one-quarter of the constituency electorate, have been invalidated (Article 170.2.2).

24. Pursuant to Article 86 of the Constitution, the results of elections are reviewed and approved by the Constitutional Court (Article 171.1). The CEC reviews the relevant ConEC records of results (together with the relevant documents) within a period of up to twenty days of election day, and then forwards them to the Constitutional Court within forty-eight hours (Article 171.2). Within ten days of receipt of these documents, the Constitutional Court, with the involvement of relevant specialists (*mütəxəssislər*), verifies their conformity to the requirements of the Electoral Code. The ten-day examination period may be extended if the process so requires (Article 171.3). If the ConEC records conform to the requirements of the Electoral Code, the Constitutional Court approves the results of the elections. This decision is final (Article 171.4).

C. Law on the Constitutional Court

25. Article 42 provides, in the relevant part:

Article 42. Interested Persons in Special Constitutional Proceedings

> "42.1. Interested persons in special constitutional proceedings shall be the bodies which have submitted a relevant inquiry or request to the Constitutional Court or bodies or persons whose interests are affected by such inquiries or requests made in connection with the circumstances provided for by Article 86 ... of the Constitution of the Republic of Azerbaijan.
>
> 42.2. The interested persons may be represented by their legal representatives in the special constitutional proceedings."

26. According to Article 43, the parties and interested persons in special constitutional proceedings have the following rights, *inter alia*: (a) to participate and speak at the sessions of the Constitutional Court; (b) to present evidence and other material; (c) to file motions and proposals concerning the examination of the case; (d) to answer questions; (e) to raise objections against judges; (f) to ask for witnesses and experts to be called upon; and so on.

27. Article 54 provides, in the relevant part:

Article 54. Particularities of the review and approval of the results of the elections to the National Assembly of the Republic of Azerbaijan

"54.1. In accordance with Article 86 of the Constitution of the Republic of Azerbaijan, the Constitutional Court shall review and approve the accuracy of the results of elections to the National Assembly of the Republic of Azerbaijan. The procedure for review and approval of the accuracy of the results of elections to the National Assembly shall be determined by the Electoral Code of the Republic of Azerbaijan.

...

54.5. The Chairman and members of the Central Electoral Commission, as well as other persons summoned by the Constitutional Court, may participate at the session of the Plenum of the Constitutional Court concerning the review and approval of the accuracy of the results of elections to the National Assembly of the Republic of Azerbaijan. ..."

THE LAW

I. JOINDER OF THE APPLICATIONS

28. Pursuant to Rule 42 § 1 of the Rules of the Court, the Court decides to join the applications given their similar factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

29. The applicants complained under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention that the invalidation of the election results for their constituencies due to the alleged incompatibility of the ConEC records of results with the requirements of the Electoral Code had been arbitrary and unlawful. The Constitutional Court's decision to invalidate the election results lacked any factual basis, was contrary to the domestic law and breached the principles of a fair trial. In particular, the Constitutional Court's decision contained no indication as to which specific documents had been examined, what specific requirements of the Electoral Code had not been met and what the specific nature of the shortcomings found in the ConEC records had been. As the Constitutional Court's decision was final, there was no remedy available in respect of the alleged violation.

30. The Court considers that this complaint falls to be examined only under Article 3 of Protocol No. 1 to the Convention and that no separate

examination is necessary under Article 13. Article 3 of Protocol No. 1 reads as follows:

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

A. Admissibility

31. 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

32. The applicants submitted that the decision of the Constitutional Court had "no legal grounds" and was merely the result of a "political order". They submitted that their rights as "interested persons" in the proceedings had not been respected, as they had not been allowed to participate in the hearing or to exercise any of the procedural rights provided for by Articles 42 and 43 of the Law on the Constitutional Court. The applicants further argued that the Constitutional Court had reviewed the election results in a very short time and, given the amount of material to be examined, such review could not have been comprehensive. According to the Constitutional Court's decision, it had been taken with the assistance of some unnamed and unspecified "specialists" (*mütəxəssis*), whereas by law the court should have called upon "experts" (*ekspert*), because only the latter were liable under domestic law for providing false opinions. Lastly, the applicants reiterated their complaint that the decision itself was completely unsubstantiated and did not provide any details as to what specifically served as a basis for a finding that the election results in their electoral constituencies and the relevant ConEC records did not comply with the requirements of the Electoral Code.

33. The Government argued that the domestic law did not require the applicants' participation in the hearing of the Constitutional Court, because Articles 42 and 43 of the Law on the Constitutional Court were "general provisions", while Article 54 of the same Law, being a "special provision", only required the participation of the chairman and members of the CEC in this type of proceedings. The Government further noted that the Constitutional Court had not had any "predetermined opinion" on the possible outcome of the review and, given that there had been more than

2,000 candidates in all the electoral constituencies under review, inviting all those candidates to participate in the proceedings as "interested persons" would have rendered the proceedings "impossible and meaningless". The Government further argued that the participation of "specialists" (*mütəxəssis*) had been lawful, as Article 171.3 of the Electoral Code provided so. Lastly, the Government disagreed with the applicants' contention that "the Constitutional Court's decision contained no indication as to which specific documents had been examined, what specific requirements of the Electoral Code had not been met and what the specific nature of the shortcomings found in the ConEC records had been". In this regard, the Government maintained that the Constitutional Court referred in its decision to "specialists' opinions", which in turn indicated the provisions of the Electoral Code that had been breached by the relevant ConEC records of election results.

2. The Court's assessment

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

35. The rights bestowed by Article 3 of Protocol No. 1 are not absolute. There is room for "implied limitations" and Contracting States have a wide margin of appreciation in the sphere of elections (see *Mathieu-Mohin and Clerfayt*, cited above, § 52; *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I; and *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV). It is, however, for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with. In particular, it has to satisfy itself that the conditions 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, and *Gitonas and Others v. Greece*, 1 July 1997, § 39, *Reports of Judgments and Decisions* 1997-IV). Such conditions must not thwart the free expression of the people in the

choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage (see *Hirst (no. 2)*, cited above, § 62).

36. Furthermore, the object and purpose of the Convention, which is an instrument for the protection of human rights, requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see, among many other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 33, *Reports* 1998-I; *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III; and *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 only be illusory if one could be arbitrarily deprived of it at any moment. Consequently, while it is true that States have a wide margin of appreciation when establishing eligibility conditions in the abstract, the principle that rights must be effective requires that the eligibility procedure contain sufficient safeguards to prevent arbitrary decisions (see *Podkolzina v. Latvia*, no. 46726/99, § 35, ECHR 2002-II). Although originally stated in connection with the conditions on eligibility to stand for election, the principle requiring prevention of arbitrariness is equally relevant in other situations where the effectiveness of individual electoral rights is at stake (see *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 72, 8 April 2010), including the manner of review of the outcome of elections and invalidation of election results (see *Kovach v. Ukraine*, no. 39424/02, § 55 et seq., ECHR 2008-...).

37. The Court has 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 *The Georgian Labour Party v. Georgia*, no. 9103/04, § 101, 8 July 2008), that the proceedings conducted by them be accompanied by minimum safeguards against arbitrariness and that their decisions are sufficiently reasoned (see, *mutatis mutandis*, *Namat Aliyev*, cited above, §§ 81-90, and *Kovach*, cited above, §§ 59-60). Moreover, considerations of expediency and the necessity for tight time-limits designed to avoid delaying the electoral process, although often justified, may nevertheless not serve as a pretext for undermining the effectiveness of electoral procedures (see, *mutatis mutandis*, *Namat Aliyev*, cited above, § 90).

38. Turning to the present case, the Court notes that the Constitutional Court's decision gives rise to serious issues concerning its factual and legal substantiation. Specifically, the only factual detail referred to in the decision was that the Constitutional Court had received a letter from the Prosecutor General's Office informing it that criminal proceedings had been instituted

against the chairmen and members of ten polling stations in the first applicant's constituency for "falsification of electoral documents", and against four members of the ConEC of the second applicant's constituency for "abuse of official authority". However, the Court considers that, in the absence of any further detailed elaboration, the mere fact that criminal proceedings were instituted in connection with some alleged and vaguely described abuses does not, in itself, constitute sufficient and relevant enough a reason to annul the elections in any given constituency as a whole. In particular, the Constitutional Court failed to establish whether the fact that these abuses had actually taken place had been proved and, if so, whether they had been serious enough to impact on the results of the election to such an extent as to render impossible the determination of the electorate's opinion in each constituency affected. Moreover, with regard to the first applicant's constituency, the Court notes that the election results in ten polling stations had already been invalidated by the CEC, which had further determined that the overall constituency results had not been affected by those abuses to a degree requiring the annulment of the election. Accordingly, in so far as the alleged abuses in those ten polling stations were concerned, the matter had already been addressed by the CEC. In such circumstances, it is difficult to understand why the same alleged abuses in what appears to be the same polling stations were repeatedly brought up in the review by the Constitutional Court.

39. In any event, and most importantly, the Constitutional Court's decision failed to specify what the shortcomings in the relevant ConEC records were, which specific provisions of the electoral law had been breached and in what manner, how these breaches affected the vote count, and whether they had been so serious as to render the determination of the voters' choice impossible. Moreover, it did not specify what the "additional documents" requested and examined by the Constitutional Court were, who the invited "specialists" were and exactly what they had provided opinions on, whether in the light of the above information the strict procedural requirements of the Electoral Code concerning the invalidation of election results (see paragraphs 20-23 above) had been met, and so on. All of these crucial questions either remained unanswered or were ignored. In such circumstances, the Court cannot but conclude that the impugned decision was unsubstantiated in respect of both factual grounds and legal reasoning.

40. Moreover, it appears that the affected parties, including each applicant as a winning candidate, were excluded from the proceedings. In particular, they had never been given access to any documentary material or the "specialists' opinions" allegedly relied on by the Constitutional Court as a basis for its decision or provided with any other information as to the grounds for this decision. Neither had they been given an opportunity to participate in the hearing or to otherwise defend their interests, either in writing or orally. In the Court's opinion, whereas the decision of the

Constitutional Court was final and at the same time had a severe impact on the effective exercise by both the candidates and thousands of voters in the relevant constituencies of their respective electoral rights, the failure to afford the affected parties any procedural safeguards was especially serious as no appeals were available to remedy the situation. The Court disagrees with the Government's argument that inviting all the affected parties to participate in the proceedings would render the proceedings "impossible and meaningless". Firstly, it was obviously unnecessary to ensure the participation of all candidates from all electoral constituencies, because the great majority of them were not affected. Secondly, the mere fact that the Constitutional Court might have commenced the proceedings without a "predetermined opinion on the possible outcome of the review" could not have reasonably prevented it from subsequently ensuring the participation of the relevant affected parties once it became clear, at any point during the examination, that there were certain problems in respect of specific constituencies.

41. Having regard to the above, the Court concludes that the Constitutional Court's decision annulling the elections in the applicants' electoral constituencies was not based on any relevant or sufficient reasons, did not afford any procedural safeguards to the affected parties, and lacked any degree of transparency. In essence, the impugned decision arbitrarily deprived the applicants of the benefit of having been elected to Parliament. As such, it ran 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.

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

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

43. In conjunction with the above complaint, the applicants complained that despite clearly winning the election they had been arbitrarily deprived of their seats in Parliament owing to their political affiliation with an opposition party. They relied on Article 14, which provides as follows:

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

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

45. 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.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 6 of the Convention

46. The applicants complained that the proceedings at the Constitutional Court had breached their right to a fair trial guaranteed by Article 6 of the Convention, which provides as follows:

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

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

48. 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. Other complaints

49. Relying on Article 13 of the Convention, the applicants complained generally about various difficulties faced by opposition candidates upon examination by the domestic authorities of their election-related complaints and about the alleged practical ineffectiveness of remedies in cases involving opposition candidates. Moreover, the applicants complained under Article 1 of Protocol No. 1 to the Convention that, owing to the violation of their electoral rights, they had been deprived of all the useful effect of the funds spent on their election campaigns.

50. However, 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 these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

(a) The first applicant

52. The first applicant claimed 122,880 Azerbaijani manats (AZN) for loss of the earnings he would have received in the form of a parliamentary member's salary if elected to the National Assembly had the results of elections in his constituency not been invalidated. He also claimed AZN 14,054 for loss of the useful effect of the funds spent on his election campaign.

53. The Government contested the applicant's claims.

54. As to the claim in respect of expenses borne during the election campaign, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this part of the claim.

55. As to the loss of earnings, the Court notes that a similar claim was examined in *Kerimova v. Azerbaijan* (no. 20799/06, §§ 60-64, 30 September 2010, with further references). Specifically, when examining such claims, it should be taken into account that the sums claimed would have to be set off against other income which the applicant may have been receiving during the period in question and which he would have had to forego if elected (see *Lykourezos*, cited above, § 64, and *Kovach*, cited above, § 66). Unlike the applicant in the *Kerimova* case, the applicant in the present case has not submitted any information about any other income which he had been receiving during the relevant period and what his "net loss" would have been, making any exact calculations of such "net loss" impossible. However, in the particular circumstances of the case, given that the applicant had served as a member of parliament until the elections of 2005 and was deprived of the benefit of being re-elected in the 2005 elections as a result of a violation found in the present judgment, the Court considers that he must have suffered a loss of earnings and should be awarded compensation for pecuniary damage. In this respect, the Court considers that, while the applicant suffered certain pecuniary damage because he

could have been expected to serve at least part of his tenure and receive a certain income from his service, this damage cannot be technically quantified in terms of monthly salaries for the entire term of service of a member of parliament (see *Kerimova*, cited above, § 64). Therefore, having regard to the inherent uncertainty in any attempt to estimate the real losses sustained by the applicant and making its assessment on an equitable basis, the Court decides to award him EUR 20,000 under this head.

(b) The second applicant

56. The second applicant claimed AZN 9,500 in respect of various expenses related to his election campaign.

57. The Government contested the claim and noted that the applicant had failed to submit any supporting documents.

58. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim.

2. Non-pecuniary damage

59. The first applicant claimed EUR 20,000 and the second applicant claimed AZN 18,000 in respect of non-pecuniary damage.

60. The Government argued that the amounts claimed were excessive and considered that the finding of a violation of the Convention would constitute sufficient just satisfaction in itself.

61. The Court considers that the applicants 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 each applicant the sum of 7,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

62. The first applicant claimed EUR 5,900 for costs and expenses, including legal fees, translation expenses and postal expenses. The second applicant claimed AZN 4,850 for costs and expenses, including legal fees, translation expenses and postal expenses.

63. The Government contested these claims.

64. 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.

65. In the present case, the Court notes that the applicants were represented by the same lawyer, that the complaints and legal arguments in both cases were either the same or similar, and that substantial parts of the lawyer’s submissions in both cases were very similar. Likewise, significant

parts of the translated text were also the same in each case. Lastly, the Court notes that not all of the claimed costs and expenses were supported with relevant documents. Regard being had to the above, as well as to the documents in the Court's possession and the criteria mentioned in the above paragraph, the Court awards both applicants jointly the total sum of EUR 3,000 in respect of costs and expenses, plus any tax that may be chargeable to the applicants on that sum.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 3 of Protocol No. 1 to the Convention and Article 14 of the Convention admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 14 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay, 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 manats at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros) to the first applicant, Mr Ali Kerimli, in respect of pecuniary damage;
      (ii) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, to each applicant in respect of non-pecuniary damage;
      (iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, to the 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President