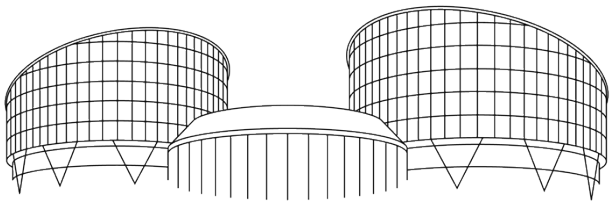

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF HAJILI v. AZERBAIJAN

(Application no. 6984/06)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

10/04/2012

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

In the case of Hajili 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 an application (no. 6984/06) 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 Arif Mustafa oglu Hajili (*Arif Mustafa oğlu Hacılı* – "the applicant"), on 1 February 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 the invalidation of the results of the parliamentary elections in his electoral constituency had infringed his electoral rights under Article 3 of Protocol No. 1 to the Convention.

4. On 21 October 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Baku. He stood for the elections to the National Assembly (Milli Majlis) of 6 November 2005 as a candidate of the opposition bloc Azadliq.

6. The applicant was registered as a candidate by the Constituency Electoral Commission ("the ConEC") for the single-mandate Zaqatala Election Constituency no. 110.

7. There were a total of forty-one polling stations in the constituency. At the end of election day, the applicant obtained copies of official records of election results (*səsvermənin nəticələrinə dair protokol*) drawn up by all forty-one Polling Station Electoral Commissions ("PECs"). According to the copies of the PEC records in the applicant's possession, he received the majority of votes in the constituency.

8. On 7 November 2005 the applicant lodged a complaint with the Central Electoral Commission ("the CEC"), claiming that, after the submission of all the PEC records of results to the ConEC, the PEC records for Polling Stations nos. 23, 24 and 25 had been falsified in favour of one of his opponents.

9. On 14 November 2005 the CEC acknowledged receipt of the applicant's complaint and also notified him that, on 12 November 2005, it had issued a decision to invalidate the election results for the entire Zaqatala Election Constituency no. 110. The decision, in its entirety, stated as follows:

> "Pursuant to Articles 19.4, 19.14, 25.2.22, 28.4, 100.12 and 170.2.2 of the Electoral Code and sections 3.5 and 3.6 of the Law of 27 May 2003 on Approval and Entry into Force of the Electoral Code, the Central Electoral Commission decides:
>
> 1. To invalidate the election results in Polling Stations nos. 1, 2, 6, 8, 10, 15, 17, 19, 20, 22, 24, 25, 26, 31, 33, 34, 36, 37 and 40 of Zaqatala Electoral Constituency no. 110 due to impermissible alterations ["*yolverilməz düzəlişlər*"] made to the PEC records of election results ["*protokollar*"] of those polling stations as well as infringements of the law ["*qanun pozuntuları*"] which made it impossible to determine the will of the voters.
>
> 2. To invalidate the election results in Zaqatala Electoral Constituency no. 110 due to the fact that the number of polling stations in which the election results have been invalidated constitutes more than two-fifths of the total number of polling stations in the constituency and that the number of voters registered in those polling stations constitutes more than one-quarter of the total number of voters in the constituency."

10. On 14 November 2005 the applicant lodged an appeal against that decision with the Court of Appeal, arguing that the findings in the CEC decision were wrong. He argued that, while the CEC decision stated that "impermissible alterations" had been made to the results records of nineteen PECs, in reality such alterations had been made to the records of only three PECs (in Polling Stations nos. 23, 24 and 25). As for the PEC records for other polling stations, the photocopies of the same PEC records which were in his possession did not contain any such alterations or changes. According to those PEC records (and excluding the PEC records for Polling Stations nos. 23, 24 and 25), he had obtained the highest number of votes in the constituency. The applicant requested the court to quash the CEC decision

of 12 November 2005 and to declare him the winner of the election in the constituency.

11. During the hearing held on 14 November 2005, the judges of the Court of Appeal did not independently examine the originals of the PEC and the ConEC records of results or hear witnesses called by the applicant. The Court of Appeal upheld the CEC decision by reiterating the findings made in that decision and concluding that the invalidation of the election results based on those findings had been lawful.

12. The applicant lodged a cassation appeal. In addition to the arguments advanced in his appeal before the Court of Appeal, he also complained, *inter alia*, that the Court of Appeal had refused to independently examine the primary evidence and had simply taken the CEC's findings as fact. He also complained that the CEC had failed to consider the possibility of ordering a recount of the votes as required by Article 108.4 of the Electoral Code and to summon him as an affected party and hear his explanation as required by Article 112.8 of the Electoral Code.

13. On 23 November 2005 the Supreme Court rejected the applicant's appeal and upheld the Court of Appeal's judgment as lawful.

14. On 1 December 2005 the Constitutional Court ordered repeat elections to be held on 13 May 2006 for all electoral constituencies in which the results had been invalidated, including the applicant's constituency.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL REPORTS

A. Electoral Code

15. After the votes in a polling station have been counted at the end of election day, 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).

16. 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).

17. Upon review of a request to declare invalid the election of a registered candidate, an electoral commission has a right to hear submissions from citizens and officials and to obtain necessary documents and materials (Article 112.8).

18. 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).

19. The ConEC or CEC may invalidate the election results for 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).

20. According to former Article 106.3.6 of the Electoral Code in force at the material time, during the initial vote-counting at a polling station at the end of election day, if a voting ballot which had not been properly placed in the corresponding envelope was found in the ballot box, the vote on that ballot was considered to be invalid. Article 106.3.6 was subsequently repealed on 2 June 2008.

B. The Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Election Observation Mission Final Report on the Parliamentary Elections of 6 November 2005 (Warsaw, 1 February 2006)

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

> "Although constituency aggregate results were made available within the legal deadline, detailed results by polling station were only released on 10 November, four days after the election, despite the computer networking of all ConECs with the CEC. This made it difficult for candidates and observers to check that results had been reported accurately. Protocols from two constituencies, 9 and 42, were never posted publicly. ...
>
> The CEC invalidated the results of four constituencies [including Zaqatala Election Constituency no. 110] under Article 170.2 of the Election Code, which states that if a ConEC or the CEC cancels more than 2/5 of PECs representing more than 1/4 of the total electorate in a constituency, then the entire constituency result is considered invalid. ...
>
> At least ... two ConEC chairpersons [ConECs 9 and 42] were dismissed after election day for involvement in electoral malfeasance. The two ConEC chairpersons were arrested and charged with forging election documents. ... The CEC forwarded

materials on possible criminal violations to the Prosecutor General's Office regarding 29 PECs. ...

The process of invalidation of aggregated results in four constituencies by the CEC did not have sufficient legal grounds or an evidentiary basis, nor was the process transparent. The CEC decisions on the invalidation of the election results in the four constituencies concluded that there were "unacceptable modifications performed on the protocols and law infringements which made it impossible to determine the will of the voters" but did not provide any factual basis to support this conclusion. ...

Furthermore, when it invalidated results, the CEC did not make the required initial factual inquiry [as required by Article 170.2 of the Election Code], and ignored Article 108.4 of the Election Code, which authorizes the CEC to order a recount of votes in a constituency if the protocols and documents submitted by the ConEC reveal "mistakes, inadmissible corrections and inconsistencies." Protocols of ConECs and PECs were not examined or reviewed at CEC sessions. Invalidation of results in a polling station was premised solely on the conclusion of an individual CEC member as to whether a protocol should be invalidated. The judgment of a single CEC member that there were deficiencies in the protocol was accepted as established fact without any explanation of the alleged defect or identification of the number of votes involved. Accordingly, there was no factual basis presented publicly for invalidating results in any of the four constituencies, which is particularly troubling since the CEC registered few complaints that alleged violations in these constituencies. ...

The adjudication of post-election disputes in the courts largely disregarded the legal framework, and fell short of internationally accepted norms. ... In most cases, complaints and appeals were either dismissed without consideration of the merits or rejected as groundless by both the Court of Appeal and the Supreme Court.

Opposition candidates appealed the CEC's invalidation of results in constituencies 9, 42 and 110. The Court of Appeal upheld the three CEC decisions without any investigation or review of the primary documents and evidence, such as the PEC protocols. In constituency 9, the appellant petitioned the Court of Appeal to examine the protocols, which had been forwarded to the Prosecutor General's office by the CEC. This petition was denied. In constituency 42, the appellant made an identical request and the court again denied the petition, ruling that it was impossible to obtain the protocols from the Prosecutor General within the legal deadline. The CEC was not able to explain or give any information as to any specific defect in an invalidated protocol or offer any explanation as to what change to a protocol was sufficient for invalidation. ...

Proceedings in the Supreme Court did not correct the shortcomings noted above. The Supreme Court upheld each CEC decision."

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

22. By letter dated 26 October 2010 the Government informed the Court of their unilateral declaration with a view to resolving the issues raised by eight separate applications, including the present application lodged by Mr Arif Hajili. The declaration read as follows:

> "Having regard to the Court's judgment in the case of *Namat Aliyev v. Azerbaijan* (application no. 18705/06, 8 April 2010) the Government of the Republic of Azerbaijan wish to express – by way of a unilateral declaration – its acknowledgement that in the cases of Yagub Mammadov (application no. 24506/06), Arif Hajili (application no. 6984/06), Mirmahmud Fattalyev (application no. 40318/06), Fuad Mustafayev (application no. 19552/06), Isa Gambar (application no. 4741/06), Elchin Rzayev (application no. 22457/06), Eldar Namazov (application no. 22564/06), Ilham Huseyn (application no. 36105/06) v. Azerbaijan the rights of the applicants under Article 3 of Protocol No. 1 were violated.
>
> The Government are prepared to pay to each applicant total sum of EUR 9,100 (nine thousand one hundred euros) in compensation for non-pecuniary damage and costs and expenses. These sums shall be free of any tax that may be applicable and shall be payable within three months from the date of the notification of the striking-out judgment of the Court pursuant to Article 37 of the European Convention on Human Rights. From the expiry of the above-mentioned period, 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.
>
> The Government consider that this amount will be an adequate redress and sufficient compensation for the impugned violations and thus will constitute the final settlement of the present cases.
>
> The Government note that the Election Code of the Republic of Azerbaijan has been amended – following the recommendations of the Venice Commission of the Council of Europe – in order to improve the procedure of examination of the complaints by the electoral commissions. The Government will also undertake to issue appropriate instructions and adopt all necessary measures in view to ensure that all complaints concerning election irregularities are effectively addressed at the domestic level in the future. Moreover, the 'Action Plan for Council of Europe support to parliamentary election in Azerbaijan in November 2010' was adopted in cooperation between the Government of Azerbaijan and the Council of Europe in order to support the election process in the country. Various measures (political, legislative, training, media issues, voters' awareness raising, etc.) were scheduled in this document. In particular, taking account of the Court's judgment in the case of *Namat Aliyev v. Azerbaijan* and its case-law, as well as applications lodged with the Court against Azerbaijan with respect to Article 3 of Protocol No. 1 to the Convention, various trainings and seminars will be organized for the representatives of the electoral administration as well as judges in order to improve the appeals and complaints system stipulated in the

domestic legislation. Separate workshop on criminal aspects of the complaints will be held for the prosecutors. ...

The Government consider that the supervision by the Committee of Ministers of the execution of Court judgments concerning the Republic of Azerbaijan in these and similar cases is an appropriate mechanism for ensuring that improvements will be made in this context. To this end, necessary cooperation in this process will continue to take place.

In the light of the above, the Government would suggest that the circumstances of the present cases allow the Court to reach the conclusion that there exists 'any other reason', as referred to in Article 37 § 1 (c) of the Convention, justifying to discontinue the examination of the application, and that, moreover, there are no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the further examination of the cases by virtue of that provision. Accordingly, the Government invite the Court to strike the applications out of its list of cases."

23. In a group letter of 9 November 2010, the applicants in the above applications, including the applicant in the present case, argued that the terms of the unilateral declaration were unsatisfactory.

24. The Court has accepted the terms of the Government's unilateral declaration in respect of seven out of the eight cases mentioned in the above-cited unilateral declaration and decided to strike those cases out of the list in respect of the complaints concerning the breaches of the respective applicants' electoral rights (see *Gambar and Others* (dec.), nos. 4741/06, 19552/06, 22457/06, 22654/06, 24506/06, 36105/06 and 40318/06, 9 December 2010).

25. However, the Court cannot reach the same conclusion in respect of the present case for the following reasons.

26. The Court reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment, which elaborates on a number of relevant factors to be assessed in this respect (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 74-77, ECHR 2003-VI). The list of such relevant factors is not intended to be exhaustive and it includes such factors as the question of whether in their unilateral declaration the respondent Government have made any admissions in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant (ibid., § 76).

27. Turning to the present case, the Court notes that the Government acknowledged the violation of the rights under Article 3 of Protocol No. 1 of the eight applicants (including the applicant in the present case) owing to the alleged similarity of all these cases to the *Namat Aliyev* judgment

(see *Namat Aliyev v. Azerbaijan*, no. 18705/06, 8 April 2010). Furthermore, in respect of all those cases, the Government made an undertaking to take the same general measures as those specifically planned in the framework of the execution of the *Namat Aliyev* judgment. Accordingly, it appears that the inclusion of the specific references to the *Namat Aliyev* case was intended to limit the scope of the Government's acknowledgment to the type of violation of Article 3 of Protocol No. 1 found in that particular case.

28. However, the Court notes that, unlike the other seven cases which indeed raised issues similar to those in the *Namat Aliyev* case, the present application concerns a different kind of interference with the rights guaranteed by Article 3 of Protocol No. 1 to the Convention. Specifically, while the applicants in the *Namat Aliyev* case and the other seven cases referred to in the unilateral declaration complained about the ineffectiveness of the domestic electoral appeals' system in connection with their complaints concerning election irregularities that had occurred before and during election day, the applicant in the present case complained about the allegedly arbitrary annulment of the results of the election in his electoral constituency.

29. Accordingly, having regard to the content and scope of the Government's unilateral declaration and the context in which it was made, the Court considers that it does not contain a full admission of the specific alleged violation complained of in the present application. In such circumstances, the Court finds that the unilateral declaration failed to establish a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case.

30. Therefore, the Court refuses the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the application.

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

31. Relying on Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicant complained that the invalidation of election results in his electoral constituency had been arbitrary and unlawful and had infringed his electoral rights as the rightful winner of the election. He argued that the process of invalidation had lacked transparency and sufficient safeguards against arbitrariness, and that the decisions of the electoral commissions and domestic courts lacked any factual basis and were contrary to a number of requirements of the domestic electoral law.

32. 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

33. The Government argued that the applicant had lost his "victim" status because the authorities had acknowledged the breaches of electoral law that had infringed the electoral rights of voters and candidates (including the applicant) and afforded redress for those breaches, by means of invalidating the election results and ordering repeat elections in the constituency.

34. The applicant contested this objection.

35. The Court considers that the Government's objection is misplaced as it appears to be based on an assumption that the applicant's Convention rights had been breached by the fact of the alleged irregularities that included "falsification of electoral documents" at the PEC and ConEC level. However, the Court notes that in the present case, the applicant complained not about the alleged irregularities at the lower levels or the alleged perpetrators of those irregularities, but about the allegedly arbitrary annulment by the CEC of the election results in his constituency. Accordingly, the Court notes that in the present case the annulment of the election results could not possibly deprive the applicant of his victim status in respect of the present complaint, given that this annulment in itself is the matter complained of. Moreover, the mere fact that the repeat elections were held does not constitute a redress for any breaches of electoral rights that had taken place during the original elections. For these reasons, the Court rejects the Government's objection.

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

B. Merits

1. The parties' submissions

37. The Government submitted that the CEC's decision to invalidate the election results in the applicant's electoral constituency had followed a complaint by the applicant himself and had been based on sound factual findings.

38. As to the applicant's argument that the CEC had failed to order a recount, the Government argued that Article 108.4 of the Electoral Code did not require the CEC to recount the votes in all cases, but simply vested it with the discretion to decide whether a recount of votes should be ordered in each particular case. The Government further argued that a recount of votes had not been possible in the present case, because in accordance with Article 106.3.6 of the Electoral Code in force at the material time (this provision was subsequently repealed in 2008), ballots which were not in envelopes were considered invalid. As all the ballots submitted to the CEC had already been pulled out of their envelopes during the original count in the relevant polling stations and had not been put back into them, the recount of these ballots was impossible.

39. The Government argued that the established incidents of tampering with official records of election results had made it impossible for the CEC to determine the true will of the voters on the basis of those records. Such interference with the procedure of the vote-count documentation interfered with the free expression of the opinion of the people and, therefore, the CEC had correctly invalidated the election results in the applicant's constituency, as it was guided by the legitimate aim of ensuring that only the candidates elected in accordance with the will expressed by voters represented those voters in parliament.

40. The applicant submitted that he had won the election convincingly by a considerable margin of votes. The applicant claimed that, according to the relevant PEC results records which he had been able to obtain, he had received the highest amount of votes in the constituency. Moreover, he noted that the "provisional" election results published by the media immediately after the elections had indicated him as the winner in his constituency.

41. The applicant argued that the CEC decision had lacked any relevant reasons and that he, as a candidate and affected party, had been deprived of the opportunity to exercise his basic procedural rights during the CEC proceedings. The examination by the domestic courts of his appeals against the CEC decision had been ineffective.

42. The applicant further noted that all the alleged impermissible changes made to the official records of the election results had been made in favour of his opponents, and not in his favour. Despite this, the CEC had failed to comply with Article 114.5 of the Electoral Code, which did not allow invalidation of election results if it was established that any irregularities discovered during the election process had been made to assist the candidates who had not ultimately been elected, and not the winning candidate. In any event, the majority of the alleged unlawful alterations were of a "technical nature" which did not affect the figures on the total number of votes cast, and therefore could not impede the determination of the true will of the voters.

43. As for the Government's argument concerning the alleged impossibility of a recount of the votes, the applicant noted that the Government's reference to former Article 106.3.6 of the Electoral Code was wrong, because that provision concerned only the original count of the votes in polling stations at the end of election day, when the envelopes containing the ballots were first taken out of the ballot boxes, and did not concern any subsequent recount of votes in the presence of the CEC members. In any event, the applicant considered that on the facts of the cases there was no need for a recount, for the simple reason that his victory in the election could be established beyond any doubt from the documentary material available.

44. The applicant submitted that there were no legitimate grounds for an outright invalidation of the election results for the entire electoral constituency. Such a decision in the present case meant in essence that the domestic electoral system allowed one or a few random individuals to frustrate the opinion of tens of thousands of voters simply by making minor alterations to official records of election results. This in turn gave the current Government the opportunity to prevent opposition candidates from becoming members of parliament by simply having an electoral official tamper with a results record in order to render the results of the election null and void, and subsequently escape with a very lenient penalty for doing this.

2. The Court's assessment

45. 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).

46. 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).

47. 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*, cited above, § 72), 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-...).

48. 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).

49. The Court notes that it has previously examined a complaint based on very similar facts, in the *Kerimova* judgment (see *Kerimova v. Azerbaijan*, no. 20799/06, 30 September 2010).

However, it observes that, unlike the *Kerimova* judgment, where it was apparent from the established facts that the applicant would have won the election had the election results not been invalidated arbitrarily (ibid., §§ 9 and 47), in the present case it is not possible to establish with certainty that the applicant would have won the election in his electoral constituency. Specifically, while the applicant claimed that he had received the highest number of votes based on the copies of PEC results records in his possession, no similar aggregated vote count showing him as the winner has ever been officially produced by the relevant ConECs or CEC (unlike in the *Kerimova* case). In this respect, the Court notes that, unless it is rendered unavoidable by the circumstances of the case, it is not the Court's task to substitute itself for domestic electoral authorities or to take on the function of a first-instance tribunal of fact by attempting to determine the exact vote counts on the basis of records of election results issued by electoral commissions of the lowest level or to determine who should have won the elections in the applicant's constituency (see, *mutatis mutandis*, *Namat Aliyev*, cited above, § 77). Nevertheless, it is sufficiently clear from the facts of the case that the applicant was one of the frontrunners among other candidates in his electoral constituency and that the authorities' decision to annul the election results affected the applicant's chances of being elected to the National Assembly. In this connection, the Court also reiterates that Article 3 of Protocol No. 1 guarantees not a right to win the election *per se*, but a right to stand for election in fair and democratic conditions (ibid., § 75).

50. Moreover, it is true that in the present case, prior to the CEC decision on the annulment of the election, the applicant had complained to the CEC about alleged irregularities perpetrated against him in three polling stations of the constituency. It could therefore be argued that the CEC decision followed a relevant request by the applicant. However, the CEC decision went manifestly beyond what had been requested of it by the applicant and invalidated the election results in a greater number of polling stations of the constituency, resulting in an invalidation of the election results in the constituency as a whole.

51. Having regard to the above considerations, the Court considers that the CEC decision to annul the elections constituted an interference with the applicant's effective exercise of his right to stand for election. It remains to be determined whether this interference was compatible with the requirements of Article 3 of Protocol No. 1 to the Convention.

52. The Government contended that the impugned decision on the invalidation of election results had been aimed at protecting the free expression of the voters' opinion from illegal interference and ensuring that only the rightfully elected candidates represented the voters in parliament. However, the Court has doubts as to whether a practice of discounting all votes cast in an entire electoral constituency owing merely to the fact that

irregularities have taken place in some polling stations, without an attempt to establish in a diligent manner the extent of the irregularities and their impact on the outcome of the overall election results in the constituency, can necessarily be seen as pursuing a legitimate aim for the purposes of Article 3 of Protocol No. 1 (compare, *mutatis mutandis*, *Kovach*, cited above, § 52, and *Kerimova*, cited above, § 46). However, the Court is not required to take a final view on this issue in the light of its findings below.

53. Having regard to the decisions of the CEC and domestic courts in the present case, the Court considers that they were not in compliance with the requirements of Article 3 of Protocol No. 1, for essentially the same reasons as those in the *Kerimova* judgment. In particular, the Court notes the following.

54. As to the CEC decision of 12 November 2005 invalidating the election results in the applicant's constituency (see paragraph 9 above), the Court notes that it contained no specific description of the alleged "impermissible alterations" made to the PEC results records or other "infringements of law", no elaboration as to the nature of these "alterations" and "infringements", and no reasons explaining as to why the alleged breaches obscured the outcome of the vote in the relevant polling stations and made it impossible to determine the true opinion of the voters. In these circumstances the Court cannot but note that the CEC decision was unsubstantiated.

55. Furthermore, the Court notes that, like in the *Kerimova* case, the CEC and the domestic courts failed to follow a number of procedural safeguards provided by the domestic electoral law, without explaining the reasons for that omission. Firstly, the CEC failed to consider the possibility of a recount of votes before invalidating the election results for the entire constituency. Even accepting the Government's argument that under Azerbaijani law an election recount was optional (at the CEC's discretion) and not mandatory, the Court considers that in the present case the CEC could have considered the possibility of a recount or at least explained the reasons for passing up this opportunity before deciding on an invalidation of the election results. Secondly, the Court notes that the domestic authorities ignored the requirements of Article 114.5 of the Electoral Code, which prohibited invalidation of election results at any level on the basis of a finding of irregularities committed for the benefit of candidates who lost the election. Accordingly, it appears that according to this provision, prior to considering a decision to annul the election, the authorities first had to specify the total vote counts and determine in whose favour the alleged irregularities had been made. However, this has not been done in the present case. In the Court's view, the authorities' failure to order a recount of votes or to take into account the requirements of Article 114.5 of the Electoral Code, and the lack of any explanation for such failure, contributed to the

appearance of arbitrariness of the decision on the annulment of the election (compare *Kerimova*, cited above, §§ 49-51).

56. Lastly, the Court notes that, despite the fact that the applicant had repeatedly raised all of the above points in his appeals to the domestic courts, the domestic courts failed to adequately address these issues and reiterated the CEC's findings. They refused to examine any primary evidence, which mostly consisted of the illegally altered originals of the PEC records of election results, and failed to review the compliance of the CEC decision with the requirements of the electoral law. As such, the manner of examination of the applicant's election-related appeals was ineffective.

57. For the above reasons, Court concludes that the decision on the annulment of the election results in the applicant's electoral constituency was arbitrary, as it lacked any relevant and sufficient reasons and was in apparent breach of the procedures established by the domestic electoral law (see paragraph 55 above). This decision arbitrarily prevented the applicant from exercising effectively his right to stand for election and as such 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.

58. 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

59. In conjunction with the above complaint, the applicant complained that he had been arbitrarily deprived of his seat in the National Assembly owing to his affiliation with the political opposition. He relied on Article 14, which provides as follows:

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

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

61. 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. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

62. The applicant complained under Article 6 of the Convention that the domestic judicial proceedings had been unfair and arbitrary. Article 6 of the Convention provides as follows:

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

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

64. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 134,938 Azerbaijani manats (AZN) in respect of pecuniary damage, including damage caused by 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, as well as loss of the useful effect of the funds spent on his election campaign.

67. The Government contested the applicant's claims.

68. As to the claim in respect of loss of a parliamentary member's salary, the Court reiterates that, as discussed in paragraph 49 above, it cannot be established with sufficient certainty in this case (unlike in the

similar *Kerimova* case) that the applicant would necessarily have won the election in his constituency and become a member of parliament, had the election not been annulled in an arbitrary manner. It is therefore impossible for the Court to speculate as to whether the applicant would have received a member of parliament's salary.

69. 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.

70. For the above reasons, the Court rejects the claim in respect of non-pecuniary damage.

2. Non-pecuniary damage

71. The applicant claimed AZN 50,000 in respect of non-pecuniary damage.

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

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

B. Costs and expenses

74. The applicant claimed AZN 3,750 for the costs and expenses incurred before the Court, including legal fees, translation costs and postal expenses.

75. The Government contested this claim.

76. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,600 covering costs under all heads, plus any tax that may be chargeable to the applicant on that sum.

C. Default interest

77. 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. *Rejects* the Government's request to strike the application out of its list of cases;

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 application 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 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 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 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's 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