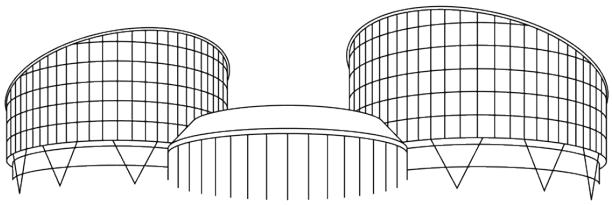

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ABIL v. AZERBAIJAN

(Application no. 16511/06)

JUDGMENT

STRASBOURG

21 February 2012

FINAL

21/05/2012

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

In the case of Abil v. Azerbaijan**,**

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

Nina Vajić, *President,*
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 31 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 16511/06) 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 Baybala Alibala oglu Abil (*Bəybala Əlibala oğlu Abil* – "the applicant"), on 15 April 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 his right to stand for election, as guaranteed by Article 3 of Protocol No. 1 to the Convention, had been infringed.

4. On 27 June 2008 the application was communicated 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 1952 and lives in Baku.

6. The applicant stood for the elections to the National Assembly of 6 November 2005 as an independent candidate. He was registered as a candidate by the Constituency Electoral Commission ("the ConEC") for the single-member Garadagh Electoral Constituency no. 11.

7. On 28 October 2005 the ConEC held a meeting in the applicant's absence and decided to apply to the Court of Appeal with a request to cancel his registration as a candidate owing to reports of his engaging in activities incompatible with the requirements of the Electoral Code. In particular, the ConEC noted that it had received a number of written statements from voters claiming that the applicant had promised them money in exchange for their promise to vote for him. The ConEC forwarded a total of seventeen such statements to the Court of Appeal, enclosed with its request for the applicant's disqualification.

8. On 29 October 2005 the applicant and his lawyer attempted to get a copy of the case file from the Court of Appeal, but were not allowed to do so.

9. On 31 October 2005 the Court of Appeal examined the case and cancelled the applicant's registration as a candidate, in accordance with Articles 88.4 and 113.2.3 of the Electoral Code. During the hearing, the applicant submitted that he had not been informed of the ConEC meeting of 28 October 2005 in advance and, therefore, had not been able to attend it. He denied all the accusations against him and asserted that they had been fabricated.

10. The court heard oral testimonies of eight out of the seventeen persons who had submitted written statements to the ConEC accusing the applicant of attempting to bribe them. One of them, H., testified that the applicant had personally offered him money. The remaining seven testified that they had been approached by some unknown people who had offered them money if they promised to vote for the applicant. When asked in court whether, when offering money, those "unknown people" had inquired from them whether they had been registered as voters in the applicant's constituency, these witnesses replied in the negative.

11. The Court of Appeal considered the above evidence sufficient to find that the applicant had offered money to voters in exchange for their votes in his favour, thus breaching Article 88.4 of the Electoral Code.

12. After the delivery of the Court of Appeal's judgment, the applicant carried out an enquiry about the identity of the persons who had testified against him. He found out that four of the eight persons who had testified against him in court were not actually registered as voters in his constituency. Moreover, witness H. was not registered and did not actually reside at the address which, according to his submissions to the court, was his primary residence located in the applicant's constituency. In the applicant's opinion, this information gave rise to serious doubts as to the personal integrity of the witnesses and the truthfulness of their statements, because it showed that they had either lied about their personal details or made false accusations against him, as there was no reason or incentive for a candidate in a given constituency to attempt, either by means of legal

campaigning or illegal methods, to secure the votes of persons who were registered to vote elsewhere and therefore could not vote for him anyway.

13. The applicant lodged an appeal with the Supreme Court, arguing that the Court of Appeal's judgment was arbitrary, that the evidence used against him had been fabricated, that the persons who had testified against him were false witnesses and that some of those persons were actually relatives of various officials of the local executive authorities. In support of his arguments, he submitted the information described in the above paragraph.

14. On 3 November 2005 the Supreme Court dismissed the applicant's appeal and upheld the Court of Appeal's judgment of 31 October 2005. It found that the Court of Appeal had duly established the factual circumstances of the case.

15. In the meantime, in September and October 2008 the applicant lodged several complaints with the ConEC and the Central Electoral Commission ("the CEC") concerning various alleged irregularities in the election process in his constituency. However, according to the applicant, he did not receive any replies to his complaints.

16. The applicant lodged an action with the Court of Appeal, complaining about the above-mentioned irregularities and asking the court to hold the Chairman of the CEC liable for the alleged failure to respond to his complaints. On 2 November 2005 the Court of Appeal dismissed the applicant's claims as unsubstantiated. On 7 November 2005 the Supreme Court upheld that judgment.

II. RELEVANT DOMESTIC LAW

A. Electoral Code

17. Article 88.4 of the Electoral Code of 2003 provides as follows:

"88.4. Candidates ... are prohibited from gaining the support of voters in the following ways:

88.4.1. giving money, gifts and other valuable items to voters (except for badges, stickers, posters and other campaign materials having nominal value), except for the purposes of organisational work;

88.4.2. giving or promising rewards based on the voting results to voters who were involved in organisational work;

88.4.3. selling goods on privileged terms or providing goods free of charge (except for printed material);

88.4.4. providing services free of charge or on privileged terms;

88.4.5. influencing the voters during the pre-election campaign by promising them securities, money or other material benefits, or providing services that are contrary to the law."

18. According to Articles 113.1 and 113.2.3 of the Electoral Code, the relevant electoral commission may request a court to cancel the registration of a candidate who engages in activities prohibited by Article 88.4 of the Code.

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

B. Code of Civil Procedure

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

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

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

THE LAW

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

23. Relying on Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicant complained that his registration as a candidate for the parliamentary elections had been cancelled arbitrarily.

The Court considers that this complaint falls to be examined only under Article 3 of Protocol No. 1 to the Convention, which 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

24. 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

25. The Government submitted that the aim of Article 88.4 of the Electoral Code was to ensure equal and fair campaign conditions for all candidates. Disqualification of candidates who engaged in various forms of illegal vote-buying had the legitimate aim of protecting the free expression of the opinion of the people in elections.

26. The Government maintained that the applicant had been disqualified because he had attempted to bribe voters. According to the Government, this fact had been sufficiently proved by the written statements made by a number of voters. They maintained that the applicant had been afforded an opportunity to fully and effectively defend his position in the relevant proceedings.

27. Lastly, the Government noted that the electoral law prohibited "any abuse" with regard to any voter, irrespective of which constituency a particular voter was registered to vote in. For this reason, the Government considered irrelevant the applicant's arguments that some of the persons who had accused him of bribery were not registered as voters in his electoral constituency.

28. The applicant submitted that the decision to disqualify him had been arbitrary and based on tenuous, insufficient, unreliable and fabricated evidence. The content and form of the written statements by alleged voters accusing him of bribery, which had been later used as a basis for his disqualification, were extremely suspect. The fact of receipt of those statements was missing from the ConEC's official register of incoming correspondence and complaints. Furthermore, most of those statements did not contain the relevant complainant's address, telephone number or other personal information, which would enable easy identification of the

complainant. Some of those statements had been signed by persons who had even failed to mention their full names, including their first name and patronymic. Ten of the seventeen statements were not dated. Moreover, the applicant claimed to have discovered that eight of the seventeen complainants were actually either relatives of, or otherwise personally dependent on, public officials of the local executive authorities.

29. The applicant further claimed that some copies of the written statements which the Government had enclosed with their observations to the Court had been tampered with at a later date. Specifically, dates and the ConEC stamp had been added to them. According to the applicant, the fact of this document-tampering could be easily established by comparing the copies submitted by the Government with the copies of the same statements that the applicant had obtained immediately after the Court of Appeal hearing of 31 October 2005, which were missing a date and a stamp.

30. The applicant further submitted that the manner in which the ConEC meeting of 28 October 2005 had been conducted had been in breach of several formal requirements of the Electoral Code, and that there were inconsistencies in the minutes of the ConEC meeting as to which specific ConEC members had been present and how they had voted. He further alleged that the domestic courts had relied on very dubious and contradictory evidence and had ignored information which had put the alleged complainants' true identity and integrity into serious doubt. In particular, among other omissions, the courts had failed to give due consideration to the fact that a number of the alleged complainants were not even voters in the applicant's constituency and that some of them had simply lied about their residence status in the constituency in question.

2. The Court's assessment

31. The Court notes that the summary of its case-law on the right to effectively stand for election, as guaranteed by Article 3 of Protocol No. 1 to the Convention, can be found in, among many other judgments, *Orujov v. Azerbaijan* (no. 4508/06, §§ 40-42, 26 July 2011). On a more specific note, the Court also reiterates that, while the Contracting States enjoy a wide margin of appreciation in imposing conditions on the right to vote and to stand for election, it is 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 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 or arbitrary (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 52, Series A no. 113; *Gitonas and Others v. Greece*, 1 July 1997, § 39, *Reports of Judgments and Decisions* 1997-IV; and *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 109 (iii), 8 July 2008).

32. The Court notes that in the present case the applicant was disqualified as a candidate in accordance with Articles 88.4 and 113 of the Electoral Code, which provide for the possibility of disqualification of candidates who resort to unfair and illegal means of gaining voter support. Given that Article 3 of Protocol No. 1 does not contain a list of "legitimate aims" capable of justifying restrictions on the exercise of the rights it guarantees and does not refer to those enumerated in Articles 8 to 11 of the Convention, the Contracting States are free to rely on an aim not mentioned in those Articles, provided that it is compatible with the principle of the rule of law and the general objectives of the Convention (see, for example, *Ždanoka v. Latvia* [GC], no. 58278/00, § 115, ECHR 2006-IV). The Court accepts the Government's argument that the conditions set out in the above-mentioned provisions of the Electoral Code pursue the legitimate aim of ensuring equal and fair conditions for all candidates in an electoral campaign and protecting the free expression of the opinion of the people in elections.

33. It remains to be determined whether there was arbitrariness or a lack of proportionality in the authorities' decisions.

34. The Court reiterates that its competence to verify compliance with domestic law is limited and that it is not its task to take the place of the domestic courts in such issues as the assessment of evidence or the interpretation of the domestic law. Nevertheless, for the purposes of supervision of the compatibility of the interference with the requirements of Article 3 of Protocol No. 1, the Court must scrutinise the relevant domestic procedures and decisions in detail in order to determine whether sufficient safeguards against arbitrariness were afforded to the applicant and whether the relevant decisions were sufficiently reasoned (see, *mutatis mutandis*, *Melnychenko v. Ukraine*, no. 17707/02, § 60, ECHR 2004-X).

35. Furthermore, the Court notes that a finding that a candidate has engaged in unfair or illegal campaigning methods could entail serious consequences for the candidate concerned, in that he or she could be disqualified from running for the election. As the Convention guarantees the effective exercise of individual electoral rights, the Court considers that, in order to prevent arbitrary disqualification of candidates, the relevant domestic procedures should contain sufficient safeguards protecting the candidates from abusive and unsubstantiated allegations of electoral misconduct, and that decisions on disqualification should be based on sound, relevant and sufficient proof of such misconduct (see *Orujov*, cited above, § 46).

36. Turning to the present case, the Court notes that only eight out of seventeen persons who had written complaints accusing the applicant of bribery were heard by the Court of Appeal. Seven of these eight persons testified that they had been offered money by some unknown people in exchange for a promise to vote for the applicant. The Court considers that

this information, by itself, does not prove that the alleged offer of a bribe originated from the applicant or that those "unknown people" were acting on his instructions or otherwise had authority to act on his behalf. There existed no further evidence linking the applicant with the alleged actions of those "unknown people" who had allegedly offered bribes to voters. The mere fact that those persons allegedly mentioned the applicant's name does not, in itself, mean that they acted on his instructions; nor does it prove that the applicant had any intention to buy votes or had taken any practical steps to put it into action.

37. It is true that one person, H., testified in court that the applicant had offered him money personally. However, the Court notes that the applicant managed to verify that H. was not registered in the voter lists of his constituency and that he had lied in court about his registered address of primary residence. The above information appears to be *prima facie* correct. Based on this information, the applicant put forward before the domestic courts a rather serious and arguable objection challenging H.'s personal integrity as a witness. The Court considers that an adequate examination of this objection might have affected the assessment of the truthfulness of H.'s statements. However, this objection was ignored by the domestic courts. In such circumstances, the Court considers that witness H. and his statements were not assessed in a manner that could remove serious doubts as to their reliability.

38. For the reasons mentioned above, the Court considers that the applicant's disqualification was based on irrelevant, insufficient and inadequately examined evidence.

39. Furthermore, the Court notes that the applicant was not afforded sufficient procedural safeguards against arbitrariness. In particular, the ConEC did not inform the applicant about its hearing of 28 October 2005, depriving him of the possibility to defend his position at the ConEC level, and took the decision to request his disqualification without hearing the complainants or otherwise attempting to carry out a comprehensive assessment of the situation. Moreover, as mentioned above, the domestic courts failed to take into account, and provide any reasoned response to, the applicant's objections and submissions.

40. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's electoral rights fell short of the standards required by Article 3 of Protocol No. 1. The applicant's disqualification from running for election was not based on sufficient and relevant evidence, the procedures of the electoral commission and the domestic courts did not afford the applicant sufficient guarantees against arbitrariness, and their decisions lacked sufficient reasoning.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. The applicant complained under Article 3 of Protocol No. 1 to the Convention that there had been a number of irregularities during the election process in his constituency and that the authorities had failed to duly examine his complaints concerning those irregularities. In conjunction with this complaint, he also complained under Article 14 of the Convention that independent candidates were at a disadvantage in comparison to candidates representing major political parties because, by law, the latter could conduct their campaign under more privileged terms, such as receiving free air time on State television and other forms of free campaigning.

43. 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

44. 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

45. The applicant claimed 13,600 Azerbaijani manats (AZN) in respect of pecuniary damage, consisting of the expenses borne during the electoral campaign.

46. The Government contested this claim and maintained that it was largely unsupported by any documentary evidence.

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

2. Non-pecuniary damage

48. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

49. The Government considered that the amount claimed was excessive.

50. 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 EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

51. The applicant also claimed approximately EUR 5,735 for the costs and expenses incurred before the domestic courts and the Court, including legal fees, translation costs and postal expenses.

52. The Government argued that the amount claimed was excessive and unreasonable and was not actually incurred.

53. 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

54. 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 concerning the applicant's disqualification from running for election 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 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;

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

Done in English, and notified in writing on 21 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President