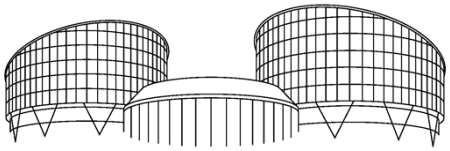

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ABDALOV AND OTHERS v. AZERBAIJAN

(Applications nos. 28508/11 and 2 others)

JUDGMENT

STRASBOURG

11 July 2019

FINAL

11/10/2019

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

In the case of Abdalov and Others v. Azerbaijan,

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

Angelika Nußberger, *President,*
Yonko Grozev,
André Potocki,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 18 June 2019,

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

PROCEDURE

1. The case originated in three applications (nos. 28508/11, 37602/11 and 43776/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Azerbaijani nationals, Mr Ikhtiyar Alish oglu Abdalov (*İxtiyar Əliş oğlu Abdalov* – "the first applicant"), Mr Ibrahim Zabit oglu Ahmadzade (*İbrahim Zabit oğlu Əhmədzadə* – "the second applicant") and Mr Tariel Adishirin oglu Shirinli (*Tariel Adışirin oğlu Şirinli* – "the third applicant"), on 26 April, 1 June and 8 June 2011 respectively.

2. The first applicant was represented by Mr K. Bagirov, a lawyer based in Azerbaijan. The second and third applicants were represented by Mr I. Aliyev, a lawyer based in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.

3. The applicants alleged, in particular, that their rights under Article 3 of Protocol No. 1 had been infringed because they had been unable to participate, as candidates, in the 2010 parliamentary election under equal conditions *vis-à-vis* other candidates, and that the domestic proceedings in their cases had been ineffective, contrary to the requirements of Article 13 of the Convention. The second and third applicants also alleged that the exercise of their right of individual application under Article 34 of the Convention had been hindered.

4. On 26 August 2014 notice of the applications was given to the Government. The applicants and the Government each submitted written observations on the admissibility and merits of the cases. Observations in respect of applications nos. 37602/11 and 43776/11 were also received from the International Commission of Jurists (the ICJ), to whom the President

had given leave to intervene as a third party in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1964, 1975 and 1955 and live in Baku, Sumgayit and Imishli respectively.

A. The first applicant

6. The first applicant was nominated by the Karabakh election bloc to stand as one of its candidates in the parliamentary elections of 7 November 2010 for the single-mandate Yasamal First Electoral Constituency No. 15. On an unspecified date the relevant constituency electoral commission ("the ConEC") preliminarily accepted his nomination as a candidate and issued him with official signature sheets in order to collect a minimum of 450 voter signatures in support of the nomination, as required by law. Under the Electoral Code, the ConEC would decide whether to register him as a candidate following the submission of all required registration documents, including the completed signature sheets.

7. The applicant collected 550 voter signatures on eleven signature sheets and submitted them to the ConEC, together with other relevant documents, on 14 September 2010.

8. On 2 October 2010 the ConEC issued a decision refusing "to accept the nomination of [the first applicant] ...". The ConEC found that, out of the 550 signatures submitted by the applicant, 159 were invalid for various reasons (including 143 signatures found to be false, and the remaining 16 rendered invalid due to various technical errors) and that, therefore, the total number of valid signatures was below the minimum of 450 required by law.

9. On 5 October 2010 the applicant lodged an appeal against that decision with the Central Electoral Commission ("the CEC"). He argued that the findings of the ConEC working group that such a large number of signatures were invalid were wrong and arbitrary. Contrary to the requirements of Article 59.3 and 59.13 of the Electoral Code, he had not been invited to participate in the process of examination of the signature sheets by the ConEC working group. Nor had he been provided with a copy of the record on the results of the examination of the signature sheets at least twenty-four hours prior to the ConEC meeting on his registration. Lastly, he argued that his presence at the ConEC meeting of 2 October 2010 had not been ensured.

10. Pursuant to a request by its expert reviewing the appeal, the ConEC extended the statutory three-day period for examination of the appeal (see paragraph 72 below). By a decision of 13 October 2010, the CEC dismissed the appeal, having conducted its own examination of the signature sheets and having found that 187 signatures were invalid.

11. The official electoral campaign period for all registered candidates started on 15 October 2010.

12. The applicant appealed against the CEC decision, reiterating his earlier complaints concerning the ConEC decision and additionally arguing that the CEC had committed the same procedural violations. By a judgment of 19 October 2010, the Baku Court of Appeal dismissed the appeal, endorsing the CEC's reasoning and finding no reasons to doubt its findings. The judgment was delivered to the applicant on 20 October 2010.

13. On an unspecified date the applicant lodged a further appeal with the Supreme Court.

14. On 28 October 2010 the Supreme Court granted the appeal and quashed the Baku Court of Appeal's judgment. The Supreme Court found that, after the applicant had submitted the relevant registration documents, the ConEC had been required, under Article 60.1 of the Electoral Code, to either formally register him as a candidate or refuse registration. However, in the present case, the ConEC had instead taken a decision refusing to accept his nomination, which was a procedurally incorrect decision (the applicant's nomination having been already accepted at that stage). The court held that, in fact, in the present case no formal ConEC decision on the applicant's registration had been taken under Article 60.1 of the Electoral Code within the time-limits prescribed by law. The Supreme Court remitted the case to the Baku Court of Appeal.

15. By a judgment of 2 November 2010 the Baku Court of Appeal ruled in the applicant's favour. The judgment did not mention the Supreme Court's legal reasoning as to the unlawfulness of the ConEC decision of 2 October 2010 on procedural grounds. Instead, the Court of Appeal ordered a new analysis of the signature sheets by a handwriting expert. The expert report found that a total of only 61 (and not 187, as had been found earlier) signatures out of 550 were invalid. Based on that report, the Court of Appeal found that the total number of valid signatures exceeded 450 and that, therefore, the applicant should have been registered as a candidate. It therefore instructed the CEC to do so.

16. On 3 November the CEC registered the applicant as a candidate. It issued the relevant registration card to him one day later, on 4 November 2010.

17. The last full day of the official electoral campaign period was effectively 5 November 2010, owing to a statutory ban on any campaigning during a twenty-four-hour blackout period before election day.

18. On 5 November 2010 the applicant sent a telegram to the CEC, asking them to postpone the elections in his constituency so that he could have time to conduct his campaign on an equal footing with other candidates. No reply was received by him before election day.

19. The applicant received very few votes and was not elected.

20. The CEC replied to his telegram of 5 November 2010 by a letter of 8 November 2010, one day after election day. It said that Article 149 of the Electoral Code provided for specific cases when elections could be postponed and that the applicant's situation did not constitute one of them.

21. The applicant lodged a formal complaint with the CEC, asking for the election results to be declared invalid and for a repeat election. He argued that the elections had been unfair owing to the unlawful delay in registration of his candidacy, as a result of which he had been unable to have sufficient time for electoral campaigning and thus to participate in the elections on an equal footing with the other candidates.

22. On 20 November 2010 the CEC dismissed the complaint, stating that the legislation did not provide for postponement of elections in the event of late registration of one of the candidates.

23. On 25 November 2010 the Baku Court of Appeal dismissed an appeal lodged by the applicant against the CEC's decision. It noted that the Electoral Code did not provide for a possibility of postponement of elections owing to late registration of a candidate. It also noted that the applicant had in fact been able to campaign after his candidacy had been registered, that he had appeared on television once, and that his electoral campaign materials had been printed in the form of booklets and also published in newspapers. The court concluded that from the moment of his registration, the applicant had been able to campaign and participate in the election on an equal footing with the other candidates.

24. On 30 November 2010 the Supreme Court dismissed a further appeal lodged by the applicant, reiterating the Baku Court of Appeal's reasoning.

B. The second applicant

25. The second applicant was self-nominated to stand as a candidate in the parliamentary elections of 7 November 2010 for the single-mandate Sumgayit Third Electoral Constituency No. 43.

26. The applicant collected 500 voter signatures and submitted them to the ConEC, together with other relevant documents, on 8 October 2010.

27. By a decision of 13 October 2010, the ConEC refused to register him as a candidate. It found that, out of the 500 signatures submitted, 138 were invalid because they were "false" signatures made by the same person in the name of other persons and that, therefore, the total number of valid signatures was below the minimum of 450 required by law. The ConEC also

found that the other documents submitted by the applicant did not comply with the requirements of the Electoral Code.

28. The official electoral campaign period for all registered candidates started on 15 October 2010.

29. On 15 October 2010 the applicant lodged an appeal against the ConEC decision with the CEC, arguing that the ConEC's conclusions concerning the validity of signatures had been arbitrary and unreasoned, and that the other documents submitted by him were in compliance with the Electoral Code. He also complained that, contrary to the requirements of Article 59.3 and 59.13 of the Electoral Code, he had not been invited to participate in the process of examination of the signature sheets by the ConEC working group. Nor had he been provided with a copy of the record on the results of the examination of the signature sheets at least twenty-four hours prior to the ConEC meeting on his registration. Lastly, he complained that his presence at the ConEC meeting of 13 October 2010 had not been ensured.

30. By a decision of 19 October 2010, the CEC dismissed the applicant's appeal, having conducted its own examination of the signature sheets and having found that 169 signatures were invalid. The decision was silent as to whether the other registration documents complied with the requirements of the Electoral Code. The decision was taken in the applicant's absence.

31. On 23 October 2010 the applicant appealed to the Baku Court of Appeal against the CEC decision, reiterating his complaints. He argued that the CEC had not ensured his attendance and had taken its decision in breach of a number of his other procedural rights under the Electoral Code. He urged the Court of Appeal to quash the CEC decision, order the CEC to register him and request the law-enforcement authorities to institute criminal proceedings against members of the electoral commissions responsible for the arbitrary decisions against him.

32. By a judgment of 29 October 2010, the Baku Court of Appeal partially upheld the applicant's appeal. Having ordered a new expert handwriting examination, the court found that only 38 signatures were invalid and the remaining valid signatures (462) exceeded the minimum of 450 required by law. The court ordered the CEC to register the applicant. It dismissed the remainder of the applicant's points of appeal.

33. The applicant lodged a further appeal with the Supreme Court in respect of the part of the Baku Court of Appeal's judgment of 29 October 2010 partially dismissing his appeal. On 3 November 2010 the Supreme Court dismissed this appeal.

34. In the meantime, on 2 November 2010 the CEC registered the applicant as a candidate, in compliance with the Baku Court of Appeal's order, and issued him with a candidate registration card.

35. On 4 November 2010 the applicant lodged a direct complaint with the Baku Court of Appeal against the ConEC and the CEC. He argued that,

owing to the arbitrary decisions by both electoral commissions refusing to register him and the ensuing significant delay in registration, he was unable to conduct an effective electoral campaign on an equal footing with other candidates, all of whom had been campaigning since 15 October 2010. He asked the court to order the postponement of the election in his constituency and payment of compensation to him by the electoral commissions. According to the applicant, that complaint was never examined.

36. On 4 November 2010 the applicant also sent complaints to the Sumgayit City prosecutor's office and the prosecutor's office of the Binagadi District of Baku, complaining about the electoral officials' actions, but to no avail.

37. The last full day of the official electoral campaigning period was effectively 5 November 2010, owing to the statutory ban on any campaigning during the twenty-four-hour blackout period before election day.

38. The applicant was not elected.

39. On 10 November 2010 the applicant lodged a complaint with the CEC, asking for the election results to be declared invalid and for a repeat election. He argued that the elections had been unfair owing to the unlawful delay in the registration of his candidacy. He also argued that there had been a number of irregularities during election day.

40. On 19 November 2010 the CEC dismissed the applicant's complaint, finding that the applicant had been able to conduct his electoral campaign freely from the moment of his registration and that he had failed to substantiate his allegations concerning the election-day irregularities.

41. On 23 November 2010 the Baku Court of Appeal dismissed an appeal lodged by the applicant, reiterating the CEC's reasoning. On 1 December 2010 the Supreme Court dismissed a further appeal lodged by the applicant, endorsing the Court of Appeal's reasoning.

C. The third applicant

42. The third applicant was self-nominated to stand as a candidate in the parliamentary elections of 7 November 2010 for the single-mandate Imishli Electoral Constituency No. 79.

43. The applicant collected 550 voter signatures and submitted them to the ConEC, together with other relevant documents, on 5 October 2010.

44. By a decision of 11 October 2010, the ConEC refused to register the applicant as a candidate. It found that, out of the 550 signatures submitted by the applicant, 139 were invalid for various reasons (including 132 signatures found to be false) and that, therefore, the total number of valid signatures was below the minimum of 450 required by law.

45. That decision was made available to the applicant on 14 October 2010.

46. The official electoral campaigning period for all registered candidates started on 15 October 2010.

47. The applicant lodged an appeal against the ConEC decision with the CEC, arguing that the ConEC's conclusions concerning the validity of signatures had been arbitrary and unreasoned and that its decision had been taken in breach of a number of procedural requirements of the Electoral Code. The applicant posted his complaint late in the day on 16 October 2010, after the last dispatch. The complaint was sent out by the post office on 18 October 2010, as 17 October had been a non-working day.

48. By a decision of 22 October 2010, the CEC rejected the applicant's appeal, finding that the applicant had missed the three-day deadline for appealing provided for by the Electoral Code.

49. On 25 October 2010 the applicant appealed against the CEC decision, reiterating his complaints and arguing that the CEC had not ensured his attendance and had taken its decision in breach of a number of the applicant's other procedural rights under the Electoral Code. He also argued that he had not missed the deadline for appealing and, in support of this contention, attached a copy of the postal receipt showing that he had posted his complaint to the CEC on 16 October 2010 by registered mail.

50. By a decision of 28 October 2010, the Baku Court of Appeal dismissed the applicant's appeal, upholding the CEC's finding that the applicant had missed the deadline for appealing. The court noted that the copy of the postal receipt did not prove that the envelope posted on 16 October 2010 had actually contained the document in question (the complaint against the ConEC decision).

51. The applicant lodged a further appeal with the Supreme Court. On 3 November 2010 the Supreme Court granted his appeal, finding that he had lodged his appeal with the CEC on time. The Supreme Court quashed the CEC decision of 22 October 2010 and the Baku Court of Appeal's decision of 28 October 2010. However, without remitting the case to the CEC or the appellate court for examination of the merits of the appeal, and without examining itself the merits of the applicant's complaint against the ConEC's decision of 11 October 2010, the Supreme Court ordered the CEC to register the applicant as a candidate.

52. On 4 November 2010 the CEC registered the applicant as a candidate, in compliance with the Supreme Court's order. The CEC issued him with a candidate registration card the next day, 5 November 2010, which was the last full day of the official electoral campaigning period.

53. On 5 November 2010 the applicant lodged a complaint with the Baku Court of Appeal against the ConEC and the CEC. He requested the postponement of the election in his constituency, owing to the fact that he had insufficient time to conduct his electoral campaign. He also sought monetary compensation from both electoral commissions in respect of non-pecuniary damage. On 5 November 2010 that complaint was declared

inadmissible for failure to pay the correct amount of court fees. The inadmissibility decision was subsequently upheld by the Supreme Court on 29 November 2010.

54. The applicant was not elected.

55. On 10 November 2010 the applicant lodged a complaint with the ConEC, arguing that, owing to the arbitrary decisions by both electoral commissions refusing to register him and the ensuing significant delay in registration, he had been unable to conduct an electoral campaign on an equal footing with other candidates, all of whom had been campaigning since 15 October 2010. He also claimed that there had been a number of irregularities in various polling stations during election day. He requested, *inter alia,* the invalidation of the election results in the constituency.

56. On 13 November 2010 the ConEC dismissed the complaint. It noted that the applicant's complaints about the refusal to register him had been examined by the courts and that he had obtained a ruling in his favour. As for the alleged irregularities during election day, it had been found that the applicant's claims were unsubstantiated.

57. On 25 November 2010 the CEC dismissed an appeal lodged by the applicant against the above-mentioned decision. It noted that his complaint had been duly examined by the ConEC. The CEC further noted that, on 22 November 2010, it had already formally approved the election results in the majority of constituencies, including the applicant's, and had forwarded that decision for final approval by the Constitutional Court. In such circumstances, there was no longer any basis for granting any of the applicant's requests.

58. On 26 November 2010 the Baku Court of Appeal dismissed an appeal lodged by the applicant against the CEC's decision. Following a further appeal lodged by the applicant, on 8 December 2010 the Supreme Court upheld the Court of Appeal's judgment of 26 November 2010.

D. Court proceedings and seizure of the applicants' case files (applications nos. 37602/11 and 43776/11)

59. At the material time the representative of the applicants in the above-mentioned applications, Mr I. Aliyev, was also representing twenty-seven other applicants in cases concerning the 2010 parliamentary elections and a number of applicants in other cases before the Court.

60. On 8 August 2014 criminal proceedings were instituted against Mr Aliyev, which were the subject of a separate application brought by him before the Court (see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, 20 September 2018). On 8 and 9 August 2014 the investigating authorities seized a large number of documents from Mr Aliyev's office, including all the case files relating to the pending proceedings before the Court which were in Mr Aliyev's possession. They concerned over 100 applications in

total. The files relating to the present cases, which, it appears, included copies of all the documents and correspondence between the Court and the parties, were also seized in their entirety. The facts relating to the seizure and the relevant proceedings are described in more detail in *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 21-28, 22 October 2015).

61. On 25 October 2014 the investigating authorities returned a number of the case files concerning the applications lodged with the Court, including the files relating to applications nos. 37602/11 and 43776/11, to Mr Aliyev's lawyer.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

A. Electoral Code

62. Unless specified otherwise, the provisions of the Electoral Code set out below were in effect at the time of the parliamentary elections of 7 November 2010.

1. System of electoral commissions

63. Elections and referenda are organised and carried out by electoral commissions, which are competent to deal with a wide range of issues relating to the electoral process (Article 17). There are three levels of electoral commissions: (a) the Central Electoral Commission ("the CEC"); (b) constituency electoral commissions ("ConEC"); and (c) precinct (polling station) electoral commissions ("PEC") (Article 18.1). A more detailed summary of the system of electoral commissions, their composition and decision-making procedures, as well as the procedure for examination of election-related appeals, is provided in *Namat Aliyev v. Azerbaijan* (no. 18705/06, §§ 31-44, 8 April 2010).

2. Time-limits applicable to the process of candidate registration

64. Following nomination, a candidate or his or her representative must submit documents required for registration, including signature sheets, to the relevant electoral commission at most fifty and at least thirty days before election day (Article 58). Before the amendments of 18 June 2010, this period was between sixty-five and forty days. Before the earlier amendments of 2 June 2008, it was 105 days and seventy days.

65. After receipt of the signature sheets and the other registration documents required, the relevant electoral commission must issue a decision to register or to refuse to register the candidate within a period of seven days (Article 60.1). Before the amendments of 18 June 2010, the time-limit was ten days.

3. Procedure for examination of the signature sheets

66. Article 59 provides as follows, in the relevant parts:

> "59.3. Candidates and their authorised representatives, as well as authorised representatives of political parties or blocs of political parties, may be present during the process of examination of signature sheets at the relevant electoral commission. The relevant electoral commission shall give advance notice to the above-mentioned persons about the examination of signature sheets. The electoral commission may not object to or obstruct the participation in this procedure of the above-mentioned persons sent by a candidate, political party or bloc of political parties. All signatures on the signature sheets shall be examined.
>
> ...
>
> 59.13. The head of the working group and a member of the relevant electoral commission with a decisive voting right shall prepare a record [*protokol*] of the results of the examination of the signature sheets of each candidate, sign it, and submit it to the electoral commission for a decision. The results record shall indicate the number of examined signatures and the number of invalid signatures, together with grounds for invalidation. The results record shall be appended to the relevant decision of the electoral commission. A copy of the results record shall be given to the candidate or authorised representative of a political party or bloc of political parties at least 24 hours prior to the electoral commission's meeting on registration of a candidate. If it is found during the examination of signatures that there are fewer than the number required, the candidate ... shall have the right to obtain, in addition to a copy of the results record approved by the head of the working group, a copy of the record of the results of the examination indicating the line numbers of the specific signatures and the number of the relevant folder containing the grounds for invalidation of voter signatures."

4. Electoral campaign period

67. It is prohibited to conduct an electoral campaign on election day and the day preceding election day (Article 75.1).

68. The electoral campaign period begins twenty-three days before election day and ends twenty-four hours before election day (Article 75.2). Before the amendments of 18 June 2010, this period was to begin twenty-eight days before election day. Before the earlier amendments of 2 June 2008, it was to begin sixty days before election day.

5. Examination of electoral disputes

69. Candidates and other affected persons may complain about decisions or actions (or omissions to act) violating the electoral rights of candidates or other affected persons, within three days of publication or receipt of such decisions or occurrence of such actions (or omissions) or within three days of an affected person becoming aware of such decisions or actions (or omissions) (Article 112.1).

70. Such complaints can be submitted directly to a higher electoral commission (Article 112.2). If a complaint is first decided by a lower electoral commission, a higher electoral commission may overrule its

decision or adopt a new decision on the merits of the complaint or remit the complaint for a new examination (Article 112.9). Decisions or actions (or omissions to act) of a ConEC may be appealed against to the CEC, and decisions or actions (or omissions to act) of the CEC may be appealed against to an appellate court (Article 112.3).

71. In cases provided for in the Electoral Code, the courts are empowered to quash decisions of the relevant electoral commissions, including decisions concerning voting results and election results (Article 112.5).

72. The relevant electoral commission must adopt a decision on any complaint submitted during the election period and deliver it to the complainant within three days of receipt of the complaint, except for complaints submitted on election day or the day after election day, which must be examined immediately (Article 112.10). Following the amendments of 2 June 2008, a new provision was introduced to the Electoral Code, allowing for a possibility for the relevant electoral commission to extend the above-mentioned three-day period, upon a request by its expert group, for an indefinite period of time (Article 112-1.10). Following the amendments of 20 April 2012, adopted after the events in the present cases, the duration of the extension period was limited to three days.

73. 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 time-limit for lodging an appeal against a court decision is also three days (Article 112.11).

B. Code of Good Practice in Electoral Matters

74. The relevant excerpts from the Code of Good Practice in Electoral Matters (Guidelines and Explanatory Report) (CDL-AD (2002) 23 rev), adopted by the European Commission for Democracy Through Law ("the Venice Commission") at its 51st and 52nd sessions (5-6 July and 18-19 October 2002), read as follows:

> "GUIDELINES ON ELECTIONS
>
> ...
>
> 1.3. Submission of candidatures
>
> i. The presentation of individual candidates or lists of candidates may be made conditional on the collection of a minimum number of signatures;
>
> ...
>
> iii. Checking of signatures must be governed by clear rules, particularly concerning deadlines;
>
> iv. The checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked;

v. Validation of signatures must be completed by the start of the election campaign;

...

EXPLANATORY REPORT

...

1.3. Submission of candidatures

8. The obligation to collect a specific number of *signatures* in order to be able to stand is theoretically compatible with the principle of universal suffrage. ... The signature verification procedure must follow clear rules, particularly with regard to deadlines, and be applied to all the signatures rather than just a sample; however, once the verification shows beyond doubt that the requisite number of signatures has been obtained, the remaining signatures need not be checked. In all cases candidatures must be validated by the start of the election campaign, because late validation places some parties and candidates at a disadvantage in the campaign. ..."

C. Joint opinion of the Venice Commission and the Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

75. The following are extracts from the Joint Opinion on the Draft Law on Amendments and Changes to the Electoral Code of the Republic of Azerbaijan, by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 25th Meeting (Venice, 12 June 2008) and by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008):

"**II. Discussion of amendments**

1. Abbreviated timeframes for the election campaign and election processes

10. A significant set of amendments reduces the amount of time for the official campaign period by more than fifty percent (50%). These amendments were not included in previous drafts discussed with the OSCE/ODIHR and the Venice Commission. The official start of the campaign period in Article 75.2 has been reduced from 60 days to 28 days prior to election day. This means that the equal access provisions to public media will apply only for a few weeks before election day. It also means that any other legal provision which is intended to create equal campaign conditions for registered candidates will only be applicable for a limited time period. While international practice differs in this respect, an abbreviated official campaign period is troublesome when other legal provisions, such as those creating a 'level playing field' for campaigning, are tied directly to the official campaign period or when the reduction of the official campaign period negatively impacts the rights of voters. In the case of Azerbaijan these amendments are introduced only a few months before the elections. As noted by the United Nations Human Rights Committee: '[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential'. If equal conditions for the communication of information to voters are limited to a few weeks before election day, then the right of voters to receive information is significantly limited. In the context of other amendments (*see also paragraphs 11, 16 ...*), the reduction of the official campaign period, cannot be considered as positive.

11. In addition to the reduction of the time for the official campaign period, these amendments reduce the deadline for announcing the elections and subsequent timeframe for preparation of the election processes. Article 8.1 has been amended to reduce the deadline for announcing the elections from 120 to 75 days before voting day. Article 29.6 has been amended to reduce the deadline for the organization of election constituencies from 115 days to 70 days before voting day. Similarly, other deadlines have been reduced, such as for candidate registration and the transfer of funds to constituency election commissions. It remains to be seen whether any of these reduced deadlines will have a negative impact on voters, candidates, or the orderly administration of election processes.

...

16. The reduced timeframe for election processes is also of concern due to the amendments that delete existing Articles 58.5 and 60.5. These two articles had allowed for candidates to register by paying a deposit should an insufficient number of valid signatures be submitted in support of candidacy. Due to the reduced timeframes introduced by the amendments, there is a greater likelihood that potential candidates will be rejected due to signature irregularities. However, such potential candidates will no longer be able to avail themselves of the possibility to register by paying a monetary deposit. The deletion of Articles 58.5 and 60.6 cannot be considered as positive.

...

III. Conclusion

49. The adopted amendments have addressed some previous recommendations of the OSCE/ODIHR and the Venice Commission. This is a positive development. However, some of the new amendments are problematic. In addition, several previous recommendations remain unaddressed or insufficiently addressed."

D. The OSCE/ODIHR Election Observation Mission Final Report on the Parliamentary Elections of 7 November 2010 (Warsaw, 25 January 2011)

76. The relevant extracts from the Final Report read as follows:

"**VII. NOMINATION AND REGISTRATION OF CANDIDATES**

The two-step process of candidate nomination and registration was handled by the ConECs. First, candidates could be nominated by political parties or by blocs of parties, by groups of voters, or through self-nomination. A political party could nominate individuals who are not party members. After examining the submitted candidate notifications and nominating party documents within a five-day period, the ConECs certified the nomination of 1,412 candidates. Of these, some 445 were nominated by 5 registered electoral blocs, some 350 were nominated by 11 political parties, and the rest were self-nominated or nominated by initiative voter groups.

In order to register a candidate, a ConEC should have received, *inter alia*, not less than 450 valid voters' signatures in support of the candidacy. The possibility to submit a financial deposit *in lieu* of signatures was removed from the Election Code in 2008. Within seven days, the ConEC had to check all the submitted documents and the collected signatures and pass a decision on registration of the candidate or on refusal

of registration. Some 300 nominees did not submit the documents and signature sheets required for their registration.

Of the 1,115 prospective candidates who submitted their registration documents before the deadline of 8 October, only 699 were initially registered by ConECs. As a result of complaints, 35 rejected candidates were later registered by the CEC, and a further 9 candidates were registered on the basis of Court of Appeal and Supreme Court decisions. Most registrations upon complaint or appeal were instituted after the start of the official campaign period. [Footnote: The Code of Good Practice in Electoral Matters of the Venice Commission states that validation of signatures must be completed by the start of the election campaign (I.1.3.v). In the explanatory report it is stated that in all cases candidatures must be validated by the start of the election campaign, because late validation places some parties and candidates at a disadvantage.] After 52 candidates withdrew and one was de-registered, 690 candidates ultimately contested the elections.

...

VIII. THE ELECTION CAMPAIGN

...

The pre-election environment was not conducive to the fair and free competition of political ideas and platforms; the whole environment and competitiveness of the election campaign was adversely affected by the fact that a very high number of prospective candidates nominated by opposition parties, as well as many self-nominated candidates, were not registered. Many interlocutors professed a lack of confidence in the election process. Many candidates expressed their concerns that the significantly shortened campaign period compared to 2005 [Footnote: The campaign period was shortened from 60 days in 2005 to 22 days (the campaign period begins 23 days before election day and ends 24 hours before the opening of the polls). In addition, several candidates were registered only during the campaign period after appealing to courts, which further limited their campaign opportunities] did not give them enough time to conduct a proper election campaign.

...

XIII. PRE-ELECTION COMPLAINTS AND APPEALS

Complaints and appeals can be filed by voters, candidates, political parties and blocs and their representatives, observers and election commissions. Actions and decisions as well as omissions of election commissions that violate electoral rights can be challenged at the higher election commission. Decisions of election commissions upon complaints, as well as decisions and actions of the CEC, can be appealed to the Court of Appeal. Decisions of the Court of Appeal can be further appealed to the Supreme Court. The timeframe for submitting a complaint or appeal is three days from the day a violation occurred or a decision was adopted or published, or the day the plaintiff was informed of the decision if the period was more than three days. Complaints and appeals lodged before election day should be reviewed and decided upon within three days; complaints and appeals submitted on or after election day should be reviewed and decided upon immediately.

The Election Code foresees the creation of expert groups at CEC and ConEC level for the adjudication of electoral disputes, consisting of nine and three members, respectively; it does not, however, provide any criteria for the appointment of these experts. It only states that commissioners with legal background may be members of these groups. The relevant CEC instruction sets as criteria professionalism, ability to

conduct factual and legal analysis, experience in the field of elections and existence of high public confidence in their professional activity. In practice, expert groups were composed of commissioners and in some cases also of administrative staff members. The CEC claimed that they did not opt for external lawyers as it would have been difficult to assess whether they enjoy public confidence. It is questionable whether the expert groups added any fact-finding capacity, as was the stated intention when they were introduced, since they consisted of those already working for the election administration and their advisory opinions did not contain detailed argumentation based on the facts or the law.

The Election Code allows for an extension of the three-day investigation period upon the request of the expert group. This provision creates a problem since it does not set an upper time limit for the extension. The possibility to extend the investigation period was used extensively by the CEC and resulted in a protracted dispute-resolution process, which in combination with the shortened election period and ambiguous legal provisions undermined the right to seek an effective and timely remedy. The review of cases for candidate registration by the Supreme Court was conducted up to 6 November. The last registration of a candidate by the CEC upon a court decision took place on 4 November."

THE LAW

I. JOINDER OF THE APPLICATIONS

77. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

II. THE GOVERNMENT'S REQUEST TO STRIKE OUT APPLICATION No. 28508/11 UNDER ARTICLE 37 OF THE CONVENTION

78. The Government submitted a unilateral declaration with a view to resolving the issues raised by the above-mentioned application. They further requested that the Court strike this application out of the list of cases, in accordance with Article 37 of the Convention.

79. The first applicant disagreed with the terms of the unilateral declaration and asked the Court to continue its examination of the application.

80. Having studied the terms of the Government's unilateral declaration, the Court considers – for the reasons stated in *Tahirov v. Azerbaijan* (no. 31953/11, §§ 32-42, 11 June 2015) and *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 30-40, 22 October 2015), which are equally applicable to the present case and from which the Court sees no reason to deviate – that the proposed declaration does not provide a sufficient basis for concluding

that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the present application.

81. The Court therefore refuses the Government's request for it 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 case.

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

82. The applicants complained under Article 3 of Protocol No. 1 to the Convention that, owing to arbitrary decisions initially refusing to register them as candidates and the subsequent delayed registrations following a number of appeals, they had been unable to participate in the parliamentary elections under equal conditions *vis-à-vis* other candidates, because they had been left with a very short time to conduct their respective electoral campaigns. 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

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

B. Merits

1. The parties' submissions

(a) The applicants

84. The applicants argued that the process of examination of signatures had been arbitrary and that the examination of their appeals had been delayed, resulting in their late registration as candidates. This, coupled with the shortened period for the electoral campaign, had resulted in a situation where they had had only three days or less to campaign. They had thus been unable to run for election under equal conditions *vis-à-vis* other registered candidates who had campaigned for twenty-two days.

85. In particular, the applicants pointed out that there had been no expert graphologists in the ConEC working groups. Instead, the role of the expert had been carried out by officials of the local police offices, who were not

qualified for the task of verifying the authenticity of signatures. Moreover, in the CEC working group, experts were employees of the forensic examination centre of the Ministry of Justice. The same body provided experts for the examinations ordered by the Baku Court of Appeal. Despite this, the conclusions reached by the experts examining signature sheets at various levels of electoral commissions and courts differed significantly.

86. The decisions of the electoral commissions to invalidate signatures had been substantively incorrect or unlawful, for various reasons. In particular, the electoral commissions had based their decisions on inconclusive findings by the working-group experts. In respect of the signatures invalidated on the grounds that they had been falsified, the electoral commissions' experts had stated in their opinions that there was only a "probability" (*ehtimal*) that those signatures had been made by the same person. This meant that the experts had abstained from making any definitive conclusions about the authenticity of those signatures based solely on the handwriting analysis of the signature sheets, and had implicitly acknowledged that there remained a possibility that those signatures were authentic. In such circumstances, without conducting any further investigation, the electoral commissions had declared the signatures invalid based merely on a probability of inauthenticity. Furthermore, some of the findings of inauthenticity of signatures had clearly been arbitrary.

87. Furthermore, the applicants pointed out that the length of the overall period for the conduct of the elections, as well as the period for the electoral campaign, had been significantly reduced shortly before the 2010 parliamentary elections. In particular, on 2 June 2008 the overall election period had been reduced from 120 days to seventy-five days, and on 18 June 2010 it had been further reduced to sixty days. As to the electoral campaign period, on 2 June 2008 its starting day had been moved from sixty days before election day to twenty-eight days before election day, and on 18 June 2010 it had been moved again to twenty-three days before election day. Those amendments had been criticised by the Venice Commission, OSCE/ODIHR, domestic non-governmental election monitoring organisations and opposition parties. The shortening of the above-mentioned periods had led to systemic difficulties for the timely registration of candidates and the timely completion of appeal procedures before the start of the electoral campaign.

(b) The Government

88. The Government submitted that, although the applicants had initially been refused registration, their appeals had eventually been granted by the Baku Court of Appeal or the Supreme Court and they had been registered as candidates and had participated in the elections. Thus, their electoral rights had been restored and there had been no violation of Article 3 of Protocol No. 1 to the Convention.

2. The Court's assessment

89. The general principles regarding Article 3 of Protocol No. 1 to the Convention have been set out in, among other cases, *Sitaropoulos and Giakoumopoulos v. Greece* ([GC], no. 42202/07, §§ 63-67, ECHR 2012) and *Davydov and Others v. Russia* (no. 75947/11, §§ 271-77, 30 May 2017). In particular, the Court reiterates that Article 3 of Protocol No. 1 enshrines a characteristic principle of an effective political democracy and is accordingly of prime importance in the Convention system. While this Article is phrased in terms of the obligation of the High Contracting Parties to hold elections under conditions which will ensure the free expression of the opinion of the people rather than in terms of a particular right or freedom, the Court has held that it also implies individual rights, including the right to vote and the right to stand for election (see *Sitaropoulos and Giakoumopoulos*, cited above, § 63).

90. In the present cases, owing to the applicants' late registration as candidates, they were allowed to join the electoral campaign at a very late stage and were able to campaign for significantly shorter periods of time than other candidates or were not able to campaign at all. The Court considers that these cases differ from those where the central issue was alleged inequality of treatment (such as, for example, alleged unequal media coverage) of the candidates during the electoral campaign or inequality of campaigning opportunities available to registered candidates (contrast, for example, *Communist Party of Russia and Others v. Russia*, no. 29400/05, §§ 107-29, 19 June 2012, and *Oran v. Turkey*, nos. 28881/07 and 37920/07, §§ 69-78, 15 April 2014). In the present cases, the applicants' ability to campaign was impaired by a time constraint, which was a practical consequence of their late registration. The primary issue, therefore, is not, in and of itself, any inequality of treatment or opportunities during the campaign, but whether the applicants' late registration adversely affected their individual right to stand freely and effectively for election. The timely registration of candidates is crucial in order for them to be known to voters and to be able to convey their political message during the electoral campaign period in an effort to gain votes and get elected. The free choice of the electorate depends on, *inter alia*, having information concerning all eligible candidates, and receiving it in a timely manner in order to form an opinion and express it on election day.

91. The Court reiterates that the applicants were entitled, under Article 3 of Protocol No. 1, to stand for election in fair and democratic conditions, regardless of whether ultimately they won or lost (see *Uspaskich v. Lithuania*, no. 14737/08, §§ 88-92, 20 December 2016, § 88, with further references). The Court has to satisfy itself that the conditions in which the applicants' individual electoral rights were exercised did not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness (see *Namat Aliyev v. Azerbaijan,*

no. 18705/06, § 75, 8 April 2010; *Scoppola v. Italy (no. 3)* [GC], no. 126/05, § 84, 22 May 2012; and *Riza and Others v. Bulgaria*, nos. 48555/10 and 48377/10, § 142, 13 October 2015). Such conditions must not thwart the free expression of the people in the choice of 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 v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 62, ECHR 2005-IX).

92. At the outset, the Court takes note of the Government's argument that the applicants' electoral rights had been "restored" because they had eventually been registered as candidates and had been able to run for election. However, that argument is misplaced in the context of the complaint in the present cases, because the complaint does not concern the applicants' ineligibility to stand for election, as they were indeed eventually registered as eligible candidates. The complaint in the present case is that the applicants' late registration denied them the possibility to participate in the elections effectively, in breach of the respondent State's undertaking to "hold free elections ... under conditions which will ensure the free expression of the opinion of the people".

93. The Court also notes the applicants' argument that the reduction of the electoral campaign period shortly before the 2010 parliamentary elections had adversely affected their ability to effectively stand for election. In this connection, the Court reiterates that Article 3 of Protocol No. 1 was not conceived as a code on electoral matters, designed to regulate all aspects of the electoral process. There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe, which it is for each Contracting State to mould into its own democratic vision (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 103, ECHR 2006-IV). Under Article 3 of Protocol No. 1, the States "enjoy considerable latitude to establish rules within their constitutional order governing parliamentary elections and the composition of the parliament, and ... the relevant criteria may vary according to the historical and political factors peculiar to each State" (see *Aziz v. Cyprus*, no. 69949/01, § 28, ECHR 2004-V). The Court considers that it is not its task in the present cases to give a general assessment of the compatibility of the domestic electoral legislation with the Convention. Its task is limited to the assessment of whether the applicants' rights under Article 3 of Protocol No. 1 were breached in the specific circumstances which obtained in the present cases.

94. Turning to those circumstances, the Court observes that the official electoral campaign period for the parliamentary elections of 7 November 2010 began on 15 October and ended on 5 November 2010. Campaigning on 6 November 2010 was prohibited owing to the twenty-four-hour

black-out period before election day. The Court further observes that the first applicant was issued with his candidate registration card on 4 November 2010, the second applicant on 2 November 2010, and the third applicant on 5 November 2010. In such circumstances, the first applicant had only one full day to campaign, the second applicant had only three full days, and the third applicant had practically no time left for campaigning.

95. The Court notes that the Venice Commission's Code of Good Practice in Electoral Matters recommends that candidatures be validated by the start of the election campaign, because late validation places some parties and candidates at a disadvantage in the campaign (see paragraph 74 above).

96. The Court considers that it is necessary to determine whether the late registration in the present cases was due to arbitrariness in the procedures and/or arbitrary delays attributable to the authorities. If so, it must then determine whether such late registration curtailed the applicants' electoral rights to an extent that was incompatible with the requirements of Article 3 of Protocol No. 1.

97. In this regard, the Court observes that it has consistently stressed the need to avoid arbitrary decisions and abuse of power in the electoral context, especially as regards the registration of candidates. It has also emphasised that the procedures for registering candidates must be characterised by procedural fairness and legal certainty (see *Petkov and Others v. Bulgaria*, nos. 77568/01 and 2 others, § 61, 11 June 2009, with further references).

98. The applicants' specific situation in the present cases must be assessed in the general context of certain systemic issues observed in the Azerbaijani 2010 parliamentary elections stemming from the lack of sufficient safeguards to prevent refusals to register candidates based on arbitrary findings of inauthenticity of supporting signatures. In particular, in the leading case of *Tahirov v. Azerbaijan* (cited above) concerning the refusal to register a candidate owing to an allegedly insufficient number of valid supporting signatures, the Court found, *inter alia*, that there were concerns regarding the impartiality of the electoral commissions, a lack of transparency in their actions and various shortcomings in their procedures (ibid., §§ 60-61); a lack of clear and sufficient information about the professional qualifications and the criteria for the appointment of working-group experts charged with the task of examining signature sheets (ibid., §§ 63-64); failure by the electoral commissions and courts to take any further investigative steps to confirm the experts' opinions on the authenticity or otherwise of signatures (ibid., § 65); and systematic failure by the electoral commissions to abide by a number of statutory safeguards designed to protect nominated candidates from arbitrary decisions (ibid., §§ 66-68 and 69). Similar findings were made in a number of other cases (see *Gasimli and Others v. Azerbaijan* [Committee], nos. 25330/11

and 4 others, 17 December 2015; *Vugar Aliyev and Others v. Azerbaijan* [Committee], nos. 24853/11 and 3 others, 17 December 2015; *Bagirov and Others v. Azerbaijan* [Committee], nos. 17356/11 and 4 others, 17 December 2015; *Soltanov and Others v. Azerbaijan* [Committee], nos. 30362/11 and 4 others, 16 June 2016; *Gaya Aliyev and Others v. Azerbaijan* [Committee], nos. 29781/11 and 5 others, 16 June 2016; and *Mammadli and Others* [Committee], nos. 2326/11 and 3 others, 30 June 2016). Having regard to the material in the case files and the parties' submissions in the present cases, the Court notes that they disclose essentially the same problematic issues in respect of the candidate-registration process – in particular as they pertain to the process of verifying the authenticity of supporting signatures – as those examined in the above-mentioned judgments. Even though the applicants in the present cases were eventually registered after a series of appeals, the Court finds, having regard to the material in the case files, that the initial refusals to register the applicants as candidates and the subsequent proceedings, up to the point of the respective decisions granting their appeals, disclosed the existence of the same procedural shortcomings as those summarised above.

99. As to the electoral time-limits, the Court notes that the domestic law provided for a maximum three-day period for electoral appeals and a maximum three-day period for the electoral commissions and courts to examine the appeals (see paragraphs 69 and 72-73 above). At the electoral commission level, the three-day period for examination could be extended for an indefinite duration (see paragraph 72 above), which was subject to, in the Court's opinion, well-founded criticism by the OSCE/ODIHR (see paragraph 76 above). With three levels of appeal against a ConEC decision (comprised of the CEC, the Court of Appeal and the Supreme Court), the electoral appeal proceedings in cases concerning refusals to register candidates could theoretically take up to eighteen days (and sometimes longer, in situations where the appeal period was extended by the CEC or where a case was remitted to a lower instance). Since the decision on refusal to register could be delivered as late as on the eve of the official start of the electoral campaign period (see paragraphs 64-65 above), the examination of appeals against such decision could take place after the start of the campaign period, as happened in the present cases. Thus, under this system, a degree of overlap was possible between the period for examination of appeals against refusals to register (which was of variable length, depending on the number of consecutive appeals which had to be lodged in a specific case and on whether the examination by the CEC was extended) and the electoral campaign period (which was fixed at twenty-two days). Consequently, given the possibility of overlap between the time periods allocated for the above-mentioned stages of the electoral process and the reduced length of the electoral campaign period, it was of utmost importance to conduct the appeal proceedings in a timely manner in order to

ensure that, should an appellant be successful, he would have sufficient time before election day to conduct his campaign.

100. On that point, the Court notes that the proceedings in the present cases were subject to a number of delays attributable to the electoral commissions and the courts, which on several occasions delivered their respective decisions in a belated manner, sometimes in breach of the three-day limit prescribed by law. For example, the first applicant's appeal against the ConEC decision was examined by the CEC in eight days, after the appeal period was extended for an undefined period of time (see paragraphs 9-10 above). While technically this was not in breach of the domestic law because there was a lawful extension decision, the fact that at the material time the law did not provide for a time-limit for the extended period was, in the Court's view, problematic. Furthermore, it appears that, in the first applicant's case, the Supreme Court's decision of 28 October 2010 following his appeal against the Baku Court of Appeal's judgment was also delivered belatedly (see paragraphs 12-14 above). In the second applicant's case, it took six days for the Baku Court of Appeal to decide on his appeal against the CEC decision (see paragraphs 31-32 above). In the third applicant's case the proceedings were significantly delayed owing to the CEC's and the Baku Court of Appeal's incorrect findings that he had missed the deadline for appealing (see paragraphs 47-50 above). Even though their findings were eventually corrected by the Supreme Court, a significant amount of the applicant's potential campaigning time was irretrievably lost.

101. Having regard to the above, the Court finds that the applicants' late registration in the present cases was due to a lack of safeguards against arbitrariness in the candidate registration procedures and, moreover, to delays in the examination of their appeals attributable to the electoral authorities and the courts.

102. As to whether such delays in registration amounted to a breach of the requirements of Article 3 of Protocol No. 1, the Court notes that, while an electoral campaign is important and does have an effect on the voting results, it is not the only factor which affects the choice of potential voters; that choice is also affected by other factors, so it may be difficult to determine a clear causal link between excessive or insufficient campaign publicity and the number of votes obtained by a candidate (see, *mutatis mutandis*, *Communist Party of Russia and Others*, cited above, § 118). However, as noted above, what is at stake in the present cases is not a restriction of campaign publicity or media coverage as such, but the applicants' individual right to stand freely and effectively for election in fair and democratic conditions (see paragraph 90 above).

103. In the present cases, the delays in the applicants' registrations were not minor. The applicants were registered so late and so close to election day that they did not have a reasonable amount of time to conduct effective

electoral campaigns. As noted above, the late registration was due to a lack of safeguards against arbitrariness in the candidate registration procedures and to delays by the electoral authorities and courts. In such circumstances, the Court finds that the applicants' individual electoral rights in the present cases were curtailed to such an extent as to significantly impair their effectiveness.

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

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

105. Relying on Article 13 of the Convention in conjunction with the above complaint, the applicants complained that the domestic proceedings had been ineffective. Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

106. The applicants reiterated the complaint. The Government submitted that the applicants had had effective domestic remedies at their disposal and that, having used them to their benefit, they had had their right to stand as candidates restored.

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

108. Having regard to the finding relating to Article 3 of Protocol No. 1 to the Convention (see paragraph 103 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION IN APPLICATIONS Nos. 37602/11 AND 43776/11

109. By a fax of 9 September 2014 Mr I. Aliyev, the representative of the second and third applicants, introduced a new complaint on behalf of those applicants. He argued that the seizure from his office of the entire case files relating to the applicants' pending cases before the Court, together with all the other case files, had amounted to a hindrance to the exercise of the applicants' right of individual application under Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

110. The submissions made by the applicants, the Government and the third party, the International Commission of Jurists (ICJ), were identical to those made by the relevant parties in respect of the same complaint raised in the case of *Annagi Hajibeyli* (cited above, §§ 57-63).

111. In *Annagi Hajibeyli*, having examined an identical complaint based on the same facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention (ibid., §§ 64-79). The Court considers that the analysis and finding it made in the *Annagi Hajibeyli* judgment also apply to the present cases and sees no reason to deviate from that finding.

112. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention in respect of applications nos. 37602/11 and 43776/11.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. The first and third applicants claimed 20,000 euros (EUR) each in respect of non-pecuniary damage. The second applicant claimed EUR 40,000 in respect of non-pecuniary damage.

115. The Government argued that the claims were excessive and considered that it would be reasonable to award less than EUR 7,500 to each applicant in respect of non-pecuniary damage.

116. Ruling on an equitable basis, the Court awards each applicant the sum of EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

117. The applicants also claimed the following amounts in respect of costs and expenses:

(i) the first applicant (application no. 28508/11) claimed EUR 2,000 for legal fees incurred in the domestic proceedings and the proceedings before the Court, and EUR 359 for translation costs incurred before the Court;

(ii) the second applicant (application no. 37602/11) claimed EUR 2,500 for legal fees incurred in the domestic proceedings and the proceedings before the Court;

(iii) the third applicant (application no. 43776/11) claimed EUR 2,500 for legal fees incurred in the domestic proceedings and the proceedings before the Court and EUR 340 for translation costs incurred before the Court.

118. The Government argued that the claims were excessive and could not be considered reasonable. They also noted that Mr Aliyev, the second and third applicants' representative, had not represented the applicants in the domestic proceedings. Moreover, both representatives of the applicants had represented a number of other applicants in similar cases before the Court and substantial parts of the representatives' submissions in the present cases, as well as in relation to other applications, were similar.

119. 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 awards EUR 1,400 to the first applicant (application no. 28508/11) and EUR 2,200 jointly to the second and third applicants (applications nos. 37602/11 and 43776/11) in respect of costs and expenses, plus any tax that may be chargeable to the applicants.

C. Default interest

120. 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. *Decides* to join the applications;

2. Rejects the Government's request to strike application no. 28508/11 out of the Court's list of cases;

3. *Declares* the complaints under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention admissible;

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

5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

6. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention in respect of applications nos. 37602/11 and 43776/11;

7. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,400 (one thousand four hundred euros), plus any tax that may be chargeable to the applicant, to the applicant in application no. 28508/11, in respect of costs and expenses, to be paid directly into their representative's bank account;

(iii) EUR 2,200 (two thousand two hundred euros), plus any tax that may be chargeable to the applicants, to the applicants in applications nos. 37602/11 and 43776/11 jointly, in respect of costs and expenses, to be paid directly into their representative's bank account;

(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;

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

Done in English, and notified in writing on 11 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President

APPENDIX

No.	Application nos.	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	28508/11	26/04/2011	**Ikhtiyar Alish oglu ABDALOV** 01/01/1964 Baku	Khalid Zakir oglu BAGIROV
2.	37602/11	01/06/2011	**Ibrahim Zabit oglu AHMADZADE** 05/07/1975 Sumgait	Intigam Kamil oglu ALIYEV
3.	43776/11	08/06/2011	**Tariel Adishirin oglu SHIRINLI** 01/07/1955 Imishli	Intigam Kamil oglu ALIYEV