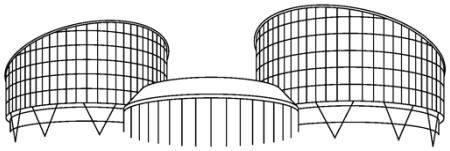

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ABIL v. AZERBAIJAN (No. 2)

(Application no. 8513/11)

JUDGMENT

Art 3 P1 • Stand for election • Applicant's disqualification from parliamentary elections for early campaigning and vote buying, resulting from deficient procedure and inadequate assessment of evidence • Insufficient safeguards against arbitrariness Art 34 • Hinder the exercise of the right of application • Seizure of applicant's case-file concerning his application to the Court

STRASBOURG

5 December 2019

FINAL

05/03/2020

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 (no. 2),

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

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

Having deliberated in private on 12 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 8513/11) 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 an Azerbaijani national, Mr Baybala Alibala oglu Abil (*Bəybala Əlibala oğlu Əbil* – "the applicant"), on 5 January 2011.

2. The applicant was 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 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 26 August 2014 notice of the application was given to the Government. The applicant and the Government each submitted written observations on the admissibility and merits of the case. Observations were also received from the International Commission of Jurists, 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 applicant was born in 1952 and lives in Baku.

6. The applicant was nominated by the Classic Popular Front Party to stand as one of its candidates in the parliamentary elections of 7 November 2010. On an unspecified date in early October 2010 he applied for registration as a candidate in the single-mandate Garadagh Electoral Constituency No. 11 and, on 5 October 2010, the Constituency Electoral Commission ("the ConEC") registered him as a candidate.

A. The incident in Qizildash and the related proceedings

7. While the applicant's registration was pending, on 4 October 2010 several posters containing the applicant's photograph, biography and a text purportedly describing his electoral platform were hung on walls of various buildings in Qizildash, a settlement in the Garadagh district. According to the applicant, this was not carried out by him or his electoral staff. The official campaigning period for the 2010 parliamentary elections was scheduled to start on 15 October 2010 and, under Article 75.2 of the Electoral Code, it was prohibited to campaign before that date.

8. According to the documents submitted by the applicant, the posters showed an incorrect date as his date of birth, contained incorrect information as to his previous career posts in both his party and in the executive authorities, and the full name of his political party was also given incorrectly. It also contained numerous spelling mistakes.

9. According to the applicant, he found out about the above-mentioned posters at 8 a.m. on 4 October 2010. At 8:30 a.m. he informed the ConEC chairman of this fact by telephone and complained orally that the posters had been orchestrated by his political opponents as an attempt to sabotage his electoral candidacy. Later that day, he submitted a written complaint to the ConEC, where he also mentioned that the posters in question were fake and contained a lot of incorrect information. He requested the ConEC to take lawful measures to stop "the sabotage", to find the perpetrators and to hold them responsible.

10. On the same day, a similar complaint was lodged by the applicant's electoral representative with the police, but to no avail.

11. On the same day, the ConEC informed the applicant by a letter that it had received "complaints by citizens" about the illegal dissemination of his electoral platform in Qizildash. In this connection, the applicant was informed that, by a decision of 4 October 2010, the ConEC had decided to issue a formal warning to the applicant for starting his electoral campaigning early, in breach of the requirements of Article 75.2 of the Electoral Code. The applicant was warned that, if he did not cease illegally campaigning, the ConEC would consider the question of cancellation of his candidacy. The decision to issue the warning was taken in the applicant's absence and a copy was eventually sent to the applicant by post on 13 October 2010 and was received by him on 18 October 2010.

12. On 5 October 2010 the applicant was formally registered as a candidate (see paragraph 6 above).

13. On 6 October 2010 the applicant sent an information request to the ConEC, asking *inter alia* for details as to the "complaints by citizens" received by the ConEC, the process of examination of those complaints, and the reasons for not inviting the applicant or his representative to participate in the examination. By a letter of 13 October 2010 (after most of the below-mentioned proceedings had taken place) the ConEC responded that on 4 October 2010 it had received complaints from four specifically-named residents of Qizildash, that based on those complaints the ConEC had requested a number of precinct electoral commissions ("PEC") located in Qizildash to investigate whether the information in those complaints was correct, that an expert group at the ConEC, having examined the complaints and the responses from the PECs, had given its opinion and that, based on that opinion, on 4 October 2010 the ConEC had taken its decision.

14. On 7 October 2010 the applicant personally wrote to the ConEC chairman, stating that what was happening in Qizildash were attempts at sabotaging his candidacy and asking the chairman to take measures to stop them. It appears that he received no reply. On 9 October 2010 he sent a similar complaint by telegram to the chairman of the Central Electoral Commission ("the CEC"). He received no reply to this telegram.

15. In the meantime, on 6 October 2010 the applicant lodged a complaint against the ConEC's decision of 4 October 2010 with the CEC. He complained that he had only been informed of that decision by means of a letter but, to date, had not been given a copy of it. He argued that the decision had not been based on any reliable evidence of any wrongdoing on his part and complained that, contrary to the requirements of Articles 40.2, 40.9 and 40.10 of the Electoral Code, it had been taken in his absence.

16. By a decision of 11 October 2010, the CEC dismissed the applicant's complaint, following its examination by the CEC expert group. In its decision, the CEC noted briefly that the applicant's complaint was unsubstantiated, that the ConEC decision had been lawful and that there were no grounds for quashing it. According to the CEC expert group's opinion, which accompanied the CEC decision, the applicant had been invited to participate in the examination of the complaint by the CEC expert group and by the CEC but he had not submitted any evidence beyond the evidence he had submitted together with his complaint.

17. The applicant appealed against this decision to the Baku Court of Appeal, arguing that the electoral commissions' decisions had been unlawful and incorrect, that the ConEC had not ensured his participation in its meeting, and that both commissions had not adequately examined the arguments raised in his complaints, namely the fact that his alleged electoral posters had contained numerous mistakes which he would not have made

and that he himself had repeatedly informed and complained to the commissions about the dissemination of those posters.

18. On 20 October 2010 the Baku Court of Appeal dismissed the applicant's appeal, finding that the electoral commissions' decisions had been lawful and that the applicant had failed to submit any reliable evidence proving that the posters had not been disseminated by him or that their dissemination had been an act of sabotage of his candidacy.

19. On 1 November 2010 the Supreme Court dismissed a further appeal by the applicant, upholding the appellate court's reasoning.

B. The incident in Alat and the subsequent proceedings

20. In the meantime, on 5 October 2010 the applicant lodged another written complaint with the ConEC, complaining that unknown persons had done the same thing – hanging false campaign posters in his name on the walls of various buildings – in Alat, another settlement located in his constituency. On 8 October 2010 the ConEC notified him by letter that it had received his complaint and had forwarded it to the local police office for inquiry and the necessary measures to be taken. No further response was given to this complaint by the police.

21. On 10 October 2010 a resident of Alat, K.M., wrote a complaint to the ConEC stating that on 9 October 2010 someone had hung the applicant's election posters on the walls of his house. He further noted that some people on the street had noticed the posters and informed him that it was illegal to display election materials. Lastly, he asked the ConEC to take "lawful measures in connection with the illegally hung posters".

22. The ConEC officials questioned K.M. and three other Alat residents in connection with the above complaint. They each gave handwritten statements on the same day, 10 October 2010.

23. K.M. stated that on 9 October 2010 another resident of Alat, J.A., had come to his house and asked him whether he could hang the applicant's election posters on the walls of his house and that K.M. had allowed him to do so.

24. A statement made by I.I., another Alat resident, was essentially identical to that of K.M. He stated that he had allowed J.A. to hang a poster on the walls of his house.

25. A handwritten statement prepared by another Alat resident, F.S., a teahouse owner, was essentially identical to those of K.M. and I.I. He stated that he had allowed J.A. to hang a poster on the walls of his teahouse.

26. J.A., the resident mentioned in K.M.'s, I.I.'s and F.S.'s statements, stated that on 9 October 2010 he had been approached by a man whose first name was Vahid and who introduced himself as the applicant's close relative and electoral representative. According to J.A., Vahid gave him 150 Azerbaijani manats (AZN) and promised him AZN 300 more in

exchange for J.A.'s help in hanging the applicant's election posters around the settlement. J.A. took the money and hung the posters on various houses, including K.M.'s and I.I.'s houses and F.S.'s teahouse.

27. On the same day, the ConEC requested the chairmen of six PECs located in Alat to verify the above allegations.

28. The chairmen of four PECs informed the ConEC that they had not found any campaign posters of the applicant on the territory of their respective precincts.

29. The chairmen of PECs nos. 5 and 6 informed the ConEC that they had discovered that the applicant's campaign material had been disseminated on the territory of their respective precincts.

30. On 11 October 2010 the ConEC expert group examined the above complaints and reports by the PECs, determined that the applicant had breached the requirements of the electoral law for a second time, and issued an opinion that the ConEC should seek a court order fining the applicant for having committed an administrative offence.

31. By a letter posted on 11 October 2010 the ConEC requested the applicant to appear before the ConEC at 3 p.m. on the same day and to give an explanation in connection with the complaints about him. That letter was delivered to the applicant on 13 October 2010 and, for that reason, until that date he remained unaware of the developments described in paragraphs 21-29 above.

32. Based on its expert group's opinion of 11 October, on 12 October 2010 the ConEC took a decision to request the district court to sentence the applicant to an administrative fine for breaching Articles 2.6.10, 75.2, 88.4.1 and 88.4.2 of the Electoral Code. The decision briefly summarised the Alat residents' and the PECs' statements (see paragraphs 21-29 above), and noted that those statements proved that a person named "Vidadi" (*sic* – "Vahid": see paragraph 26 above), who was the applicant's representative, had begun to disseminate the applicant's campaign material ahead of the official start of the electoral campaign. The decision was taken in the applicant's absence.

33. Based on the above decision, on 12 October 2010 the ConEC chairman drew up an administrative-offence record (*inzibati xəta haqqında protokol*) in respect of the applicant under Article 39.1 (breach of the rules on the period for conducting the pre-election or referendum-related campaigning) of the Code of Administrative Offences ("the CAO").

34. According to the applicant, a copy of the administrative-offence record of 12 October 2010 was shown to him for the first time during a hearing at the Garadagh District Court on 15 October 2010, while a copy of the ConEC decision of 12 October 2010 was given to him on 19 October 2010.

35. On 15 October 2010 the Garadagh District Court held a hearing to determine the request made by the ConEC.

36. The applicant made two written submissions to the court, apparently either during the hearing or on the day of the hearing. In the first, he requested the court to take into account, *inter alia*, his complaints to the ConEC and the police of 4 October 2010, his complaint to the ConEC of 5 October 2010, his information request to the ConEC of 6 October 2010, his complaint to the CEC of 6 October 2010, and the election poster in question containing incorrect information about him, copies of which he attached to his submissions.

37. In his second submission he noted that, from the documents he received during the court proceedings, he had become aware of a person named Vahid who allegedly claimed to be his electoral representative. He denied having any representatives named Vahid and noted that all his representatives were present in the courtroom. He made the following requests to the court: (a) to grant him more time to acquaint himself with the case material; (b) to take measures to identify the person named Vahid and to hear him in person at the court hearing; and (c) to apply to the prosecution authorities for a criminal investigation into the actions of J.A. who had stated that he had accepted a payment for unlawful activities. There are no documents in the case file showing that the court responded to any of the above requests by the applicant.

38. At the oral hearing, the applicant and his representatives argued that, despite the applicant's own numerous complaints which he had been making since 4 October 2010 to various authorities about illegal actions being taken in his name and against him, the electoral authorities had wrongly concluded that he had breached electoral law. He maintained that his candidacy was being sabotaged.

39. The court also heard evidence from the chairman and two members of the ConEC who maintained their findings reached in the ConEC decision of 12 October 2010.

40. The court further heard evidence from J.A., K.M., I.I. and F.S., all of whom reiterated their written statements as made to the ConEC.

41. Based on the above submissions, the Garadagh District Court found that the available evidence proved that the applicant had breached Article 39.1 of the CAO and sentenced him to an administrative fine in the amount of AZN 25 (around 23 euros (EUR) at the time).

42. The applicant appealed, arguing that the Garadagh District Court had not examined the documents adduced by him in evidence and had not responded to his requests and arguments. He requested the appellate court to quash the first-instance court's judgment and reiterated his requests that the person named Vahid be identified and examined at the court hearing and that the case be referred to the prosecution authorities for investigation of J.A.'s actions.

43. By a judgment of 29 October 2010 the Baku Court of Appeal upheld the Garadagh District Court's judgment, without expressly responding to

the applicant's arguments and holding that the lower court had correctly found that the available case material proved that the applicant had breached the relevant legal provisions. No further appeal lay against the Court of Appeal's judgment.

C. Cancellation of the applicant's candidacy

44. Referring to the Garadagh District Court's judgment of 15 October 2010, on the same day the ConEC decided, in accordance with Article 113.2 of the Electoral Code, to request the Baku Court of Appeal to cancel the applicant's candidacy for breaching Article 39.1 of the CAO and Articles 75.2, 88.4.1 and 88.4.2 of the Electoral Code. This decision was taken in the applicant's absence.

45. In his written submissions to the court in response to the ConEC's request, the applicant reiterated his earlier arguments at length and maintained that the alleged illegal campaigning and the subsequent actions taken against him had been staged to sabotage his candidacy.

46. By a judgment of 19 October 2010 the Baku Court of Appeal granted the ConEC's request and cancelled the applicant's candidacy. In reaching this decision, it examined the ConEC's and the applicant's oral and written submissions and the documents available in the case file. No witnesses were heard.

47. Following an appeal by the applicant, on 1 November 2010 the Supreme Court upheld the Court of Appeal's judgment, holding that the lower court had correctly applied the substantive and procedural requirements of the domestic law and that the arguments raised in the applicant's appeal were unsubstantiated.

D. Court proceedings and seizure of the applicant's case file

48. At the material time the applicant's representative in the present case, 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.

49. 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 proceedings pending before the Court which were in Mr Aliyev's possession. They concerned over 100 applications in total. The file relating to the present case was also seized in its 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).

50. On 25 October 2014 the investigating authorities returned a number of the case files concerning the applications lodged with the Court, including the file relating to the present application, to Mr Aliyev's lawyer.

II. RELEVANT DOMESTIC LAW

51. The relevant provisions of the Electoral Code, as in force at the material time, provided as follows:

Article 2. Principles of participation in elections and referendum

"2.6. Persons participating in elections (referendums) shall comply with the terms set out below:

...

2.6.10. not to influence voters to one's side through illegal activities; ..."

Article 40. Transparency in the activity of electoral commissions

"40.2. ... [C]andidates registered in the relevant constituency and their authorised representatives or counsel ... have the right to observe the meetings of electoral commissions and the vote counting; ... obtain copies of the decisions of the constituency and precinct electoral commissions and other election documents ...; observe the implementation of other election activities in electoral commissions.

...

40.9. In accordance with the rules specified in Article 20.1 of this Code, the relevant electoral commission shall provide information on the timings of processing election documents and meetings of the electoral commission to: the superior election commissions [and to] each registered candidate and his or her authorised representative ...

40.10. Representatives of the interested parties shall have the right to be present at meetings at which electoral commissions are investigating formally submitted complaints. ..."

Article 75. The electoral campaign period

"75.1. Any form of electoral campaigning on election day and the preceding day shall be prohibited.

75.2. The electoral campaign shall begin twenty-three days before election day and end twenty-four hours before election day. ..."

Article 87. Production and distribution of printed, audiovisual and other electoral campaign materials

"87.3. Printed and audiovisual electoral campaign material should contain information about the organisation that produced it and the organisation that ordered its production, the number of issues and the date of production.

87.4. A registered candidate, political party, bloc of political parties, or referendum campaign group should submit to the electoral commission detailed information about their printed electoral campaign materials or their copies, and the addresses of organisations that ordered and produced those materials.

87.5. It shall be prohibited to distribute electoral campaign materials in breach of the requirements of Articles 87.3 and 87.4 of this Code."

Article 88. Prohibition of abuse while conducting an electoral campaign

"88.4. Candidates, registered candidates, political parties, blocs of political parties, referendum campaign groups, their authorised representatives, and other persons and organisations who participate directly or indirectly in an electoral campaign are prohibited from gaining the support of voters in the following ways:

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

88.4.2. giving or promising rewards contingent on the outcome of the voting to voters who were involved in the above-mentioned organisational work; ..."

Article 113. Cancellation of registration of registered candidates or referendum campaign groups and refusal to register candidates

"113.2. Registration of a candidate or a referendum campaign group shall be cancelled in the cases mentioned below and in the manner provided by law on the basis of a final court verdict in respect of a criminal offence or a final court judgment in respect of an administrative offence:

...

113.2.2. if it is established that a candidate or referendum campaign group has been conducting an electoral campaign before being registered or before the period indicated in Article 75 of this Code (this provision may not serve as a ground for restricting the freedom of expression and thought guaranteed by the Constitution of the Republic of Azerbaijan);

113.2.3. if it is established that there has been a[n unlawful] gain of voter support, that is if a candidate, political party, bloc of political parties, referendum campaign group, or their authorised representatives or counsel are found to have committed actions prohibited by Article 88.4 of this Code; ..."

52. The relevant provisions of the 2000 Code of Administrative Offences, as in force at the material time, provided as follows:

Article 39. Breach of the rules or the time period for conducting an electoral or referendum-related campaign

"39.1. Breach of the rules or the time period established by law for conducting an electoral or referendum-related campaign is punishable by a fine in an amount of twenty-five to fifty manats. ..."

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

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

54. The applicant did not comment on the terms of the unilateral declaration.

55. Having studied the terms of the Government's unilateral declaration, the Court considers – for the reasons stated in *Tahirov v. Azerbaijan* (no. 31953/11, §§ 34-42, 11 June 2015) and *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 33-40, 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.

56. 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.

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

57. The applicant complained under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention 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 (see *Abil v. Azerbaijan*, no. 16511/06, § 23, 21 February 2012), 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

58. 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

59. The applicant noted that, even before the ConEC had begun its examination of the alleged illegal campaigning, he himself was the first one to report to the authorities the fact of the unauthorised distribution of false campaign material on his behalf. He brought the matter to the attention of the authorities and repeatedly complained that it was an attempt to undermine his candidacy. However, those complaints were never taken into consideration by the ConEC when examining the matter.

60. The applicant submitted that the fake electoral campaign posters had been anonymously disseminated by someone with the aim of sabotaging his candidacy in the elections. The posters in question had contained numerous mistakes of the kind that would not be reasonably made in legitimate campaign material, such as the incorrect date of birth of the candidate, the incorrect full name of his political party, and wrong factual information about his professional career. Moreover, the posters had displayed the applicant's image taken from a photograph that he had submitted to a police office and the ConEC to get a temporary candidate ID. That photograph had never been used anywhere else.

61. The applicant further submitted that he had never been given an opportunity to question any of the local residents who had made complaints about him to the ConEC. In the domestic proceedings, no attempt was made to adequately establish any actual link between the person allegedly named Vahid and the applicant. The applicant maintained that there had been no person named Vahid among the electoral staff authorised to conduct his electoral campaign. Neither had he known J.A., who was the witness who had testified about the person named Vahid. Despite the applicant's numerous requests and applications where he had pointed out these issues, neither the electoral authorities nor the courts had taken them into consideration.

62. Lastly, the applicant noted that neither his nor his representatives' participation had been ensured at a number of the relevant ConEC meetings. As a result, he had been deprived of the opportunity to defend himself against arbitrary decisions.

63. The Government submitted that Article 75.2 of the Electoral Code established strict dates for the start of electoral campaigns and Article 113.2 of the Electoral Code provided for the cancellation of a candidate's registration, by virtue of a final court decision in respect of an administrative offence, if the candidate was found to have started his campaigning before the period specified in Article 75.2. These provisions were laid down to ensure equal conditions for candidates during an electoral campaign, which was one of the major pre-requisites for an election to be considered free and fair. Accordingly, the measures taken against the applicant pursued a legitimate aim.

64. The Government further submitted that the domestic decisions finding that the applicant had violated the rules for conducting his electoral campaign had been based on repeated complaints and witness statements of local residents. The electoral authorities' and courts' decisions were well-founded and the applicant's complaints and appeals against those decisions had been correctly dismissed as unsubstantiated.

65. The general principles regarding Article 3 of Protocol No. 1 to the Convention, including the principles on conditions for the eligibility to stand for election, have been set out in, among other judgments, *Davydov and Others v. Russia* (no. 75947/11, §§ 271-77, 30 May 2017), *Paksas v. Lithuania* ([GC], no. 34932/04, § 96, ECHR 2011 (extracts)), *Tănase v. Moldova* ([GC], no. 7/08, §§ 154-61, ECHR 2010), *Tahirov v. Azerbaijan* (cited above, §§ 53-57) and *Orujov v. Azerbaijan* (no. 4508/06, §§ 40-42, 26 July 2011). In particular, the Court 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 meet the requirement of lawfulness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate or arbitrary (see *Davydov and Others*, cited above, § 272; see also *Paksas*, cited above, § 96-97; *Tănase*, cited above, §§ 161-62; and *Dicle and Sadak v. Turkey*, no. 48621/07, § 83, 16 June 2015).

66. Unlike other provisions of the Convention, such as Article 5, Articles 8 to 11, or Article 1 of Protocol No. 1, the text of Article 3 of Protocol No. 1 does not contain an express reference to the "lawfulness" of any measures taken by the State. However, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and its Protocols (see, among many other authorities, *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III). This principle entails a duty on the part of the State to put in place a legislative framework for securing its obligations under the Convention in general and Article 3 of Protocol No. 1 in particular (see *Karimov v. Azerbaijan*, no. 12535/06, § 42, 25 September 2014; *Paunović and Milivojević v. Serbia*, no. 41683/06, § 61, 24 May 2016; and *Yabloko Russian United Democratic Party and Others v. Russia*, no. 18860/07, § 75, 8 November 2016).

67. As to the lawful basis for the interference in the present case, the Court notes that the applicant was disqualified on two grounds, namely, that he had started his campaign early, contrary to Article 75.2 of the Electoral Code, and that he had attempted to buy votes, that is to gain voter support by giving them money, contrary to the requirements of Articles 88.4.1

and 88.4.2 of the Electoral Code. The procedure for disqualification was regulated by Article 113.2 of the Electoral Code, combined in the applicant's case with Article 39.1 of the CAO.

68. 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 Articles 75.2 and 113.2 of the Electoral Code pursued the legitimate aim of ensuring equal conditions for the candidates during the electoral campaign. While the Government did not expressly comment on Articles 88.4.1 and 88.4.2 of the Electoral Code, the Court considers that those provisions were also aimed at ensuring equal and fair conditions for all candidates in the elections (see *Atakishi v. Azerbaijan*, no. 18469/06, § 38, 28 February 2012).

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

70. 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 matters as assessment of evidence or interpretation of the domestic law. Nevertheless, for the purpose of supervision of the compatibility of an 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 *Atakishi*, cited above, § 40). A finding that a candidate has engaged in unfair or illegal campaigning 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).

71. The Court notes that the applicant was disqualified by virtue of the Baku Court of Appeal's judgment of 19 October 2010, delivered at the ConEC's request, as upheld by the Supreme Court's decision of 1 November 2010. These disqualification proceedings were the result of, and based on the findings reached in, the two preceding sets of proceedings

initiated at the ConEC level. The first set of proceedings concerned the incident in Qizildash, which resulted in a formal warning being issued to the applicant for early campaigning. The second set concerned the "repeated" incident of early campaigning, as well as vote buying, in Alat, which resulted in an administrative fine. The Court considers that the circumstances of the case and the complaint raised before it require a review of all the proceedings leading to and including the disqualification proceedings.

72. As to the first set of proceedings concerning the incident in Qizildash, the Court notes that the applicant himself was the first one to report the incident to the ConEC on the morning of 4 October 2010, informing it of the allegedly fake posters, noting that he was not responsible for disseminating them and complaining that it had been orchestrated by someone unknown to him (see paragraph 9 above).

73. In response, the ConEC took a decision of 4 October 2010 formally warning the applicant for early campaigning, in his absence, and without hearing from him beforehand. The applicant was not informed of the ConEC meeting in advance, and had no knowledge of the evidence on which its decision was based. He was not provided with a copy of that decision until several days later (see paragraph 11 above). It was only on 13 October 2010, after his appeal against the decision was examined by the CEC, that the ConEC provided him with a copy of the decision and informed him that it was based on complaints by several Qizildash residents received on 4 October 2010. The applicant was never given copies of those complaints or an opportunity to challenge the complainants at any stage of the proceedings, including the appeal proceedings in the CEC, the Baku Court of Appeal or the Supreme Court (see paragraphs 15-19 above).

74. As to the second set of proceedings, the Court notes that, again, it was the applicant who first reported the incident in Alat to the ConEC on 5 October 2010. Without questioning the applicant, the ConEC forwarded the complaint to the police and, as it appears, did not give any further consideration to that complaint. Subsequently, according to the ConEC, on 10 October 2010 it received complaints from Alat residents of alleged illegal campaigning by the applicant. The ConEC reacted to those complaints on the same day by questioning those individuals and various PEC chairmen. The ConEC's decision of 12 October 2010 to seek a court order in respect of an administrative offence was taken in the applicant's absence and without his knowledge, because he was only informed about it belatedly (see paragraph 31 above). A copy of the decision of 12 October 2010 was made available to him on 19 October 2010, only after the Garadagh District Court sentenced him to an administrative fine (see paragraph 34 above). Moreover, the applicant first became aware of the existence of the complaints made against him by K.M., I.I., F.S. and J.A., and the contents of those complaints, only during the court hearing.

75. Having regard to the above, the Court reiterates that considerations of expediency and the necessity for tight time-limits designed to avoid delaying the electoral process, although often justified, may nevertheless not serve as a pretext to undermine the effectiveness of electoral procedures or to deprive the persons concerned by those procedures of the opportunity to effectively contest any accusations of electoral misconduct made against them (see *Orujov*, cited above, § 56, and *Khanhuseyn Aliyev v. Azerbaijan*, no. 19554/06, § 40, 21 February 2012). In the present case, the Court finds that, in the proceedings before the ConEC, the applicant was not afforded sufficient procedural safeguards. He had not been informed of the relevant ConEC meetings in advance and had not been given an opportunity to challenge the evidence used against him, depriving him of the possibility to adequately defend his position before the ConEC. Moreover, copies of the ConEC decisions and other relevant documents were given to him with significant delays of several days. This deprived the applicant of the opportunity to adequately prepare his appeals within the maximum three-day statutory period for lodging appeals against ConEC decisions.

76. When examining the applicant's appeals against the ConEC decision of 10 October 2010, as well as in the judicial proceedings concerning the administrative offence, the domestic courts did not address the applicant's repeated arguments concerning the above-mentioned procedural deficiencies in the ConEC proceedings. Likewise, those arguments were also raised by the applicant but not given due consideration by the Baku Court of Appeal and the Supreme Court in the subsequent proceedings concerning the cancellation of the applicant's candidacy.

77. Furthermore, in addition to the above-mentioned procedural deficiencies, the Court considers that, throughout the entirety of the proceedings, neither the electoral commissions nor the domestic courts adequately assessed the evidence serving as the basis for the applicant's disqualification as a candidate or the applicant's arguments raised in his defence.

78. The available evidence consisted of the election posters in question and statements by several local residents and two PEC chairmen.

79. As to the election posters, the applicant repeatedly noted in his various submissions, both in the first and in the subsequent sets of proceedings, that the posters were fake and pointed to the fact that they contained numerous incorrect data concerning his personal and career details, which in itself was evidence that they could not have been made by him and that they were made by someone who was not on his campaign staff. In the Court's view, this was a strong argument that required examination by the electoral authorities and courts in order to determine whether the posters indeed originated from the applicant's electoral staff, before finding him responsible for early campaigning. However, this

argument was never given any response or consideration by the electoral authorities or the courts.

80. As to the witnesses' and PEC chairmen's statements, the majority of them merely noted either that they had simply seen the applicant's election posters in Qizildash or Alat (see paragraphs 13 and 29 above) or that they had allowed J.A. to hang the posters on the walls of the buildings they owned (see paragraphs 21-25 above). Only one witness statement – that of J.A., a resident of Alat – provided some detail as to who was allegedly behind the posters' dissemination (see paragraph 26 above). He stated that someone who identified himself only by his given name (Vahid) had introduced himself as the applicant's electoral representative and asked for J.A.'s assistance in disseminating the posters, giving him money in exchange for his assistance and promising more in the future. However, the Court considers that this witness statement alone could not prove, by itself, that the person named Vahid was acting on the applicant's instructions or otherwise had authority to act on his behalf. There existed no other evidence linking the applicant to that person. The mere fact that he had allegedly claimed to represent the applicant does not mean that he had actually acted on his instructions (compare *Abil*, cited above, § 36).

81. Despite the applicant's repeated and insistent arguments that there was no person named Vahid on his campaign staff, the domestic courts never attempted to either investigate this matter further or to provide a reasoned response to the applicant's arguments. In view of the requirement that decisions on disqualification from election should be based on sound, relevant and sufficient proof of misconduct (see paragraph 70 above), the Court considers that J.A.'s statement, in and of itself but especially when coupled with the unexamined dubious content of the posters in question and the applicant's repeated protests as to his association with J.A., was insufficient to establish the applicant's responsibility for the misconduct attributed to him. This required the ConEC and the courts to seek and examine further evidence, either corroborating or refuting the information provided in J.A.'s statement.

82. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's electoral rights did not meet the requirements of Article 3 of Protocol No. 1. The domestic procedures resulting in the applicant's disqualification from the election did not afford him sufficient safeguards against arbitrariness and the domestic authorities' decisions lacked sufficient reasoning and adequate assessment of the evidence.

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

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

84. In conjunction with the above complaint, the applicant complained that his disqualification was a discriminatory measure based on his affiliation with the political opposition. He relied on Article 14 of the Convention, which provides as follows:

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

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

86. However, having regard to its above finding in relation to Article 3 of Protocol No. 1, the Court considers that it is not necessary to examine whether in this case there has been a violation of Article 14.

IV. ALLEGED FAILURE TO COMPLY WITH THE OBLIGATIONS UNDER ARTICLE 34 OF THE CONVENTION

87. By a fax of 9 September 2014 Mr I. Aliyev, the applicant's representative in the present case, introduced a new complaint on behalf of the applicant. He argued that the seizure from his office of the entire case file relating to the present application had amounted to a hindrance to the exercise of the applicant's 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."

88. The submissions made by the applicant, the Government and the third party, the International Commission of Jurists, 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).

89. 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 finding it made in the *Annagi Hajibeyli* judgment also applies to the present case and sees no reason to deviate from that finding.

90. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

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

93. The Government argued that the claim was excessive.

94. Ruling on an equitable basis, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

95. The applicant also claimed EUR 2,859 for the costs and expenses incurred before the domestic courts and the Court. In particular, he claimed EUR 2,000 for legal services provided by Mr I. Aliyev in the domestic proceedings and before the Court. He further claimed EUR 500 for legal services provided by Mr K. Bagirov, another lawyer, who, according to the applicant, provided him with legal assistance in connection with the present application during the time period when Mr I. Aliyev was detained. He also claimed EUR 359 for translation costs.

96. The Government submitted that Mr I. Aliyev had not represented the applicant in the domestic proceedings and, moreover, as to his legal fees in respect of the proceedings before the Court, the claim was excessive. As to the legal fees claimed in respect of the services of Mr K. Bagirov, the Government argued that they amounted to double-billing the applicant for the work already done by Mr I. Aliyev and, therefore, had not been necessarily incurred.

97. 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.

98. The Court notes that there is no sufficient evidence showing that Mr I. Aliyev represented the applicant as a lawyer in the proceedings before the domestic courts as stipulated and itemised in the contract for legal services concluded between him and the applicant and the accompanying statement of services provided. Furthermore, it appears from the documents in the case file that the applicant was represented by several other lawyers in

the proceedings before various domestic instances; however, no claims in respect of their legal services and no copies of relevant documents concerning their legal fees have been submitted. Therefore, the part of the claim concerning the legal fees incurred in the domestic proceedings must be dismissed. The Court further notes that Mr K. Bagirov had not been appointed as the applicant's representative in connection with the present application and, therefore, the part of the claim in respect of his legal fees must also be dismissed.

99. As to the remainder of the claims, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,459 covering costs under all heads.

C. Default interest

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

2. *Declares* the application admissible;

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

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

5. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

6. *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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,459 (one thousand four hundred and fifty-nine 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;

7. *Dismisses* the remainder of the applicant claim for just satisfaction.

Done in English, and notified in writing on 5 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President