



Arbitrary invalidation of parliamentary election results

In today's Chamber judgment in the case [Kerimova v. Azerbaijan](#) (application no. 20799/06), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A Violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights

Principal facts

The case concerned the invalidation by the electoral authorities of the November 2005 parliamentary elections in the constituency in which the applicant was a candidate.

The applicant, Flora Alakbar Gizi Kerimova, is an Azerbaijani national who was born in 1941 and lives in Baku.

Ms Kerimova stood as a candidate for the opposition bloc Azadliq in the November 2005 elections to Parliament (Milli Majlis). The copies of the results she obtained from the local electoral commission at the end of the election day showed that she had received the largest number of votes in her constituency. In particular, she had obtained 5,566 votes as compared to the 3,922 votes cast in respect of a candidate from the ruling political party who came second. Following the official tabulation of the results the next day, Ms Kerimova featured in the electoral protocol as "the elected candidate".

On 8 November 2005, the Central Election Commission invalidated the election results in Ms Kerimova's constituency as it found that the protocols had been tampered with to the effect that it was impossible to determine the will of the voters. Ms Kerimova appealed, arguing that the changes in the protocols had in effect reduced the number of votes recorded in her favour and had increased those cast in favour of the candidate immediately after her. She pointed out that she remained the winner despite the falsifications to her disadvantage. Her appeals were unsuccessful.

In the meantime, two election officials were criminally convicted for having falsified the election results in Ms Kerimova's constituency, to the benefit of candidates other than herself.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 May 2006.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Relying on Article 3 of Protocol No 1, Ms Kerimova complained that the invalidation of the election results in her constituency had been arbitrary and unlawful and had infringed her electoral rights as the winner of the election.

Judgment was given by a Chamber of seven, composed as follows:

Christos **Rozakis** (Greece), *President*,
Nina **Vajić** (Croatia),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 3 of Protocol No 1

The Court noted that it had been sufficiently clear that, according to the election results both before and after the irregularities, Ms Kerimova had been the winner of the elections. Despite that, in their decision to invalidate the results, the election authorities had not given reasons as to why they found that the alterations obscured the outcome of the elections. Neither had the authorities even considered the possibility of recounting the votes once the irregularities had been established. Consequently, the decision to invalidate the election had been unsubstantiated and arbitrary.

The Court further noted that the relevant national law applicable at the time, the Electoral Code, had prohibited the invalidation of election results at any level on the basis of a finding of irregularities committed for the benefit of candidates who lost the election. Irrespective of that rule, which protected the opinion and free will of the people who voted and aimed at preventing the wrongful punishing of a winning candidate, the domestic courts had simply reiterated the election commission's findings.

As a result, the authorities' inadequate approach had brought about a situation where the election process in the entire electoral constituency had been single-handedly sabotaged by two electoral officials who had abused their position by making changes to a number of election protocols. By arbitrarily invalidating the election results because of those officials' actions, the national authorities had essentially helped them to obstruct the election. While the two officials had not succeeded in influencing the ultimate outcome of the elections, the invalidation decision itself had had that effect. That decision had arbitrarily infringed Ms Kerimova's electoral rights by depriving her of the benefit of being elected to Parliament; it had also shown lack of concern for the integrity of the electoral process, which could not be considered compatible with the spirit of the right to free elections under the Convention. There had, therefore, been a violation of Article 3 of Protocol No. 1.

Under Article 41 (just satisfaction) of the Convention, the Court held that Azerbaijan was to pay Ms Kerimova 50,000 euros (EUR) in respect of pecuniary damage, EUR 7,500 in respect of non-pecuniary damage and EUR 1,600 in respect of costs and expenses.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.