

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

FIRST SECTION

DECISION

CASE OF GAMBAR AND OTHERS
Applications nos. 4741/06, 19552/06, 22457/06, 22654/06, 24506/06, 36105/06 and 40318/06
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 9 December 2010 as a Chamber composed of:

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above applications,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

All of the applicants were represented before the Court by Mr I. Aliyev, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

The facts of the cases, as submitted by the parties, may be summarised as follows.

A. Application no. 4741/06, lodged by Isa Gambar on 19 January 2006

The applicant, Mr Isa Gambar, is an Azerbaijani national who was born in 1957 and lives in Baku.

He stood for the elections to the Milli Majlis (Parliament) of 6 November 2005 as a candidate of the opposition bloc Azadliq. He was registered as a candidate by the Constituency Electoral Commission ("the ConEC") for the single-mandate Narimanov Second Electoral Constituency No. 20.

During the period from 28 September 2005 to 4 November 2005 the applicant's authorised representative repeatedly applied to the electoral authorities, on more than ten different occasions, with a number of complaints concerning alleged irregularities during the electoral campaign. Each of these complaints was addressed either to the ConEC, the Central Electoral Commission ("the CEC") or the Chief Prosecutor's Office. In these complaints, the applicant claimed, *inter alia*, that:

(i) one of his opponents, a pro-government candidate, attempted to gain support of voters by illegal campaigning methods, such as funding road repairs in the constituency;

(ii) the local executive and police authorities, as well as heads of educational, medical and other state-funded institutions, interfered in the election process in favour of the pro-government candidate (in the form of harassing the applicant's campaign staff, preventing the applicant from distributing campaign posters and leaflets, coercing voters to vote for the pro-government candidate, etc.);

(iii) the state-funded television channel, AzTV, refused, in breach of the requirements of the Electoral Code and an agreement concluded with the Azadliq bloc, to provide the applicant air time for his political advertising, while no similar restrictions were applied to pro-government candidates; and

(iv) the precise and finalised voters' lists were not compiled in a timely manner and the distribution of voter identification cards did not comply with the requirements of the Electoral Code.

According to the applicant, all of these complaints were ignored. While some of the complaints were forwarded by the ConEC to the Chief Prosecutor's Office, no further action was taken.

During election day (6 November 2005) the applicant submitted several further complaints to the ConEC and the CEC, complaining about ongoing irregularities (such as harassment of voters) in a number of polling stations. On 7 November, he submitted another complaint to the CEC, alleging that

the vote-counting procedure in the ConEC did not comply with the requirements of the Electoral Code.

According to the ConEC protocol drawn up after the election, the pro-government candidate obtained the highest number of votes in the constituency.

In his complaint of 8 November 2005 (with addendums of 10, 15 and 17 November 2005), the applicant requested the CEC to invalidate the election results in the entire constituency. He argued that the results of the election did not reflect the will of the voters due to a number of alleged violations of the election law. He complained, *inter alia*, that:

(i) in a number of polling stations, groups of persons (allegedly, police officers and/or supporters of the pro-government candidate) harassed and intimidated voters and otherwise attempted to influence voter choice;

(ii) there were instances of "carousel" voting whereby unidentified people, transported by bus to different polling stations, voted more than once;

(iii) in several polling stations, observers were not allowed to be present during the vote-counting and there were instances of ballot-stuffing;

(iv) there were significant discrepancies and inconsistencies in the protocols of a number of Precinct Electoral Commissions ("the PEC") and the ConEC protocol; and

(v) changes were made to a number of PEC protocols at a later date.

In support of his allegations, he submitted hundreds of pages of documents, including voters' complaint letters, observers' affidavits and other materials.

The CEC did not reply to the applicant's complaints.

The applicant's representative lodged an action with the Court of Appeal, claiming that the CEC had unlawfully failed to react to the applicant's complaints. On 24 November 2005 the Court of Appeal dismissed this claim.

On 23 November 2005 the CEC issued its final election protocol and submitted it, together with other relevant documents, to the Constitutional Court for review and approval of the election results.

On 28 November 2005 the applicant's representative lodged another action with the Court of Appeal, asking the court to invalidate the CEC's final protocol on election results in the part relating to the election results in Narimanov Second Electoral Constituency No. 20. The applicant reiterated all of his complaints made previously to the electoral authorities and argued that, due to the irregularities complained of, it was not possible to determine the true opinion of the voters in his constituency. He also noted that, although during the entire electoral process he had lodged more than 20 complaints with the CEC, the latter had failed to examine any of them.

During the hearing, a representative of the CEC argued that the CEC had examined all of the applicant's complaints and found that they had been unsubstantiated.

On 29 November 2005 the Court of Appeal dismissed the applicant's claims noting, in general terms, that his allegations had been unsubstantiated, without elaborating further on any of the applicant's specific allegations.

On 2 December 2005 the Supreme Court dismissed the applicant's cassation appeal against the Court of Appeal's judgment of 29 November 2005.

In the meantime, on 1 December 2005 the Constitutional Court confirmed the election results in the applicant's constituency, together with the majority of other electoral constituencies.

B. Application no. 19552/06, lodged by Fuad Mustafayev on 11 May 2006

The applicant, Mr Fuad Mustafayev, is an Azerbaijani national, who was born in 1958 and lives in Baku.

He stood for the elections of 6 November 2005 as a candidate of the opposition bloc Azadliq in Nasimi First Electoral Constituency no. 21.

According to the authorities' preliminary election results issued after election day, the applicant lost the election to another candidate (Q.).

On 7 November 2005 the applicant submitted a complaint to the CEC, requesting the latter to invalidate the election results in the entire constituency due to numerous irregularities committed in various polling stations during election day. On 8 and 9 November 2005 the applicant submitted addendums to his complaint, elaborating on these alleged irregularities in greater detail. He claimed, *inter alia*, that:

(i) certain state officials, as well as heads of state-funded institutions and organisations, interfered in the election process and engaged in illegal campaigning in favour of Q. during election day;

(ii) supporters of Q. intimidated voters and otherwise attempted to influence voter choice;

(iii) in some polling stations, observers were harassed, arrested or otherwise excluded from the voting area by the police;

(iv) in some polling stations, PEC members were excluded from participating in the vote-counting process;

(v) there were numerous instances of ballot-stuffing; and

(vi) in some polling stations, observers and candidates' representatives were not provided with certified copies of PEC election protocols.

In support of his claims, the applicant submitted to the CEC, *inter alia*, photocopies of PEC protocols in his possession as well as a number of

affidavits by election observers documenting specific instances of the irregularities complained of.

On 23 November 2005 the applicant was informed that, on 21 and 22 November 2005, the CEC had issued two decisions on invalidation of the election results in a total of eight polling stations of Nasimi First Electoral Constituency no. 21.

On 23 November 2005 the CEC issued its final election protocol and submitted it, together with other relevant documents, to the Constitutional Court for review and approval of the election results. The CEC protocol indicated Q. as the winner of the election in Nasimi First Electoral Constituency no. 21.

On 26 November 2005 the applicant lodged an action with the Court of Appeal, asking the court to invalidate the CEC's final protocol on election results in the part relating to the election results in Nasimi First Electoral Constituency no. 21. He argued that, although the CEC had invalidated election results in eight polling stations, it had failed to take any action to investigate the irregularities which had taken place in ten other polling stations. He also requested the court to decide on the issue of criminal responsibility of persons who had committed the irregularities and demanded a compensation for moral damage. In support of his claims, the applicant submitted, *inter alia*, photocopies of PEC protocols and observers' affidavits.

On 26 November 2005 the Court of Appeal dismissed the applicant's claims as unsubstantiated. The court noted that the CEC, having examined the complaints relating to this constituency, had invalidated election results in a number of polling stations and that no other irregularities had been found by the CEC. Without elaborating on the applicant's allegations in detail, the court noted that he had failed to support them with appropriate evidence.

On 30 November 2005 the applicant lodged a cassation appeal against this judgment. On the same day the Supreme Court dismissed the applicant's cassation appeal, reiterating the Court of Appeal's reasoning.

On 1 December 2005 the Constitutional Court confirmed the election results in the applicant's constituency, together with the majority of other electoral constituencies.

C. Application no. 22457/06, lodged by Elchin Rzayev on 19 May 2006

The applicant, Mr Elchin Rzayev, is an Azerbaijani national, who was born in 1961 and lives in Naftalan.

He stood for the elections of 6 November 2005 as a candidate of the opposition bloc Azadliq in Goranboy-Naftalan Electoral Constituency no. 96.

According to the ConEC protocol drawn up after election day, the applicant lost the election to another candidate (H.).

On 8 November 2005 the applicant submitted a complaint to the CEC, requesting that the results of the election in the constituency be invalidated due to a number of irregularities during election day. He claimed, *inter alia*, that:

(i) local executive and police authorities interfered in the election process and allowed (or even themselves engaged in) illegal campaigning in favour of H. during the election day;

(ii) in some polling stations (including those created exclusively for voting by military personnel), election observers were evicted from the premises of polling stations prior to the vote-counting procedure at the end of the voting day;

(iii) there were instances of ballot-stuffing in a number of polling stations; and

(iv) in some polling stations, observers were not provided with certified copies of PEC election protocols.

Having not received a reply from the CEC with a three-day period prescribed by law, on 14 November 2005 the applicant lodged a lawsuit with the Court of Appeal, claiming that the CEC's failure to respond within a three-day period was unlawful. By an interim decision of 16 November 2005, the Court of Appeal suspended the examination of this lawsuit, noting that the CEC was in the process of examining the merits of the applicant's complaint of 8 November 2005. Ultimately, following the CEC's decision of 22 November 2005 (see below), on 7 December 2007 the Court of Appeal rejected the applicant's claim concerning the delay in examination of his complaint by the CEC.

On 22 November 2005 the CEC issued a decision on invalidation of the election results in Polling Station no. 6 of Goranboy-Naftalan Electoral Constituency no. 96.

On 23 November 2005 the CEC issued its final election protocol and submitted it, together with other relevant documents, to the Constitutional Court for review and approval of the election results. The CEC protocol indicated H. as the winner of the election in Goranboy-Naftalan Electoral Constituency no. 96.

On 25 November 2005 the applicant lodged a lawsuit with the Court of Appeal, asking the court to invalidate the CEC's decision of 22 November 2005 and invalidate the election results in entire Goranboy-Naftalan Electoral Constituency no. 96. In addition to reiterating all of his complaints made previously to the CEC, he also complained about the CEC's failure to take any action to investigate the alleged numerous election irregularities. In support of his claims, the applicant submitted, *inter alia*, photocopies of election observers' affidavits and other documents.

On 26 November 2005 the Court of Appeal dismissed the applicant's claims as unsubstantiated. The court noted that, according to the CEC's submissions, no irregularities in the election process had taken place in the constituency except in Polling Station no. 6. The court noted, in general terms, that it had not been proven that the irregularities alleged by the applicant could serve as a basis for invalidation of election results in the entire constituency.

On 28 November 2005 the applicant lodged a cassation appeal with the Supreme Court, complaining about the Court of Appeal's failure to examine his allegations in detail and to independently assess the evidence put before it.

On 30 November 2005 the Supreme Court dismissed the applicant's cassation appeal. It noted that photocopies of documents submitted by the applicant could not be considered as admissible evidence, because either the originals or notarised copies of those documents should have been submitted.

On 1 December 2005 the Constitutional Court confirmed the election results in the applicant's constituency, together with the majority of other electoral constituencies.

D. Application no. 22654/06, lodged by Eldar Namazov on 16 May 2006

The applicant, Mr Eldar Namazov, is an Azerbaijani national, who was born in 1956 and lives in Baku.

He stood for the elections of 6 November 2005 as a candidate of the opposition bloc Yeni Siyaset (YeS) in Yasamal First Electoral Constituency no. 15.

According to the authorities' preliminary election results issued after election day, the applicant lost the election to a pro-government candidate.

On an unspecified date after election day, the ConEC decided to invalidate the election results in Polling Stations nos. 22, 23 and 24 of the constituency due to irregularities in election protocols drawn up by the relevant PEC. The applicant was not provided with a copy of this decision.

On 8 November 2005 a representative of YeS submitted a complaint to the CEC, requesting the latter to quash the ConEC's decision on invalidation of election results in Polling Stations nos. 22, 23 and 24 and to take necessary measures in connection with a number of irregularities that had allegedly taken place in fifteen other polling stations of the constituency. On 10 November 2005 the applicant submitted an additional complaint to the CEC, elaborating on these alleged irregularities in greater detail. It was claimed in these complaints, *inter alia*, that:

(i) the elections in Polling Stations nos. 22, 23 and 24 were carried out lawfully, with the applicant receiving the highest number of votes in those

polling stations; the ConEC's decision on invalidation of the election results in those polling stations was arbitrary;

(ii) the PEC protocols in a number of other polling stations were falsified in favour of the pro-government candidate after election day; in particular, there were discrepancies between copies of PEC protocols in possession of the candidates and the allegedly falsified copies of the same protocols submitted to the ConEC;

(iii) in some polling stations, the candidates and observers were not provided with certified copies of PEC protocols; and

(iv) local executive and police authorities interfered in the work of PECs and in the electoral process in general.

In support of his claims, the applicant submitted to the CEC, *inter alia*, photocopies of PEC protocols in his possession as well as a number of affidavits by election observers documenting specific instances of the irregularities complained of.

By letters of 23 and 26 November 2005, the representative of YeS was informed that, on 22 November 2005, the CEC had issued a decision on invalidation of the election results in Polling Stations nos. 9, 21, 26 and 27 of Yasamal First Electoral Constituency no. 15.

On 23 November 2005 the CEC issued its final election protocol and submitted it, together with other relevant documents, to the Constitutional Court for review and approval of the election results. The CEC protocol indicated the pro-government candidate as the winner of the election in Yasamal First Electoral Constituency no. 15.

On 25 November 2005 the applicant lodged a lawsuit with the Court of Appeal, asking the court to invalidate the CEC's decision of 22 November 2005 and "re-consider" the election results in the entire constituency taking into account the alleged irregularities and falsifications made in favour of the pro-government candidate. In addition to reiterating all of the complaints made previously to the CEC, the applicant also complained about the CEC's failure to take any action to investigate the alleged irregularities. In support of his claims, the applicant submitted, *inter alia*, photocopies of PEC protocols, observers' affidavits and other documents.

On 26 November 2005 the Court of Appeal dismissed the applicant's claims as unsubstantiated. Relying, among other things, on the photocopies of PEC protocols submitted by the applicant, the court noted that the invalidation of election results in Polling Stations nos. 22, 23 and 24 by the ConEC as well as the invalidation of election results in Polling Stations nos. 9, 21, 26 and 27 by the CEC had been lawful. As to the applicant's allegations concerning the irregularities and falsifications in other polling stations, the court briefly noted that photocopies of affidavits and documents submitted by the applicant could not be considered as admissible evidence and that either the originals or notarised copies of those affidavits should have been submitted.

On 30 November 2005 the Supreme Court dismissed the applicant's cassation appeal on the same grounds as the Court of Appeal's judgment of 26 November 2005.

On 1 December 2005 the Constitutional Court confirmed the election results in the applicant's constituency, together with the majority of other electoral constituencies.

E. Application no. 24506/06, lodged by Yagub Mammadov on 27 May 2006

The applicant, Mr Yagub Mammadov, is an Azerbaijani national who was born in 1941 and lives in Baku.

The applicant stood for the elections to the Milli Majlis (Parliament) of 6 November 2005 as a candidate of the opposition bloc Yeni Siyaset, a coalition formed for electoral purposes by several political parties. He was registered as a candidate by the Constituency Electoral Commission ("the ConEC") for the single-mandate Nasimi Second Electoral Constituency no. 22.

According to the final official results of the elections, one of the applicant's opponents, A.M., a member of the Azerbaijan Democratic Reforms Party, obtained the highest number of votes in the constituency.

Following election day, on 7 November 2005 the applicant submitted complaints to the Central Election Commission ("the CEC"), in which he claimed, *inter alia*, that:

(i) the local executive and police authorities interfered in the election process in favour of A.M. during election day. In particular, they interfered in the work of Precinct Electoral Commissions ("the PEC") by directly instructing the latter to ensure A.M.'s victory;

(ii) in some polling stations, election observers were evicted with police assistance from the premises of polling stations prior to the vote-counting procedure at the end of the voting day;

(iii) there were instances of multiple voting and ballot-box stuffing in different polling stations and when the observers objected to those cases they were evicted by the police force;

(iv) election protocols of a number of PECs were drawn up with serious breaches of procedural requirements. In particular, in some PECs the protocols were not drawn up immediately after the end of the voting and they were drawn up in the Nasimi District Executive Authority's building with the participation of local executive authorities' employees and three members of the ConEC;

(v) his representatives were not provided with copies of PEC protocols in the majority of the polling stations and, in those cases where they were provided with such copies, it was done only after the OSCE observers interference;

(vi) according to the results of the vote-counting in seventeen PECs, in which the vote-counting process was carried out with the participation of the OSCE observers and where his observers could obtain copies of the protocols, he won the elections, however in PECs in which the vote-counting was not carried out with the participation of international and local observers, his votes were not duly counted.

On 11 November 2005 the applicant submitted a similar complaint to the Chief Prosecutor's Office ("the CPO"). On 12 November 2005 the CPO forwarded this complaint to the CEC with an instruction to investigate the applicant's claims. In turn, on 23 November 2005 the CEC forwarded the complaint to the ConEC for examination.

In the meantime, on 22 November 2005 the CEC issued a decision on invalidation of election results in Polling Station no. 27 of Nasimi Second Electoral Constituency no. 22. By a letter of 23 November 2005 the CEC informed the applicant that his complaint of 7 November 2005 registered under no. 196 was examined by the CEC and the election results in Polling Station no. 27 had been invalidated. On the same day the overall election results in Nasimi Second Electoral Constituency no. 22 were approved by the CEC.

On 25 November 2005 the applicant lodged an action with the Court of Appeal, complaining that the CEC decision of 23 November 2005 had been unlawful, as the CEC had failed to effectively investigate his allegations. He also reiterated his complaints about the election irregularities and requested the court to invalidate the election results in his constituency. In support of his allegations, he submitted, *inter alia*, numerous affidavits and copies of PEC protocols.

On 26 November 2005 the Court of Appeal dismissed the applicant's claims as unsubstantiated. It noted that the applicant submitted only photocopies of observers' affidavits and other materials, which could not be considered as admissible evidence, because either the originals or notarised copies of those documents should have been submitted. Moreover, it noted that each of the documents was signed only by a minority of observers for each polling station, which indicated that their observations did not reflect the truth. Lastly, it noted that the applicant had failed to submit any documents proving the identity of the alleged observers who had signed the affidavits and that he had not called them to testify as witnesses during the court hearing.

On 28 November 2005 the applicant lodged a cassation appeal against this judgment reiterating his previous complaints. In particular, he alleged that the CEC had not examined in detail his claims concerning election irregularities.

On 30 November 2005 the Supreme Court dismissed the applicant's appeal on the same grounds as the Court of Appeal's judgment of 26 November 2005.

On 1 December 2005 the Constitutional Court confirmed the election results in the majority of the electoral constituencies, including Nasimi Second Electoral Constituency no. 22.

F. Application no. 36105/06, lodged by Ilham Huseyn on 25 July 2006

The applicant, Mr Ilham Huseyn, is an Azerbaijani national who was born in 1954 and lives in Baku.

Following the elections of 6 November 2005, election results in ten constituencies (out of total of 125) were invalidated either by the CEC or the Constitutional Court and repeat elections in these constituencies were fixed to be held on 13 May 2006.

The applicant stood for the repeat elections of 13 May 2006 as a non-partisan candidate in the single-mandate Surakhani Second Electoral Constituency no. 31.

According to the ConEC protocol drawn up after election day, one of the applicant's opponents, A.V., a member of the ruling Yeni Azerbaijan Party and the president of the private Odlar Yurdu University ("the OYU"), obtained the highest number of votes in the constituency.

On 16 May 2006 the applicant submitted a complaint to the CEC, in which he claimed, *inter alia*, that:

(i) the local executive and municipal authorities, as well as heads of state-funded institutions and organisations and employees of the OYU interfered in the election process in favour of A.V. prior to and during election day (in the form of openly campaigning in his favour and coercing voters to vote for him);

(ii) A.V.'s supporters (mostly State officials of various sorts and employees of the OYU) intimidated voters and otherwise attempted to influence voter choice in polling stations;

(iii) during the entire election process he, as a non-partisan candidate, had been discriminated against due to his political non-partisan affiliation and had not been allowed to run for election under equal conditions with the candidates affiliated with the political parties, because he had no right to free TV air time, unlike the candidates affiliated with the political parties;

(iv) some members of several PECs were employees of the OYU or were not resident in the area of the relevant PEC, as required by law;

(v) in several polling stations, there were instances of multiple voting and ballot-box stuffing and observers were harassed and not allowed to observe the vote-counting process;

(vi) election protocols of a number of PECs were drawn up with serious breaches of procedural requirements;

(vii) his representatives were not provided with copies of PEC protocols in the majority of the polling stations and, in those cases where they were

provided with such copies, there were discrepancies between different copies of the same protocols given to different candidates.

In support of his claims, the applicant submitted to the CEC numerous affidavits (*akt*) of election observers, photos documenting specific instances of irregularities complained of, voters lists taken from A.V.'s supporters and copies of twenty-seven sealed and numbered ballots that the chairman of PEC no. 15 had tried to take out unlawfully from the polling station.

As the applicant did not obtain any reply to his complaint from the CEC, on 19 May 2006 he lodged an action with the Court of Appeal, complaining of the CEC's failure to act, reiterating his allegations concerning election irregularities, and asking the court to invalidate the election results.

On 22 May 2006 the Court of Appeal dismissed the applicant's action on the ground that he had failed to raise the same complaints before the ConEC prior to submitting them to the CEC. On 30 May 2006 the Supreme Court upheld the Court of Appeal's judgment of 22 May 2006.

In the meantime, on 23 May 2006 the CEC actually examined the applicant's complaint of 16 May 2006 and found it unsubstantiated.

On 25 May 2006 the applicant lodged an action with the Court of Appeal, complaining that the CEC decision of 23 May 2006 had been unlawful, as the CEC had failed to effectively investigate his allegations. He also reiterated his complaints about the irregularities and requested the court to invalidate the election results in his constituency. In support of his allegations, he submitted the photocopies of PEC protocols, observers' affidavits and other materials previously submitted to the CEC.

On 30 May 2006 the Court of Appeal dismissed the applicant's claims as unsubstantiated. It noted that the applicant submitted only photocopies of observers' affidavits and other materials, which could not be considered as admissible evidence, because either the originals or notarised copies of those documents should have been submitted. Moreover, it noted that each of the documents was signed only by a minority of observers for each polling station, which indicated that their observations did not reflect the truth. Lastly, it noted that the applicant had failed to submit any documents proving the identity of the alleged observers who had signed the affidavits and that he had not called them to testify as witnesses during the court hearing.

On 1 June 2006 the applicant lodged a cassation appeal against this judgment reiterating his previous complaints.

On 2 June 2006 the Supreme Court dismissed the applicant's appeal on the same grounds as the Court of Appeal's judgment of 30 May 2006.

G. Application no. 40318/06, lodged by Mirmahmud Fattayev on 27 September 2006

The applicant, Mr Mirmahmud Fattayev, is an Azerbaijani national who was born in 1956 and lives in Sumgayit.

The applicant was the chairman of the Popular Front Party ("Classical" Wing). He stood for the repeat elections of 13 May 2006 as a candidate in the single-mandate Sumgayit Second Electoral Constituency no. 42.

During the period from 28 March 2006 to 12 May 2006 the applicant repeatedly applied to the electoral authorities with a number of complaints concerning alleged irregularities during the pre-election campaign. Each of these complaints was addressed either to the ConEC or the CEC. In these complaints, the applicant claimed, *inter alia*, that:

(i) one of his opponents, M.K., a member of the ruling Yeni Azerbaijan Party and the president of the state-owned Azerkimya company, attempted to gain support of voters by illegal campaigning methods, such as funding numerous road repairs and other urban development works in the constituency (these repairs and works were allegedly carried out by employees of Azerkimya during their regular working hours);

(ii) a number of members of PECs were employees of Azerkimya ;

(iii) the local executive and police authorities, as well as heads of educational, medical and other state-funded institutions, interfered in the election process in favour of M.K. (in the form of harassing the applicant's supporters, preventing the applicant from distributing and displaying his campaign advertisements and materials, coercing voters to vote for M.K., etc.);

(iv) on a number of occasions, the authorities hindered the applicant's attempts to organise meetings with voters.

According to the applicant, some of these complaints were ignored, while others were rejected without much substantiation.

During election day the applicant submitted further complaints to the ConEC and the CEC, complaining about ongoing irregularities in a number of polling stations.

According to the ConEC protocol drawn up after the election, M.K. obtained the highest number of votes in the constituency.

On 16 May 2006 the applicant submitted a complaint to the CEC (and an identical complaint to the ConEC), requesting the latter to take action in connection with numerous irregularities committed both before and during the election day. In addition to reiterating his previous allegations concerning the irregularities during the pre-election campaign, he further claimed *inter alia* that:

(i) there were significant discrepancies between various figures (total number of voters, voter turnout, etc.) in the ConEC election protocol and the PEC election protocols;

(ii) a few observers in different polling stations were excluded from the voting area by the police;

(iii) employees of the local executive and other state authorities, as well as M.K.'s supporters, interfered in the voting process and illegally campaigned in favour of M.K. during election day;

(iv) in a number of polling stations, there were instances of ballot-stuffing during the vote-counting process.

In support of his allegations, the applicant submitted a number of documents, including the photocopies of PEC protocols, observers' affidavits and other materials.

By a brief decision of 19 May 2006, the CEC rejected the applicant's complaint as unsubstantiated.

On 24 May 2006 the applicant lodged an action with the Court of Appeal, complaining that the CEC decision of 19 May 2006 had been unlawful, as the CEC had failed to effectively investigate his allegations. He also reiterated his complaints about the irregularities and requested the court to invalidate the election results in his constituency. In support of his allegations, he submitted the photocopies of the same observers' affidavits and other materials previously submitted to the CEC.

On 25 May 2006 the Court of Appeal refused to admit this action. It held that, as (by that time) the CEC had not finished its review of the election results and had not issued its final election protocol, the applicant's request to invalidate the election results was premature and non-justiciable.

On 27 May 2006 the applicant lodged a cassation appeal against the Court of Appeal's inadmissibility decision of 25 May 2006, arguing that the latter was obliged to examine the merits of his complaint. On 1 June 2006 the Supreme Court quashed the Court of Appeal's decision of 25 May 2006 and remitted the case for examination on the merits.

By a judgment of 2 June 2006, the Court of Appeal dismissed the applicant's claims noting, in general terms, that there had been no breaches of the electoral law in the applicant's constituency and that the applicant's allegations were unsubstantiated, without elaborating further on any of his specific allegations.

Following the applicant's cassation appeal, on 14 June 2006 the Supreme Court upheld the Court of Appeal's judgment of 2 June 2006.

In the meantime, on 27 May 2006 the CEC issued its final election protocol concerning the repeat parliamentary elections and submitted it, together with other relevant documents, to the Constitutional Court for review and approval of the election results.

On 31 May 2006 (following the CEC's decision of 27 May 2006 and prior to the quashing of the Court of Appeal's inadmissibility decision of 25 May 2006 in the first set of proceedings) the applicant had also lodged a separate action with the Court of Appeal against the CEC's decision of 27 May 2006, reiterating his complaints about the irregularities and

requesting the court to invalidate the election results in his constituency. In support of his allegations, he submitted the photocopies of the same observers' affidavits and other materials previously submitted to both the CEC and the Court of Appeal (in the first set of proceedings). In essence, the applicant's submissions were almost identical to those made in the first set of proceedings.

On 1 June 2006 the Court of Appeal dismissed the applicant's action of 31 May 2006 as unsubstantiated. It noted that the applicant submitted only photocopies of observers' affidavits and other materials, which could not be considered as admissible evidence, because either the originals or notarised copies of those documents should have been submitted. Moreover, it noted that each of the documents was signed only by a minority of observers for each polling station, which indicated that their observations did not reflect the truth. Lastly, it noted that the applicant had failed to submit any documents proving the identity of the alleged observers who had signed the affidavits and that he had not called them to testify as witnesses during the court hearing.

On 2 June 2006 the applicant lodged a cassation appeal against this judgment reiterating his previous allegations.

According to the documents submitted by the Government, by a decision of 7 June 2006 the Court of Appeal refused to admit the applicant's cassation appeal noting that he had failed to lodge his cassation appeal within three-day statutory time-limit for filing a cassation appeal. According to the Government, this decision was sent to the applicant on 8 June 2006.

According to the applicant he did not receive any reply to his cassation appeal.

COMPLAINTS

1. The applicants complained under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention that there had been a number of breaches of the electoral law and other irregularities before, during and after election day, which had infringed their right to stand as a candidate in free elections, and that the domestic authorities, including the electoral commissions and courts, had failed to duly examine their complaints and to investigate such irregularities. They also argued that one of the reasons for the authorities' failure to effectively examine their complaints was the method of composition of electoral commissions at all levels, which allegedly placed the majority of votes within each commission under the control of the ruling political forces and made the commissions prone to take politically-motivated decisions disadvantaging opposition candidates.

2. In conjunction with the above complaints, the applicants complained under Article 14 of the Convention that during the entire electoral process they, as opposition or non-partisan candidates, had been discriminated against due to their political affiliation and had not been allowed to run for election under equal conditions with the candidates affiliated with the incumbent party.

3. The applicants complained under Article 6 of the Convention that the domestic judicial proceedings had been unfair and arbitrary.

4. In applications nos. 22654/06, 24506/06, 36105/06 and 40318/06, the applicants also complained under Article 1 of Protocol No. 1 that, as a result of the alleged infringement of their electoral rights, they had been deprived of all the useful effect of the funds spent on their election campaigns.

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The applications were communicated to the respondent Government under Article 3 of Protocol No. 1 of the Convention and Articles 13 and 14 of the Convention, regarding the alleged violations of the applicants' electoral rights.

Pursuant to Rule 42 § 1 of the Rules of the Court, the Court decides to join the applications given their similar factual and legal background.

A. Complaints concerning the alleged infringement of the applicants' electoral rights

By letter dated 26 October 2010 the Government informed the Court of their unilateral declaration with a view to resolving the issues raised by these applications. The declaration reads as follows:

> "Having regard to the Court's judgment in the case of *Namat Aliyev v. Azerbaijan* (application no. 18705/06, 8 April 2010) the Government of the Republic of Azerbaijan wish to express – by way of a unilateral declaration – its acknowledgement that in the cases of Yagub Mammadov (application no. 24506/06), ... , Mirmahmud Fattalyev (application no. 40318/06), Fuad Mustafayev (application no. 19552/06), Isa Gambar (application no. 4741/06), Elchin Rzayev (application no. 22457/06), Eldar Namazov (application no. 22564/06), Ilham Huseyn (application no. 36105/06) v. Azerbaijan the rights of the applicants under Article 3 of Protocol No. 1 were violated.
>
> The Government are prepared to pay to each applicant total sum of EUR 9,100 (nine thousand one hundred euros) in compensation for non-pecuniary damage and costs and expenses. These sums shall be free of any tax that may be applicable and shall be payable within three months from the date of the notification of the striking-out judgment of the Court pursuant to Article 37 of the European Convention on Human Rights. From the expiry of the above-mentioned period, simple interest shall be

payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

The Government consider that this amount will be an adequate redress and sufficient compensation for the impugned violations and thus will constitute the final settlement of the present cases.

The Government note that the Election Code of the Republic of Azerbaijan has been amended – following the recommendations of the Venice Commission of the Council of Europe – in order to improve the procedure of examination of the complaints by the electoral commissions. The Government will also undertake to issue appropriate instructions and adopt all necessary measures in view to ensure that all complaints concerning election irregularities are effectively addressed at the domestic level in the future. Moreover, the 'Action Plan for Council of Europe support to parliamentary election in Azerbaijan in November 2010' was adopted in cooperation between the Government of Azerbaijan and the Council of Europe in order to support the election process in the country. Various measures (political, legislative, training, media issues, voters' awareness raising, etc.) were scheduled in this document. In particular, taking account of the Court's judgment in the case of *Namat Aliyev v. Azerbaijan* and its case-law, as well as applications lodged with the Court against Azerbaijan with respect to Article 3 of Protocol No. 1 to the Convention, various trainings and seminars will be organized for the representatives of the electoral administration as well as judges in order to improve the appeals and complaints system stipulated in the domestic legislation. Separate workshop on criminal aspects of the complaints will be held for the prosecutors. ...

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

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

In a common letter of 9 November 2010, the applicants argued that the terms of the unilateral declaration were unsatisfactory. They contended that the acknowledgment of the violations by the Government was of a "formal character" and was only aimed at having the cases struck out of the list. They further argued that striking the cases out of the list would deprive them of the possibility to have the domestic proceedings reopened and their complaints re-examined by the domestic courts and that the declaration contained no undertaking by the Government to conduct such re-examination. The applicants further argued that the amendments to the Electoral Code mentioned by the Government in their unilateral declaration had not been aimed at improving the situation with respect to the matters raised in the present cases, but on the contrary were aimed at restricting certain other electoral rights. The applicants also submitted that they were

not satisfied with the amount of monetary compensation proposed by the Government, considering it too low.

The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Article 37 § 1 in fine includes the following proviso:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court also reiterates that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court shall examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment, which elaborates on a number of relevant factors to be assessed in this respect (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 76, ECHR 2003-VI). The list of such relevant factors is not intended to be exhaustive and, depending on the particulars of each case, further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 (c) of the Convention (ibid., § 77).

Turning to the present applications, the Court observes that the declaration contains a clear acknowledgment by the Government that the applicants' electoral rights had been breached. The Government also noted the similarity of the present cases to *Namat Aliyev v. Azerbaijan* (no. 18705/06, 8 April 2010), where the Court found a violation of Article 3 of Protocol No. 1 to the Convention and considered it unnecessary to examine complaints under Articles 13 and 14 of the Convention raised in conjunction with Article 3 of Protocol No. 1 to the Convention. The Court is also of the opinion that the factual circumstances of the present cases are indeed very similar to those of the *Namat Aliyev* case, while the complaints are essentially identical.

Furthermore, the Court notes that, under the Convention, the Government is under an obligation to adopt in its domestic legal order, under the supervision by the Committee of Ministers, the general and, if appropriate, individual measures in order to redress the violation found by the Court in the *Namat Aliyev* judgment. In their unilateral declaration made in the present cases, the Government confirmed their undertaking to comply with their obligation as to the necessary general measures to be taken in the

framework of the execution of the *Namat Aliyev* judgment with the aim of improving the effectiveness of the domestic electoral appeals' system to a level acceptable under the Convention. The Court considers that, had it decided to proceed with the examination of the present cases and delivered judgments finding a similar violation of the Convention, the general measures to be adopted in the framework of the execution of such judgments would, in any event, be the same as those to be adopted under the *Namat Aliyev* judgment.

As to the individual redress to be provided to the applicants, the Court takes note of their argument that, in the absence of the Court's judgments in their cases, they would not be able to have the respective proceedings reopened in the domestic courts. Even assuming that this is correct, the Court cannot accept this argument for the following reasons. The Court considers that the nature of the alleged violation in the present cases is such that it would not be possible to eliminate the effects of the infringement of the applicants' electoral rights by means of reopening of the domestic proceedings, owing to the fact that the elections of 6 November 2005 have been completed and their results confirmed as final. The Court cannot see how, apart from awarding compensation to the applicants, the reopening of the domestic election-related proceedings at the present time could put them in a position that they would have been had the requirements of Article 3 of Protocol No. 1 not been disregarded during the elections in question. Therefore, taking into account the current circumstances and the nature of the alleged violation, compensation for damages appears to be the only possible and adequate form of individual redress. The Court considers the amount of compensation proposed by the Government, namely 9,100 euros to each applicant, to be acceptable.

In these circumstances, the Court considers that it is no longer justified to continue the examination of the applications pursuant to Article 37 § 1 (c) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the cases. In view of the above, it is appropriate to strike the applications out of the list.

B. Remainder of the applications

The applicants also complained about a violation of Article 6 of the Convention owing to the alleged unfairness of the domestic judicial proceedings. The Court reiterates, however, that Article 6 does not apply to proceedings concerning electoral disputes (see, for example, *Namat Aliyev*, cited above, § 98, and *Seyidzade v. Azerbaijan*, no. 37700/05, § 45, 3 December 2009). It follows that this part of the applications is incompatible

ratione materiae with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

Lastly, in applications nos. 22654/06, 24506/06, 36105/06 and 40318/06, the applicants complained under Article 1 of Protocol No. 1 that, owing to the alleged infringement of their electoral rights, they had been deprived of all the useful effect of the funds spent on their election campaigns. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Takes note of the terms of the respondent Government's declarations in respect of the complaints under Article 3 of Protocol No. 1 of the Convention and Articles 13 and 14 of the Convention and the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, in so far as they relate to the above complaints;

Declares the remainder of the applications inadmissible.

Søren Nielsen
Registrar

Christos Rozakis
President