

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

FIRST SECTION

DECISION

Application no. 26287/06
by Ismayil SALIMOV and Others
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 2 September 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, *Registrar,*

Having regard to the above application lodged on 16 June 2006,

Having regard to the observations submitted by the parties,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ismayil Salimov, Mr Khaladdin Ibrahimli and Ms Solmaz Rustamova-Togidi are Azerbaijani nationals who were born in 1961, 1958 and 1953 respectively and live in Baku. They 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 case, as submitted by the parties, may be summarised as follows.

The applicants stood as candidates for the elections to the Milli Majlis (Parliament) of 6 November 2005. They were registered as candidates by the Constituency Election Commission ("the ConEC") for the single-mandate Sabunchu Second Election Constituency no. 27.

According to the ConEC protocol drawn up after the election day, one of the applicants' opponents, F.Z., obtained the highest number of votes cast in the constituency in question.

On 7 November 2005 six candidates, including the applicants in the present case, submitted a brief note to the Central Election Commission ("the CEC"), claiming that there had been a number of various irregularities in some polling stations of the constituency. They stated that materials about these irregularities were being collected for submission to the CEC.

On 8 November 2005 the first applicant, Mr Salimov, 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 the election day. He claimed that, *inter alia*:

(i) the police and executive authorities, as well as the supporters of the winner candidate, interfered in the election process, engaged in illegal campaigning and harassed observers;

(ii) in some polling stations, the vote-counting process lacked transparency and observers were excluded from participating in the vote-counting process;

(iii) there were numerous instances of ballot-stuffing and tampering with ballots;

(iv) election protocols of a number of polling station election commissions ("PEC") were drawn up with serious breaches of procedural requirements.

In support of his claims, the applicant submitted to the CEC a number of affidavits by election observers documenting specific instances of the irregularities complained of.

On 25 November 2005 the CEC informed Mr Salimov that, on 23 November 2005, it had issued its final election protocol and submitted it, together with other relevant documents (including the ConEC protocol documenting the results of the election in Sabunchu Second Election Constituency no. 27), to the Constitutional Court for review and approval of the election results.

On 26 November 2005 Mr Salimov lodged an action with the Court of Appeal, reiterating the specific complaints made to the CEC. He asked the court to invalidate the CEC's final protocol on election results in the part relating to the election results in Sabunchu Second Election Constituency no. 27, and to invalidate the election results in Polling Stations nos. 4, 10, 11, 12, 13, 14, 19, 20 and 21 of the constituency. He also

requested the court to decide on the issue of criminal responsibility of persons who had committed the irregularities.

On 1 December 2005 the Court of Appeal dismissed Mr Salimov's claims as unsubstantiated, without elaborating on the applicant's allegations in detail.

On 16 December 2005 the Supreme Court dismissed Mr Salimov's cassation appeal and upheld the Court of Appeal's judgment of 1 December 2005.

In the meantime, on 1 December 2005 the Constitutional Court confirmed the election results in the majority of the election constituencies, including Sabunchu Second Election Constituency no. 27.

COMPLAINTS

The applicants complained under Article 3 of Protocol No. 1 to the Convention and Article 6 of the Convention that the election in their electoral constituency had not been free and fair and that their right to stand for election had been infringed due to the domestic authorities' and courts' failure to effectively address their complaints concerning election irregularities.

Relying on Articles 13 and 14 of the Convention, the applicants complained that the domestic remedies had been ineffective and that, during the entire election process they, as independent and opposition candidates, had been discriminated against due to their political opinions and had not been allowed to run for elections under equal conditions with the pro-government candidates.

THE LAW

I. IN RESPECT OF THE SECOND AND THIRD APPLICANTS

The Court notes that by letters of 8 June 2009 and 20 November 2009 the second and third applicants informed the Court of their wish to withdraw their application.

The Court considers that, in these circumstances, the second and third applicants may be regarded as no longer wishing to pursue their application, within the meaning of Article 37 § 1 (a) 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 case in respect of the second and third applicants. In view of the above, it is appropriate to strike this part of the application out of the list of cases.

II. IN RESPECT OF THE FIRST APPLICANT

On 29 April 2010 the Court received the following declaration from the Government:

> "1. In the light of the judgment of the European Court of Human Rights in the case of *Namat Aliyev v. Azerbaijan* (no. 18705/06, 8 April 2010) the Government of the Republic of Azerbaijan offer to pay EUR 8,000 (eight thousand euros) to one of the applicants, Mr Ismayil Salimov, with a view to securing a friendly settlement of the application registered under no. 26287/06. This sum shall cover any non-pecuniary damage as well as costs and expenses, and it will be payable within three months starting from the notification of the judgment delivered by the Court pursuant to Article 39 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This payment will constitute the final resolution of the case. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay, until settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> 2. This declaration does not entail any acknowledgment by the Government of a violation of the European Convention on Human Rights in the present case.
>
> 3. The Government further undertake not to request the referral of the case to the Grand Chamber under Article 43 § 1 of the Convention. "

On 8 June 2010 the Court received the following declaration signed by the first applicant:

> "I acknowledge receipt of your letter of 3 May 2010, enclosing the Government's proposals for a friendly settlement in the above mentioned case.
>
> I agree with terms and conditions proposed by the Government for friendly settlement and I am ready to sign this document ..."

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention). In view of the above, it is appropriate to strike this part of the application out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren Nielsen
Registrar

Christos Rozakis
President