



System of electoral administration in Azerbaijan is not independent; reform should be encouraged

In today's **Chamber** judgment¹ in the case of [Gahramanli and Others v. Azerbaijan](#) (application no. 36503/11) 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) of the European Convention on Human Rights.

The case concerned complaints brought by the applicants, candidates for various opposition political parties, about electoral fraud and irregularities during the 2010 parliamentary elections. Their allegations included interference with the election process by electoral commission members, undue influence on voter choice, obstruction of observers and ballot-box stuffing.

The Court found that the applicants' serious and arguable complaints, based on electoral observers' first-hand accounts of alleged irregularities, had not been effectively addressed at domestic level either by the electoral commissions or by the courts. Indeed, the conduct of both the electoral commissions and courts – including the Constitutional Court – in the applicants' case revealed an apparent lack of any genuine concern for combatting allegations of electoral fraud and protecting the applicants' right to stand for election. Moreover, the Court found that the current system of electoral administration in Azerbaijan, which results in a particularly high proportion of pro-ruling-party members making up the structure of the electoral commissions, had been one of the systemic factors contributing to the ineffectiveness of the way in which the applicants' complaints had been examined. The Court pointed out that it was now for the Council of Europe's Committee of Ministers, which supervises the Court's judgments, to follow up on the implementation of change to Azerbaijan's electoral administration aimed at improving the effectiveness of the examination of individual election-related complaints. In particular, Azerbaijan should be encouraged to make an effort to reform the structural composition of electoral commissions.

Principal facts

The applicants, Fuad Ali oglu Gahramanli, Zalimkhan Adil oglu Mammadli, and Namizad Heydar oglu Safarov, are Azerbaijani nationals who were born in 1975, 1957, and 1955 respectively and live in Baku.

On 7 November 2010 the applicants stood as candidates for various opposition political parties in the parliamentary elections which took place in one of the constituencies of the Khatai District in Baku. On 10 November they lodged a complaint with the Central Electoral Commission, alleging – among other things – unlawful interference with the election process by electoral commission members, undue influence on voter choice, obstruction of observers and ballot-box stuffing.

In a decision of 21 November 2010 the commission dismissed the applicants' complaints as unsubstantiated, concluding in particular that the statements made by observers about irregularities had been subjective and had in any event been contradicted by over one hundred other observers.

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 five 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.

The observers who had criticised the electoral process were not called for questioning by the commission; the applicants themselves were not called to the hearing on the decision in their case.

The applicants then brought court proceedings to appeal against the commission's decision and complain about the fact that the commission neither ensured their presence at the hearing on their case nor investigated their serious allegations. By a judgment of 26 November 2010 the Baku Court of Appeal, mostly reiterating the commission's findings, dismissed the applicants' appeal.

This judgment was then upheld by the Supreme Court, which found that in any event it had to dismiss the applicants' appeal as the Constitutional Court had in the meantime already approved as final the election results.

Complaints, procedure and composition of the Court

Relying in particular on Article 3 of Protocol No. 1 (right to free elections), the applicants complained about a number of serious irregularities and breaches of the electoral law – making it impossible to determine the true opinion of voters – and the ensuing lack of an effective examination by the electoral commission and the domestic courts. They argued in particular that the structural composition of the electoral commissions, dominated at all levels by pro-government political forces, had not been independent. They maintained that that had created unfair advantages for pro-Government candidates and led to the failure to effectively investigate allegations of irregularities. Lastly, they complained that their appeal to the Supreme Court had been deprived of all effectiveness, the election results already having been approved by the Constitutional Court.

The application was lodged with the European Court of Human Rights on 1 June 2011.

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

András Sajó (Hungary), *President*,
Elisabeth Steiner (Austria),
Khanlar Hajiyev (Azerbaijan),
Paulo Pinto de Albuquerque (Portugal),
Linos-Alexandre Sicilianos (Greece),
Erik Møse (Norway),
Dmitry Dedov (Russia),

and also André Wampach, *Deputy Section Registrar*.

Decision of the Court

Although the Court was not in a position to assume a fact-finding role to determine whether all or some of the alleged electoral irregularities had actually taken place in 2010, it considered that the applicants had presented a very serious and arguable claim that there had been a failure to hold free and fair elections in their constituency. The applicants' claims had been based on relevant evidence, namely electoral observers' first-hand accounts of alleged irregularities, and had been corroborated in a report – by the Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR)² – identifying the most frequent problems which arose during the election process in Azerbaijan and which were similar to those alleged by the applicants.

However, those serious and arguable complaints had not been effectively addressed at domestic level either by the electoral commissions or by the courts. Indeed, the conduct of both the electoral

² The OSCE/ODIHR Election Observation Mission Final Report on the Parliamentary Elections of 7 November 2010 (Warsaw, 25 January 2011).

commissions and courts in the applicants' case revealed an apparent lack of any genuine concern for combatting allegations of electoral fraud and protecting the applicants' right to stand for election.

The assessment of the evidence presented by the applicants to the electoral commission, the system provided for under Azerbaijani law for examining complaints of electoral irregularities, had neither been adequate nor comprehensive. First, the applicants' presence at the electoral commission hearing in November 2010 had not been ensured, despite the requirements of the Electoral Code and the applicants' request that they be allowed to attend. In fact, it was open to doubt whether a hearing had actually even taken place as, in practice, the commission routinely adopted an expert group member's opinion without discussing the substance of the complaints. Nor were the observers, who had alleged such irregularities as ballot-box stuffing, called for questioning and no further investigation into their allegations was carried out. Instead, the commission gave a somewhat dubious reason for discrediting the observers' statements, namely that their statements, which had clearly been first-hand factual observations, had been subjective. Furthermore, the commission, vaguely describing statements made by other observers who refuted the applicants' allegations, had not made those statements available either to the applicants or to the European Court of Human Rights.

These shortcomings had not been remedied by the domestic courts either. The Baku Court of Appeal merely reiterated and upheld the electoral commission's findings and reasoning, without conducting an independent examination of the arguments raised or addressing the applicants' complaints about the commission's procedure. The remaining avenue of redress – to the Supreme Court – available to and pursued by the applicants had then been made futile by the Constitutional Court's premature confirmation of the entire country-wide election results as final while the applicants' appeal had still been pending.

Moreover, the Court found that the current system of electoral administration in Azerbaijan, which results in a particularly high proportion of pro-ruling-party members making up the structural composition of the electoral commissions, had been one of the systemic factors contributing to the ineffectiveness of the examination of the applicants' complaints of electoral irregularities. It pointed out that it was now for the Council of Europe's Committee of Ministers, which supervises the Court's judgments, to follow up on the implementation of change to Azerbaijan's electoral administration with the aim of improving the effectiveness of the examination of individual election-related complaints. In particular, Azerbaijan should be encouraged to make an effort to reform the structural composition of electoral commissions.

There had therefore been a violation of Article 3 of Protocol No. 1 to the Convention.

[Article 41 \(just satisfaction\)](#)

The Court held that Azerbaijan was to pay the applicants 10,000 euros (EUR) to each applicant in respect of non-pecuniary damage and EUR 850 for costs and expenses.

The judgment 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.