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Meeting: 1514th meeting (December 2024) (DH)

Item reference: Action Plan (14/10/2024)

Communication from Azerbaijan concerning the group of cases of NAMAT ALIYEV v. Azerbaijan (Application No. 18705/06)

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Communication de l'Azerbaïdjan concernant le groupe d'affaires NAMAT ALIYEV c. Azerbaïdjan (requête n° 18705/06) (*anglais uniquement*)

Action Plan/Report

Namat Aliyev Group (application no. 18705/06 and others)

DGI

14 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

A. Description of the cases

1. This group of cases concerns **violations of the right to free elections** (Article 3 of Protocol No. 1) of members of opposition parties or independent candidates in the context of the parliamentary elections.

2. In most of the cases, the Court found that the electoral commissions and the domestic courts had, in an arbitrary manner and without giving reasons and/or through procedures that did not afford safeguards against arbitrariness:

- rejected complaints regarding irregularities or breaches of electoral law;
- refused/cancelled the registration as candidates or the election of the applicants.

3. With regard to the decisions of the electoral commissions, the Court, in particular, found the following major irregularities:

- the dismissal without reasoning of the applicants' complaints and evidence;
- the acceptance of the statements and witness testimony against the applicants without a proper examination to determine their truthfulness and credibility;
- the lack of independent examination and reasoning in the decisions cancelling the applicants' registration as candidates or their election;
- the applicants' lack of participation in the hearings before these commissions.

4. In *Gahramanli and Others*, the Court indicated that an effort by the respondent State envisioning a reform of the structural composition of the electoral commissions should be encouraged with the aim of improving the effectiveness of examination of individual election-related complaints.

5. With regard to the decisions of the domestic courts, the Court, in particular, found the following major shortcomings:

- the refusal to examine the evidence submitted and failure to take steps ex officio to clarify outstanding issues, owing to excessive formalism stemming from the civil procedure rules;
- the domestic courts merely reiterated the findings of the electoral commissions;
- the applicants did not have sufficient time to prepare their defence in the expedited procedure;
- the erroneous application of the electoral law.

6. In *Gahramanli and Others* the violation was due, inter alia, to the fact that the Constitutional Court, under the domestic law, could and did approve the country-wide election results while the applicants' appeal before the Supreme Court was pending. This decision deprived the remedy available to the applicants of all prospect of success and rendered the entire electoral complaints system futile and illusory.

7. In seven cases, the Court also found violations of the right of individual petition on account of the seizure, in August 2014, from the office of the applicants' legal representative of the entire case file relating to the applicants' pending cases before the Court, together with all his other case files (violations of Article 34).

B. Individual measures:

8. The table below contains information regarding payment of just satisfaction in this group of cases.

| No. | Case Number | Name of the Case | Date of Definite Judgement | Just Satisfaction Data |
|-----|-------------|----------------------------------|----------------------------|---|
| 1 | 8513/11 | ABIL v. Azerbaijan (no. 2) | 05/03/2020 | Paid |
| 2 | 28508/11 | ABDALOV AND OTHERS v. Azerbaijan | 11/10/2019 | EUR 7500 was paid to Ikhtiyar Abdalov in the following order: 24.10.2019 – 2000 EUR 07.11.2019 – 2000 EUR |

| | | | | |
|----|----------|--|------------|--|
| | | | | <p>20.11.2019 – 2000 EUR 11.12.2019 – 1500 EUR</p> <p>07.11.2019 1400 EUR to rep. Khalid Bagirov</p> <p>Ibrahim Ahmadzade is residing in Iran and he is unable to present his bank details (7500 EUR pending)</p> <p>EUR 7500 was paid to Tariel Shirinli in the following order:</p> <p>24.10.2019 – 2000 EUR 07.11.2019 – 2000 EUR 20.11.2019 – 2000 EUR 11.12.2019 – 1500 EUR</p> <p>07.05.2020 - 2000 EUR+ 22.72EUR to rep. Khalid Bagirov</p> |
| 3 | 20411/11 | ASLAN ISMAYILOV AND OTHERS v. Azerbaijan | 13/04/2017 | Paid |
| 4 | 36821/11 | SAMADBAYLI AND OTHERS v. Azerbaijan | 13/04/2017 | Information will be provided soon |
| 5 | 37614/11 | SHUKUROV v. Azerbaijan | 27/01/2017 | Paid |
| 6 | 16511/06 | ABIL v. Azerbaijan | 21/05/2012 | Paid |
| 7 | 18469/06 | ATAKISHI v. Azerbaijan | 28/05/2012 | Paid |
| 8 | 6984/06 | HAJILI v. Azerbaijan | 10/04/2012 | Paid |
| 9 | 12535/06 | KARIMOV v. Azerbaijan | 25/12/2014 | Paid |
| 10 | 18475/06 | KERIMLI AND ALIBEYLI v. Azerbaijan | 04/06/2012 | Paid |
| 11 | 20799/06 | KERIMOVA v. Azerbaijan | 30/12/2010 | Paid |
| 12 | 19554/06 | KHANHUSEYN ALIYEV v. Azerbaijan | 21/05/2012 | Paid |
| 13 | 4508/06 | ORUJOV v. Azerbaijan | 26/10/2011 | Paid |
| 14 | 37700/05 | SEYIDZADE v. Azerbaijan | 03/03/2010 | Paid |

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|----|----------|---------------------------------------|------------|------|
| 15 | 2204/11 | ANNAGI HAJIBEYLI v. Azerbaijan | 22/01/2016 | Paid |
| 16 | 36503/11 | GAHRAMANLI AND OTHERS v. Azerbaijan | 08/01/2016 | Paid |
| 17 | 25330/11 | GASIMLI AND OTHERS v. Azerbaijan | 17/12/2015 | Paid |
| 18 | 29781/11 | GAYA ALIYEV AND OTHERS v. Azerbaijan | 16/06/2016 | Paid |
| 19 | 2326/11 | MAMMADLI v. Azerbaijan | 30/06/2016 | Paid |
| 20 | 4641/06 | MAMMADOV v. Azerbaijan (no. 2) | 10/04/2012 | Paid |
| 21 | 30362/11 | SOLTANOV AND OTHERS v. Azerbaijan | 16/06/2016 | Paid |
| 22 | 31953/11 | TAHIROV v. Azerbaijan | 11/09/2015 | Paid |
| 23 | 24853/11 | VUGAR ALIYEV AND OTHERS v. Azerbaijan | 17/12/2015 | Paid |
| 24 | 17356/11 | BAGIROV AND OTHERS v. Azerbaijan | 17/12/2015 | Paid |
| 25 | 18705/06 | NAMAT ALIYEV v. Azerbaijan | 08/07/2010 | Paid |

9. The Government submit that the "paid" notation in the just satisfaction data column indicates that the just satisfaction has been fully paid. This information is also confirmed on HUDOC-EXEC in relation to this group of cases.¹

10. Additionally, in *Abdalov and Others v. Azerbaijan* (28508/11), just satisfaction has been paid in full to all the applicants in the order listed in the table.

11. As for *Samadbayli and Others v. Azerbaijan* (36821/11), the Government will provide information on the payment of just satisfaction shortly.

12. Given that the cases in this group pertain to elections that took place quite some time ago, and considering the nature of these cases, their review would not be deemed appropriate or give the applicant tangible redress. Therefore, the Government consider review of the cases of this group to be unproductive.

¹<https://hudoc.exec.coe.int/eng#%7B%22execdocumenttypecollection%22:%5B%22CEC%22%5D,%22execprecedentappnos%22:%5B%2218705/06%22%5D%7D>

Violations of the right of individual petition

13. As regards failure to comply with obligations under Article 34 of the Convention the Government submit that the casefile taken from the applicant's representative (Intigam Aliyev) was returned to Intigam Aliyev's lawyer Javad Javadov on 25 October 2014.

C. General measures:

14. All procedures related to complaints and appeals regarding violations of electoral rights during elections held in the Republic of Azerbaijan are regulated by relevant legislation, including the Election Code and the "Instruction on the Procedure for Submitting and Considering Complaints and Appeals Related to Violations of Electoral Rights to the Central Election Commission and Constituency Election Commissions of the Republic of Azerbaijan." These documents have been developed based on the recommendations of reputable international organizations and in cooperation with them. Especially, Eugenio Polizzi, expert of the Venice Commission participated in the drafting process of the documents. The legal framework ensures that complaints and appeals are thoroughly, promptly, and impartially investigated, thereby fully guaranteeing the more effective realization of citizens' electoral rights.

15. To ensure the impartial, comprehensive, and prompt examination of complaints and appeals, and to safeguard citizens' active and passive electoral rights, expert groups are established under the Central Election Commission (CEC) and constituency election commissions (ConECs). The expert groups consist of nine members at the CEC level and three members at the ConEC level. When forming these groups, particular emphasis is placed on including specialists with legal education and specific expertise in the relevant field.

16. From the moment a complaint or appeal is submitted, members of the expert group begin a thorough investigation, gathering, verifying, and assessing the evidence related to the case. Members of the expert group and other CEC representatives are dispatched to meet with witnesses and verify the reported incidents. They report their conclusions to the Commission, and after a comprehensive discussion in an open session with Commission members, decisions regarding complaints are made through a voting with reasoned judgments provided.

17. Applicants are invited to participate in the investigation process and in the CEC's meetings regarding the relevant issue. Necessary steps are taken to ensure their involvement, and they are reminded to submit any additional materials related to their appeal. To ensure transparency during the examination of complaints and appeals, the activities of the expert group are always open to applicants, international observers, media representatives, and interested parties. Complainants, representatives of international organizations and observer missions, as well as members of the media, are informed and invited to follow the process, ensuring the participation of all interested parties.

18. Throughout the investigation, expert group members respond to any questions from relevant parties and periodically clarify issues of interest concerning the investigation process.

19. It is important to note that the investigation of a complaint or appeal is only terminated if the applicant withdraws it. In all other cases, the complaint or appeal is mandatorily accepted by the relevant election commission, thoroughly investigated in full transparency, impartiality, and in compliance with the requirements of the law. After the investigation, the matter is reviewed at a Commission meeting, where a reasoned decision is rendered.

20. If the CEC's decisions regarding complaints and appeals do not satisfy the applicants, their right to have the matter reviewed by the relevant judicial authorities is unequivocally and fully guaranteed.

21. To ensure transparency in the review of complaints and appeals and to allow citizens to follow the process, all complaints and appeals are promptly posted on the Commission's official website. This includes the registration number, date and time of submission, the complainant's name and the content of their appeal, the member of the CEC's expert group handling the complaint, their findings, as well as the CEC's corresponding decision on the matter. These measures not only enhance the efficiency of the complaint review process but also provide citizens with timely information regarding the investigation of their complaints, the discussions during Commission meetings, and the decisions made.

22. The CEC closely monitors the investigations conducted by lower election commissions, including the establishment of expert groups, to ensure that complaints and appeals submitted by citizens are handled objectively and promptly. The CEC regularly

provides necessary recommendations during the process. Complaints submitted to ConECs are immediately referred to the members of the expert group established under the relevant commission for investigation. After the expert group's review, their conclusions are presented at a commission meeting, where appropriate decisions are made.

23. It should also be noted that the CEC has made it a priority to enhance the knowledge, professionalism, and practical skills of ConEC expert group members in handling complaints and appeals, as part of its efforts to more effectively safeguard citizens' electoral rights. The CEC has closely collaborated with international organizations in this regard.

24. For instance, during the 2008 Presidential elections, a training project on "Handling Complaints and Appeals" was initiated in cooperation with the Venice Commission of the Council of Europe and the International Foundation for Electoral Systems (IFES). Since then, the project has been successfully implemented in all subsequent elections. One of the key projects dedicated to the review of complaints and appeals during the 2015 parliamentary elections was carried out in cooperation with the European Union, as part of the CEC's broader collaboration with international organizations.

25. Training sessions on the handling of electoral complaints and appeals have become a key component of the CEC's comprehensive awareness-raising program, and they are regularly and successfully implemented in all elections. These training sessions, which cover all members of ConEC expert groups, provide detailed presentations on the procedures for investigating and reviewing complaints and appeals, covering a range of essential topics. To ensure clarity, the presentations are supplemented with visual materials that offer comprehensive and clear explanations.

26. The practical component of the trainings includes case studies on electoral legislation and expert activities, where participants engage in exercises to solve mock cases. Participants are also involved in solving trial tests to further enhance their practical skills. Additionally, all participants receive a handbook titled "Guide for Expert Group Members," prepared by the CEC, which serves as a valuable reference throughout the process.

27. Since 2019, in line with its awareness-raising program, CEC has been organizing regional seminars and consultations in collaboration with the Supreme Court and appellate courts. These initiatives aim to enhance the knowledge of ConECs regarding the judicial

resolution of electoral disputes and to more effectively safeguard citizens' electoral rights. These seminars are part of a broader joint project to ensure more effective protection of electoral rights.

28. Officials from the Supreme Court and Baku Court of Appeal, along with CEC representatives, deliver presentations on the procedures for submitting and investigating complaints and appeals related to violations of electoral rights to election commissions, the application of electoral law by courts, and the judicial process for protecting electoral rights.

29. The seminars are attended by CEC members, staff from relevant departments of the Secretariat, appellate court judges from the regions, and the heads of constituency election commissions. At the conclusion of these seminars, discussions are held on various topics related to the judicial resolution of electoral disputes, and participants' questions are addressed.

30. It is important to note that the primary objective of this project is to ensure that elections are organized in accordance with the law and conducted in a free, fair, and transparent manner. In addition to these efforts, the project aims to enhance the knowledge, skills, and awareness levels of constituency election commissions regarding the resolution of electoral disputes. It also seeks to improve the effectiveness of the steps taken in this direction and to ensure citizens' electoral rights more effectively.

31. The Government respectfully note that, in the case of *Gahramanli and Others*, a violation was found, in part, due to the fact that the Constitutional Court approved the country-wide election results while the applicants' appeal before the Supreme Court was still pending. This situation effectively deprived the applicants of any meaningful remedy, rendering the electoral complaints system ineffective.

32. The Government submits that the practice which amounted to violation of the applicants' rights was reviewed by the Constitutional Court, which took into account the findings of the European Court. As a result, the problematic practice identified in *Gahramanli and Others* was duly taken into consideration and as to the Government's knowledge no longer persists. For example, in the 2020 and 2024 parliamentary elections, the improvements to the electoral process were evident, ensuring a more effective and fair system (see also paragraph 37).

33. In light of these developments, the Government respectfully request that this case be closed, as the circumstances that gave rise to the violation have significantly improved.

Information on Parliamentary elections in 2024

34. In accordance with Article 98.1, and Article 109.1 of the Constitution, by the Decree of the President of the Republic of Azerbaijan dated 28 June 2024, the Sixth Convocation of the Parliament (Milli Majlis) was dissolved, and early elections to the Milli Majlis were scheduled for 1 September 2024 with the elections held on that date.

35. According to Article 171.2 of the Election Code the CEC shall verify the protocols of the ConECs (together with the documents attached thereto in accordance with the Code) no later than 20 days after the voting day and submit them to the Constitutional Court of the Republic of Azerbaijan within 24 hours.

36. In accordance with Article 86 of the Constitution, the Constitutional Court is responsible for reviewing and confirming the validity of the results of elections of deputies to Milli Majlis in the manner prescribed by law.

37. On 21 September 2024 the Constitutional Court adopted the decision on the verification and confirmation of the results of the early elections to the Milli Majlis held on 1 September 2024.²

38. According to the protocol of the CEC dated 16 September 2024, regarding the overall results of the voting, the election results for all 125 constituencies were deemed valid, and the candidates elected as deputies from those constituencies were confirmed.

39. As indicated by the materials submitted to the Constitutional Court, the CEC conducted investigations into complaints and appeals related to electoral violations. Based on various sources of information, including webcam footage and other evidence, violations of electoral law were identified in 46 polling stations, and the election results from those stations were declared invalid.

² The decision on the verification and confirmation of the results of the early elections to the Milli Majlis held on 1 September 2024 (constcourt.gov.az) available at: <https://constcourt.gov.az/az/decision/1438>

40. Additionally, the materials reveal that, due to shortcomings in their operations during the preparation, conduct, and determination of the results of the elections, a total of 35 polling station commissions were dissolved.

41. The Constitutional Court also reviewed and carefully examined the information regarding electoral complaints submitted by appellate courts, the Supreme Court, and the General Prosecutor's Office. It should be noted that all these complaints have been review by the relevant authorities and final decisions have been adopted. Only after that the information on them was submitted to the Constitutional Court for final review of the election results in general.

42. In doing so, procedural law violations that had occurred during the 2005 and 2010 elections were corrected, and electoral complaints were considered on their merits before the final decision on the results of elections was approved by the Constitutional Court.

43. This is providing a genuine opportunity for the complainants to achieve the legally prescribed outcomes if their cases were successful.

Code of Administrative procedure. Proceedings related to the protection of electoral rights.

44. The Code of Administrative Procedure, which entered into force as from 1 January 2011, specified that the complaints against the actions (omissions) or decisions of the election commissions shall be lodged with the courts of appeal (Chamber of Administrative and Economic Cases).

45. Article 14 of this Code provides that the administrative body which has adopted the disputed act should prove the existence of the facts necessitated its adoption. This provision places burden of proof on the respondent authority.

46. Article 46 of the Code stipulates that where the application does not comply with the legal requirements the judge should provide the applicant with additional time to bring the application in conformity with legal provisions. This means that formalistic reasons cannot serve as the ground for rejecting the application.

47. Moreover, Article 48 of the Code places on judge the duty to assist in elimination of formal mistakes, explanation of vague testimonies, lodging of requests concerning the merits

of the application, gathering of full factual information, and submission of written evidences necessary for objective examination of the case.

48. In addition, Article 60 of the Code provides that the administrative authority should submit documents and necessary information upon the judge's request. In the Government's opinion, the above amendments address the problems raised in the Court's judgments in the Namat Aliyev group of cases.

49. On 20 April 2012 new chapter called "Proceedings Related to the Protection of Electoral (Referendum Participation) Rights" has been added to the Code of Administrative Procedure. Relevant chapter provides the procedural rules for the proceedings regarding alleged electoral violations. The text of the relevant chapter is provided below:

"Chapter 18

Proceedings Related to the Protection of Electoral (Referendum Participation) Rights

Article 130. Characteristics of Proceedings for the Protection of Electoral (Referendum Participation) Rights

130.1. Claims for the protection of electoral (referendum participation) rights are submitted to appellate courts in accordance with the procedure established by the Election Code of the Republic of Azerbaijan.

130.2. A court must consider a claim for the protection of electoral (referendum participation) rights within 3 days of its receipt, or within 2 days if less than 30 days remain before the voting day (but no later than the voting day). Claims submitted on or after the voting day must be reviewed immediately, and a decision on the merits must be issued.

130.3. The court considers the claim with the participation of the claimant, the relevant election commission, or other interested parties. The absence of these parties, after proper notification of the time and place of the hearing, does not prevent the court from considering the case and making a decision.

130.4. A written version of the full court decision must be provided within 24 hours of the announcement of its operative part. For decisions made less than 30 days before the voting day or after the voting day, the full decision must be provided no later than 18 hours after the announcement of the operative part.

130.5. An appeal against a court decision may be filed with the Supreme Court within 3 days from the date the full decision is provided. The appeal must be considered within 3 days, or

within 2 days if less than 30 days remain before the voting day (but no later than the voting day). Appeals submitted on or after the voting day must be reviewed immediately.”

50. The legislative act outlined above establishes clear deadlines and procedures for addressing complaints related to the violation of electoral rights. These provisions create a solid legal framework for timely responses to potential violations, which is especially critical in the context of elections where timing is crucial. The adoption of these changes can be seen as a positive step towards enhancing the system of legal remedies within the country's electoral process. By ensuring transparency and facilitating the swift restoration of infringed rights, these reforms contribute to strengthening public confidence in the electoral system.

D. Conclusion:

51. The Government kindly ask to take into account the individual and general measures undertaken by the Government.

52. The Government respectfully requests the closure of the supervision over the execution of the cases related to the 2005 and 2010 parliamentary elections, as well as the case of *Gahramanli and Others v. Azerbaijan* (Application no. 36503/11).

53. These cases are now significantly outdated, and no ongoing or systemic issues identified in their context continue to persist. Given the time elapsed and the absence of any current relevance, the Government believes that further supervision is no longer necessary. Therefore, the Government kindly invite the Court to close these cases.