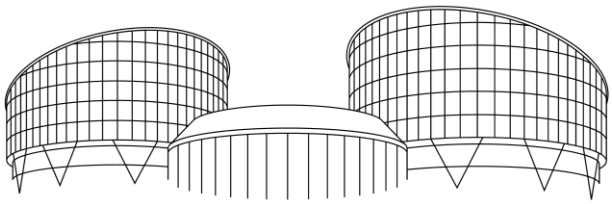

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ORUJOV v. AZERBAIJAN

(Application no. 4508/06)

JUDGMENT

STRASBOURG

26 July 2011

FINAL

26/10/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Orujov v. Azerbaijan**,**

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

Nina Vajić, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 5 July 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 4508/06) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Nadir Oruj oğlu Orujov ("the applicant"), on 27 December 2005.

2. The applicant was represented by Mr N. Abdullayev, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that his right to stand for election, as guaranteed by Article 3 of Protocol No. 1 to the Convention, had been infringed.

4. On 9 June 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Baku.

6. The applicant applied for registration as an independent candidate for the forthcoming elections to the Milli Majlis (Parliament) of 6 November 2005. On 19 August 2005 the Constituency Electoral

Commission ("the ConEC") for Nasimi First Election Constituency no. 21, a single-mandate constituency in Baku, registered him as a candidate.

A. Allegations of breach of electoral law by the applicant

7. On 26 October 2005 Police Office No. 19 of the Nasimi District Police Department informed the ConEC that the applicant was privately funding certain urban improvement works (such as laying new asphalt and repairing public recreation facilities for children) in some public areas of his constituency, allegedly with the purpose of winning over the support and votes of the local residents, in breach of the requirements of the electoral law. To this effect, the police drew up a record, signed by three police officers and two employees (A.A. and V.Q.) of the local housing utilities committee responsible for the residential buildings in question, which stated that the applicant had "laid fresh asphalt in front of the residential buildings indicated on the attached drawing ... and this fact [was] confirmed by the signatures below".

8. In support of this submission, the police office submitted handwritten statements by several local residents, all of which were addressed directly to the police and expressed gratitude to the applicant for the work he had carried out in their neighbourhood. While some of the statements were dated 26 October 2005, two statements were dated 27 October 2005.

9. In particular, a statement by I.K., dated 26 October 2005 and addressed to Police Office No. 19, read as follows:

> "I have resided at the above-mentioned address since 1989. During this time, no renovation has been done in the courtyard [of our building]. But in the last month a lot of renovation work has been carried out in the courtyard ... [a description of specific improvements follows].
>
> The above-mentioned works were organised and carried out by our respected neighbour ... Nadir Orujov. He is a person who is willing to share all the problems of the entire neighbourhood and to assist [in resolving these problems]. We wish this person only victory in the upcoming elections".

10. A statement by G.N., dated 27 October 2005 and addressed to Police Office No. 19, read as follows:

> "In reply to the questions asked of me, I inform you that Nadir Oruj oglu Orujov, who has nominated himself as a candidate [for the parliamentary elections], has carried out benevolent renovation works in our courtyard in the pre-election period. He has laid fresh asphalt in front of the buildings. I have written this statement myself. I confirm [the authenticity of] my signature".

11. A statement by S.A., dated 27 October 2005 and addressed to Police Office No. 19, read as follows:

> "I inform you that Nadir Oruj oglu Orujov, who has nominated himself as a candidate [for the parliamentary elections], is laying fresh asphalt in front of the

buildings [in our courtyard]. He is a good person. I have written this statement myself. I confirm [the authenticity of] my signature."

12. Other statements were of a similar content.

B. Decision of the electoral authorities to seek cancellation of the applicant's candidacy

13. According to an extract from the minutes of the ConEC meeting held on 28 October 2005, made available to the applicant and later submitted by him to the Court, the ConEC decided as follows:

"1. To take into consideration the statements by voters ...

2. To confirm, based on the statements and other material submitted, breaches of Articles 88.4.4 and 88.4.5 of the Electoral Code by Nadir Oruj oglu Orujov, who is registered as a candidate for the elections to the Milli Majlis.

3. In accordance with Article 113.2.3 of the Electoral Code, to apply to the Court of Appeal with a request for the cancellation of the applicant's registration as a candidate owing to the breach of the requirements of Articles 88.4.4 and 88.4.5 of the Electoral Code. ..."

14. The full copy of the same minutes of the above ConEC meeting, as submitted by the Government, indicates that this meeting was held on 29 October 2005.

15. By a letter of 28 October 2005, the ConEC submitted the cancellation request to the Court of Appeal. The request stated, *inter alia*:

"[C]andidate Nadir Oruj oglu Orujov has breached the requirements of Article 88 of the Electoral Code and thus violated the rights of other candidates. There have been repeated oral submissions to [the ConEC] concerning his illegal actions. Finally, citizens have applied to Police Office no. 19 of the Nasimi District Police Department and requested [the police] to put an end to his illegal actions. ... It has been proved that [the applicant] conducted [certain renovation works], in breach of Articles 88.4.4 and 88.4.5 of the Electoral Code, with the purpose of buying votes. ..."

16. According to the applicant, he was not informed about the ConEC's request in a timely manner.

C. Judicial proceedings concerning the cancellation of the applicant's candidacy

17. The Court of Appeal examined the case the next day, at 11 a.m. on Saturday 29 October 2005.

18. According to the record of the court hearing, the court examined the documents submitted by the ConEC and heard a number of witnesses. In particular, two police officers, F. Zamanov and R. Samadov, testified that, according to "residents of the buildings" in question, the applicant had carried out unauthorised urban improvement works in the constituency.

19. The court also heard six local residents. It appears that three of them (G.N., R.I. and V.Q.) had submitted handwritten statements to the police earlier. These three witnesses told the court that they did not know the applicant personally and had not known who had carried out the renovation works, that on 26 October 2005 police officer F. Zamanov had approached each of them individually on the street, engaged them in conversation and informed them that the works had been carried out by the applicant, and that F. Zamanov had then asked them to write a "thank-you note" expressing their gratitude to the applicant for his efforts on behalf of the community. The witnesses said that they had not been told that their statements would be used against the applicant later.

20. Of the remaining three local residents, one stated that she did not know who had carried out the urban improvement works near her home, and two stated that the works had been carried out by the local residents themselves at their own expense.

21. In its judgment of 29 October 2005, consisting of one and a half typed pages, the Court of Appeal summarised the above-mentioned witness statements as follows:

> "... witnesses F. Zamanov and R. Samadov confirmed that [the renovation works] at [the location in question] had been carried out under the instructions and with the assistance of the candidate for the elections to the Milli Majlis, N.O. Orujov. This circumstance was also confirmed by witnesses [R.I. and G.N.] when questioned at the court hearing. ...
>
> Witnesses [V.Q. and M.M.], when questioned at the court hearing, stated that they did not know who had laid the fresh asphalt and carried out the renovation works, while witnesses [Q.H. and G.V.] stated that these renovation works had been carried out by the local residents themselves".

22. The court then directly proceeded to a finding that the applicant, by carrying out renovation works in public areas "with the aim of winning over voters" and "promising to provide assistance to voters in return for their votes", had attempted to influence the voters' opinion in a manner prohibited by Article 88.4 of the Electoral Code. The court therefore decided to cancel the applicant's registration as a candidate.

23. On 31 October 2005 the applicant enquired as to the identity of the local residents who had testified against him. He discovered that two of the persons (S.A. and T.T.) who had complained about him to the police did not actually live in his constituency and had used false addresses in their written submissions.

24. Three other witnesses (I.K., G.N. and V.Q.) made notarised affidavits addressed to the Supreme Court in which they retracted their previous handwritten submissions to the police, claiming that, in fact, none of them had known whether the renovation works had actually been carried out by the applicant, and that they had been either pressured or tricked by

the police into making these statements, without being informed that the police intended to use them against the applicant.

25. The applicant lodged a cassation appeal with the Supreme Court, arguing that the evidence used against him had been fabricated, that the Court of Appeal had made manifest errors in examining the evidence and had based its decision on unproven allegations, and that therefore his registration had been cancelled arbitrarily. With his cassation appeal, he also enclosed the witness affidavits mentioned above.

26. On 3 November 2005 the Supreme Court dismissed the applicant's appeal and upheld the Court of Appeal's judgment of 29 October 2005. It refused to admit the new evidence submitted by the applicant challenging the reliability of the original evidence used against him (including the witnesses' affidavits retracting their previous accusations in respect of the applicant); it noted that the factual circumstances of the case had been duly established by the lower court and that the Supreme Court could examine the case only on points of law. Furthermore, the Supreme Court stated that the lower court had applied the material law correctly and complied with the requirements of procedural law.

II. RELEVANT DOMESTIC LAW

A. Electoral Code

27. Article 88.4 of the Electoral Code of 2003 provides as follows:

> "88.4. Candidates ... are prohibited from gaining the support of voters in the following ways:
>
> 88.4.1. giving money, gifts and other valuable items to voters (except for badges, stickers, posters and other campaign materials having nominal value), except for the purposes of organisational work;
>
> 88.4.2. giving or promising rewards based on the voting results to voters who were involved in organisational work;
>
> 88.4.3. selling goods on privileged terms or providing goods free of charge (except for printed material);
>
> 88.4.4. providing services free of charge or on privileged terms;
>
> 88.4.5. influencing the voters during the pre-election campaign by promising them securities, money or other material benefits, or providing services that are contrary to the law."

28. According to Articles 113.1 and 113.2.3 of the Electoral Code, the relevant electoral commission may request a court to cancel the registration

of a candidate who engages in activities prohibited by Article 88.4 of the Code.

29. Complaints concerning decisions of electoral commissions must be examined by the courts within three days (unless the Electoral Code provides for a shorter period). The period for lodging an appeal against a court decision is also three days (Article 112.11).

B. Code of Civil Procedure

30. Chapter 25 of the Code of Civil Procedure sets out rules for the examination of applications concerning the protection of electoral rights (or the right to participate in a referendum). According to Article 290, such applications must be submitted directly to the appellate courts in accordance with the procedure established by the Electoral Code.

31. Applications concerning the protection of electoral (referendum) rights must be examined within three days of receipt of the application, except for applications submitted on election day or the day after election day, which must be examined immediately (Article 291.1). The court must hear the case in the presence of the applicant, a representative of the relevant electoral commission and any other interested parties. Failure by any of these parties to attend the hearing after due notification does not preclude the court from examining and deciding the case (Article 291.2).

32. The appellate court's decision can be appealed against to the higher court (the court of cassation) within three days. This appeal must be examined within three days, or immediately if submitted on election day or the next day. The decision of the court of cassation is final (Article 292).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

33. Relying on Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicant complained that his registration as a candidate for the parliamentary elections had been cancelled arbitrarily. The Court considers that this complaint falls to be examined only under Article 3 of Protocol No. 1 to the Convention, which reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

35. The Government submitted that the aim of Article 88.4 of the Electoral Code was to ensure equal and fair campaign conditions for all candidates. Disqualification of candidates who engaged in various forms of illegal vote-buying had the legitimate aim of protecting the free expression of the opinion of the people in elections.

36. The Government maintained that the applicant had been disqualified because he had attempted to influence voter choice by providing free services and promising goods and money to voters. According to the Government, several residents had applied to the Nasimi District Police Department "complaining about the infringement of the law by the applicant during the electoral campaign" and, based on these complaints, the police had "carried out inquiries" and discovered that the applicant was indeed funding the laying of fresh asphalt and the repair of public recreation facilities for children and for the elderly, with the aim of influencing the local residents' votes.

37. The Government argued that the domestic courts had examined the case fairly and that their decisions were well-founded and based on the relevant witness testimonies which confirmed that the applicant had provided free services in breach of Article 88.4 of the Electoral Code. The Government further argued that the decision by the Court of Appeal to hold a hearing the very next day after the receipt of the ConEC's submission was based on the law, which required the courts to examine matters relating to elections within three days of their submission. Therefore, contrary to the applicant's claims, the immediate judicial hearing did not breach the applicant's rights.

38. The applicant submitted that he had had nothing to do with the urban improvement works in question and that, according to the information available to him, these works had actually been sponsored by two other, pro-government candidates, one of whom had ultimately won the election. The applicant argued that the decision to disqualify him had been arbitrary and based on flimsy, insufficient, unreliable, inadmissible and even fabricated evidence. He noted that the few witnesses who had allegedly complained about him to the police had made their initial statements under

pressure and had subsequently retracted those statements during the judicial proceedings.

39. He further claimed that he had been denied an opportunity to properly defend his position before the domestic courts during the proceedings concerning the cancellation of his registration. The Court of Appeal had held its hearing during a weekend, within only one day of receiving the ConEC's request. As a result, the applicant had been deprived of the opportunity to prepare his defence and to gather information undermining the credibility of the questionable evidence produced against him. For example, he had not been able to obtain information from the relevant housing authorities about the authenticity of the residential addresses provided by the alleged witnesses, because those authorities were closed on Saturday. Subsequently, after the applicant had gathered such information and submitted it together with his cassation appeal, the Supreme Court refused to take into consideration the new evidence submitted by him, wrongfully stating that it was not competent to determine the factual circumstances.

2. The Court's assessment

40. The Court has established that Article 3 of Protocol No. 1 guarantees individual rights, including the rights to vote and to stand for election. Important though these rights are, they are not, however, absolute. Since Article 3 recognises them without setting them out in express terms, let alone defining them, there is room for "implied limitations", and contracting States have a wide margin of appreciation in this sphere. In their internal legal orders they may make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3 (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 51-52, Series A no. 113; *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I; and *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV).

41. While the Contracting States enjoy a wide margin of appreciation in imposing conditions on the right to vote and to stand for election, it is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate or arbitrary (see *Mathieu-Mohin and Clerfayt*, cited above, § 52; *Gitonas and Others v. Greece*, 1 July 1997, § 39, *Reports of Judgments and Decisions* 1997-IV; and *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 109 (iii), 8 July 2008).

42. Furthermore, the object and purpose of the Convention, which is an instrument for the protection of human rights, requires its provisions to be

interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see, among many other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 33, *Reports* 1998-I; *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III; and *Lykourezos v. Greece*, no. 33554/03, § 56, ECHR 2006-VIII). The right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, would be illusory if one could be arbitrarily deprived of it at any moment. Consequently, while it is true that States have a wide margin of appreciation when establishing eligibility conditions in the abstract, the principle that rights must be effective requires that the eligibility procedure contain sufficient safeguards to prevent arbitrary decisions (see *Podkolzina v. Latvia*, no. 46726/99, § 35, ECHR 2002-II). Although originally stated in connection with the conditions on eligibility to stand for election, the principle requiring prevention of arbitrariness is equally relevant in other situations where the effectiveness of individual electoral rights is at stake, and the Court has consistently stressed the need to avoid arbitrary decisions and abuse of power in various electoral contexts and has emphasised that the relevant procedures for such decisions must be characterised by procedural fairness and legal certainty (see, *mutatis mutandis*, *Kovach v. Ukraine*, no. 39424/02, § 55, ECHR 2008-...; *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 72, 8 April 2010; and *Petkov and Others v. Bulgaria*, nos. 77568/01, 178/02 and 505/02, § 61, ECHR 2009-..., with further references).

43. The Court notes that in the present case the applicant was disqualified as a candidate in accordance with Articles 88.4 and 113 of the Electoral Code, which provide for the possibility of disqualification of candidates who resort to unfair and illegal means of gaining voter support. Given that Article 3 of Protocol No. 1 does not contain a list of "legitimate aims" capable of justifying restrictions on the exercise of the rights it guarantees and does not refer to those enumerated in Articles 8 to 11 of the Convention, the Contracting States are free to rely on an aim not mentioned in those Articles, provided that it is compatible with the principle of the rule of law and the general objectives of the Convention (see, for example, *Ždanoka v. Latvia* [GC], no. 58278/00, § 115, ECHR 2006-IV). The Court accepts the Government's argument that the conditions set out in the above-mentioned provisions of the Electoral Code pursue the legitimate aim of ensuring equal and fair conditions for all candidates in the electoral campaign and protecting the free expression of the opinion of the people in elections.

44. It remains to be determined whether there was arbitrariness or a lack of proportionality in the authorities' decisions.

45. The Court reiterates that its competence to verify compliance with domestic law is limited and that it is not its task to take the place of the domestic courts in such issues as assessment of evidence or interpretation of the domestic law. Nevertheless, for the purposes of supervision of the compatibility of the interference with the requirements of Article 3 of Protocol No. 1, the Court must scrutinise the relevant domestic procedures and decisions in detail in order to determine whether sufficient safeguards against arbitrariness were afforded to the applicant and whether the relevant decisions were sufficiently reasoned (see, *mutatis mutandis*, *Melnychenko v. Ukraine*, no. 17707/02, § 60, ECHR 2004-X).

46. In this respect, the Court notes that a finding that a candidate has engaged in unfair or illegal campaigning methods could entail serious consequences for the candidate concerned, in that he or she could be disqualified from running for the election. As the Convention guarantees the effective exercise of individual electoral rights (see paragraph 42 above), the Court considers that, in order to prevent arbitrary disqualification of candidates, the relevant domestic procedures should contain sufficient safeguards protecting the candidates from abusive and unsubstantiated allegations of electoral misconduct, and that decisions on disqualification should be based on sound, relevant and sufficient proof of such misconduct.

47. In the present case, the decision to disqualify the applicant was based on the finding that he had provided free services to voters with the aim of gaining their support, in the form of financing or carrying out urban development works which consisted in laying fresh asphalt and repairing public recreation facilities for children and for the elderly in some areas of the electoral constituency. The only evidentiary basis for reaching this finding were several very short written statements by random residents of the area and oral statements by two police officers. No other evidence existed. However, in the Court's opinion, it is unlikely that someone could commission, sponsor or carry out large-scale urban development works in public areas, in plain view of the public and with the aim of "buying" votes, without the existence of strong material evidence, including at least some of the following: proof of financial transactions carried out by the applicant in connection with the works, contracts signed between the applicant and a construction company or construction workers, statements from these construction workers showing their links to the applicant, statements by witnesses who have directly observed the applicant or his staff being present at the construction site or issuing instructions concerning the works to be carried out, statements by witnesses who have personally heard the applicant or his staff informing the voters that the works were carried out by the applicant and asking them to support the applicant in the elections, and so on.

48. The Court notes in this regard that, instead of direct material evidence in support of the applicant's alleged misconduct, the domestic

authorities' findings were based on rather scant evidence consisting of very brief statements by two police officers and several random persons. Moreover, in any event, the Court considers, on the basis of the reasons specified below, that even the existing evidence was not devoid of serious shortcomings, and that, despite the applicant's objections in this regard, the procedure for finding the applicant responsible for electoral misconduct did not afford him sufficient guarantees against arbitrariness.

49. At the outset, the Court notes that all the evidence relating to the alleged misconduct by the applicant was produced with the direct involvement of the police. Such an initiative by the police as interfering in electoral matters is in itself rather unusual. The Court finds reasonable the applicant's suspicions concerning the fact that the statements of "residents" used against him were addressed to the police rather than the electoral authorities and that, moreover, these statements, in a manner rather unusual and contradictory to the purpose for which they were ultimately used, were not worded as complaint letters but as letters of praise. It is also unusual that anyone who did not personally know the applicant but who nevertheless wanted to commend him for his alleged charitable activities for the benefit of the community should, of his or her own accord, express his or her gratitude to the applicant by means of a letter addressed to the police, and even more so considering that several people did so on the same day, allegedly independently of each other.

50. Moreover, the Court notes that in the subsequent proceedings concerning the applicant's disqualification none of those "residents" testified in a manner consistent with their written statements to the police. In particular, of the six residents heard by the courts, three persons stated that they had no prior knowledge as to who had commissioned the renovation works. As to why they had written statements implicating the applicant, they explained that they had been requested to write them by police officer F. Zamanov, that they had first heard about the applicant's alleged involvement in the renovation works from this police officer, and that they had not been informed that these statements would be used against the applicant later (see paragraph 19 above). The other three residents noted that they had no knowledge whatsoever about the applicant's involvement in the renovation works. Two of them even stated that these works had been carried out by the residents themselves at their own expense (see paragraph 20 above). Moreover, after the hearing in the Court of Appeal, three of the residents made notarised affidavits formally retracting their written statements to the police and explaining that they had been essentially tricked by the police into making those original statements (see paragraph 24 above).

51. Two other persons, who had also submitted written statements to the police and had claimed to be "residents" of the area in question, were never heard by the courts at any stage. As became apparent in the course of the

proceedings from the information gathered by the applicant, these two persons were not residents of the area in question and could not be otherwise identified or located.

52. Lastly, the Court notes that in the course of the judicial proceedings only two witnesses, namely police officers F. Zamanov and R. Samadov, positively identified the applicant as the person who had allegedly commissioned the renovation works in question. However, their statements appeared to be hearsay evidence, as the police officers did not claim to have any first-hand knowledge of the matter and stated that they had "heard" this information from some local residents whom they did not identify. In essence, the police officers' statements, taken alone and uncorroborated by other evidence, appear to have been nothing more than a rumour; in such circumstances, the Court is concerned that these statements were not subjected to any degree of scrutiny by the domestic courts.

53. It therefore appears that, with the exception of the two police officers, none of the witnesses testified against the applicant during the judicial hearings. In view of the above, the Court takes seriously the applicant's claims as to the highly questionable nature of the actual evidence produced, and the lack of consistent and reliable proof of his alleged misconduct.

54. However, despite the seriousness of the applicant's objections, neither the electoral commission, nor the domestic courts effectively examined them.

55. In particular, it appears that the ConEC took the decision to request the applicant's disqualification without any independent hearing or assessment of the factual circumstances, and without informing the applicant in a timely manner. It is therefore apparent that no procedural safeguards against arbitrariness were afforded to the applicant at the ConEC level. Moreover, according to the documents submitted by the Government, the relevant ConEC meeting was held on 29 October 2005, while the official cancellation request made by the ConEC was dated 28 October 2005, one day earlier. This suggests that the formal decision to request cancellation of the applicant's candidacy was actually taken *post facto*, one day after the request had been sent to the Court of Appeal. This discrepancy in the ConEC paperwork was unexplained by the Government. This type of irregularity, in the absence of any reasonable explanation, constitutes another indication that there was a lack of any genuine assessment of the matter at the ConEC level.

56. The Court of Appeal examined the case the day after receiving the ConEC request, on a Saturday at 11 a.m. In such circumstances, the applicant was not afforded much time to examine the material in the case file and to prepare arguments in his defence. The Court reiterates that considerations of expediency and the necessity for tight time-limits designed to avoid delaying the electoral process, although often justified,

may nevertheless not serve as a pretext to undermine the effectiveness of electoral procedures (see, *mutatis mutandis*, *Namat Aliyev*, cited above, § 90) or to deprive the persons concerned by those procedures of the opportunity to effectively contest any accusations of electoral misconduct made against them. In the present case, it appears that the examination of the issue of the applicant's disqualification took place without any reasonable advance notice, and as such caught him by surprise and left him unprepared for the hearing.

57. Moreover, it appears that in its judgment the Court of Appeal misrepresented the statements of certain witnesses. In particular, according to the record of the court hearing, witnesses G.N. and R.I. stated that they had not known who had commissioned the renovation works but had been "informed" for the first time about that alleged fact by police officer F. Zamanov who had then asked them to write "thank-you notes" (see paragraph 19 above); however, the Court of Appeal's judgment stated that these witnesses had unequivocally confirmed the police officers' allegations against the applicant (see paragraph 21 above). Furthermore, despite the apparent lack of evidence proving the alleged misconduct (see paragraph 47 above), the court failed to seek any further clarifications or information concerning the financing of the renovation works, any material or documentary proof of the applicant's involvement, or any proof of intent to unlawfully influence voter choice. Moreover, while the oral statements of most of the witnesses heard appeared to be favourable to the applicant, the Court of Appeal failed to explain why it had discarded these statements and instead found the two police officers' statements and the written material presented by them sufficient to prove the alleged misconduct. In fact, the court failed to provide any reasoning for its decision, as the text of its judgment jumped immediately to the conclusion after a brief summary of the oral submissions and citation of the relevant provisions of the Electoral Code, notably lacking any assessment of the probative value of the evidence presented or the legal arguments. In the light of the above, the Court cannot but conclude that the proceedings before the Court of Appeal did not afford the applicant the necessary procedural safeguards, and that its decision was unsupported by sufficient factual evidence and was not sufficiently reasoned.

58. As to the procedure before the Supreme Court, the Court notes that, before the hearing of his appeal, the applicant was able to procure additional documents in support of his position. In particular, he had obtained statements from the local housing authority that two of the authors of the original statements to the police (S.A. and T.T.) had not been residents of the area in question and could not be identified. Based on this, he argued that the evidence against him had been "fabricated" and that the Court of Appeal had inexplicably failed to seek the attendance of these persons or to seek an explanation from the police as to who they were. Furthermore, he

submitted notarised affidavits by three of the other authors of the original statements to the police, in which they retracted their original statements and described the circumstances in which they claimed they had been tricked by the police into making them. In the Court's opinion, the above information discloses the appearance of an incomprehensive review of evidence by the lower court and supports the applicant's argument that, in so far as he was unable to procure and present the above information at the Court of Appeal hearing because of the unreasonable time-constraints created by that court, he was not afforded sufficient safeguards against arbitrariness. Accordingly, these submissions concerned not only the allegedly wrong assessment of the facts by the lower court, but also, quite importantly, the procedural shortcomings having led to such wrong assessment. Nevertheless, despite having competence to review procedural defects committed by lower courts, the Supreme Court refused to take these submissions into account, relying irrelevantly and formalistically on its lack of competence to deal with questions of fact. In essence, the Supreme Court ignored all of the applicant's points of appeal and failed to detect and put right any of the procedural defects committed by the lower court.

59. In view of the above, the Court concludes that the interference with the applicant's electoral rights fell short of the standards required by Article 3 of Protocol No. 1. In particular, the applicant's disqualification from running for election was not based on sufficient and relevant evidence, the procedures of the electoral commission and the domestic courts did not afford the applicant sufficient guarantees against arbitrariness, and the domestic authorities' decisions were unreasoned and arbitrary.

60. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

61. The applicant complained under Article 6 of the Convention that the domestic judicial proceedings had been unfair and arbitrary. Article 6 of the Convention provides, in its relevant part, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

62. The Court notes that the proceedings in question involved the determination of the applicant's right to stand as a candidate in parliamentary elections. The dispute in issue therefore concerned only the applicant's political rights and did not have any bearing on his "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention (see *Pierre-Bloch v. France*, 21 October 1997, § 50, *Reports* 1997-VI; *Cherepkov v. Russia* (dec.), no. 51501/99, ECHR 2000-I; *Ždanoka v. Latvia* (dec.), no. 58278/00, 6 March 2003; and *Mutalibov v. Azerbaijan* (dec.),

no. 31799/03, 19 February 2004). Accordingly, this Convention provision does not apply to the proceedings complained of.

63. It follows that this complaint 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

65. The applicant claimed 200,000 Azerbaijani manats (AZN) in respect of pecuniary damage, including AZN 75,000 for the expenses borne during the electoral campaign and AZN 125,000 for loss of salary and various social allowances he would have received if elected as member of parliament.

66. The Government argued that there was no causal link between the alleged violation and the damages claimed. They further argued that the applicant had failed to support his claims with relevant documents.

67. The Court notes that the present application was about the applicant's right to stand for election. It cannot be assumed that, had the applicant's right not been infringed, he would necessarily have won the election in his constituency and become a member of parliament. Therefore, it cannot be speculated that the expenditure on his electoral campaign was a pecuniary loss or that the applicant would have received a salary and social allowances as a parliamentarian (see, *mutatis mutandis*, *The Georgian Labour Party v. Georgia*, no. 9103/04, § 150, 8 July 2008, and *Seyidzade v. Azerbaijan*, no. 37700/05, § 50, 3 December 2009). As no causal link has been established between the alleged pecuniary loss and the violation found, the Court dismisses the applicant's claim under this head.

2. Non-pecuniary damage

68. The applicant claimed AZN 500,000 in respect of non-pecuniary damage caused by the infringement of his electoral rights.

69. The Government argued that the amount claimed was excessive and requested the Court to award a reasonable amount on an equitable basis.

70. The Court considers that the applicant suffered non-pecuniary damage which cannot be compensated solely by the finding of the violation of Article 3 of Protocol No. 1. Ruling on an equitable basis, the Court awards him the sum of 7,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

71. The applicant did not submit a claim in respect of costs and expenses in the manner required by Rule 60 of the Rules of Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

72. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 3 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Azerbaijani manats at the rate applicable on the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President