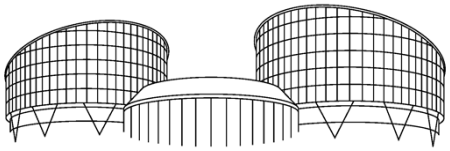

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VUGAR ALIYEV AND OTHERS v. AZERBAIJAN

(Applications nos. 24853/11, 28465/11, 28502/11 and 31970/11)

JUDGMENT

STRASBOURG

17 December 2015

This judgment is final. It may be subject to editorial revision.

In the case of Vugar Aliyev and Others v. Azerbaijan,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Faris Vehabović, *President,*
Khanlar Hajiyev,
Carlo Ranzoni, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 1 December 2015,

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

PROCEDURE

1. The case originated in four applications (nos. 24853/11, 28465/11, 28502/11 and 31970/11) 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 four Azerbaijani nationals, Mr Vugar Sabir oglu Aliyev, Mr Mohubbat Nariman oglu Jabbarov, Mr Vahid Fazil oglu Jafarov and Mr Razi Umudali oglu Abasov ("the applicants"), on various dates in 2011 (see Appendix).

2. The applicants were represented by Mr K. Bagirov, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. On 24 June 2013 (application no. 24853/11) and 30 August 2013 (applications nos. 28465/11, 28502/11 and 31970/11) the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants' dates of birth and places of residence are given in the Appendix.

5. The applicants were nominated by the Karabakh Election Bloc as candidates in the parliamentary elections of 7 November 2010 and applied for registration as candidates in various single-mandate electoral constituencies (see Appendix).

6. As the Electoral Code required that each nomination as a candidate for parliamentary elections be supported by a minimum of 450 voters, the applicants on various dates submitted sheets containing the signature of

more than 450 voters collected in support of their candidacy to their respective Constituency Electoral Commissions ("ConECs").

7. Before a decision by a ConEC on registering an applicant as a candidate, the signature sheets and the other registration documents submitted by the applicants had first to be verified by special working groups (*işçi qrupu*) established by the ConECs. None of the applicants were invited to participate in the examination of their sheets of signatures by the ConEC working groups.

8. The ConECs on various dates (see Appendix) issued decisions to refuse the applicants' requests for registration as a candidate, after the ConEC working groups had found that some of the voter signatures were invalid and that the remaining valid signatures had numbered fewer than 450. Signatures were found to be invalid on several grounds in each case, including: (a) falsified or repeat signatures ("signatures made repeatedly by the same individuals who had already signed sheets in the name of other individuals"); (b) incorrect personal information on voters (birth date, identity card number, and so on); (c) signatures by persons whose identity cards had expired; (d) signatures belonging to voters registered outside the constituency; (e) uncertified corrections in signature sheets; (f) withdrawal by the signature collector of his or her own signature certifying a list, invalidating the entire list of 50 signatures; and (g) unspecified "other grounds"; and so on.

9. None of the applicants were invited to the ConEC meetings where decisions to refuse their requests for registration were taken. In each case, despite the requirements of the law, all the relevant working group documents (expert opinions, minutes of the meeting, records and tables of results of the examination), as well as the ConEC decision itself, were only made available to the applicants after the decision to refuse their registration had been taken. In many cases, some of the documents were never made available to the applicants or were only made available to them as late as during the subsequent judicial proceedings in the Baku Court of Appeal.

10. Each applicant lodged a complaint with the Central Electoral Commission ("the CEC") against the ConEC decision. They made some or all of the following complaints:

(a) the findings of the ConEC working groups that such large numbers of signatures were invalid had been factually wrong, unsubstantiated, and arbitrary. Some of those findings of fact could easily have been rebutted by simply contacting the voter in question and confirming the authenticity of his or her signature. However, the ConECs had not taken any steps to corroborate their findings with any reliable evidence, such as contacting and questioning a number of voters randomly selected from the group whose signatures were suspected of being false. There were no specialist handwriting experts among the members of the ConEC working groups and

therefore their findings on the authenticity of some signatures had been highly subjective and arbitrary;

(b) the ConEC decisions to declare the signatures invalid had been arbitrary and in breach of the substantive and procedural requirements of the law. Relying on various provisions of the Electoral Code, the applicants argued that unintentional and rectifiable errors in the signature sheets could not serve as a reason to declare a voter signature invalid. If the errors found could be rectified by making the necessary corrections, the Electoral Code required the ConEC to notify the particular candidate of this within twenty-four hours and to provide him or her with an opportunity to make corrections in the documents before deciding on his or her registration as a candidate. The ConECs had, however, declared large numbers of signatures invalid in the case of each applicant on the basis of easily rectifiable errors, without informing the candidates in advance and giving them an opportunity to make necessary corrections;

(c) the procedure followed by the ConECs had also breached other requirements of the Electoral Code. Contrary to the requirements of Article 59.3, the applicants had not been informed in advance of the time and place of the examination of the signature sheets and their presence had not been ensured. Contrary to the requirements of Article 59.13 of the Electoral Code, the applicants had also not been provided with a copy of the minutes of the examination of the validity of the signature sheets at least twenty-four hours prior to the ConEC meeting dealing with their respective requests for registration. Subsequently, none of the applicants had been invited to the ConEC meetings, which had deprived them of the opportunity to argue for their position;

(d) some of the grounds for invalidation were not provided by law and therefore to declare signatures invalid on these grounds had been unlawful. For example, the Electoral Code did not allow the invalidation of a signature merely because the voter's identity document had recently expired;

(e) in some cases, various local public officials and police officers had applied undue pressure on voters or signature collectors to "withdraw" their signatures on the grounds that they had been tricked to sign in the candidate's favour "by deceptive means".

11. The CEC arranged for another examination of the signature sheets by members of its own working group. None of the applicants was invited to participate in that examination process. The CEC working group found in each case that large numbers of signatures were invalid and that the remaining valid signatures were below the minimum required by law.

12. In each case, the number of signatures found to be invalid by the CEC working group differed from the number given by the particular ConEC working group, with differences often being significant. Furthermore, in almost every case the grounds for declaring signatures

invalid given by the CEC had been different from the grounds given for the same signature sheets by the ConEC. In most cases a certain number of the total signatures were also declared invalid on the grounds that they had "appeared" to have been falsified, that is, "made by the same person in the name of other people" (*"ehtimal ki, eyni şəxs tərəfindən icra olunmuşdur"*).

13. On various dates, the CEC rejected the applicants' complaints (see Appendix). None of the applicants were invited to attend the CEC meeting dealing with their complaint. Moreover, in each case, all the relevant CEC documents (including the working group documents) were only made available to the applicants after the CEC decision had been taken, while in some cases such documents were never given to them at all, or were given as late as at the stage of judicial appeal proceedings.

14. On various dates, each of the applicants lodged an appeal with the Baku Court of Appeal against the decisions of the electoral commissions. They reiterated the complaints they had made before the CEC concerning the ConEC decisions and procedures. They also raised some or all of the following complaints concerning the CEC's decisions and procedures:

(a) contrary to the requirements of electoral law, the CEC had failed to notify them of its meetings and ensure their presence during the examination of the signature sheets and their complaints;

(b) contrary to the requirements of electoral law, some or all of the relevant CEC documents had not been made available to them, depriving them of the opportunity to mount an effective challenge to the CEC decisions;

(c) the decisions of the electoral commissions had been based on expert opinions that had contained nothing more than conjecture and speculation (for example, that the signatures had "appeared" ("*ehtimal ki*") to have been falsified), instead of properly established facts;

(d) in those cases where the applicants had submitted additional documents in support of their complaints, the CEC had ignored those submissions and failed to take them into account.

15. Relying on a number of provisions of domestic law, and directly on Article 3 of Protocol No. 1 to the Convention, the applicants claimed that their right to stand for election had been infringed.

16. On various dates (see Appendix), the Baku Court of Appeal dismissed appeals by the applicants, finding that their arguments were irrelevant or unsubstantiated and that there were no grounds for quashing the decisions of the CEC.

17. The applicants lodged cassation appeals with the Supreme Court, reiterating their previous complaints and arguing that the Baku Court of Appeal had not carried out a fair examination of the cases and had delivered unreasoned judgments.

18. On various dates (see Appendix), the Supreme Court dismissed the applicants' appeals as unsubstantiated, without examining their arguments

in detail, and found no grounds to doubt the findings of the electoral commissions or of the Baku Court of Appeal.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

19. The relevant domestic law and international documents concerning the rules and requirements for candidate registration, as well as observations made during the 2010 parliamentary elections in Azerbaijan, are summarised in *Tahirov v. Azerbaijan* (no. 31953/11, §§ 23-31, 11 June 2015).

THE LAW

I. JOINDER OF THE APPLICATIONS

20. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

II. THE GOVERNMENT'S REQUEST FOR THE APPLICATIONS TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

21. On 16 September 2014 the Government submitted unilateral declarations with a view to resolving the issues raised by the present applications. They further requested that the Court strike the applications out of the list of cases in accordance with Article 37 of the Convention.

22. The applicants disagreed with the terms of the unilateral declarations and requested the Court to continue its examination of the applications.

23. Having studied the terms of the Government's unilateral declarations, the Court considers – for the reasons stated in the *Tahirov* judgment (ibid., §§ 33-40), which are equally applicable to the present cases and from which the Court sees no reason to deviate – that the proposed declarations do not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the present applications.

24. Therefore, the Court refuses the Government's request for it to strike the applications out of its list of cases under Article 37 of the Convention, and will accordingly pursue its examination of the admissibility and merits of the cases.

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

25. The applicants complained under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention that their right to stand as a candidate in free elections had been violated because their requests for registration as candidates had been refused arbitrarily. The Court considers that this complaint falls to be examined only under Article 3 of Protocol No. 1 to the Convention and that no separate examination is necessary under Article 13 (compare *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 57, 8 April 2010). Article 3 of Protocol No. 1 to the Convention 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

26. 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

27. The applicants submitted that, contrary to the requirements of Article 59.3 of the Electoral Code, they had not been informed about the time of the ConEC working group meetings in advance and had not been given the opportunity to attend the meeting. Contrary to the requirements of Article 59.13 of the Electoral Code, the working group documents with the results of the examination of the signature sheets had also not been made available to them prior to the ConEC meeting dealing with their registration requests. Therefore, they had been deprived of the opportunity to provide the necessary explanations to working group members in order to dispel any doubts about the authenticity of disputed signatures and to correct any shortcomings found by the working group experts in the signature sheets.

28. Most importantly, in the applicants' view, the decisions of the electoral commissions to declare some of the signatures invalid were for various reasons substantively incorrect, unsubstantiated or arbitrary. Some of the working groups' factual findings had been wrong and could easily have been rebutted by simply contacting the voter in question and confirming the authenticity of his or her signature. In particular, it was not

clear how the commissions and their experts had concluded that a number of signatures had been falsified. There were no specialist handwriting experts among the working-group members and, therefore, their findings that large numbers of signatures were inauthentic had been highly subjective and arbitrary. However, the electoral commissions had relied on the working-group expert opinions without conducting any further investigation to conclusively establish the authenticity of the impugned signatures.

29. The applicants further noted that their appeals before the CEC and the domestic courts had not been examined in an impartial manner and that their arguments had not been addressed.

30. The Government submitted that the Contracting States enjoyed a wide margin of appreciation under Article 3 of Protocol No. 1 in establishing conditions for exercising the right to stand for election. The requirement to collect at least 450 signatures in support of a candidate had a legitimate aim of reducing the number of fringe candidates and avoiding "overcrowded" lists of registered candidates in order to prevent confusion among the electorate.

31. The Government argued that the domestic electoral law contained sufficient safeguards preventing the adoption of arbitrary decisions to refuse registration. Firstly, signature sheets were examined by working groups specially created by electoral commissions in accordance with Article 59.2 of the Electoral Code. These working groups consisted of experts and "specialists" of the relevant State authorities, most of whom were employees of the Centre of Forensic Science of the Ministry of Justice, the Ministry of the Interior, the State Register of Immovable Property and other agencies. Before taking up their duties as working group members, they had been trained by experts with the "appropriate knowledge and experience in the relevant field". Secondly, the electoral law required that a working group meeting had to be open to the public, that the nominated candidate be given the opportunity to attend if he or she wished to do so, and that the working group's documents on the results of examination of signature sheets be made available to the nominated candidate twenty-four hours before the electoral commission met to decide whether to register the candidate. Thirdly, the law required the working group to indicate the basis for invalidating signatures. Fourthly, the nominated candidate had a right to lodge appeals with the CEC and courts against a decision refusing the registration. All of the above combined to form a sufficient body of safeguards preventing arbitrary refusals to register candidates.

32. The Government submitted that in the present case both the ConEC and CEC working groups had found that large numbers of signatures collected in support of the applicants were invalid. Therefore, the decisions to refuse registration had been justified, owing to the applicants' failure to produce at least 450 valid signatures in their support. Both the Baku Court of Appeal and the Supreme Court had correctly concluded that there were

no reasons to doubt the findings of the electoral commissions' working groups.

2. The Court's assessment

33. The Court refers to the summaries of its case-law made in the *Tahirov* judgment (cited above, §§ 53-57), which are equally pertinent to the present applications.

34. For the purposes of the present complaint, the Court is prepared to accept the Government's submission that the requirement for collecting 450 supporting signatures for nomination as a candidate pursued the legitimate aim of reducing the number of fringe candidates.

35. It remains to be seen whether, in the present case, the procedures for monitoring compliance with this eligibility condition were conducted in a manner affording sufficient safeguards against an arbitrary decision.

36. Having regard to the material in the case files and the parties' submissions, the Court notes that the issues raised by the present complaint are essentially the same as those examined in the *Tahirov* judgment. The facts of both the *Tahirov* case and the present case are similar to a significant degree. The Court considers that the analysis and conclusions made in the *Tahirov* judgment also apply to the present case. In particular, the Court noted the existence of serious concerns regarding the impartiality of the electoral commissions, a lack of transparency in their actions, and various shortcomings in their procedure (ibid., §§ 60-61); a lack of clear and sufficient information about the professional qualifications and the criteria for the appointment of working-group experts charged with the task of examining signature sheets (ibid., §§ 63-64); failure by the electoral commissions and courts to take any further investigative steps to confirm the experts' opinions on the authenticity or otherwise of signatures (ibid., § 65); systematic failure by the electoral commissions to abide by a number of statutory safeguards designed to protect nominated candidates from arbitrary decisions (ibid., §§ 66-68 and 69); failure by the electoral commissions and courts to take into account the relevant and substantial evidence submitted by the candidate in an attempt to challenge the findings of the working-group experts on the authenticity or otherwise of signatures (ibid., § 69); and the failure by the domestic courts to deal with appeals in an appropriate manner (ibid., § 70). Having regard to the above, the Court found that, in practice, the applicant in the *Tahirov* judgment had not been afforded sufficient safeguards to prevent an arbitrary decision to refuse his registration as a candidate.

37. Having regard to the facts of the present case and their clear similarity to those of the *Tahirov* case on all relevant and crucial points, the Court sees no particular circumstances that could compel it to deviate from its findings in that judgment, and finds that in the present case each

applicant's right to stand as a candidate was breached for the same reasons as those outlined above.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. Each applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government noted that the claim was excessive and considered that EUR 7,500 would be a reasonable award in respect of non-pecuniary damage.

42. Ruling on an equitable basis, the Court awards each applicant the sum of EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

43. Each applicant also claimed EUR 1,600 for legal fees incurred before the domestic courts and before the Court.

44. The Government submitted that, given the fact that all four applicants were represented by the same lawyer, they should be awarded EUR 1,600 jointly.

45. The Court notes that all the applicants were represented by the same lawyer, Mr K. Bagirov, in the proceedings before the Court and that substantial parts of the lawyer's submissions in relations to the different applications were similar. Having regard to that circumstance, as well as to the documents in its possession and to its case-law, the Court considers it reasonable to award a total sum of EUR 4,000 to all four applicants jointly, covering costs under all heads, plus any tax that may be chargeable to the applicants.

C. Default interest

46. The Court considers it appropriate that the default interest rate 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. *Decides* to join the applications;

2. *Rejects* the Government's request to strike the applications out of the Court's list of cases;

3. *Declares* the applications admissible;

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

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into Azerbaijani new manats at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to each applicant, in respect of non-pecuniary damage;
      (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicants, to all four applicants jointly, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 December 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Faris Vehabović
President

APPENDIX

No.	Application no.	Lodged on	Applicant name year of birth place of residence	Represented by	Electoral constituency and the nominating body	Electoral commissions' decisions	Domestic courts' decisions
1	24853/11	08/04/2011	**Vugar ALIYEV** 1972 Baku	Khalid BAĞIROV	Terter Electoral Constituency No. 95, nominated by the Karabakh Election Bloc	ConEC decision of 06/10/2010; CEC decision of 20/10/2010	Baku Court of Appeal judgment of 26/10/2010; Supreme Court decision of 05/11/2010
2	28465/11	26/04/2011	**Mohubbat JABBAROV** 1958 Beylagan	Khalid BAGIROV	Beylagan Electoral Constituency No. 81, nominated by the Karabakh Election Bloc	ConEC decision of 03/10/2010; CEC decision of 12/10/2010	Baku Court of Appeal judgment of 19/10/2010; Supreme Court decision of 28/10/2010
3	28502/11	26/04/2011	**Vahid JAFAROV** 1955 Duyarli, Shamkir District	Khalid BAGIROV	Shamkir Villages Electoral Constituency No. 99, nominated by the Karabakh Election Bloc	ConEC decision of 12/10/2010; CEC decision of 16/10/2010	Baku Court of Appeal judgment of 05/11/2010; Supreme Court decision of 11/11/2010
4	31970/11	07/05/2011	**Razi ABASOV** 1979 Javad, Sabirabad District	Khalid BAGIROV	Sabirabad First Electoral Constituency No. 63, nominated by the Karabakh Election Bloc	ConEC decision of 01/10/2010; CEC decision of 12/10/2010	Baku Court of Appeal judgment of 29/10/2010; Supreme Court decision of 03/11/2010 (sent to applicant on 10/11/2010)