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COUNCIL OF EUROPE
1949 - 2024
CONSEIL DE L'EUROPE

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Date: 29/10/2024

DH-DD(2024)1240

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

Communication from an NGO (Free Voices Collective) (17/10/2024) concerning the NAMAT ALIYEV group of cases v. Azerbaijan (Application No. 18705/06).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1514e réunion (décembre 2024) (DH)

Communication d'une ONG (Free Voices Collective) (17/10/2024) relative au groupe d'affaires NAMAT ALIYEV c. Azerbaïdjan (requête n° 18705/06) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DH-DD(2024)1240: Rule 9.2 Communication from an NGO in NAMAT ALIYEV v. Azerbaijan.
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FREE VOICES COLLECTIVE

DGI
17 OCT. 2024
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex, France
October 2024

COMMUNICATION
In accordance with RULE 9.2 of the Rules of the Committee of Ministers regarding the supervision of the execution of judgment Namat Aliyev v. Azerbaijan (18705/06)

1. This communication is submitted by the non-profit and non-governmental organization, Free Voices Collective to the Committee of Ministers of the Council of Europe concerning the implementation of the Namat Aliyev v. Azerbaijan case (application no. 18705/06, leading case, enhanced procedure) in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

2. Free Voices Collective is an EU-based non-profit, and non-governmental organization established by Azerbaijani human rights defenders, journalists, and lawyers in Germany. The FVC's mission is to build a democratic environment in Azerbaijan by advocating for the rights and protections of journalists, activists, and NGOs, ensuring a society where civil freedoms are upheld, and civil society can thrive without fear of persecution.

I. Introduction

3. The group consists of **25** judgments that cover **72** applicants whose right to free elections were violated in the 2005 and 2010 Parliamentary Elections. In most of the cases, the Court found that the electoral commissions and the domestic courts, including the

Constitutional Court, 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/canceled the registration as candidates or the election of the applicants.

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 canceling the applicants' registration as candidates or their election; the applicants' lack of participation in the hearings before these commissions.

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.

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.

4. However, the cases on violation of electoral rights are not limited to those enlisted in this group and to the elections of 2005 and 2010: a large number of complaints were brought before the Court on alleged violations of Article 3 of Protocol No. 1 and Article 13 of the Convention that are similar to the cases in this group. None of them were examined on the merits, and the cases were struck off the list by friendly settlements or unilateral declarations.[1]

[1] Only two applications, one from each parliamentary election, were struck out of the list of cases on the ground that the applicants didn't wish to pursue the applications.

5. The Court decided to strike **49** applications on the 2015 Parliamentary Elections[2], **27** applications on the 2020 Parliamentary Elections out of its list of cases in accordance with Article 37 § 1 or 39 of the Convention[3].
6. Therefore, this communication informs the CM not only about the cases in this group but also similar cases that are related to 2015 and 2020. The updates in this submission are mostly based on the 2020 and 2024 Parliamentary Elections results.

II. Individual Measures

7. As for *restitutio in integrum*, since it is impossible to ascertain whether the applicants would have been elected as MPs if their rights had not been violated, restoring the situation that existed before the violations is also impossible. However, the relevant authorities should have investigated those violations and taken relevant measures against those officials who had roles in committing violations. The State Party satisfied itself only by making some tokenistic changes. Despite the fact that after every election some members from lower commissions are replaced or dismissed by the CEC (Central Election Commission), the composition of the commissions is largely maintained.

8. As for *just satisfaction*, according to the Government's last Action Report submitted on 14 October 2024, the just satisfaction to the applicants in this group, *except Samadbayli and Others v. Azerbaijan (36821/11)*, has been fully paid.[4]

9. Though the Court's decisions to strike applications out of its list of cases are monitored separately from this group, it is crucial to bring the recent situation regarding payments to the attention of the Committee of Ministers (CM), as the supervisory body responsible for overseeing the implementation of all decisions before it. There are significant delays in payment of compensations in respect of all cases including the decisions adopted in 2024 on violations of Article 3 Protocol No. 1. On 24 January 2024, the Parliamentary Assembly of the Council of Europe resolved not to ratify the credentials of the Azerbaijani delegation on the ground that the country has "not fulfilled major commitments"

[2] The figures have been calculated based on five decisions, in respect of the 2015 Parliamentary Elections, covering 27 applicants, which were published on HUDOC, available at https://hudoc.echr.coe.int/?i=001-228274; https://hudoc.echr.coe.int/?i=001-213031; https://hudoc.echr.coe.int/?i=001-213030; https://hudoc.echr.coe.int/?i=001-215273.
[3] The figures have been calculated based on five decisions, in respect of the 2020 Parliamentary Elections, covering 27 applicants, which were published on HUDOC, available at https://hudoc.echr.coe.int/?i=001-233541; https://hudoc.echr.coe.int/?i=001-233540; https://hudoc.echr.coe.int/?i=001-233268; https://hudoc.echr.coe.int/?i=001-233267; https://hudoc.echr.coe.int/?i=001-233207.
[4] Action Plan/Report of the government of 14 October 2024, §32 and §37, available at https://rm.coe.int/0900001680b1fb83

stemming from its joining the Council of Europe.[5] Since that date the compensation to the significant number of applicants have not been paid. In response to calls by the applicants, the office of the Government Agent of the Republic of Azerbaijan before the European Court of Human Rights informed them that they did not know when the payments would be resumed to applicants. This stance by the Government is believed to be a response to the PACE's resolution.

III. General Measures

10. Findings of the Court that have led to the violation of electoral rights of the applicants that were nominees or candidates in the 2005 and 2010 Parliamentary elections persisted in all the subsequent elections even though the trend was towards deterioration in every election despite calls from the CM to implement the relevant judgments and despite negative opinions and recommendations from international organizations, in particular from OSCE/ODIHR to address the issues.[6] Two state bodies have again been in the spotlight during the election period of the parliamentary elections: the ***Election commissions*** *and* ***Domestic courts***. Therefore, the submission mostly focuses on the two institutions.

3.1. Election Commissions

11. The fact that the election commissions play a crucial role in the administration of elections, as well as being a specialized institution in the election-related decision-making process, makes them one of the two institutions responsible for violations of the right to free elections. Although there are numerous shortcomings in the activities of the election commissions, arising from both legislation and practice, the primary deficiencies related to violations of Article 1 of Protocol No. 1 of the Convention stem from the following factors:
    - The composition of the commissions;
    - The decision-making process in the commissions;

[5] PACE resolves not to ratify the credentials of Azerbaijan's parliamentary delegation, CoE website, available at https://pace.coe.int/en/news/9358/pace-resolves-not-to-ratify-the-credentials-of-azerbaijan-s-parliamentary-delegation-citing-a-failure-to-fulfil-major-commitments-

[6] OSCE/ODIHR, in each election when it recruited an observation mission to Azerbaijan, reiterates that its priority recommendations are not implemented at all by Azerbaijan. The last document adopted by the organization is a preliminary conclusion that were issued together with OSCE/PA is related to 1 September 2024 Parliamentary Elections, available at https://www.osce.org/files/f/documents/f/4/575497.pdf

- The establishment and functioning of Working Groups and Expert Groups under the commissions.

3.1.1. Composition of Election Commissions

12. The elections are administered by three-tiered election commissions that are appointed for a five-year term - the Central Election Commission (CEC), Constituency Election Commissions (ConECs), and Precinct Election Commissions (PECs).[7] The CEC that is appointed by the parliament appoints ConECs that appoint, in turn, PECs within the boundaries in their jurisdiction. The members of the election commissions are nominated in equal shares by three parliamentary groups: the political party which has the majority, the 9 parties representing the minority, and the 37 non-partisan MPs jointly; each group nominates six CEC members, three ConEC members, and two PEC members.[8] In accordance with the law, the majority party YAP nominates the chairpersons of all election commissions at all levels. The Court is of the opinion - supported by the OSCE/ODIHR - that the lack of genuine political differentiation between the three parliamentary groups undermines the independence and the impartiality of the election administration and the integrity of the process.[9] The absence of real political diversity between the parliamentary groups are also proved by the transcripts of the Plenary Sessions of the Parliament.[10] For instance, in 2024, **91** laws were adopted in the parliamentary sessions, only **18** out of them faced votes cast against proposals. Among those 18 laws:
    - **13** laws had just **1** person vote against them.
    - **3** laws had **2** people vote against them.
    - **2** laws had **3** people vote against them.

13. This fact was also mentioned by the OSCE/ODIHR EOM to Azerbaijan, referring to the last parliamentary sessions of 2023, having observed the Presidential Election of 7 February 2024 noting that in all parliamentary votes in the last session of parliament for which records are available, there were no votes cast against government proposals.[11] Accordingly, impartiality and independence of representatives of the parliamentary groups who are supporting the same policy in almost all aspects raise doubts which reflect itself in the decision making process that is elaborated below.

[7] The Election Code of Azerbaijan Republic, Article 18.
[8] Ibid, Articles 24, 30 and 36
[9] See, ECtHR, Gahramanli and Others v. Azerbaijan, Application No. 36503/11, judgment, 8 October 2015, § 78
[10] Transcripts of parliamentary sessions, available https://www.meclis.gov.az/cat-cari.php?cat=84&lang=az
[11] OSCE/ODIHR IEOM, Early Presidential Election, 7 February 2024, Interim Report (29 December 2023 – 19 January 2024), page 3

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14. OSCE/ODIHR furthermore questioned the independence of PECs, the lowest commissions, noting that they are overwhelmingly composed of public employees and chaired by their supervisors, for example, schoolteachers being PEC members with their director serving as PEC Chair.[12]

3.1.2. Decision-Making Process in the Commissions

15. The cases in the group are divided into two categories: failure of the relevant domestic authorities to register nominees as candidates and to address election day irregularities.[13]

16. According to the Election Code, nominees have to submit, among other notarized documents, at least **450** collected supporting signatures of voters, income and asset declaration.[14]In the 2024 Parliamentary Elections, the vast majority of complaints to the commissions, on rejection of candidate registration, were related to the requirements on these three documents. Prospective candidates were denied registration mainly due to insufficient number of valid signatures and inaccurate income and asset declarations, without any opportunity to correct mistakes in their applications.[15] The relevant commissions' methodology on examining the signature sheets is unclear. They declare some signatures invalid, but the nominees do not know which signatures are exactly invalid and ConECs do not give any explanation about that. Appeals to the CEC against these types of decisions do not lead to significant changes.[16] This way gives the relevant commissions power to deny registration of any candidate in an arbitrary manner.

17. Subtle mistakes in income and asset declaration are one of the main excuses that the relevant commissions refer to deny nominees to be registered. Not only failure to submit income and asset declaration, but also technical mistakes in the declarations that can be corrected easily can be the reason for denying registration. For example, in the 2024 Parliamentary Elections, the Musavat party nominee Osman Kazimov submitted his asset declaration but there were slight differences between the measurement of the property

[12] OSCE/ODIHR, IEOM, Early Parliamentary Elections, 7 September 2024, Preliminary Findings, page 9
[13] The case of Fuad Gahramanli and others v. Azerbaijan in the group is related to violation of Article 3 of Protocol No. 1 in respect of registration of candidates.
[14] Election Code, Article 58, 147.
[15] OSCE/ODIHR, IEOM, Early Parliamentary Elections, 7 September 2024, Preliminary Findings, page 10
[16] "When the CEC decisions alleged fraudulent signatures, the rejected candidates were not informed which exact signatures were deemed incorrect and how that was established", OSCE/ODIHR, IEOM, Early Parliamentary Elections, 7 September 2024, Preliminary Findings, page 18.

declared by the applicant and that submitted by the relevant state institution.[17] This was accepted as a reason to deny his registration whereas it was a technical mistake that can be corrected by the nominee once he was informed. Another Musavat Party nominee Dunyakhanim Jarullayeva was denied to be registered on the ground that decades ago there was a car - no longer in existence - in her property whereas she was registered as a candidate in previous parliamentary elections with the same property records.[18] This was the failure of the authorities not to remove that asset from her list of properties due to its non-existence but the nominee was held responsible by the relevant commissions.[19]

18. The Election Code reads that if the ConECs find mistakes or errors that can be corrected by the nominees, it shall notify the nominee to correct the mistake within the 5-day examination period.[20] However, the absence of a clear definition of what mistakes can be corrected gives the commissions wide discretionary power.[21] In parallel, absence of effective procedural safeguards against the arbitrary approach of the commissions result in refusal of certain nominees to be registered as candidates that are at odds with Article 3 Protocol 1.

19. After the complainants submit the required documents to the commissions, the latter, in turn, send a request to the relevant state body to verify the accuracy of the property declaration.[22] In response to this request, even a minor discrepancy between the information provided by the relevant institutions and the documents submitted by the applicants is considered by the commissions as grounds for refusing to register the candidate. Refusal to register applicants due to incorrect information or technical errors, which could be clarified in coordination with state institutions, is a flawed practice that is of a punitive nature, which constitutes a disproportionate interference with individuals' right to stand for elections.

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[17] See the decision of the CEC on the complaint of Osman Kazimov. The denial of registration is reasoned that the applicant has not given accurate information about his property. The decision is available at www.msk.gov.az/uploads/plugins/pdf/datafiles/az_FILE_1DA8A9-EE2127-967CBE-C971EF-04E9E9-A69A21.pdf

[18] See the decision of the CEC on the complaint of Dunyakhanim Jarullayeva, www.msk.gov.az/uploads/plugins/pdf/datafiles/az_FILE_9EBBDB-972EDC-C09B9C-8AC8C6-2984B0-989F6A.pdf

[19] Similar cases can be found on the relevant section of the CEC's website available at https://www.msk.gov.az/az/elections/view/1325.

[20] The Election Code, Article 53.7.

[21] OSCE/ODIHR IEOM to Azerbaijan, in its preliminary findings on 1 September 2024 Parliamentary Elections, notes that, By law, ConECs may deny registration to applicants in case of intentional mistakes in their applications, without offering them an opportunity to correct the mistakes. However, neither the law nor regulations define intentional and unintentional mistakes, granting ConECs discretionary powers to deny registration. Page 10, available at https://www.osce.org/files/f/documents/f/4/575497.pdf

[22] Ibid, Article 59.2

20. If the state institutions submit any information with mistakes, even technical ones, it will be regarded by the election commissions as reliable so the decision will be issued against the complainant. If the complainant proves that the information of the relevant state institution contains mistakes, the commissions suggest they challenge it against the state institutions before the administrative courts that may take even years to be examined. Absence of legal provisions for prompt examination by the administrative courts of the complaints against state institutions on electoral matters put the nominees at a disadvantaged position vis-a-vis the election commissions and state institutions.

21. Although the decisions of the election commissions are made in collegial meetings, these meetings are entirely formal in nature. While the participation of complainants is ensured in some cases, the meetings are not adversarial, and no examination is carried out during the meetings. The draft decisions are prepared in advance, making the meetings of the relevant commissions largely symbolic, serving only to formalize these predetermined decisions.[23]

22. While complainants who participated in the meetings were allowed to speak, their statements had no real impact on the opinions of the commission members. For instance, in the meetings of the CEC during the period of the Parliamentary Elections of 1 September 2024, many participants, in their speeches during CEC meetings, raised some questions requiring clarification. They argued that the procedural violations they faced in the proceedings before ConECs were mainly as follows: they were notified of the relevant commission meeting only a few hours beforehand, leaving no time to prepare for that; the failure of the relevant ConECs to ensure the participation of complainants in the examination process conducted by working groups or expert groups; not being informed about which signatures were exactly deemed invalid; and not being given an opportunity to correct rectifiable mistakes. However, their arguments typically went unanswered, or a commission member made a general response, claiming that these rights were guaranteed.[24] The CEC chairman does not acknowledge the complainants' right to challenge such responses from commission members, nor do they deem it necessary to hear the lower commissions representatives in determining the facts.

[23] OSCE/ODIHR, IEOM, Early Parliamentary Elections, 7 September 2024, Preliminary Findings, page 18

[24] "Even though the complainants were invited to present oral arguments at the CEC sessions, at the sessions observed by the ODIHR EOM, the CEC never considered their arguments and always approved the draft decision prepared in advance, in all but one case unanimously. Most complainants did not have the opportunity to present additional evidence, or to review the examination protocols on which the CEC had based its decisions" (Excerpt from findings of OSCE/ODIHR mentioned above)."

23. There are no disagreements during commission meetings, and the voting process is purely symbolic, lasting only a few seconds, with all decisions made unanimously. As a result, the CEC meetings act as a notary, merely endorsing predetermined decisions regarding potential candidates.

24. The hearings on complaints regarding election day violations and election results are essentially the same as those concerning complaints about the refusal of candidate registration.

3.1.3. *Working Groups and Expert Groups*

25. Working groups are established under the relevant election commissions to verify the accuracy of signatures and other information on signature sheets when considering candidate registration.[25] Also, expert groups are established under the ConECs and the CEC to investigate complaints regarding actions (or inaction) and decisions that violate citizens' electoral rights.[26] While the Working Group under the CEC includes both CEC members and experts from various state institutions, the Expert Group is composed solely of the CEC members and representatives of the CEC Secretariat.

26. Although complainants participate in the meetings of the election commissions, the meetings of the Working Groups are closed to them. Complainants are only able to review the conclusions reached by the Working Group, which are general in nature, and their participation in the examination process is not allowed. Additionally, the methodology used by the Working Groups to verify the accuracy of signatures and documents, as well as the professionalism of the group members—particularly whether they have the skills to check the accuracy of signatures—remains questionable.

27. Moreover, the fact that the majority of the working group members are experts from executive authorities raises concerns about their independence and impartiality. Without safeguards to ensure their independence, it is normally expected that experts invited from various government ministries that are governed by the ruling party, would decide in favor of the nominees or candidates of the ruling party, or against the representatives of the opposition.[27]

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[25] Decision of the CEC on establishment of the Working Group under the CEC, available at www.msk.gov.az/uploads/plugins/pdf/datafiles/az_FILE_FF1936-2B958C-731E59-14EE45-144959-F21675.pdf

[26] Decision of the CEC on establishment of the Expert Group under the CEC, available at www.msk.gov.az/uploads/plugins/pdf/datafiles/az_FILE_1DD3B1-91C93B-37ACE9-EE4D9A-DB6B75-1D3EAE.pdf

[27] According to the CEC, the Working Group that was established during the election period of the 1 September 2024 Parliamentary Elections includes experts from the Forensic Expertise Center of the Ministry of Justice, experts from

28. As for expert groups, unlike working groups, they consist entirely of the CEC members and representatives of the CEC Secretariat. This means that the individuals in the expert groups first participate in the investigation and provide their opinion, and then the same individuals vote on that opinion as members of the CEC. The involvement of the same people in both roles undermines the effectiveness of the expert groups, rendering them actually illusory. To ensure the objectivity of expert groups, it would be more appropriate for them to be composed of independent experts both in law and in practice.

29. Complaints on election violations are examined and assessed by the expert groups, with the ConECs and CEC making decisions based on their findings. However, the time allotted for the examination of each complaint is so limited that it seems practically impossible to conduct a thorough examination within that time frame. This issue is particularly evident when the respective election commissions consider complaints with requests that election results are annulled. For instance, on 25 February 2020, the CEC addressed **26** complaints against the preliminary results of the 9 February 2020 Parliamentary Elections.[28] Similarly, for the 1 September 2024 parliamentary elections, the CEC decided on **25** complaints on 4-5 September.[29] A review of the submitted complaints reveals that each complainant provided a substantial number of video recordings and documents for investigation. Even the official website of the CEC indicates that many of these complaints were submitted the same day as they were taken into examination. The current resources of the CEC are insufficient to effectively investigate such a high volume of complaints within a single working day. Consequently, an examination of the decisions shows that their texts are standard, repetitive, and differ only in the names of the individuals involved, dates, subjects, etc.

30. Accordingly, the Court's findings on irregularities in respect of election commissions, in particular the significant ones - 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 canceling

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the Ministry of Internal Affairs of the Republic of Azerbaijan, the Ministry of Finance, the State Tax Service under the Ministry of Economy and the State Service for Property Issues, and experts from the Accounting Chamber of the Republic of Azerbaijan. One of the members of the Central Election Commission with decisive voting rights is appointed head of that group.

[28] Opinions of the Expert Group and decisions of the CEC on 9 February 2020 Parliamentary Elections, available at https://www.msk.gov.az/az/elections/view/1086

[29] Opinions of the Expert Group and decisions of the CEC on 1 September 2024 Parliamentary Elections, available at https://www.msk.gov.az/az/elections/view/1325

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the applicants' registration as candidates or their election; the applicants' lack of participation in the hearings before these commissions - persist and even worsen with each election.

3.2. Domestic Courts

31. By law, the complainants can challenge the CEC decisions before the Court of Appeals.[30] Claims on the protection of electoral rights must be considered by the administrative courts within three days if there are fewer than 30 days remaining before the election day. If a claim is received with less than 30 days until the election day, it must be considered within two days, but no later than the election day. Claims received on the election day or afterward must be heard immediately, and a decision should be made on the merits.[31] OSCE/ODIHR notes that such short deadlines are in line with international good practices.[32] However, the complaints sent by post to the court of appeals may be delayed, though a 3-day period starts to run from the day the court receives the complaint. Sending the complaints to the wrong jurisdiction may also lead to the case being heard later than prescribed by law. Furthermore, the proceedings before the Supreme Court may take more time than 3 days. Such delays prolong the proceedings before the domestic courts, even may continue after the Constitutional Court delivers its final decision on the results of elections, which makes proceedings before the domestic courts ineffective that are at odds with Article 13 of the Convention.

32. As for hearing the complaints by the courts on the merits, the court of appeals, in practice, don't conduct any investigation, the petitions by the complainants are ignored, first hand witnesses - observers, voters and other persons who have significant information for a fair investigation of the case are not invited to the hearings and the decisions are made without reasoning.[33]

33. While the complainants can launch proceedings before the relevant commissions and the court of appeals without representation by the lawyers who are the members of the bar association, it is not the case for the proceedings before the Supreme Court. In 2017, Amendments to the relevant laws limited legal representation of the complainants to

[30] The Election Code, Article 112.3
[31] Administrative Procedural Code of Azerbaijan Republic, Article 130.2.
[32] OSCE/ODIHR, IEOM, Early Parliamentary Elections, 7 September 2024, Preliminary Findings, Election Dispute Resolution, page 17.
[33] Ibid, page 18

lawyers who are members of the Bar Association in all court cases.[34] Free legal aid is provided by law in cases where representation by a lawyer is mandatory under the law, However, there is no specific legislation on legal aid, and no clear criteria for eligibility. The allocation of legal aid is decided by a judge and takes the form of a court appointed defense counsel.[35] Given the legal costs are not affordable for all complainants, such requirements undermine the right to defense of some complainants.

34. One of the concerning issues on domestic courts that the Court criticised in its judgment of *Gahramanly and others v. Azerbaijan,* is the fact that the Constitutional Court has the competence, by law, to approve the country-wide election results while the applicants' appeal before the Supreme Court is pending; this deprives the remedy available to the applicants of all prospects of success and renders the entire electoral complaints system futile and illusory.[36]
35. The Government, in its Action Report of 14 October 2024, submits that this practice was reviewed and duly taken into consideration by the Constitutional Court and as to the Government's knowledge no longer persists.[37] It referred, in general, to the 2020 and 2024 parliamentary elections, without showing any proof whereas the same troubling deficiency still remains unchanged and unaddressed in both the 2020 and 2024 Parliamentary Elections. On the other hand, the Court found that this flaw applies not only in practice but also that the law does not prevent the Constitutional Court from approving the results before the cases pending before the Supreme Court are decided.[38] Accordingly, even assuming that the Government's claim that the practice has been put to an end is true, both the practice and the law must be changed.

3.3. Non-Compliance and Its Impact on Public Interest

[34] Report of Commissioner for Human Rights of the CoE following her visit to Azerbaijan, 8-17 July 2019, §56 available at https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108
[35] Ibid, §73
[36] See, ECtHR, Gahramanli and Others v. Azerbaijan, Application No. 36503/11, judgment, 8 October 2015, §§86-87.
[37] Action Plan/Report of the government of 14 October 2024, §32 and §37, available at https://rm.coe.int/0900001680b1fb83
[38] The Court in, Gahramanli and Others v. Azerbaijan noted: "The upshot of this situation was that the domestic legal system allowed the Constitutional Court to finalise the entire election process, including the election results, while the applicants were still in the process of seeking redress for alleged breaches of their electoral rights in their constituency through the existing appeal system – which was specifically designed for dealing with electoral disputes."

36. The non-compliance with the rulings in the Namat Aliyev group (and OSCE/ODIHR recommendations) are one of the crucial factors that have led to the public interest in elections significantly decreasing. This can be observed even in the official statistics that were produced by the state institutions: according to figures published by the CEC, turnout in the 2015 parliamentary elections was **55.4%**, while **46.84%** in 2020, **37.24%** in 2024.[39]

37. Not only the public as voters, but also political parties and individual potential candidates as vital elements of elections do not tend effectively to join the competition.[40] Therefore, the number of independent candidates, particularly those who are critical towards the government, plummeted every next election. In 2020, **1314** candidates contested the elections[41] while in 2024, this figure decreased down to **990** candidates[42].

38. Lack of interest in the elections can also be discerned from the complaints to the domestic courts on violation of electoral rights. According to the Constitutional Court's decision on post-election day complaints, in **2020**, **151** complaints were lodged with the court of appeals, out of which **78** cassation appeals against the lower courts were recorded[43]. At the same time, in **2024**, **47** complaints were filed with the court of appeals, out of which, **16** cases were brought to the Supreme Court[44]. It is noteworthy that none of the complaints was successful in the domestic courts, which is another indication of the ineffectiveness of domestic courts in the context of election complaints.

IV. Conclusion and Recommendations

[39] All results and turnout published by the CEC by its Information Centre, which are available at https://www.infocenter.gov.az

[40] While 25 out of 26 parties decided to participate in the 2024 Parliamentary Elections, names of some parties' leaders were not in the list of candidates. For instance, Musavat Party, Hope Party, Democratic Party, Right and Justice Party, etc.

[41] CEC chairpersons: "1314 candidates will contest the elections', state agency "Azertag" available at https://azertag.az/xeber/milli_meclise_sechkilerde_1314_deputatliga_namized_mubarize_aparacaq-1408423

[42] "The voters enjoy their constitutional rights", 1 September 2024, state agency "Azertag", available at https://azertag.az/xeber/sechiciler_konstitusion_huquqlarindan_istifade_edirler___azertac_xankendiden_xeber_verir__foto_video-3158374

[43] The decision of the Supreme Court on verifying and approval of the 9 February 2020 Parliamentary Elections. In the decision, responses by the courts to the enquiries by the Constitutional Court on election disputes before them are given place. Available at https://www.constcourt.gov.az/az/decision/1110

[44] The decision of the Supreme Court on verifying and approval of the 1 September 2024 Parliamentary Elections. Available at https://www.constcourt.gov.az/az/decision/1438

39. Three parliamentary elections were held since this group of cases is under examination by the Committee of Ministers. Nevertheless, no positive step was taken by the State Party addressing the shortcomings revealed by the Court, as well as OSCE/ODIHR missions. The Government has only implemented individual measures by ensuring payment of just satisfaction for the applicants who brought cases before the Court in relation to the cases in this group. As for the decisions concerning the 2020 Parliamentary elections, no significant action was taken on individual and general measures.

40. Having regard to the above-mentioned issues, we call on the Committee of Ministers to urge the authorities to take measures in order to fully implement the judgments in this group:

- The election commissions should be re-established on the basis of genuine political differentiation that comprise of all political groups including those which have dissenting views and critical attitudes towards the Government;

- Working groups and expert groups should be formed from independent experts in order to protect them from the external influence;

- Approval of the results of the whole election by the Constitutional Court should be suspended, by law, until all the hearings on complaints in which the results of the elections are challenged are finalized before the Supreme Court;

- The authorities should take measures to ensure that the relevant commissions and domestic courts apply the principles established in this group judgments;

- The OSCE/ODIHR recommendations should be complied with, the election code and the election practice should be revised based on these recommendations, in particular:[45]
  - the Election Code should be amended to revise the composition of election commissions at all levels with the aim of enhancing the impartiality of election commissions and public confidence in their work;
  - the CEC and ConECs' criteria for denial of candidate registration should be clear and reasonable, the candidates should be given an opportunity to correct omissions or other technical mistakes in registration documents;

[45] The OSCE/ODIHR has not yet issued its final report on the 2024 Parliamentary Elections, and the recommendations from the 2020 Parliamentary Elections remain unaddressed by the authorities and still await implementation.

DH-DD(2024)1240: Rule 9.2 Communication from an NGO in NAMAT ALIYEV v. Azerbaijan.
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- decisions on all election-related complaints should be based on a reasoned decision, all parties involved should have an effective opportunity to be present during hearings;
- in cases of irregularities during the count, a thorough and impartial investigation of election-day materials should be conducted, including PEC voting results protocols, signed voter lists, ballots and web camera footage, where available.

Nijat Mammadbayli,
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Co-founder