**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*Review of the complaint by H.A.Nuri concerning conformity of the decision*

*of the Civil Collegium of the Supreme Court of 26 September 2005*

*to the Constitution and laws of the Republic of Azerbaijan*

**21 October, 2005 Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan in attendance of:

Judges F.Abdullayev (President Judge), F.Babayev, B.Qaribov, R.Qvaladze, E.Mammadov, I.Najafov, S.Salmanova (Reporting Judge) and A.Sultanov and Court Secretary I.Ismayilov,

in presence of the complainant, his representative Ch.Quliyev and the respondent, represented Judge R.Mammadov of the Supreme Court of the Republic of Azerbaijan and Q.Orujov of the Central Election Commission of the Republic of Azerbaijan

based on a complaint lodged by Hajiagha Nuri,

has examined in the open session under the special constitutional procedure in accordance with Article 130 Section V of the Constitution of the Republic of Azerbaijan the constitutional case of conformity of the decision of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan of 26 September 2005 to the Constitution and laws of the Republic of Azerbaijan.

Having heard a report of Judge Salmanova and statements of the complainant and the representatives of both parties, studied materials and deliberated the case, the Plenum of the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

A candidacy of Hajiagha Nuri for the elections to the National Assembly of the Republic of Azerbaijan of the third convocation, nominated by the Pro-Azerbaijani Forces (Azerbaijanchi Quvveler) alliance of political parties, was registered by the resolution No.29 of the Election Commission of the Third Sabunchu Constituency 28 on 1 September 2005.

On 14 September 2005 the Central Election Commission the Republic of Azerbaijan henceforth “CEC”) resolved (resolution No. 28/132) to abrogate the above resolution.

On 19 September 2005 the Civil Collegium of the Court of Appeals of the Republic of Azerbaijan ruled to dismiss a claim of Nuri in connection with the pertinent CEC resolution.

On 26 September 2005 the Civil Collegium of the Supreme Court of the Republic of Azerbaijan ruled to:

dismiss a cassation complaint by Nuri; and

uphold the judgement of the Civil Collegium of the Court of Appeals of the Republic of Azerbaijan.

In his complaint addressed to the Constitutional Court of the Republic of Azerbaijan, Nuri claimed that despite his candidacy being put forward the political alliance of Pro-Azerbaijani Forces and him not being a cleric, the above court decisions infringed on his passive electoral right by focusing on his membership in Islam Party, which is not officially registered. Nuri further claimed that incorrect application of the provisions of Articles 53.4 and 54.6 of the Electoral Code led to violation of his rights under Articles 54, 55 and 56 of the Constitutional Court of the Republic of Azerbaijan and thus requested revoking the decision of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan of 26 September 2005.

Based on Article 131 Section I of the Constitution of the Republic of Azerbaijan, the constitutional complaint by Nuri was admitted to procedure to be examined by the Plenum of the Constitutional Court.

The Plenum of the Constitutional Court has noted the following in relation to the complaint.

Being a key instrument of democracy building, the primary goal of elections held regularly at reasonable intervals is to ensure that the government is formed in accordance with the political will of the nation. Free elections serve to establish a truly democratic political regime. Through elections, the government obtains legitimacy of a popular mandate, and the citizens participate in political life of the society and governance of the state. Electoral right also allows the citizens to express their attitude to candidates which later creates certain legal outcomes and obligations thereupon.

Article 1 of the Constitution of the Republic of Azerbaijan establishes that the people are the only source of state sovereignty and power in Azerbaijan. Sovereignty of the nation is expressed through referenda or representatives elected at general, equal and direct elections done via free, secret and personal ballot (Article 2 the Constitution).

Article 56 Section I of the Constitution states the right of citizens of the Republic of Azerbaijan to elect and be elected to office and vote in referenda. This right is closely linked with other political rights, such as the right to participate in politics and governance.

The same right is enshrined in a number of international legal instruments. Article 21 of the Universal Declaration of Human Rights states: “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. Similar provisions are contained in Article 25 of the International Pact on Civil and Political Rights.

According to Article 3 of Protocol 1 to the European Convention of Human Rights and Basic Freedoms, “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.”

Along with other important elements, the electoral right provides for a personal right to elect and be elected to office. However, enforcement of this right can be subject to certain limitations, provided both in international legal instruments and domestic legislation. Any such limitations should pursue a lawful interest, be in proportion to the limited right and should not substantially impair the right to free election. The key pre-condition for full and free expression of popular will is ensuring competition for people with diverse ideas and interests. The notion of free competition forms the core of democratic society.

The law of the Republic of Azerbaijan ensure free expression of will of its citizens by protecting principles and norms of the electoral right. The Electoral Code of the Republic of Azerbaijan regulates conduct of elections of members to the National Assembly (Milli Majlis), the President of the Republic of Azerbaijan and municipal councillors as well as of the referendum (national vote). Along with principal concepts and general provisions concerning realisation of the electoral right, the Electoral Code also contains special provisions pertaining to the conduct of the referendum and parliamentary, presidential and municipal elections. The Electoral Code defines the principle of general, equal and direct elections, secrecy of the ballot, obligation to hold elections and referenda and other essential electoral principles, electoral right guarantees and subjects of active and passive electoral right in accordance with the Constitution of the Republic of Azerbaijan.

Realisation of the passive electoral right is accompanied by some limitations intrinsic to the nature of this right. These limitations are enumerated in the Constitution and the laws of the Republic of Azerbaijan. Incorrect application of these limitations by election officials and by courts trying electoral disputes results in the breach of the passive electoral right.

As seem from the materials of the case, Nuri was nominated to run for the National Assembly by an alliance of political parties, which includes Community (Birlik) and Unity (Vahdat) parties. The minutes of council meetings of these parties and the minutes of the general meeting refer to the complainant as a member of the Islam Party.

Pertinent court decisions state that when registering Nuri’s candidacy the Constituency Election Commission violated Article 113 of the Electoral Code because information in candidacy nomination documents presented by Nuri referred to him as a member of the Islam Party, which is not correct as such party is not officially registered. For example, the decision of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan referred to Articles 53.4 and 54.5 of the Electoral Code and noted that the law requires statement of party affiliation (if any) from every candidate.

In connection with these, the Plenum of the Constitutional Court is of the opinion that the courts applied law provisions that should not have been applied to this dispute. Article 53 of the Electoral Code, which is referred to in the court decisions, regulates cases of candidate’s self-nomination and nomination by voters and not nomination by political forces. However, the pertinent court decisions indisputably ascertain that the complainant was nominated by a block of political parties. In this case the dispute clearly can not be resolved in accordance with Article 53 of the Electoral Code. When referring to Article 54.5 the courts again applied a provision that should not have been applied to this case. This Article conditions a candidacy nominated by one specific political party whereas, as shown above, the complainant was nominated not by one political party but by a party alliance.

The Plenum of the Constitutional Court also notes that the court allowed misinterpretation of Article 54.6 of the Electoral Code. The said Article enumerates documents to be presented to a relevant electoral commission by an authorised representative of a political alliance and has no requirement to disclose candidate’s political affiliation to a registered or an unregistered political party alike.

It should be stressed here that the Electoral Code contains no provision whatsoever barring members of officially unregistered political parties to be nominated by political alliances. To the contrary, Article 54.4 of the Electoral Code clearly states that a political party or a block of political parties can nominate a candidate who is not their member. This was the correct provision to be applied by the courts but it was not applied in this case.

Generally, analysis of legislation regarding nomination and registration of candidates during elections leads us to a conclusion that a requirement of official registration is put only to political parties. Participation of several political parties united in a block is possible through registration thereof by CEC (Articles 50.2 and 54.5 of the Electoral Code). Individuals can run representing a party or an alliance or else as independent candidates. A member of an unregistered party can be nominated as a candidate by himself / herself, a group of voters, a registered party or an alliance of registered parties. Not coincidentally, the Electoral Code contains no imperative requirement to disclose candidate’s party affiliation. Articles 53.4 and 54.8 of the Electoral Code provide for voluntary disclosure of party information in nomination documents presented to electoral commissions. In consideration of the above, membership in an officially unregistered party can neither prevent nomination of this candidate by a block of political parties, nor disqualify the candidacy altogether.

Article 60 Section I of the Constitution of the Republic of Azerbaijan guarantees everyone judicial protection of rights and freedoms. This guarantee requires courts to protect rights and freedoms while allowing stability and predictability of court decisions, possibility of redressing judicial errors, strict observance of procedural norms at all levels of the judiciary.

In conformity with Article 416 of the Code of Civil Procedure of the Republic of Azerbaijan, the cassation court reviews application of substantive and procedural legal norms by the appellate court. Article 418.1 of the same Code states that breach or wrong application of substantive and procedural legal norms constitutes grounds for revocation of judgements and procedural decisions of the appellate court. Notwithstanding this provision, the decision of the Civil Collegium of the Supreme Court of 26 September 2005 upheld the judgement of the appellate court and thus violated the above procedural requirements.

Based on the above, the Plenum of the Constitutional Court of the Republic of Azerbaijan has come to a conclusion that the decision of the the Civil Collegium of the Supreme Court of the Republic of Azerbaijan of 26 September 2005 contravenes Article 56 Section I and Article 60 Section I of the Constitution of the Republic of Azerbaijan and Articles 416 and 418.1 of the Code of Civil Procedure of the Republic of Azerbaijan and shall therefore be deemed forfeited.

Guided by Article 130 Sections V, IX and X of the Constitution of the Republic of Azerbaijan and Articles 52, 62, 63, 65, 66, 67 and 69 of the Law of the Republic of Azerbaijan on the Constitutional Court, the Plenum of the Constitutional Court

**DECIDED:**

1. The decision of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan of 26 September 2005 concerning invalidation by the Central Election Commission (resolution No. 28/132 of 14 September 2005) of candidacy of Hajiagha Nuri’s registered by the Election Commission of the Third Sabunchu Constituency 28 shall be deemed contravening Article 56 Section I and Article 60 Section I of the Constitution of the Republic of Azerbaijan and Articles 416 and 418.1 of the Code of Civil Procedure of the Republic of Azerbaijan and, therefore, be forfeited. The case shall be tried again in the manner prescribed by the civil procedure of the Republic of Azerbaijan while securing Qasimov’s right to the cassation complaint.
2. The Decision shall become effective from the day it is announced.
3. The Decision shall be published in the newspapers Azerbaycan, Respublika, Xalq Qazeti and Bakinskiy Rabochiy and in the Bulletin of the Constitutional Court of the Republic of Azerbaijan.
4. The Decision is final and can not be annulled, amended or officially interpreted by whichever person or entity.