**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC AZERBAIJAN**

*Concerning the outcomes of the elections to the National Assembly (Milli Majlis)*

*of the Republic of Azerbaijan of the third convocation held on 6 November 2005*

**1 December, 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 (Reporting Judge), R.Qvaladze (Reporting Judge), E.Mammadov, I.Najafov, S.Salmanova and A.Sultanov (Reporting Judge) and Court Secretaries I.Ismayilov and V.Zeynalov

in presence of Chairman M.Panahov, Deputy Chairman S.Qasimova, Secretary N.Mammadov and Members F.Javadov, G.Orujov, R.Ibrahimov, A.Taghiyev, I.Mammadov, A.Aliyev, Kh.Ahmadov, V.Kazimova, M.Bayramov, Y.Baghirzade and A.Alizade of the Central Election Commission of the Republic of Azerbaijan

experts of the Chair of Constitutional Law of the Law Department of the Baku State University: Acting Ass. Prof. M.Ismayilov (Cand. of Jurisprudence) and Reader Sh.Yusubov,

specialist staff of the State Statistical Committee of the Republic of Azerbaijan: I.Hamidova, G.Ahmadova and E.Qasimov

based on materials presented by the Central Election Commission of the Republic of Azerbaijan

has examined under special constitutional procedure in accordance with Article 130 Sections V and VIII of the Constitution of the Republic of Azerbaijan the constitutional case concerning the outcomes of the elections to the National Assembly (Milli Majlis) of the Republic of Azerbaijan held on 6 November 2005.

Having heard reports of Judges Sultanov, Qaribov and Qvaladze, statements from Chairman M.Panahov, Deputy Chairman S.Qasimova, Secretary N.Mammadov and Members M.Bayramov and A.Aliyev of the Central Election Commission of the Republic of Azerbaijan, opinions of the experts M.Ismayilov and Sh.Yusubov, information of the specialist E.Qasimov and deliberated the case, the Plenum of the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In accordance with Article 84 Section II of the Constitution of the Republic of Azerbaijan, Article 145.1 of the Electoral Code of the Republic of Azerbaijan and Executive Order of the President of the Republic of Azerbaijan No. 876 of 4 July 2005, elections to the National Assembly of the Republic of Azerbaijan were held on 6 November 2005.

As required by Article 171.2 of the Electoral Code of the Republic of Azerbaijan, no later than 20 days after the elections the Central Election Commission shall examine the official voting records of constituency election commissions (with additional documents attached thereto in conformity with the Electoral Code) and present them to the Constitutional Court within 48 hours.

In accordance with Article 86 of the Constitution of the Republic of Azerbaijan, Article 171.1 of the Electoral Code of the Republic of Azerbaijan and Article 54.1 of the Law of the Republic of Azerbaijan on the Constitutional Court, elections results are examined and approved by the Constitutional Court.

In keeping with above legal requirements, on 23 November 2005 the Central Election Commission of the Republic of Azerbaijan presented the Constitutional Court of the Republic of Azerbaijan with the overall election report of the Central Election Commission as well as the voting records of constituency election commissions (and additional documents attached thereto) with the purpose of examination and approval of the results of the elections to the National Assembly of the Republic of Azerbaijan of the third convocation held on 6 November 2005 by the Constitutional Court. Special opinion Separate opinions of two members of the Central Election Commission were attached to the election report of the Central Election Commission. A member of the Central Election Commission spoke at the session to deliver his separate opinion.

The Constitutional Court of the Republic of Azerbaijan has noted the following specificities in relation to the 2005 elections to the National Assembly of the Republic of Azerbaijan of the third convocation:

In contrast with previous parliamentary elections, these elections to the National Assembly of the Republic of Azerbaijan were held under a strictly majoritarian system. The Electoral Code of the Republic of Azerbaijan enacted on 27 may 2003 served as a single-source legal document to guide the entire electoral process. The elections were held in all constituencies without exception, including, for the first time, in the Khankandi Constituency 112 comprising the area of Mountainous Garabagh (Nagorno-Karabakh). The minimum number of signatures required for registration of a candidate was reduced from 2,000 to 450. Facilitation of the registration process led to a dramatic increase in participation. Each voter was issued a voter I.D.; local NGOs were allowed to directly observe the elections; finger-marking with transparent ink was introduced; and an electoral “exit poll” was conducted.

The President of the Republic of Azerbaijan signed the Executive Order 806 “Improvement of Electoral Practices in the Republic of Azerbaijan” on 11 May 2005 and the Executive Order 1062 “Pressing Actions with Regard to Preparation to and Administration of the Election to the National Assembly of the Republic of Azerbaijan” on 26 October 2005, with stated aims of preventing possible irregularities and law violations during the run-up to and the actual holding of the elections; conducting parliamentary elections in full conformity with the provisions of the Electoral Code of the Republic of Azerbaijan; warranting proper discharge by various executive agencies of their respective duties; and ensuring citizens’ voting rights in a more comprehensive manner.

The overall election report of the Central Election Commission of the Republic of Azerbaijan of 23 November 2005 presented to the Constitutional Court of the Republic of Azerbaijan established the following:

total number of eligible voters on voters’ rolls: 4,675,572;

total turn-out of voters: 1.974.036;

total number of the constituency election commissions: 125;

number of the official voting records of the constituency election commissions used for compiling the election report of the Central Election Commission: 121;

number of constituencies where voting results are annulled: 4;

number of precincts where voting results are annulled: 460.

As can be seen from the election report of the Central Election Commission, candidates elected to the parliament are identified in 121 constituencies where voting results are found valid.

Along with that, the Central Election Commission of the Republic of Azerbaijan annulled the vote in:

16 precincts of the Second Sumqayit Constituency 42, by Resolution 44/202 of 8 November 2005;

13 precincts of the Second Binaqadi Constituency 9, by Resolution 44/203 of 8 November 2005;

19 precincts of the Zaqatala Constituency 110, by Resolution 47/211 of 12 November 2005; and

11 precincts of the Second Nizami (Ganja) Constituency 38, by Resolution 48/212 of 15 November 2005.

In case of each constituency listed above, the number of precincts with the invalid vote exceeded 2/5 of the total number of precincts in a constituency and the number of registered voters in precincts with the invalid vote exceeded ¼ of the total number of registered voters in a constituency. Therefore, the voting results in the four above-mentioned constituencies were annulled.

Furthermore, the Central Election Commission of the Republic of Azerbaijan annulled the vote in 10 precincts of the Second Surakhani Constituency 31 and in 12 precincts of the First Binaqadi Constituency 8, by Resolution 45/201 of 8 November 2005 and Resolution 45/204 of 9 November 2005, respectively, which, consequently, altered determination of the winner in these constituencies.

Upon submission of the election report and other materials of the Central Election Commission to the Constitutional Court, the Court, as required by Article 171.3 of the Electoral Code of the Republic of Azerbaijan, has engaged relevant experts and specialists for examining the records obtained from the Commission and, as authorised by Article 54.4 of the Law of the Republic of Azerbaijan on the Constitutional Court, required the Court of Appeals of the Republic of Azerbaijan, the Supreme Court of the Republic of Azerbaijan as well as the Ministry of Justice and the Prosecutor General Office of the Republic of Azerbaijan to provide information on their respective review of complaints and requests pertaining to electoral rights and infringement of the electoral laws.

According to the official letter of the Ministry of Justice of the Republic of Azerbaijan dated 25 November 2005 (ref. 02/1-740), local district (city) courts reviewed 20,117 and granted 20,105 (99.9%) of the requests of citizens concerning inclusion to the voters’ rolls for the elections to the National Assembly of the Republic of Azerbaijan held on 6 November 2005; only 12 such requests were refused.

According to the official letter of the Court of Appeals of the Republic of Azerbaijan dated 29 November 2005 (ref. 59-278/05), 71 cases regarding decisions of various election commissions and actions (inactions) leading to violation of electoral rights were initiated at the Court of Appeals after the elections to the National Assembly of the Republic of Azerbaijan were held on 6 November 2005. All those cases were properly reviewed and ruled upon by the Court of Appeals. Additionally, 57 complaints pertaining to final decisions taken by the Central Election Commission of the Republic of Azerbaijan were lodged with the Court of Appeals. All these complaints were dismissed for the lack of grounds.

According to the official letter of the Supreme Court of the Republic of Azerbaijan dated 30 November 2005 (ref. 2-83), 38 civil cases pertaining to administration of the elections to the National Assembly of the Republic of Azerbaijan were referred to the Supreme Court for cassation. In all the cases the pertinent judgements of the Court of Appeals were sustained.

By the official letter to the Constitutional Court, the Prosecutor General Office of the Republic of Azerbaijan stated that the total of 72 cases of supposedly criminal character were referred by the Central Election Commission and constituency election commissions to the Prosecutor General Office in relation to the elections to the National Assembly of the Republic of Azerbaijan.

Further to investigation of the said cases, 11 criminal proceedings were instituted against:

a number of candidates in the First Sabunchu Constituency 26, the First Sumqayit Constituency 41, the Goychay Constituency 88, the Samukh-Shamkir Constituency 102, the Aghstafa Constituency 108 and the Oghuz-Qabala Constituency 117, for attempts at illegally influencing the electorate;

a candidate in the Shamkir Rural Constituency 99, for interference with the work of an election commission;

a chairperson of the Constituency Election Commission and others in the Second Sumqayit Constituency 42, a chairperson of the Constituency Election Commission and others in the Second Binaqadi Constituency 9 and a chairperson and members of the 1oth Precinct Election Commission of the Second Surakahni Constituency 31, for falsifying the election records; and

four members of the Constituency Election Commission in the Jalilabad-Masalli-Bilasuvar Constituency 69, for misuse of authority.

Examination of the documents presented by the Central Election Commission of the Republic of Azerbaijan and additional documents requested by the Constitutional Court of the Republic of Azerbaijan and analyses by the experts and specialists engaged by the Constitutional Court have led us to conclude that out of 121 official voting records of constituency election commissions input into the election report of the Central Election Commission of the Republic of Azerbaijan, 115 official voting records of constituency election commissions comply with the Electoral Code of the Republic of Azerbaijan.

The remaining six official voting records of constituency election commissions from the Second Surakhani Constituency 31, the Sumqayit – Absheron Constituency 44, the Jalilabad - Masalli – Bilasuvar Constituency 69, the Gadabay Constituency 103, the Tovuz – Qazakh – Aghstafa Constituency 106 and the Aghdam Rural Constituency 119 do not comply with the requirements of the Electoral Code of the Republic of Azerbaijan; hence, voting results in these constituencies can not be approved.

Bsed on the aforesaid and guided by Articles 86 and 130 Sections VIII and IX of the Constitution of the Republic of Azerbaijan and Articles 54, 62, 63, 65, 67 and 69 of the Law of the Republic of Azerbaijan on the Constitutional Court, the Plenum of the Constitutional Court

**DECIDED:**

1. To approve results of the elections to the National Assembly (Milli Majlis) of the Republic of Azerbaijan of the third convocation held on 6 November 2005 for the following constituencies:

the Sharur – Sadarak Constituency 1;

the Sharur Constituency 2

the Babek – Kangarli Constituency 3;

the Nakhchivan Urban Constituency 4;

the Shahbuz – Babek Constituency 5;

the Julfa – Babek Constituency 6;

the Ordubad – Julfa Constituency 7;

the First Binaqadi Constituency 8;

the Third Binaqadi Constituency 10;

the Qaradagh Constituency 11;

the Qaradagh – Binaqadi – Yasamal Constituency 12;

the First Azizbeyov Constituency 13;

the Second Azizbeyov Constituency 14;

the First Yasamal Constituency 15:

the Second Yasamal Constituency 16;

the Third Yasamal Constituency 17;

the Narimanov – Nizami Constituency 18;

the First Narimanov Constituency 19;

the Second Narimanov Constituency 20;

the First Nasimi Constituency 21;

the Second Nasimi Constituency 22;

the Nasimi – Sabail Constituency 23;

the First Nizami Constituency 24;

the Second Nizami Constituency 25;

the First Sabunchu Constituency 26;

the Second Sabunchu Constituency 27;

the Third Sabunchu Constituency 28;

the Sabail Constituency 29;

the First Surakhani Constituency 30;

the Third Surakhani Constituency 32;

the First Khatai Constituency 33;

the Second Khatai Constituency 34;

the Third Khatai Constituency 35;

the Fourth Khatai Constituency 36

the First Nizami (Ganja) Constituency 37;

the First Kapaz (Ganja) Constituency 39;

the Second Kapaz (Ganja) Constituency 40;

the First Sumqayit Constituency 41;

the Third Sumqayit Constituency 43;

the Absheron Constituency 45;

the Ali Bayramli Constituency 46;

the Mingachevir Constituency 47;

the Yevlakh Constituency 48;

the Yevlakh - Mingachevir Constituency 49;

the Qobustan – Khizi - Quba Constituency 50;

the Qusar Constituency 51;

the Quba Constituency 52;

the Quba - Qusar Constituency 53;

the Davachi – Siyazan Constituency 54;

the Khachmaz Urban 55;

the Khachmaz Rural 56;

the Kurdamir Constituency 57;

the Hajiqabul – Kurdamir Constituency 58;

the Salyan Constituency 59;

the Salyan – Neftchala Constituency 60;

the Neftchala Constituency 61;

the Saatli Constituency 62;

the First Sabirabad Constituency 63;

the Second Sabirabad Constituency 64;

the Saatli – Sabirabad – Kurdamir Constituency 65;

the Bilasuvar Constituency 66;

the Jalilabad Urban 67;

the Jalilabad Rural 68;

the Masalli Urban 70;

the Masalli Rural 71;

the Yardimli – Masalli Constituency 72;

the Lankaran Urban 73;

the Lankaran Rural 74;

the Lankaran – Masalli Constituency 75;

the Lankaran – Astara Constituency 76;

the Astara Constituency 77;

the Lerik – Lankaran Constituency 78;

the Imishli Constituency 79;

the Imishli – Beylaqan Constituency 80;

the Beylaqan Constituency 81;

the Aghjabadi Constituency 82;

the Aghjabadi – Aghdam Constituency 83;

the Fuzuli Constituency 84;

the Shamakhi Constituency 85;

the Ismayilli Constituency 86;

the Aghsu – Ismayilli Constituency 87;

the Goychay Constituency 88;

the Goychay – Aghdash Constituency 89;

the Aghdash Constituency 90;

the Ujar Constituency 91;

the Zardab – Ujar Constituency 92;

the Barda Urban 93;

the Barda Rural 94;

the Tartar Constituency 95;

the Goranboy – Naftalan Constituency 96;

the Goranboy – Aghdam – Tartar Constituency 97;

the Shamkir Urban 98;

the Shamkir Rural 99;

the Shamkir – Dashkasan Constituency 100;

the Khanlar – Dashkasan Constituency 101;

the Samukh – Shamkir Constituency 102;

the Gadabay – Tovuz Constituency 104;

the Tovuz Constituency 105;

the Qazakh Constituency 107;

the Aghstafa Constituency 108;

the Balakan Constituency 109;

the Zagatala – Balakan Constituency 111;

the Qakh Constituency 112;

the Shaki Urban 113;

the First Shaki Rural 114;

the Second Shaki Rural 115;

the Qabala Constituency 116;

the Oghuz – Qabala Constituency 117;

the Aghdam Urban 118;

the Jabrayil – Qubadli Constituency 120;

the Lachin Constituency 121;

the Khankandi Constituency 122;

the Kalbajar Constituency 123;

the Shusha – Fuzuli – Khojali – Khojavand Constituency 124; and

the Zangilan – Qubadli Constituency 125

1. To disapprove results of the elections to the National Assembly of the Republic of Azerbaijan held on 6 November 2005 for the following constituencies:

the Second Surakhani Constituency 31

the Sumqayit – Absheron Constituency 44

the Jalilabad – Masalli – Bilasuvar Constituency 69

the Gadabay Constituency 103

the Tovuz – Qazakh – Aghstafa Constituency 106

the Aghdam Rural 119

1. The Decision shall become effective immediately after it is announced.
2. 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.
3. The Decision is final and can not be annulled, amended or officially interpreted by whichever person or entity.