

DECISION

of Central Election Commission of the Republic of Azerbaijan

on consideration of the appeal # 148 submitted to the Central Election Commission on November 8, 2015 in the Elections to the Milli Majlis of the Republic of Azerbaijan on November 1, 2015

In his written apply addressed to the Central Election Commission on November 8, 2015, Huseyn Panah Chodar, registered candidate nominated by "AZADLIG-2015" bloc of political parties on Sabirabad first Con.EC # 63 requested to annul the decision # 25/88 of that Con.EC, dated November 7, 2015 and the voting results protocol on the election constituency, to investigate the existing appeal with his own and authorized representatives' participation, to re-count the votes on the election constituency and to adopt a decision on the annul the voting results on the election constituency in the case of impossibility to determine voters' will.

The complaint was adopted for the implementation in comply with Articles 112 and 112-1 of the Election Code of the Republic of Azerbaijan and "Instruction on the rules for submission and investigation of the appeals and complaints filed to the Central Election Commission of the Republic of Azerbaijan and Constituency Election Commissions", relevant opinion was provided on this issue by a member of the Expert Group under CEC and considered at the Commission session upon the investigation of the appeal by the Expert Group member.

During the investigation process, the registered candidate to deputy who had appealed was contacted and informed on his rights to submit additional documents and materials, also to participate in the investigation and session. The candidate to deputy took part in the investigation and submitted the originals of the compiled acts on the law violations supposed to have been committed and other documents. But although the plaintiff had been invited to the CEC session, he did not participate at the session.

P.Ch.Huseyn indicates in his appeal that the participation of himself and his authorized representatives was not provided in the investigation of his appeal filed to Sabirabad first Con.EC # 63 on November 4, 2015, the relevant Con.EC had not accepted the tangible evidences and arguments which verified the commitment of the law violations claimed on in the complaint, Guluzadeh Novruz Misir, authorized representative of "AZADLIG-2015" bloc of political parties was invited to the session just an hour before, the Con.EC decision was not discussed by the commission members, the authorized representative was not given floor and consequently, his appeal was not implemented without any reason by the Con.EC decision # 25/88, dated November 7, 2015.

Apart from all these, he also informed that he had already appealed to the Con.EC on November 2, 2015 and to the Central Election Commission on November 3, 2015 that the PEC protocols on the voting results had not been displayed on the notice boards, his observers had not been provided with the PEC voting results protocols, but still has not received any reply, and basing on the argument that the Con.EC had not required any affidavit from his representatives during the investigation, the plaintiff also claimed

that the affidavits of other candidates and observers who had taken part in the elections were falsified, alongside with these, neither candidate nor observer by the political party except himself and the observers by the New Azerbaijan Party had been present in the polling stations, the claims on his impolite behaviour towards the persons participating in elections, as well as, the commission members and informing the police on that did not possess any grounds, the arguments on the efforts made by himself and the observers by "AZADLIG-2015" bloc of political parties to obstruct the voting procedures in the polling station # 13 were groundless, and building the basis on the argument that the information on the voters' turnout transmitted to superior election commission by the PECs and Con.ECs on the E-day did not correspond with the information obtained by his observers, also upon questioning the votes collected by other candidates on different polling stations, he requested to re-calculate the votes and to make a decision on the annul of the election results if an impossibility of determining voters' real opinions expressed in the elections had been found out as a result of the examination.

A relevant investigation was held to examine the cases included in the complaint thoroughly and to obtain all the evidences necessary for the case.

During the investigation the affidavit provided by the Con.EC chairman shows that P.Ch.Huseyn visited the Con.EC many times after he submitted his appeal to the Con.EC on November 4, 2015, he had been informed on the investigation and examination of the appeal, but informed that he would not be able to participate at the session, therefore, Guluzadeh Novruz Misir, authorized representative of "AZADLIG-2015" bloc of political parties was invited to the session where the appeal would have been examined and his participation at the session was provided. During the submission of the draft decision compiled as a result of the investigation, it was offered to read only the decision part of the draft document by considering the same content and subject of the investigations on the other polling stations upon the suggestion of the commission members after the results of the investigation on 10 polling stations have been read and the draft decision was adopted upon the voting. Although N.M.Guluzadeh participated at the session, he did not express any comments or suggestions and requested to be provided with the decision in shorter period of time.

As regards to providing the interested persons with the PEC protocols and publicizing them upon displaying in a manner defined by law, it was determined through the investigation that the copies of protocols were available immediately after the compilation, also they were publicized upon being displayed in relevant places defined by law. These cases were also justified by the affidavits of other registered candidates on the Con.EC - Aghayev Said Nizami, Usubov Araz Rashid, Mirzayev Kamran Adil, Movludov Bakhtiyar Hafiz, as well as, a number of observers representing different political parties and who participated in elections on own initiatives.

The plaintiff's claims on the curtail of his rights to get the copies of the PEC protocols was also not justified through the investigation. According to the act submitted by the Con.EC and affidavit of the Con.EC chairman, authorized representative N.M.Guluzadeh had addressed to the Con.EC to get the PEC protocols and substantiated this on the grounds that he did not have opportunity to visit all the polling

stations. As making copies of the PEC protocols to present to him required certain period of time, he left the Con.EC building saying that he had limited time.

It was determined as a result of the investigation that there was not any obstacle for the plaintiff to attach the argued evidences (acts, appeals, video disc) and send them to the Con.EC by post.

To challenge the number of the voters who had participated in the voting without any reason basing on the grounds that individual candidates had collected votes in different number (less on the polling station located where they had been born and more on the polling stations located within other territories) cannot be a serious ground to re-count the votes.

It became evident during assessing all the documents and materials submitted by the plaintiff in the investigation process that although those documents and materials compiled in the form of different acts and claimed to include this or another law violation had not been submitted to the Con.EC, they were investigated fully, thoroughly and fairly as having been included comprehensively in the application submitted by the plaintiff to the Con.EC. The video disc attached to the appeal cannot be regarded as an evidence since it had not been submitted in a relevant manner.

It was defined during the investigation that 688 observers representing "AZADLIG-2015" bloc of political parties and other different interests participated in the observation in 35 polling stations on Sabirabad first Con.EC # 63 on the voting day.

Although challenging by the plaintiff that the Con.EC decision includes the appeals submitted to the District Police Department by different persons is seemingly interesting, this has not in reality formed any legal consequence which could be assessed as a violation of P.Ch.Huseyn's rights. Thus, neither Con.EC nor other authorized bodies have undertaken an activity of legal consequences on those cases.

The claims of some observers who are representatives of P.Ch.Huseyn's interests on the existence of discrepancy between the voters' turnout in the polling stations and the number of the voters included in the voting results protocol are refuted by many other persons who had observed in the same polling stations on that time, also by the coincidence of the number of the voters' who have got ballot papers with the numbers included in the official protocol and the results of other procedure rules.

As the investigation revealed impossible cases to determine voters' will as a result of violating the election legislation in the polling station # 13, there are legal grounds to partly implement the complaint and invalidate the voting results on that polling station in comply with the Election Code of the Republic of Azerbaijan.

The investigation held leads to conclude that due to impossible cases to determine the voters' will on the polling station # 13 during the elections on Sabirabad first Con.EC # 63, the voting results shall be regarded as invalid and the appeal of P.Ch.Huseyn, registered candidate to deputy shall not be implemented in the remaining parts due to groundlessness since the claims on law violations included in the complaint other

polling stations of that election constituency have not been justified, there is not any legal ground to re-count the votes on the election constituency and law violations have not been revealed which could obstruct the determination of voters' will during the conduct of the voting and defining the results.

Thus, the appeal # 148 of P.Ch.Huseyn, dated November 8, 2015 shall be partly implemented, the voting results on the polling station # 13 shall be regarded as invalid and the appeal shall not be implemented in the remaining part due to groundlessness. The decision # 25/88 of Sabirabad first Con.EC # 63, dated November 7, 2015 in shall be annulled relation to the voting results on the polling station # 13 and that decision shall be remained in force in the remaining parts without any changes.

Taking the above mentioned as a basis, pursuant to Articles 19.4, 28.2, 28.4, 112 and 112-1 of Election Code of the Republic of Azerbaijan and item # 1, 2, 4, 6 and 7 of the "Instruction on the rules for submission and investigation of the appeals and complaints filed to the Central Election Commission of the Republic of Azerbaijan and Constituency Election Commissions", the Central Election Commission **decides**:

1. The appeal # 148 of Huseyn Panah Chodar, registered candidate nominated by "AZADLIG-2015" bloc of political parties on Sabirabad first Con.EC # 63, dated November 8, 2015 shall partly implemented, the voting results on the polling station # 13 shall be regarded as invalid and the appeal shall not be implemented in the remaining part due to groundlessness.
2. The decision # 25/88 of Sabirabad first Con.EC # 63, dated November 7, 2015 in shall be annulled relation to the voting results on the polling station # 13 and that decision shall be remained in force in the remaining part without any changes.
3. The decision shall be enforced upon its publication.

CEC Chairman

Mazahir Panahov

CEC Secretary

Arifa Mukhtarova

CEC Secretary

Mikayil Rahimov