

DECISION

of Central Election Commission of the Republic of Azerbaijan

on consideration of the appeal # 175 submitted to the Central Election Commission on November 12, 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 12, 2015, Talibov Mikayil Abulfat, registered candidate on Astara Con.EC # 77 claimed that candidates were not provided with equal opportunities for pre-election campaign, law violations were committed in some polling stations on the voting day and requested to annul the relevant decision of the Con.EC, to investigate his complaint on substance, to annul the voting results on some polling stations of that Con.EC and to regard the voting results on the Con.EC as invalid.

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.

In spite of efforts were made to contact the registered candidate to deputy during the investigation process, they were useless. The plaintiff did not submit any document or material to verify the law violations indicated in the appeal.

M.A.Talibov informed in his complaint that the observation was not facilitated in the polling stations # 3, 8, 9, 32 and 45 on the voting day, impossibility of conducting a normal observation, revealing the persons not included in the voters' list to have participated in the voting, multiply voting, issuing ballot paper to the persons who had not presented ID cards, voting in place of another person, mass cutting of ballot corners by some PEC chairmen, strict violation of the rules for abiding by transparency principles during the vote calculation, not counting the voters' signatures and unused ballot papers, the video taping was not permitted in the polling station, the observers and commission members with consultative voting rights appointed by him were not provided with protocol copies, the voters' turnout was low in the polling stations, there was a large discrepancy between the number of the voters who had participated in the voting and the number of the voters recorded in the official protocol, law violations were committed during the vote count and determination of the voting results, therefore requested to annul the voting results on the above-mentioned 4 polling stations and to invalidate the voting results on the Con.EC and indicated that although he appealed to the Con.EC on those violations on E-day, the Con.EC did not implement his appeal due to groundlessness by the decision # 26/95 on November 6, 2015 (the plaintiff erroneously indicated the date of the decision as November 7).

The reference provided by Astara Con.EC # 77 shows that full and equal opportunities were formed to conduct pre-election campaign within that election constituency and every registered candidate was provided with indoor and outdoor venues for pre-election campaign in a relevant manner.

M.A.Talibov did not use this possibility to apply to the Con.EC officially for the arrangement of the meetings.

It was determined through the investigation that not any state institute had intervened in the pre-election campaign, every candidate was provided with equal opportunities and during that period neither Con.EC, nor the Central Election Commission has been filed a complaint on the usage of administrative resources by campaign actors.

Other registered candidates on that election constituency held free meetings on different times. This case was also justified by the affidavits of registered candidates Ismayilova Gulzar Asgar and Rzayev Adil Azad. The above-mentioned proved that the claims on that candidates had not been provided with equal opportunities, other registered candidates had used administrative resources and state bodies had intervened in the election process were groundless.

It became evident through the investigation of the claim on not facilitating observation and impossibility of conducting a normal observation in the polling stations on the voting day that the plaintiff substantiated this case on the grounds that observers were not provided with necessary observation opportunity, even they were not allowed to move off their places, it was impossible from the spot of observers to see neither the number of ballot papers, not the information included in the ballot paper (who to vote for, validity), the number of the counted ballot papers was not declared for observers loudly in a number of polling stations and observers were too faraway to monitor the checking of voters' thumbs. This claim was refuted fully upon the investigation. Thus, registered candidate M.A.Talibov applied neither to the Central Election Commission, nor the Con.EC relevantly to register the observers to observe within Astara Con.EC # 77 or within the polling stations of that election constituency, thereof any commission member with consultative right or agent was not appointed. And as it was mentioned, he did not present any observation material for the investigation. Therefore, it is impossible to determine whether the claimed cases had been committed in reality basing only on inclusion in the plaintiff's appeal.

Although any document or material verifying the law violations claimed to have been committed on E-day was not presented, the cases included in the appeal were investigated on substance and as a result of the investigation, the affidavits concerning the polling stations # 3, 8, 32 and 45 provided by other registered candidates on Astara Con.EC # 77, a group of observers representing different interests who observed in that election constituency and polling stations of that Con.EC, as well as, many commission members revealed that the commitment of the violation included in the appeal was refuted.

The appeal shall not be implemented since the impossible cases have not been revealed through the investigation to determine voters' will as a result of violating the election legislation on the polling stations # 3, 8, 32 and 45 of Astara Con.EC # 77 and generally, on that Con.EC and any legal ground has not been determined to annul the voting results on the above-mentioned polling stations and invalidate the voting results on that election constituency.

The plaintiff's claims on the discrepancy between the number of the voters who voted in the polling stations, also generally on the election constituency with the number of voters included in the voting results protocol are refuted by a number of other persons who had observed in the same polling stations on that time, also by the coincidence of

the number of the voters who got ballot papers included in the voters' list with the number included in the official protocol and the results of other procedure rules.

The investigation of all the cases indicated in the appeal on their subjects fully, thoroughly and fairly formed grounds to implement the appeal partly.

It was determined during the evaluation of the decision # 26/95 of Astara Con.EC # 77, dated November 6, 2015 on not implementing the appeal of M.A.Talibov that the appeal had been examined by the Con.EC with his own participation within the period and manner defined by law and a relevant decision was submitted to the plaintiff in time. While investigating that appeal at the Con.EC, the reliability and possibility of the collected evidences were focused on and relevant measures were undertaken for their sources and methods of availability to comply with legal requirements. Thus, the evidences had been collected by the entitled persons and affidavits, information, acts, references and other materials of great importance for the case had been obtained in a manner defined by law. The plaintiff who participated at the investigation and session of the Con.EC did not have any note and comment.

As the violations claimed in the appeal filed to the Con.EC questioned the voting results on the polling stations, a number of observers representing different interests and PEC members were required affidavits on the cases investigated by the Con.EC regarding the challenged polling stations and other necessary materials were collected. The non-violation of the election legislation was verified through the collected evidences and since the violations indicated in the appeal have not been justified and proved to be groundless, a decision was made to not implement the appeal.

During the investigation any ground was not determined to annul the decision # 26/95 of Astara Con.EC # 77, dated November 6, 2015 on not implementing the appeal of M.A.Talibov, dated November 4, 2015. Therefore, the decision shall be remained enforced without any changes.

Thus, the appeal of registered candidate to deputy M.A.Talibov shall be partly implemented, the complaint shall be regarded as implemented in the part on the investigation on substance, it shall not be implemented due to groundlessness in the part on the annul of the election results in the polling stations # 3, 8, 32 and 45 of Astara Con.EC # 77, to regard the voting results on that Con.EC as invalid and to annul the decision # 26/95 of Astara Con.EC # 77, dated November 6, 2015 and that decision shall be remained enforced 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 # 175 of Talibov Mikayil Abulfat, registered candidate on Astara Con.EC # 77, dated November 12, 2015 shall be regarded as partly implemented in part on the investigation on substance regarding Elections to the Milli Majlis of the Republic of Azerbaijan on November 1, 2015.

2. The decision # 26/95 of the Con.EC, dated November 6, 2015 shall be remained enforced without any changes and the appeal shall not be implemented due to groundlessness in the other part.
3. The decision shall be enforced upon its publication.

CEC Chairman

Mazahir Panahov

CEC Secretary

Arifa Mukhtarova

CEC Secretary

Mikayil Rahimov