

DECISION

of Central Election Commission of the Republic of Azerbaijan

on consideration of the appeals # 118, 119, 120, 121, dated November 2, 2015, # 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, vø 139, dated November 4, 2015 and # 143, dated November 5, 2015 in the Elections to the Milli Majlis of the Republic of Azerbaijan on November 1, 2015

Regarding the Elections to the Milli Majlis of the Republic of Azerbaijan on November 1, 2015, on November 2, 2015 Gulagha Gulam Aslanli, registered candidate of Musavat Party on Binagadi third Con.EC # 10 and on November 4, 2015 Misir Mahammad Mahmudov, registered candidate on Surakhani first Con.EC # 30, Zakir Bekir Mammadzadeh, registered candidate on Nizami second Con.EC # 25, Mustafa Mustafa Hajili, registered candidate on Surakhani second Con.EC # 31, Sakhavat Shirsoltan Soltanli, registered candidate on Absheron-Gobustan Con.EC # 50, Razim Malikajdar Amiraslanov, registered candidate on Jabrayil-Gubadli Con.EC # 120, Isa Yunis Gambar, registered candidate on Yasamal first Con.EC # 15, Fattah Elman Volodiya, registered candidate on Shirvan Con.EC # 46, Arif Mustafa Hajili, registered candidate on Khatai first con.EC # 33, Dilshad Safarbay Naghiyeva, registered candidate on Khatai second Con.EC # 34, Niyaz Eynulla Nasirov, registered candidate on Khazar-Pirallahi Con.EC # 13 appealed to the Central Election Commission and requested to invalidate the Con.EC final protocols on voting results on relevant constituencies and to accept the invalidity of the voting on those election constituencies and the violation of Article 3 of the Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; On November 2, 2015 Arif Mustafa Hajili, registered candidate on Khatai first con.EC # 33 and Isa Yunis Gambar, registered candidate on Yasamal first Con.EC # 15, on November 4, 2015 Farzulla Khasay Safar, registered candidate on Masalli village Con.EC # 71, on November 5, 2015 Valeh Hummat Aliyev, registered candidate on Salyan Con.EC # 59 appealed to the Central Election Commission and requested to annul the relevant Con.EC decisions # 23/68, dated October 29, 2015, # 28/67, dated October 30, 2015, # 30/117 and # 22/55, dated October 30, 2015; Mustafa Mustafa Hajili, registered candidate on Surakhani second Con.EC # 31 appealed to the Central Election Commission and requested to withdraw his candidacy to deputy and to delete his name from the printed ballot papers, also to appeal to the relevant state bodies to legally assess the inaction of the Con.EC since that election commission had committed illegal inaction having not considered the same appeal filed by him.

The complaints were 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", summarized in one implementation upon informing the Group coordinator due to the same substance and content, as well as, the direct and grounded relation to the consequences rooted from the relevant decision of the political party that had nominated the plaintiffs on the refusal from participation in elections, investigated through considering the substance and date of filing the complaints, relevant opinion was provided on this issue by a member of the Expert Group under CEC and considered at the Commission session.

Although the applicant candidates to deputy were contacted during the investigation process and explained of their rights to submit additional documents and materials, also to participate in the investigation and session, only G.Aslanli, E.Fattah and M.Hajili took part at the CEC session.

The plaintiffs who required to invalidate the the Con.EC final protocols on voting results on relevant constituencies and to accept the invalidity of the voting on those election constituencies and the violation of Article 3 of the Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the applicants and to annul the relevant Con.EC decisions justified their claims on the grounds that although each of them had appealed to the relevant Con.ECs to withdraw their candidacies on the relevant election constituencies, the Con.ECs did not implement their appeals and consequently, keeping their names in the ballot papers curtailed the rights of other candidates.

Thus, if otherwise the votes collected by them were distributed among relevant candidates, this would impact resolutely the election results upon changing the elected candidate.

It was determined through the investigation that even if the votes collected by the plaintiffs on the election constituencies which they had been registered on are added to the votes of the second winner candidate after the leader candidate who had collected the majority of votes, the emerged number would not impact the election results. Thus, on Binagadi third Con.EC # 10 – leader candidate collected 15728 votes, second candidate – 2806, plaintiff Gulagha Gulam Aslanli – 487 votes; on Khazar-Pirallahi Con.EC # 13 – leader candidate collected 25505 votes, second candidate – 1621, plaintiff Niyaz Eynulla Nasirov – 1253 votes; on Yasamal first Con.EC # 15 – leader candidate collected 16764 votes, second candidate – 108, plaintiff Isa Yunis Gambar – 599 votes; on Nizami second Con.EC # 25 – leader candidate collected 13219 votes, second candidate – 1596, plaintiff Mammadzadeh Zakir Bekir – 1100 votes; on Surakhani first Con.EC # 30 – leader candidate collected 9522 votes, second candidate – 1221, plaintiff Mahmudov Misir Mahammad– 434 votes; on Surakhani second Con.EC # 31 – leader candidate collected 5473 votes, second candidate – 4341, plaintiff Hajili Mustafa Mustafa– 1078 votes; on Khatai first Con.EC # 33 – leader candidate collected 12078 votes, second candidate who was plaintiff Hajili Arif Mustafa – 1799; on Khatai second Con.EC # 34 – leader candidate collected 13196 votes, second candidate – 4067, plaintiff Naghiyeva Dilshad Safarbay– 547 votes; on Shirvan Con.EC # 40 – leader candidate collected 14703 votes, second candidate – 5316, plaintiff Fattah Elman Volodiya– 184 votes; on Absheron-Gobustan Con.EC # 50 – leader candidate collected 17887 votes, second candidate – 3803, plaintiff Soltanli Sakhavet Shirsoltan– 661 votes; on Jabrayil-Gubadli Con.EC # 120– leader candidate collected 14723 votes, second candidate – 2226, plaintiff Amiraslanov Razim Malikajdar– 2088 votes.

Furthermore, to claim that all of the voters who have determined the decision to vote for the candidate who has withdrawn the candidacy would vote not for the elected candidate, but for the other candidates not elected after that candidate has refused from the participation in elections does not seem to be undisputable. It is evident from the above-mentioned that the claims on impossibility of determining voters' will on those election constituencies and the assumption that the situation emerged as a result of not excluding the plaintiffs' names from the ballot papers curtailed the rights of the persons participating in the election process in relevant election constituencies are groundless.

Apart from all these, the mechanisms of protecting the rights of the persons of mature age with physical capability by other persons are determined by the legislation of the Republic of Azerbaijan. Thus, pursuant to Article 362 of Civil Code, a person is entitled to charge another person with the protection of their rights upon providing a letter of attorney with the aim of interpersonal representation.

Obviously, the plaintiffs were not entitled to ensure the legal protection of the third persons and the other persons whose rights had been claimed to be violated by the plaintiffs did not claim on the violation of their rights.

The above-mentioned arguments allow to conclude that the plaintiffs' claim to invalidate the voting results protocols of the relevant Con.ECs which they have been registered on, to regard the elections as invalid, also to annul the foregoing Con.EC decisions shall not be implemented due to groundlessness.

And Hajili Mustafa Mustafa oghlu, registered candidate on Surakhani second Con.EC # 31 justified his claim on the grounds that his written application on the part on destination had not been considered at all as in the case of the other plaintiffs. It seemed surprising that he appealed to the Central Election Commission on November 2, 2015 on the withdrawal of his candidacy and excluding his name from the printed ballot papers and it shall be refused to implements its substance in that part due to either legislation or emergence as an impossible request since it has lost its essence after the voting has ended. Alongside with these, because of the following reasons M.Hajili's appeal in question to the Con.EC shall be refused to be implemented in the part on appealing to the relevant state bodies to legally assess the inaction of the Con.EC basing on not considering the appeal by that commission:

So, the evidences presented by the Con.EC reveal that M.Hajili's appeal was filed to Surakahnii second Con.EC # 31 by post on November 2, 2015, registered as # 091 on the same day, a decision was made on that appeal upon timely consideration at the Con.EC session, it was displayed on notice board and published and relevant activities were undertaken thereof to deliver to the plaintiff.

According to the above-mentioned, M.Hajili's appeal shall not be implemented due to groundlessness.

Thus, pursuant to the election legislation of the Republic of Azerbaijan and a decision of prejudicial importance, adopted by the Central Election Commission, the appeals of the plaintiffs shall not be implemented as being considered groundless.

So, on October 29, 2015 G.G.Aslanli, authorized representative and A.M.Hajili, chair of Musavat Party appealed to the Central Election Commission informing that the party had stoooped the participation in the Elections to the Milli Majlis of the Republic of Azerbaijan on November 1, 2015 and the withdrawal of candidacies by the registered candidates of the party had been forwarded to their own consideration and requested to ensure that the Con.ECs would receive the applications on the withdrawal of candidacies of the registered candidates of the party, also to postpone the elections 4 months later.

The appeals were not implemented due to groundlessness by the decision # 40/287 of the Central Election Commission, dated October 29, 2015. The CEC decision was substantiated in comply with Article 154.1 of the Election Code of the Republic of Azerbaijan and basing on the provision that a political party and a bloc of political parties shall have the right to recall a candidate and registered candidate nominated on single-mandate election constituency upon submitting a written application to the relevant Con.EC pursuant to the charter of the political party and decisions of the authorized representatives of the political parties which entered a bloc of the political

parties. This decision of CEC was remained in force by the decision of Baku Appeal Court, dated November 3, 2015.

Taking the above mentioned as a basis, pursuant to Articles 19.4, 28.2, 112, 112-1 and 154.1 of the 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 appeals # 118 of Hajili Mustafa Mustafa oghlu, registered candidate on Surakahni second Con.EC # 31 dated November 2, 2015 and # 132, dated November 4, 2015, appeals # 119 of Hajili Arif Mustafa oghlu, registered candidate on Khatai first Con.EC # 33 dated November 2, 2015 and # 137, dated November 4, 2015, appeal # 120 of Aslanli Gulagha Gulam oghlu, registered candidate on Binagadi third Con.EC # 10 dated November 2, 2015, appeals # 121 of Gambar Isa Yunis oghlu, registered candidate on Yasamal first Con.EC # 15, dated November 2, 2015 and # 135, dated November 4, 2015, appeal # 129 of Farzulla Khasay Safar oghlu, registered candidate on Masalli village Con.EC # 71, dated November 4, 2015, appeals # 130 of Mahmudov Misir Mahammad oghlu, registered candidate on Surakahni first Con.EC # 30, dated November 4, 2015, appeal # 131 of Mammadzadeh Zakir Bekir oghlu, registered candidate on Nizami second Con.EC # 25, dated November 4, 2015, appeal # 133 of Soltanli Sakhavet Shirsoltan oghlu, registered candidate on Absheron-Gobustan Con.EC # 50, dated November 4, 2015, appeal # 134 of Amiraslanov Razim Malikajdar oghlu, registered candidate on Jabrayil-Gubadli Con.EC # 120, dated November 4, 2015, appeal # 136 of Fattah Elman Volodiya, registered candidate on Shirvan Con.EC # 46, dated November 4, 2015, appeal # 138 of Naghiyeva Dilshad Safarbay, registered candidate on Khatai second Con.EC # 34, appeals # 139 of Nasirov Niyaz Eynulla oghlu, registered candidate on Khazar-Pirallahi Con.EC # 13, dated November 4, 2015 and the appeal # 143 of Aliyev Valeh Hummat oghlu, registered candidate on Salyan Con.EC # 59, dated November 5, 2015 shall not be implemented due to groundlessness and the argued decisions of the relevant Con.ECs shall be remained in force.
2. The decision shall be enforced upon its publication.

CEC Chairman

Mazahir Panahov

CEC Secretary

Arifa Mukhtarova

CEC Secretary

Mikayil Rahimov