

Opinion

of Mr. Gabil Orujov, member of Expert Group under Central Election Commission to investigate the complaints against actions (inactions) and decisions violating citizens' election rights in the repeat Elections to the Milli Majlis of the Republic of Azerbaijan on June 18, 2016, on Aghdash Con.EC # 90 on the appeal 02 submitted to CEC on May 16, 2016 by Natig Mehman Jafarov, the authorized representative of Ilgar Eldar Mammadov who nominated his candidacy to deputy on his own initiative

Baku

18 May 2016

In his written complaint addressed to the Central Election Commission on May 16, 2016, Natig Mehman Jafarov, authorized representative of Ilgar Eldar Mammadov, nominee on his own initiative in the repeat Elections to the Milli Majlis of the Republic of Azerbaijan on Aghdash Con.EC # 90, appointed to June 18, 2016 requested to annul the Con. EC decision, dated May 11, 2016 on the refusal from registering the candidacy of I.E.Mammadov upon regarding illegal and to register his candidacy on that election commission.

I, member of Expert Group, Gabil Orujov, investigating the written appeal # 02 submitted to CEC on May 16, 2016 by Natig Mehman Jafarov, the authorized representative of Ilgar Eldar Mammadov who nominated his candidacy to deputy on his own initiative, defined:

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.

During the investigation process, the 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 plaintiff substantiated his appeal on the grounds that when adopting a decision on the refusal from registering the candidacy, the Con.EC illegally refused from registering the candidacy upon basing on the legal consequence of remaining the resolution of Shaki Court of Severe Crimes concerning I.E.Mammadov, dated March 17, 2014 enforced by the decision of Shaki Court of Appeals, dated April 29, 2016. When adopting the imprisonment of I.E.Mammadov for 7 (seven) years by the relevant decision of that court and serving his sentence in the detention place as a basis, the Con.EC did not consider the relevant decision of the European Court of Human Rights which possessed more legal force about the candidate and simplified his situation.

It was determined through the investigation that the Notification on the nomination of the candidacy on own initiative for the repeat Elections to the Milli Majlis of the Republic of Azerbaijan on Aghdash Con.EC # 90, appointed to June 18, 2016 and other documents for the approval of the nomination were provided to the Con.EC on April 25, 2016, despite the deadline to approve the candidacy by the Election Code to be 5 (five) days, the Con.EC approved the candidacy of I.E.Mammadov within 3 (three) days on April 28,

2016 by the decision # 6/17 with the aim of providing more convenient conditions for I.E.Mammadov due to his detention at Penitentiary Isolation. That decision was sent to the authorized representative immediately and he was informed by phone. On May 3, 2016 the Con.EC provided N.M.Jafarov, authorized representative of the candidate with 11 (eleven) signature sheets to collect more than enough voters' signatures in support of the candidate. On May 5, 2016, the signature sheets were returned empty, unsigned and unfilled to the Con.EC without being attached necessary documents defined in legislation by a person called Jeyhun who had introduced himself as an assistant of the authorized representative. In this regard the Con.EC sent a letter to N.M.Jafarov, candidate's authorized representative on May 6, 2016 and having informed him about the delivery of the provided signature sheets to the Con.EC by unauthorized person. The authorized representative visited the Con.EC on May 8, 2016 and informed that the signature sheets had been returned empty and unfilled upon his request. Although he had been informed by the Con.EC on the enough time for collecting signatures and offered him to benefit the existing time period, he intended to return the empty and unfilled signature sheets to the Con.EC and later, the signature sheets were received upon the compilation of an act, the authorized representative signed the act and was provided with a reference on that.

It was determined through the above-mentioned that they did not benefit voluntarily by the provided opportunities to collect signatures for the registration of the candidacy and submit other documents implied in Article 58 of the Election Code (2 copies of the protocol on the results of signature collection, compiled in the form defined by the Central Election Commission, notification on the amendments made to the submitted information on the candidate, information on the amount and sources of the candidate's income and property belonging to the candidate based on the right to property, annual financial report of the candidate).

Although the Con.EC arrived in the correct conclusion in substantiating the decision on the refusal from registering the candidate, the incomplete application of the existing grounds to adopt the decision caused basis for the annul of that decision. So, the above-mentioned point out that while the failure of submission of the documents for the registration of the candidate as implied in the Election Code of the Republic of Azerbaijan should have been adopted as a primary basis for the refusal from registering the candidate in compliance with the Election Code, the Con.EC applied the legal provisions incompletely upon referring to the candidate's imprisonment and detention for only severe crime as a basis for the refusal, notwithstanding the Con.EC had discussed the issue in its decision. And this legally necessitates the annul of the Con.EC decision and the adoption of a new decision.

Alongside with the grounds referred by the Con.EC, incorrect recording or lack of the documents indicated in Articles 57 and 58 of the Election Code are also adopted as a basis for the refusal from registering the candidate as in comply with Article 60.2.2 of the Code.

Thus, the appeal # 02 of Natig Mehman Jafarov, dated May 16, 2016 shall be partly implemented, the Con.EC decision # 9/31, dated May 11, 2016 shall be annulled and since the failure of submitting necessary documents for the candidate's registration as implied in Articles 57 and 58 of the Election Code and legal consequences caused by the court decision on the candidate made the registration of the candidacy impossible, the registraion of I.E.Mammadov as a candidate shall be refused.

Taking the above mentioned as a basis, pursuant to Articles 19.4, 28.2, 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”, I have opinion that:

1. The appeal # 02, dated on May 16, 2016 by Natig Mehman Jafarov, authorized representative of Ilgar Eldar Mammadov, nominee on his own initiative in the repeat Elections to the Milli Majlis of the Republic of Azerbaijan on Aghdash Con.EC # 90, appointed to June 18, 2016 shall be partly implemented and the Con.EC decision # 9/31, dated May 11, 2016 shall be annulled.
2. As the registration of the candidate is impossible due to the reasons indicated in the substantiative part of the decision, the candidacy of I.E.Mammadov shall be refused to be registered.
3. Opinion shall be published from day of its adoption no later than 18 hours from that period (placed in internet site) and its copy shall be sent to the applicant.

Member of Expert Group

Gabil Orujov