

DECISION

of Central Election Commission of the Republic of Azerbaijan
on consideration of the appeal # 02 submitted to the Central Election Commission on
December 26, 2019 in the Elections to the MilliMajlis on February 9, 2020

Self-nominee Nargiz Ilgar Mahmudova whose candidacy on Narimanov second Con.EC # 20 has been verified in the Elections to the MilliMajlis on February 9, 2020 applied to the Central Election Commission of the Republic of Azerbaijan (CEC) on December 26, 2019, arguing the decision of Narimanov second Con.EC # 20, dated 18 December 2019 on the approval of the candidacy of Zaur Araz Gurbanli, self-nominee on that election constituency, she claimed on the illegality of that decision and therefore requested to undertake relevant measures.

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

Citizen N.I. Mahmudova substantiated her complaint basing that she nominated her candidacy on own initiative on Narimanov second Con.EC # 20 and the Con.EC approved her candidacy by the Decision dated 20 December 2019. When she visited the Con.EC to get the relevant documents for the registration of the candidacy, she inquired about other candidates and it was defined that the candidacy of Zaur Gurbanli was also approved by the Con.EC decision dated 18 December 2019. She considered the Con.EC decision on the approval illegal since Z.A. Gurbanli had been imprisoned for grave crime.

N.I. Mahmudova was informed on the investigation and invited to take part at the investigation. She stated that she supported her appeal, did not have any additional document to present to the investigation and would not be able to participate at the Commission session. Z.A. Gurbanli was informed on the argument of the Con.EC decision on the approval of his candidacy, the investigation was held on the case and he was invited to participate at the investigation. He informed by phone that he considered the Con.EC decision legitimate, he was set free from the unpaid part of the imprisonment by the amnesty order of President and he did not have any imprisonment basing on the decisions of European Court of Human Rights and Committee of Ministers of the Council of Europe. He e-mailed the copies of the foregoing decisions.

Z.A. Gurbanli was invited to the CEC session and his participation at the session was ensured.

During the investigation process the documents of the nomination of Z.A. Gurbanli on Narimanov second Con.EC # 20, the reference on receiving of the documents and the Con.EC decision # 30/111, dated 18 December 2019 were required for investigation.

It was determined that on December 13, 2019, Z.A. Gurbanli applied to the Con.EC with the notification on the nomination of his candidacy and application on commitment in the Elections to the MilliMajlis. The application on commitment contained the information on his imprisonment by Articles 228.3 (regarded as grave crime) and 220.1 (regarded as grave crime) of the Criminal Code, his amnesty on 30.12.2014,

considering the imprisonment illegal by the decision of the European Court of Human Rights and the implementation of that decision by the Azerbaijan government.

After receiving the documents, on 14.12.2019 the Con.EC sent an inquiry to the Police Office of Narimanov district on the imprisonment of Z.A.Gurbanli and other persons who have nominated their candidacy. But that inquiry had not been replied to within the 5 days' period – until 18.12.2019, implied in the law to consider the issue on the approval of the candidacy nomination. It is found out from the explanations of the Con.EC chairman, secretaries, members and heads of the Working Group and the reference on receiving the documents that although they could not get a reply from the inquiry and despite the imprisonment of Z.A.Gurbanli in May of 2014, a decision was made to approve his candidacy and he was provided signature sheets in support of his candidacy upon considering the amnesty by Order of President of the Republic of Azerbaijan in December of 2014 and the relevant decision of the European Court of Human Rights submitted by him.

Thus, Narimanov second Con.EC # 20 violated the requirements of II part of Article 85 of the Constitution and Articles 13.3.2 and 53.7 of the Election Code of the Republic of Azerbaijan. The Con.EC should have made a decision on the approval of the nomination after an official document on the lack of imprisonment (if the person has paid the penalty or was set free) for grave crime of a citizen who has nominated their candidacy is submitted as in compliance with the requirements of the legislation.

The reference #078-38795 of Narimanov district Police Office, dated 27.12.2019 also points out that citizen Z.A.Gurbanli was indeed imprisoned for eight years upon being accused by Baku Court on Grave Crimes by Articles 220.1 (regarded as grave crime) and 228.3 (regarded as grave crime) of the Criminal Code of the Republic of Azerbaijan and was set free from the unpaid part of his penalty by amnesty of Order # 972 of President of the Republic of Azerbaijan, dated 29.12.2014.

It is worth noting that though Z.A.Gurbanli was set free from the unpaid part of his imprisonment on 29.12.2014, his imprisonment is not paid since the period defined in the legislation has not passed. So, pursuant to Article 83.3.4 of the Criminal Code of the Republic of Azerbaijan, a person sentenced to imprisonment for the commitment of grave crime shall be regarded as paid his penalty after *six years* have passed since the day of his payment of the penalty.

Article 83.4 of the Criminal Code implies that if the arrested is early set free from paying penalty within a manner defined by law, or the unpaid part of the penalty is replaced by light punishment, then the period to pay the imprisonment shall be calculated from *the period of setting free from paying* the main and additional penalties.

Pursuant to the III part of Article 56 of the Constitution, the right to be elected of military servants, state officials, imprisoned persons by the enforced court decision, religious people and other persons implied in the Constitution and law could be restricted by law.

The II part of Article 85 of the Constitution of the Republic of Azerbaijan defines that the imprisoned persons for grave crimes shall not be elected deputy to the MilliMajlis.

Pursuant to Article 13.3.2 of the Election Code, the imprisoned persons for the crimes (grave and specific grave) implied in Articles 15.4-15.5 of the Criminal Code shall not have the right to be elected deputy to the MilliMajlis – passive election right.

Pursuant to Article 53.7 of the Election Code, one of the grounds to refuse from approving the candidate's nomination could be the violation of the rule for candidate nomination as determined by the Code.

Thus, it is determined that the Con.EC Decision # 30/111, dated 18.12.2019 on the approval of the candidacy of Z.A.Gurbanli has been adopted through violating the legal requirements as he had the unpaid imprisonment penalty, therefore the decision shall be annulled upon being considered groundless.

It should be noted regarding the address of Z.A.Gurbanli to the decisions of the European Court of Human Rights and Committee of Ministers of the Council of Europe, referred in his verbal explanations in the investigation that the decision of the European Court of Human Rights on the case of Z.A.Gurbanli does not mean that the judgment on him by Baku Court of Grave Crimes, dated 6 May 2014 has been invalidated or he does not have imprisonment. The imprisonment could be regarded as served or paid only within a manner defined in the legislation of the Republic of Azerbaijan.

The restriction of passive election rights of a certain category of people in the Parliamentary election as defined in many decisions by the European Court of Human Rights is aimed at ensuring the independence of the parliament and guarantee of voters' free rights to elect and meanwhile, states could determine relevant requirements in this field.

Thus, the existence of the unpaid imprisonment for grave crimes excludes the approval of the candidacy nomination.

The election commissions shall make decisions basing on the documents submitted to them as in compliance with the legislation of the Republic of Azerbaijan.

Pursuant to Article 25.2.1 of the Election Code, the Central Election Commission supervises on the implementation of citizens' election rights in the preparation and conduct of elections (referendum), also ensures the application of relevant provisions of the Code equally and accurately.

Pursuant to Article 112.9 of the Code, the superior election commission shall have the right to annul the decision of lower election commission, to adopt a decision on the substance or to order to re-consider the case.

Basing on the above-mentioned, the legal grounds are found out to implement the complaint and to annul the decision # 30/111, dated 18 December 2019 of Narimanov second Con.EC # 20 on the approval of the candidacy nomination since that decision has been received through violating the requirements of the Election Code.

Pursuant to Articles 56 and 85 of the Constitution of the Republic of Azerbaijan, Articles 13.3.2, 19.4, 25.2.1, 28.2, 53 and 112, 112-1 of Election Code of the Republic of Azerbaijan and items 1, 2, 4, 6 and 7 of the " Instruction on the rules for filing appeals and complaints to the Central Election Commission and Constituency Election Commissions of the Republic of Azerbaijan and their consideration" the Central Election Commission **decides:**

1. The appeal # 02 submitted by self-nominee NargizllgarMahmudova on Narimanov second Con.EC # 20 in the Elections to the MilliMajlis, appointed to February 9, 2020 shall be implemented as it is grounded and the decision # 30/111 of Narimanov second Con.EC # 20, dated 18 December 2019 on the approval of the

candidacy of self-nominee ZaurArazGurbanli on that election constituency shall be annulled due to groundlessness.

2. The decision shall be enforced upon its publication

CEC Chairman

MazahirPanahov

CEC Secretary

ArifaMukhtarova

CEC Secretary

MikayilRahimov