

## OPINION

on the appeal # 01, dated 19 December 2019, submitted to the Central Election Commission, investigated by Ramiz Ibrahimov, member of the Expert Group established under the Central Election Commission to investigate the complaints against the actions (inactions) and decisions violating citizens' election rights in the Elections to the Milli Majlis, appointed to February 9, 2020

Baku

21 December 2019

Me, Ramiz Ibrahimov, as a member of the Expert Group investigated the appeal # 01, dated 19 December 2019, submitted by Rasul Aghahasan Jafarov, self-nominee to deputy on Yasamal first Con.EC # 15 in the Elections to the Milli Majlis of the Republic of Azerbaijan, appointed to February 9, 2020 against the decision # 21/93, dated 17 December, 2019 by Yasamal first Con.EC # 15 on the refusal from the approval of his candidacy to deputy and determined the following:

As the appeal had been filed within the period implied for filing complaints, it was adopted for the implementation and relevant investigation was held in comply with Articles 112 and 112-1 of the Election Code of the Republic of Azerbaijan and Instruction of the Central Election Commission, dated 12 August 2008, approved by the Decision # 11/53-2 (made amendments by the decisions # 15/58-6, dated 23 July 2010 and # 5/16. Dated 19 October 2012),. Citizen R.A.Jafarov substantiated his complaint basing that on March 17, 2016 the European Court of Human rights and on 3-5 December, 2019 the Committee of Ministers of the Council of Europe adopted decisions regarding him and those decisions required to reinstate all his rights including the election right. Therefore, the plaintiff reasons basing on the decisions that the decision # 21/93 of the Con.EC dated 17 December 2019 shall be annulled and his nomination to deputy shall be approved.

The relevant Con.EC substantiated the decision # 21/93, dated 17 December 2019 on the refusal from the approval of the candidacy of R.A.Jafarov to deputy in the Elections to the Milli Majlis of the Republic of Azerbaijan basing on that R.A.Jafarov submitted a notification on the approval of his nomination on December 13, 2019 and on December 14, 2019, a reference on the imprisonment to the Con.EC to attach to the documents. According to the application on commitment and the reference attached to it, it was determined that R.A.Jafarov was arrested for grave crime by the relevant Article of the Criminal Code of the Republic of Azerbaijan. Pursuant to Article 13.3 of the Election Code, the persons arrested for the crimes (grave and specific grave) implied in Article 15.4-15.5 of the Criminal Code shall not have the right to be elected (passive election right) deputy of the Milli Majlis as in compliance with Article 85 of the Constitution of the Republic of Azerbaijan.

Basing on the above-mentioned, the Con.EC refused from the approval of the candidate's nomination in accordance with Articles 13.3, 53.7 and other articles of the Election Code.

R.A.Jafarov was informed on the investigation and he was invited to the investigation. He stated that he supported his appeal and did not have any additional document to present in the investigation, meanwhile he informed that he would take part in the investigation after contacting if he thought it was necessary. R.A.Jafarov admitted his imprisonment for grave crime and requested to annul the Con.EC decision and to approve his nomination basing on his amnesty. His participation at the CEC session was ensured.

It was found out after the investigation that self- nominee R.A.Jafarov was arrested by Articles 179.3.2 (grave crimes) and other articles of the Criminal Code and set free from the unpaid imprisonment penalty by the Order, dated 17 March 2016 of President of the Republic of Azerbaijan "On the amnesty of some prisoners".

It is worth noting that though R.A.Jafarov had been set free from the unpaid imprisonment, his imprisonment is not paid as the time period defined in the legislation has not passed. So that, pursuant to Article 83.3.4 of the Criminal Code, the imprisoned persons for the commitment of grave crimes are regarded as persons who have paid their imprisonment after six years have passed from the day of their 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.

Meanwhile, the II part of Article 85 of the Constitution defines that the imprisoned persons for grave crimes shall not be elected deputy to the Milli Majlis.

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 Milli Majlis – 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 had refused from approving the nomination of R.A.Jafarov as in compliance with the requirements of legislation due to the unpaid imprisonment.

Regarding R.A.Jafarov's address to the decisions of the European Court and Committee of Ministers of the Council of Europe, it should be noted that 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 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.

So that, the imprisonment for grave crimes is the legal ground to refuse from the approval of the candidate's 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.

Due to the lack of legal grounds to implement the complaint and annul the Con.EC decision # 21/93, dated 17 December, 2019 basing on the above-mentioned, the appeal shall not be implemented due to the groundlessness and that decision of Yasamal first Con.EC # 15 shall be remained enforced without being changed.

Pursuant to Articles 13.3.2, 53 and 112, 112-1 of Election Code of the Republic of Azerbaijan and items 1-7 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", I **have concluded:**

1. The appeal # 01 submitted by Rasul Aghahasan Jafarov, self-nominee to deputy on Yasamal first Con.EC # 15 in the Elections to the Milli Majlis of the Republic of Azerbaijan, appointed to February 9, 2020 shall not be implemented due to the groundlessness and the Con.EC decision # 21/93, dated 17 December, 2019 on the refusal from the approval of his nomination shall be remained enforced without any changes.
2. The opinion shall be published (posted on the website) not later than 18 hours upon its adoption and its copy shall be sent to the applicant.

Member of the Expert Group

Ramiz Ibrahimov