

## DECISION

### **of Central Election Commission of the Republic of Azerbaijan on consideration of the appeal # 06 submitted to the Central Election Commission on January 4, 2020 in the Elections to the MilliMajlis of the Republic of Azerbaijan on February 9, 2020**

By applying to the Central Election Commission (CEC) on January 4, 2020 Rustamzade Ilkin Bakir, self-nominee to deputy on Nizami second Con.EC # 25 in the Elections to the MilliMajlis of the Republic of Azerbaijan, appointed to February 9, 2020 argued the decision # 26/116, dated 25 December, 2019 by Nizami second Con.EC # 25 on the refusal from the approval of his candidacy to deputy and therefore, requested to approve his nomination upon annulling that decision.

The complaint was adopted for the implementation in comply with Articles 112 and 1121 of the Election Code of the Republic of Azerbaijan 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 I.B. Rustamzade substantiated his complaint basing on that the European Court of Human rights 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 # 26/116, of the Con.EC dated 25 December, 2019 shall be annulled and his nomination to deputy shall be approved.

The relevant Con.EC substantiated the decision # 26/116, dated 25 December, 2019 on the refusal from the approval of the candidacy of I.B. Rustamzade deputy on January 4, 2020 Elections to the MilliMajlis of the Republic of Azerbaijan basing on that I.B. Rustamzade submitted a notification on the approval of his nomination on December 13, 2019, a reference on the imprisonment to the Con.EC to attach to the documents. According to the application on commitment, it was determined that I.B. Rustamzade was arrested for grave crime by the relevant Article of the Criminal Code of the Republic of Azerbaijan (Criminal Code). 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 MilliMajlis as in compliance with Article 85 of the Constitution of the Republic of Azerbaijan (Constitution).

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.

I.B. Rustamzadeh's authorized representative Rustamzadeh Turkan Bakir has been provided for participation in the investigation and the session of the Central Election Commission.

It was determined by the investigation that I.B.Rustamzade, whose candidacy was nominated by himself, was arrested by Articles 220.1, 228.3 (grave crimes) and other Articles of the Criminal Code and other Articles and set free from the unpaid part of the penalty by Order, dated 16 March 2019 of President of the Republic of Azerbaijan “On the amnesty of some arrested”.

It is necessary to note that although I.B.Rustamzade was released from a prison sentence, his imprisonment is not paid as the period defined in the legislation has not passed. Thus, the persons sentenced to imprisonment for committing serious crimes under Article 83.3.4 of the Criminal Code shall be considered to have paid their sentences after six years from the date of their release.

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.

It is worth noting that though I.B.Rustamzade 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 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 had refused from approving the nomination of I.B.Rustamzade as in compliance with the requirements of legislation due to the unpaid imprisonment.

Regarding I.B.Rustamzades 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 # 26/116, dated 25 December, 2019 basing on the above-mentioned, the appeal shall not be implemented due to the groundlessness and that decision of Nizami second Con.EC # 25 shall be remained enforced without being changed.

Pursuant to Articles 56 and 85 of the Constitution of the Republic of Azerbaijan, Articles 13.3.2, 19.4, 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 # 06 submitted by January 4, 2020 by Rustamzade İlkin Bakir, self-nominee to deputy on Nizami second Con.EC # 25 in the Elections to the MilliMajlis of the Republic of Azerbaijan, appointed to February 9, 2020 shall not be implemented due to the groundlessness and the Con.EC decision # 26/116, dated 25 December, 2019 on the refusal from the approval of his nomination shall be remained enforced without any changes.
2. The decision shall be enforced upon its publication

CEC Chairman

MazahirPanahov

CEC Secretary

ArifaMukhtarova

CEC Secretary

MikayilRahimov