

JOINT OPINION

**of Ramiz Ibrahimov, Gabil Orujov, Valida Kazimova and Emin Guliyev,
members of Expert Group established under Central Election Commission
for investigating the complaints about the actions (inactions) violating citizens'
election rights on the appeals submitted to Central Election Commission by
the authorized representative of New Azerbaijan Party Ali Ahmadov, Public TV and
Radio Broadcasting Company and registered candidate to presidency Jamil Hasanli
in the Presidential Elections of the Republic of Azerbaijan on October 9, 2013**

Baku city

21 September 2013

Having investigated the appeals 01 and 02 dated 20 September 2013 by the authorized representative Ali Ahmadov, appeal 03 dated 20 September 2013 by Public TV and Radio Broadcasting Company and appeal 04 dated 20 September 2013 by registered candidate to presidency Jamil Hasanli in the Presidential elections of the Republic of Azerbaijan on October 9, 2013, as members of the Expert Group – Ramiz Ibrahimov, Gabil Orujov, Valida Kazimova and Emin Guliyev, we have determined that:

As the appeals were in comply with Article 112-1 of the Election Code of the Republic of Azerbaijan and Instruction “On the rules for filing the appeals and complaints on the violation of election rights to Central Election Commission of the Republic of Azerbaijan and Constituency Election Commissions and their consideration” dated 12 August 2008 and were combined in one implementation.

As the appeals have been compiled in comply with Article 112-1 of the Election Code of the Republic of Azerbaijan and Instruction of Central Election Commission “On the rules for filing the appeals and complaints about the violation of election rights to Central Election Commission and Constituency Election Commissions and their consideration by the commissions” dated 12 August 2008, they were adopted to the investigation. While investigating the appeals initially, it was decided to investigate them in one implementation and providing one joint opinion on them by taking into account that the complaints were connected with the law violations committed at the same period and in the same place.

As the appeal submitted by Public TV and Radio Broadcasting Company is connected with its direct activity as mass media joined the process, voters' rights to get effective information and interests of campaigning persons, it was also investigated together with other appeals.

The applicants did not come to the investigation though they have been invited by the members of the Expert Group and did not submit any additional documents and evidences regarding the issues indicated in the appeal. The followings have been determined at the result of the investigation of the appeals:

Having applied to Central Election Commission on September 20, 2013, Ali Ahmadov, authorized representative of New Azerbaijan Party the candidate of which has been registered in the Presidential elections to be held on October 9, 2013 informed that when conducting "Round table" on 19 September 2013 in "Khalg sechir" ("People elects") organized in accordance with the schedule of free airtime allocated for conducting campaign of candidates in the Presidential elections of the Republic of Azerbaijan, registered candidate to presidency Jamil Hasanli nominated by "National Council of Democratic Forces" voters' initiative group had conducted campaign by offending requirements of relevant items in article 88 of the Election Code of the Republic of Azerbaijan, thus using the expressions honor and dignity of Mr. Ilham Aliyev, candidate of New Azerbaijan Party and President of the Republic of Azerbaijan, protected by article 106 of the Constitution of the Republic of Azerbaijan, as well as, human and dignity of his family members, committing illegal actions in contradiction with ethics of broadcasting and period of the allocated campaign and causing the violation of other candidates' rights to conduct campaign and therefore, requested to undertake relevant measures defined by law.

Registered candidate Hasanli Jamil Poladkhan oghlu nominated by "National Council of Democratic Forces" voters' initiative group also applied to Central Election Commission on that day and informed that his honor and dignity had been humiliated by another registered candidate Hafiz Hajiyev and authorized representative of New Azerbaijan Party Ali Ahmadov, as well as, Hafiz Hajiyev had insulted honor and dignity of members of the voters' initiative group which has nominated him, had accused him in different crimes, used the expressions forming social, racial, national, religious hatred and hostility, had committed hooliganism action by throwing away the plastic water bottle, as a result, could not use 1.5 min of the airtime allocated for him and therefore requested to undertake relevant measures.

Public TV and Radio Broadcasting Company of the Republic of Azerbaijan also applied to Central Election Commission on that date and informed that registered candidate to presidency Jamil Hasanli who was participant of “Round table” offended the rights of other participants by his rude behavior when using free airtime allocated for him, thus violating the Constitution of the Republic of Azerbaijan and other legislative acts severely upon using non-ethic expressions for the President of the Republic of Azerbaijan and his family members in his speech, as well as, causing material damage for the company by using airtime 6 min 12 seconds more than the allocated. Furthermore, the appeal also concluded that Jamil Hasanli forms reason for using more time than the airtime allocated for “Round table” and damages the business reputation of Public TV and Radio Broadcasting Company of the Republic of Azerbaijan by using the expressions in contradiction with the airtime requirements upon offending the timely and qualified deliverance of other programs to the audience and violated the rights of large audience to get effective information. It was requested to warn the participants of “Round table” for the prevention of such offensive cases along with undertaking relevant measures defined by legislation on registered candidate to presidency Jamil Hasanli.

Press Group under Central Election Commission of the Republic of Azerbaijan also investigated the information on law violations at “Round table” indicated in its session and having arrived at the conclusion that there had been certain violations, applied to Central Election Commission for undertaking the measures defined by law.

Video recording of the above-mentioned “Round table” were submitted to Central Election Commission by the applicants.

Members of the Expert Group believe that the appeal of Press Group under the Commission on undertaking relevant measures regarding with law violations allowed during “Round table” shall also be reviewed and other appeals shall be partly implemented.

Thus, it was determined through the investigation that when holding discussions at “Round table” during “Khalg sechir” (“People elects”) program at Public TV and Radio Broadcasting Company of the Republic of Azerbaijan organized and broadcasted for pre-election campaign on September 19, 2013, registered candidate to presidency Jamil Hasanli had violated the requirements of Article 106 of the Constitution of the Republic of Azerbaijan which implies the protection of honor and dignity of President of the Republic of Azerbaijan and interests of his family members protected by law, as well as, the requirements of

legislation of the Republic of Azerbaijan for conducting pre-election campaign before the whole audience without using the allocated airtime on re-appointment (as in the first round table, without paying no attention to the calls of Central Election Commission for complying with legal requirements) and despite conducting pre-election campaign, used false and legally prohibited expressions for Mr. Ilham Aliyev, President of the Republic of Azerbaijan and his family members. And therefore, he provided the interested parties with the ground to apply with request of undertaking relevant measures for criminal prosecution and exposing to liability about him.

Members of Expert Group believe that since the event had taken place in the frame of pre-election campaign activities and under intense psychological circumstances, it was one of the first discussions at "Round table" and this was not enough for obtaining much practice, meanwhile, as it appeared in such severe form for the first time and used by Jamil Hasanli more than implied by legislation, it should be sufficient to warn Jamil Hasanli seriously instead of solving the matter by undertaking criminal prosecution measures upon considering the requirements of item 1 of Article 47 of the Constitution of the Republic of Azerbaijan and the above-mentioned issues.

The video recording "Round table" organized on Public TV for the conduct of pre-election campaign of registered candidates reveals that registered candidate Hafiz Hajiyev who had fully used the airtime allocated for him severely offended the airtime requirements and ethics by interfering without microphone as the protest to illegal and groundless speech of Jamil Hasanli against honor and dignity of President of the Republic of Azerbaijan and his family members and used non-ethic expressions for him before the multi-million audience and threw away the plastic water bottle put in front of him to Jamil Hasanli.

At the same time, he used the expressions supposed to insult honor and dignity of different persons, thus accusing them in different crimes and forming social, racial, national, religious hatred and hostility. Therefore, Jamil Hasanli was obstructed to use 1.5 min of the airtime allocated for him normally without break. Consequently, Jamil Hasanli required from the announcer to restore this time due to the fact that he could not use 25 seconds of the airtime allocated for him. By insisting on the request, Jamil Hasanli informed that he was going to continue the conflict until solving the issue in favor of him and thus, obstructed another participant of "Round table", authorized representative of New Azerbaijan Party Ali Ahmadov to continue his speech.

Despite that, by using this time with intervals, he could display the model of “campaign based on dispute” used as a successful means by some election technologists, by using 6 min 12 seconds of the airtime allocated for him despite forming serious obstacles for normal proceeding of the program on pre-election campaign using expressions against legal status of the Head of State, protected by law in full comply with the methods, format and subject of the campaign conducted by him independently. Therefore, there is no need to allow Jamil Hasanli to use the airtime at the same duration and Central Election Commission is not empowered with such authority in legislation.

Instead of solving the misunderstanding relating to the duration of unused airtime based on the dispute with Hafiz Hajiyev, Jamil Hasanli brought about a reason to damage to hold discussions in the defined succession and period, needless usage of more time than the allocate airtime, thus offending the rights defined by law for the participants of “Round table” and TV audience and injuring business reputation of Public TV and Radio Broadcasting Company of the Republic of Azerbaijan by disputing with the announcer on the issue not in the announcer’s competence (allocation of additional airtime) without paying attention to law-based requests of the “Round table” announcer.

Since any fact proving the commitment of illegal actions against registered candidate J.Hasanli by authorized representative of New Azerbaijan Party Ali Ahmadov has not been found out through the investigation conducted by the members of Expert Group, there are not any grounds to conclude that his behavior was contrary to the legal requirements.

As to Public TV and Radio Broadcasting Company, members of the expert group thinks that there is obvious necessity of determining and applying the most effective methods and ways in comply with the legislation for the effective usage of the airtime allocated only for pre-election campaign in accordance with the format of “Round table”, deliverance of the programs to voters normally by the users, as well as, for ensuring the rights of voters to be familiar with pre-election programs and platforms that is very important for the implementation of voters’ sovereign rights. Therefore, Public TV and Radio Broadcasting Company shall undertake relevant measures on this, organize the next “Round table” more effectively and take necessary activities for facilitating voters to get information. As to the request of Public TV and Radio Broadcasting Company of the Republic of Azerbaijan on needless usage of 6 min 12 seconds airtime due to illegal actions of Jamil Hasanli,

members of expert group reckons that the possibility of implementing this request in court manner shall be clarified.

Apart from the above-mentioned, members of the expert group think that the possibility of protecting honor, dignity and business reputation in court manner shall be brought to the notice of the parties in comply with Article 106 of the Constitution of the Republic of Azerbaijan.

Thus, an individual may require disproof of the information injuring his/her honor and dignity or business reputation, offending his/her private and family secrets or private and family protection, providing that the person who has disseminated this information does not prove it to be reality. When the factual information is not fully published and if it injures the honor, dignity or business reputation of a person, the same manner shall be applied.

Members of expert group consider worthy to note that the persons having right to conduct campaign in the Presidential elections of the Republic of Azerbaijan on October 9, 2013 and participants of "Round table" shall comply strictly with the legislation requirements when using the facilities and free airtime allocated for them, use the allocated airtime only for campaign purposes, not to injure the values protected by law, respect rights and interests of President of the Republic of Azerbaijan, defended by the Constitution, not to abuse mass media like a campaign causing social, racial, religious, national hatred and hostility when holding pre-election campaign, not to make speeches and disseminate the materials calling to intimidation and calumnies or violence, to respect freedom of press, not to intervene in the activity of mass media representatives engaged in their occupation, not to interfere and boycott the election campaigns of candidates, political parties, not to give space to the calls on possessing power by force, changing the constitutional structure by force and offending the territorial integrity of the state, opinions humiliating citizens' honor and dignity in the campaign materials and speeches issued in mass media and they shall comply strictly with these legal requirements.

Pursuant to Article 106 of the Constitution of the Republic of Azerbaijan, President of the Republic of Azerbaijan shall enjoy the right of personal immunity. Honor and dignity of President of the Republic of Azerbaijan are protected by law.

Pursuant to Article 189.2 of the Election Code, free airtime allocated by TV and radio broadcasting organizations shall be considered for the conduct of discussions, round tables, other similar campaign activities by the registered candidates to presidency.

Pursuant to Article 2.6 of the Election Code of the Republic of Azerbaijan, persons participating in elections shall respect freedom of press and abide by the terms of to not obstruct the professional activities of representatives of the mass media, to not violate or interfere in election (referendum) campaign of candidates and parties (blocs of political parties), to respect the authorized persons and observers and cooperate with them, to not influence voters to one's side through illegal actions, to not make calls and disseminate materials calling to intimidation, calumnies or violence, to not incite voters to vote or to not vote through pressure or offering bribes, or other illegal methods.

Pursuant to Article 88.1 of the Election Code, in compliance with the Criminal Code, the Code of Administrative Offences, and the Civil Code of the Republic of Azerbaijan, pre-election programs (pre-referendum calls) of candidates, political parties, blocs of political parties, and referendum campaign groups, meetings and pre-election campaign speeches and materials distributed through the mass media should not contain incitements to overthrow the government by force, change the constitutional system by force, violate the territorial integrity of the country, or insult citizens' honor and dignity. This prohibition should be implemented in accordance with Article 47 of the Constitution of the Republic of Azerbaijan.

Pursuant to Article 88.2 of the Election Code, in compliance with the Criminal Code of the Republic of Azerbaijan, during a pre-election campaign it shall be prohibited to abuse the mass media for campaigns which incite social, racial, national or religious hatred and hostility.

Pursuant to Articles 47.1, 106 of the Constitution of the Republic of Azerbaijan, Articles 2.6, 19., 19.314, 28.2, 28.4, 88.1, 88.2, 112, 112-1, 189.2 of the Election Code of the Republic of Azerbaijan and Articles 1, 2, 4, 6 and 7 of the Instruction "On the rules for filing the appeals and complaints on violation of election rights to Central Election Commission and Constituency Election Commissions and their consideration by these commissions" dated 12 August 2008 adopted by Central Election Commission and according to the above-mentioned, members of expert group **came to opinion:**

1. Information of Press Group under Central Election Commission shall be taken into account.
2. The appeals 01 and 02 dated 20 September 2013 by the authorized representative of New Azerbaijan Party Ali Ahmadov, appeal 03 dated 20 September 2013 by the Public TV and Radio Broadcasting Company of the Republic of Azerbaijan shall be partly implemented and registered candidate to presidency Jamil Poladkhan oghlu Hasanli shall be strictly warned.
3. The appeal 04 dated 20 September 2013 by registered candidate to presidency Jamil Hasanli shall be partly implemented and registered candidate to presidency Hafiz Alamdar oghlu Hajiyev shall be warned.
4. The possibility of protecting honor, dignity and business reputation shall be brought to notice of the parties by complying with Article 106 of the Constitution of the Republic of Azerbaijan.
5. The persons having right to conduct campaign, especially, participants of "Round table" shall be reminded on the necessity of complying strictly with legislation and preventing abuse when conducting pre-election campaign.
6. Public TV and Radio Broadcasting Company of the Republic of Azerbaijan shall be reminded on the necessity of determining and applying more effective ways and means for the organization and conduct of "Round table" more effectively in the limits and manner defined by law.
7. The opinion shall be published within 18 hours from the moment of its adoption (on the web site of Central Election Commission) and a copy should be sent to the applicants.

Member of Expert group

Member of Expert group

Member of Expert group

Member of Expert group

Ramiz Ibrahimov

Gabil Orujov

Valida Kazimova

Emin Guliyev