

## OPINION

**of Valida Kazimova, member of Expert Group established under Central Election Commission for investigating the complaints about the actions (inactions) violating citizens' election rights on the appeal #12 dated October 01, 2013 by Jamil Hasanli registered candidate in Presidential Elections of the Republic of Azerbaijan on October 9, 2013**

Baku city

October 02, 2013

Investigating the appeal #12 dated October 01, 2013 by Jamil Hasanli, registered candidate to presidency in the Presidential elections of the Republic of Azerbaijan appointed to October 9, 2013, as a member of Expert group – Valida Kazimova, I determined that:

Appealing to the Central Election Commission of the Republic of Azerbaijan on October 1, 2013, Jamil Poladkhan oghlu Hasanli, registered candidate in Presidential Elections of the Republic of Azerbaijan on October 9, 2013 indicated that Hafiz Hajiyev, another registered candidate to presidency humiliated for the next time the honor and dignity of him and separate members of “National Council of Democratic Forces”, intimidated them by killing, showed disrespect to the audience but the broadcast announcer did not stop his speech during the “Round table” discussions at “People elects” program arranged by Public TV and Radio Broadcasting Company for the candidates to conduct free campaign on 28 September 2013 and requested to cancel the registration of registration of candidate Hafiz Hajiyev and appeal to legal protection bodies for undertaking relevant measures, as well as to take relevant measures on the broadcast announcer of “People elects” program of Public TV and Radio Broadcasting Company.

As the appeal had been compiled in comply with Articles 112 and 112-1 of the Election Code of the Republic of Azerbaijan and “Instruction on the rules for filing appeals and complaints on the violation of election rights to Central Election Commission and Constituency Election Commissions and their consideration by these commissions”, it was accepted for investigation by me – as a member of the Expert Group established under Central Election Commission.

The applicant was kept contact in the process of investigation and was informed on the right to participate in the investigation and he was invited to assist the investigation

Assuming the principle of ensuring citizens election rights more effectively as a basis, the applicant's appeal was reviewed by Central Election Commission in a manner defined by law.

Video recording of "People elects" program arranged by Public TV and Radio Broadcasting Company for the candidates to conduct free campaign on 28 September 2013 was considered during the investigation of the appeal and the scene that Hafiz Hajiyev or any candidate intimidates by killing was not seen in the video record. Lack of the case on intimidation by killing was justified both by the authorized representative of the applicant and registered candidate to presidency Hafiz Hajiyev and announcer-journalist Fuzuli Ismayilov. Therefore, the appeal is groundless in this part.

As to the claim on humiliating honor and dignity of registered candidate to presidency Jamil Hasanli and separate members of "National Council of Democratic Forces" by another candidate Hafiz Hajiyev during the above-stated TV debate, it should be noted that honor and dignity of Hafiz Hajiyev, different persons and groups were humiliated not less than him and was told the expressions possible to be assessed as the violation of not only the "Round table" participants, but also the rights of voters to get information as enshrined by law.

Therefore, as a Expert group member, I reckon that the applicant should be reminded on the requirement for the protection of citizens' honor and dignity in a manner defined by civil and criminal-procedural legislations.

Thus, pursuant to Article 23.1 of Civil Code of the Republic of Azerbaijan, a physical person may require the court to neglect the information humiliating his honor, dignity and business reputation, offending personal or family secret or personal and family integrity, providing that the person who has disseminated this information does not prove this information to be reality. If the factual information not published completely humiliates the person's honor, dignity and business reputation, the same rule shall be referred.

Pursuant to Article 37.2 of Criminal-Procedural Code of the Republic of Azerbaijan, criminal prosecution shall be implemented on the crimes implied by Articles 147, 148, 165.1 and 166.1 of Criminal Code of the Republic of Azerbaijan only on the basis of the sufferer's complaint.

The cases implied by Article 113.2 of the Election Code, create grounds for the cancel of a candidate's registration.

Pursuant to Article 113.2 of the Election Code of the Republic of Azerbaijan, the registration of a candidate, referendum campaign group shall be canceled in accordance with court judgment enforced upon a crime or decision on

administrative offence in a manner defined by legislation in the cases implied by Article 113.2.1-13 of the Election Code of the Republic of Azerbaijan.

As obvious, there is not any enforced court judgment or decision on administrative offence related to the case.

Furthermore, Central Election Commission considers necessary to remind once more that the persons having the right to campaign who participate in the Presidential elections of the Republic of Azerbaijan to be held on October 9, 2013, especially, participants of "Round table" shall comply strictly with legislation requirements while using the facilities and free airtime allocated for them, use the allocated airtime only for campaign purposes, not insult the values protected by law, respect rights and interests of the President of the Republic of Azerbaijan enshrined in the Constitution, not abuse mass media in the form of campaign forming social, racial, national and religious hatred and hostility during the conduct of pre-election campaign, not make calls and disseminate materials directing to intimidation and slanders or violence, respect freedom of press, not interfere in the work of media representatives dealing with their profession, not intervene and obstruct the election campaigns of candidates and political parties, not issue the calls to overthrow the government, overturn of the constitutional structure and breaking the integrity of the country or the discretion humiliating citizens' honor and dignity in the campaign materials disseminated in mass media and abide strictly by such legal requirements.

As to the accusation of the "Round table" announcer by the applicant in illegal activity, it should be noted that registered candidates shall enjoy full rights to use the allocated airtime for the conduct of campaign and they shall use this airtime for pre-election campaign in accordance with their discretion. As the interference of the announcer for preventing the violation of the above-stated requirements by the candidate or applicant making speech leads to the unnecessary loss of 6 min 12 seconds airtime of Public TV and Radio Broadcasting Company in practice, meanwhile, as the person in the function of announcer in "Round table" discussions is not charged with the commitment of stopping candidates' pre-election campaign, it is impossible to undertake any measures on this person.

According to the above-mentioned, the appeal shall not implemented, the applicant shall be reminded on the legislation requirement for juridical protection of citizens' honor and dignity and the necessity of complying strictly with legislation requirements and not abusing by the persons empowered to conduct campaign, especially, "Round table" participants during the conduct of pre-election campaign shall be underlined.

Pursuant to Article 189.2 of the Election Code, free airtime allocated by TV and radio broadcasting companies shall be considered for the registered candidates to presidency to conduct round tables and other similar campaign activities. The rules for conducting these activities shall be defined by the Central Election Commission.

Pursuant to Article 2.6 of the Election Code of the Republic of Azerbaijan, the persons participating in elections shall respect freedom of the press, not obstruct the professional activities of representatives of the mass media, not violate or interfere in election (referendum) campaign of candidates and parties (blocs of political parties), respect authorized persons and observers and to cooperate with them, not influence voters to one's side through illegal activities, not make speeches that intimidate, slander or call to violence, or distribute materials with such content, not pressure, bribe or use other methods in contradiction with legislation to entice voters to vote or refrain from voting.

Furthermore, Pursuant to Article 88.1 of the Election Code 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 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.

Taking the above mentioned as a basis, Pursuant to Articles 112, 112-1 of the Election Code of the Republic of Azerbaijan and Articles 1, 2, 4, 6, 7 and 8 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", **I came to opinion:**

1. The appeal # 12 dated 1 October 2013 by Jamil Poladkhan oghlu Hasanli, registered candidate in the Presidential elections of the Republic of Azerbaijan on October 9, 2013 shall not be implemented.
2. The applicant shall be informed on the possibility of juridical protection of honor, dignity and business reputation.

3. The necessity of complying strictly with legislation requirements and not abusing by the persons empowered to conduct campaign, especially, “Round table” participants during the conduct of pre-election campaign shall be underlined.

4. 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

Valida Kazimova