

OPINION

of Rafiq Abbasov, member of Expert Group established under Central Election Commission for investigating the complaints about The actions (inactions) violating citizens' election rights on the appeal #14 by Jamil Hasanli registered candidate in Presidential Elections of the Republic of Azerbaijan on October 9, 2013

Baku city

October 3, 2013

Investigating the appeal #14 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 – Rafiq Abbasov, I determined that:

As the appeal was compiled in accordance with Election Code and Instruction “on rules for submission and processing of complaints and appeals on the violation of election rights filed to the Central Election Commission of the Republic of Azerbaijan and constituency election commissions” and submitted within the period implied for the complaint, it was accepted for investigation.

Jamil Poladkhan oghlu Hasanli, registered candidate in Presidential Elections of the Republic of Azerbaijan on October 9, 2013 applied in written form to the Central Election Commission on October 2, 2013 and argued the decision # 19/113 dated 25 August 2013 by the Central Election Commission on the registration of the candidate to presidency.

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” dated August 12, 2008, it was accepted for investigation by me – as a member of the Expert Group established under Central Election Commission.

During the review, the appeal was determined to have been filed without complying strictly with the rules defined by legislation and some other requirements.

Central Election Commission reckons that the opinion of the Expert Group member on return of the appeal has been compiled in comply with the legislation requirements and the complaint shall be sent back to the person who has submitted it.

Thus, decision # 19/113 dated 25 August 2013 of the Central Election Commission was publicized on 26 August 2013 and facilitated for filing complaints in a manner and within the period defined by legislation. But the applicant did not use this opportunity and the deadline for filing complaints was missed without any valid reasons.

Furthermore, though the applicant had to appeal to the Appeal Court from the decision of the Central Election Commission, he appealed to the body itself

which made decision without considering the destination rules of the election legislation.

As to the commitment charged by the Central Election Commission for appealing to the court regarding the cancel of the candidacy by the applicant, Central Election Commission has not been charged with such a duty in the legislation.

Pursuant to Article 112.10 of the Election Code of the Republic of Azerbaijan and item 7.8 of “Instruction on the rules for considering and filing the appeals and complaints on the violation of election rights to the Central Election Commission of the Republic of Azerbaijan and Constituency Election Commissions”, decision on every complaint submitted to the election commission during the election course shall be adopted and delivered to the complainer within 2 days when there are less than 30 days remaining prior to the voting day (not later than the voting day) and immediately on the voting or the next day.

Pursuant to item 7.1 of the above-mentioned Instruction, the expert shall firstly review the complaint after the election commissions record and submit the complaint to the consideration of expert. If the expert reveals that the complaint has been submitted by violating the rules defined by the Election Code and the Instruction, then by informing the group coordinator, he/she shall provide opinion on sending the complaint back to the person who has submitted it.

If the complaint is not implemented preliminarily by superior election commission pursuant to Article 112.3 of the Election Code, the persons implied by Article 112.1 of the Code may file a complaint to the Central Election Commission from the decision or action (inaction) of the Constituency Election Commission and to the Appeal Court from the decision or action (inaction) of the Central Election Commission.

Assuming the above-mentioned as a basis and pursuant to Articles 112, 112-1 of the Election Code of the Republic of Azerbaijan and items 1, 2, 4, 6 and 7 of “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”, **I came to opinion:**

1. The appeal # 14 dated 2 October 2013 by Jamil Poladkhan oghlu Hasanli, registered candidate in the Presidential elections of the Republic of Azerbaijan on October 9, 2013 shall be sent back to the applicant due to the expired deadline for filing complaints as defined by legislation and violation of the destination rules.

2. 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.