

OPINION

of Bakhsheyish Asgarov, member of Expert Group under CEC to investigate the complaints against actions (inactions) and decisions violating citizens' election rights in the Municipal Elections on December 23, 2014

on the appeal 07 submitted to CEC on November 22, 2014

Baku

24 November 2014

Having investigated the appeal # 07 submitted to CEC on November 22, 2014 by Jafar Mazahir Jafarov, nominee on Arkivan municipality of Masalli village Con.EC # 71 on his own initiative in the Municipal elections on December 23, 2014 regarding illegal refuse from registering his candidacy by the above-mentioned Con.EC and undertaking relevant measures defined by law on this, as a member of Expert Group, I have determined that:

Since the appeal had been submitted in comply with Articles 112 and 112-1 of the Election Code of the Republic of Azerbaijan and the Instruction "On the rules for submission and processing of appeals and complaints on the violation of election rights to the Central Election Commission and Constituency Election Commissions of the Republic of Azerbaijan" approved by the CEC decision # 11/53-2 dated August 12, 2008 (amended by decisions # 15/58-6 dated July 23, 2010 and # 5/16 dated October 19, 2012), it was accepted for implementation and relevant investigation was held on this.

The applicant was informed on the investigation, also noted on his right of presenting additional evidences and documents on the complaint and invited to take part in the investigation.

By justifying his complaint, J.M.Jafarov informed that he had nominated his candidacy on his own initiative on Arkivan municipality of Masalli village Con.EC # 71 in Municipal elections on December 23, 2014, submitted signature sheets and other necessary documents attached to them to the Con.EC upon the collection of voters' signatures within that municipality, but his candidacy was refused from registration by the Con.EC without any reason. According to his information, the Con.EC indicated that the reason for refusal had been empty columns in the signature sheets and invalidity of 32 signatures. But he did not agree by explaining that 71 signatures had been collected by him, the signatures had been put by citizens themselves and the relevant Con.EC had not provided him yet with the decision on the refusal from registering his candidacy.

By justifying its decision # 17/63 dated November 21, 2014 on the refusal from registering the candidacy of J.M.Jafarov, the Con.EC informed that he had not included the full necessary information on candidate in the signature sheet (name, surname, patronymic, serial number of ID card or its substitute document, date of issue, date of signature, place of work (type of activity), address of residence). The signature sheet # 02 had not been signed by the candidate to municipality membership and although Elmir Miralam Aliyev was indicated as a person collecting signatures in the signature sheet, the signature, as well as, serial number of ID card included in the signature sheet # 02 did not belong to him.

It is also pointed out that 3 persons of those who have signed the signature sheets live outside the republic and the expiry date of 2 voters' ID cards have terminated. During the checking of signatures by the Con.EC Working Group 36 out of 71 signatures were considered valid. Consequently, as the signatures necessary for the candidate's registration were not sufficient, the candidacy of J.M.Jafarov was refused to be registered. Meanwhile, J.M.Jafarov was contacted with and though he had been invited to the session on consideration of his candidacy registration, he did not participate at the session explaining that he was in Baku.

The above-mentioned cases were taken as basis to refuse from registering the candidacy of J.M.Jafarov.

During the investigation process the documents which have led to the adoption of the argued decision by the Con.EC and submitted for the candidate registration were requested to be sent by the Con.EC to the Working Group under CEC for opinion providing upon the conduct of relevant investigation. The opinion and protocol dated November 23, 2014, compiled as a result of examining the documents necessary for the candidate registration by the Working Group revealed that voters' signatures included in the signature sheet submitted by J.M.Jafarov, candidate to municipality membership for the candidacy registration had not been collected in comply with the Election Code. Thus it was determined that 56 out of 71 voters' signatures were signatures put by one person on behalf of different persons or by different persons on behalf of one person. In other words, 71 signatures included in the columns "Signature and date" of submitted two signature sheets had been implemented by the same persons in 15 groups among them. And this is contrary to pursuant to Article 57.4 of the Election Code of the Republic of Azerbaijan and item # 1.6 of the Instruction "On the rules for collection of voters' signatures in support of candidates and submission of signature sheets and the attached documents to the Constituency Election Commission in the Municipal Elections", approved by the decision # 29/11 of the Central Election Commission dated June 14, 2006. According to the requirements of those norms, a voter shall include their surname, name, patronymic, date of birth, address of residence, serial number of ID card or its substitute document, date of issue and date of signature while signing the signature sheet. The information on the voter may be included by a person collecting signatures in the signature sheet upon the voters' agreement (excluding signature). Only a voter shall have the right to sign.

It was also determined through investigation that while approving the signature sheet # 01 by a person collecting signatures and signing it by the candidate to municipality membership, date of signature was not mentioned in both cases.

It was determined that legal grounds were not found to register the candidacy of J.M.Jafarov as the number of valid signatures had not been sufficient for the registration of the candidacy.

So, pursuant to Article 215.1.4 of the Election Code, every nominated citizen shall collect 50 valid voters' signatures to be registered to the municipality membership within a territory covering 10.000 up to 9.999 population number. It is justified through a reference submitted by the relevant executive authority that the population number within the territory covered by Arkivan municipality is within the limits defined by the above-mentioned Article of the Election Code.

It was also determined through investigation that while approving the signature sheet # 01 by a person collecting signatures and signing it by the candidate to municipality membership, date of signature was not mentioned in both cases. And both the first and second pages of the signature sheet # 02 did not contain fully the necessary information on the candidate (name, surname, patronymic, serial number of ID card or its substitute document, date of issue, date of signature, place of work (type of activity), address of residence). Meanwhile, the explanation by Elmir Miralam Aliyev who has been mentioned as a person collecting signatures in that signature sheet, data on ID card and the relevant act compiled at the Con.EC reveal that he had not collected signatures in support of J.M.Jafarov, nominee on his own initiative to the membership of Arkivan municipality and the signature put in column "Person approving signature" and data on the ID card included in the signature sheet did not belong to him. The signature sheet # 02 was not signed by the person nominated to the municipality membership, either.

Thus, legal consequences were formed as implied by Article 59.9 of the Election Code.

So, according to that norm, if the signature sheets have not been approved by signatures put in handwriting by a person collecting signatures, as well as, by a candidate, all the signatures included in signature sheets shall be considered invalid.

It was determined through investigation of the information on not providing J.M.Jafarov with the decision # 17/63 of Masalli village Con.EC # 71 dated November 21, 2014 that that decision had been sent by post to his address by the Con.EC on 21.11.2014.

So, through a full, comprehensive, fair and impartial investigation not any legal ground was found to annul the argued decision of the Con.EC and to implement the complaint. According to the above-mentioned, the complaint shall not be implemented due its groundless factors and the decision # 17/63 of Masalli village Con.EC # 71 dated

November 21, 2014 on the refusal from registering the candidacy of J.M.Jafarov on Arkivan municipality shall be remained in force.

Pursuant to Articles 59, 60, 112, 112-1, 215.1.5, 216.1 of the Election Code of the Republic of Azerbaijan and items # 1-7 of "On the rules for submission and processing of appeals and complaints on the violation of election rights to the Central Election Commission and Constituency Election Commissions of the Republic of Azerbaijan", **I have determined that:**

1. The appeal # 07, dated November 22, 2014 by Jafar Mazahir Jafarov nominated on Arkivan municipality of Masalli village Con.EC # 71 on his own initiative shall not be implemented due to its groundless factors.

2. The opinion shall be published no later than 18 hours upon its adoption (shall be posted on the website) and its copy shall be sent to the applicant.

Expert Group member

Bakhsheyish Asgarov