

DECISION

of Central Election Commission of the Republic of Azerbaijan
on consideration of the appeal # 54 submitted to the Central Election Commission on
January 2, 2020 in the Municipal Elections on December 23, 2019

Regarding the Municipal Elections on December 23, 2019, Mehman Rafiq Huseynov, registered candidate to Garachukhur municipality of Surakhani second Con.EC # 31 appealed against the decision No 24/279 of Surakhani second Con.EC # 31, dated 28 December 2019 to the Central Election Commission of the Republic of Azerbaijan (CEC) on January 2, 2020 and having attached an electronic data carrier to his complaint, he requested to annul that decision of the commission, to re-count the voting results on the PECs # 22, 23, 24, 25, 26 of Surakhani first Con.EC # 30 and PECs # 5, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 28, 29, 32 of Surakhani second Con.EC # 31 in the Municipal Elections held on December 23, 2019, to annul the voting results on the polling stations where law violations had been committed and meanwhile, to report to the prosecutor's offices in comply with the relevant articles of the Criminal Code about the persons who had committed law violations in the foregoing polling stations of the above-mentioned election constituencies.

Since the appeal was filed against the Con.EC decision and the submission was within the timeframe implied in Articles 112 and 112-1 of the Election Code of the Republic of Azerbaijan (Election Code) 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", it was investigated and relevant opinion was provided on this issue by a member of the Expert Group under CEC and considered at the Commission session.

M.R.Huseynov, registered candidate to the municipality membership claimed the following law violations to have been committed in the Municipal Elections:

- during the campaign period his campaign materials were destroyed by another candidate and on E-Day the elections were held openly unfairly;
- though voter turnout was low, it was increased artificially as a result of ballot box stuffing in favor of the government candidate, group voting by taking them to polling station and voting in several polling stations, as well as, voting of many voters in the election constituencies and precincts where they do not belong;
- the observers were arranged to sit far away the voting process and they were not allowed to leave that place. And it was impossible to observe the voting process from the spaced places fully and precisely. So that, the observers were not able to see how the fingers of voters who came to voting were being checked, or whether those persons lived within that polling station or not and later, to monitor the accurate counting of ballot during the vote count.
- the observers were not provided copy of the protocols in the PECs # 22, 23, 24, 25, 26 of Surakhani first Con.EC # 30 and PECs # 6, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 28, 29, 32 of Surakhani second Con.EC # 31. Many PEC chairmen did not announce loudly the number of the ballot papers being counted by them. The checking voters' fingers was implemented at a distance far away from the voting room and observers' possibility to see at all, in some polling stations.
- the decision of Surakhani second Con.EC # 31 is groundless, the Con.EC did not view the video tapes and did not investigate the committed law violations, the decision was adopted without examining the evidences presented by M.R.Huseynov and independent observers and not efforts were made to prevent any law violation committed in the Municipal Elections held on December 23, 2019.

- Article 240.2.1 of the Election Code was violated in the above-mentioned polling stations. Thus, the law violations committed during the conduct of voting or during determining the conduct of voting do not allow defining voters' will on the election constituency, thereby forming a legal ground to regard those polling stations as invalid.

M.R.Huseynov was informed on the investigation and his right to take part at the investigation, also to submit any document. He stated that he did not know on the necessity of the copies of the voting results protocols to the complaint and he would present the copies of some PEC protocols provided to him during the investigation. Notwithstanding all these, he did not come to the investigation and he submitted neither the copies of the protocols he promised nor any document. His participation at the session was facilitated.

It is found out basing on the documents submitted by Surakhani second Con.EC # 31 for the investigation of the appeal of M.R.Huseynov that a member of the Expert Group under Con.EC enquired explanation from registered candidates, not elected due to the voting results who conducted observation on the voting day in the PECs on Garachukhur municipality of the election constituency - A.Mirzeyev, T.Muradzadeh, A.Jafarov, R.Rzayev, N.Sharifova, Sh.Garayev, O.Hasanov, Sh.Shahmuradov. The explanations pointed out that the processes of voting and vote counting were observed by them and their observers in the PECs # 22, 23, 25, 26 of Surakhani first Con.EC # 30 and in all precincts of Surakhani second Con.EC # 31 and during the observation they were not encountered with any incident of law violation which could affect the voting results. The reports on the case, provided by the members of the PECs of both election constituencies or registered candidates observed the voting and vote counting in those polling stations, 105 observers who conducted observation by different political parties or own initiatives also did not verify the indicated cases.

Meanwhile, the opinion of the Con.EC Expert Group indicates that in his report on the investigation, the chairman of the PEC # 1 of Surakhani second Con.EC # 31 informed that on the voting day since declaring the polling station open to the voting until compiling the voting results protocol, RovshanZeynalAliyev, observers of M.R.Huseynov conducted observation in the polling station and videotaped by phone any time he wanted. He was also provided an approved copy of the voting results protocol. While the voting process and compiling voting results protocol upon counting the votes, the observer did not comment nor submitted written opinion on any violation. The entrance of the police to the polling stations was aimed at ensuring the security of the transfer of the final protocol and other election documents to the Con.EC.later,the opinion of the Expert Group member pointed out that I.V.Gorilova, observers of M.R.Huseynov visited the PEC # 15 of that election constituency on the voting day before declaring the polling station open, observing the voting process during the day she videotaped the procedures and left the polling station at 19.00. As to the report of the PEC chairman, M.R.Huseynov and observers with him monitored the voting process during the daytime and informed that not any law violation had been committed. Despite the absence of webcam in the polling station, the violation claimed afterwards was reported to have been committed before the webcam. The opinion of the Expert Group member did not justify the violations claimed to have been committed in the PECs # 5, 13 and 15 of the Con.EC and it was indicated that the person who addressed for voting in the PEC # 13 was moved away from the polling station by the PEC member as the entry of that person had not been included in the voters' list.Later, that voter was enquired insistently by M.R.Huseynov who was videotaping out of the polling station and he was claimed to have voted in that polling station.

Basing on the reports by many election stakeholders, a member of Expert Group provided an opinion to not implement an appeal of M.R.Huseynov and basing on that opinion, the Con.EC adopted the currently argued decision. The decision indicates that though the plaintiff had been informed on the place and date of the session, he did not come to the session.

Responding to the inquiry on whether the observers representing the interests of M.R.Huseynov participated or not in the polling stations where law violations were claimed to have been committed on the voting day regarding the investigation of the appeal and whether the candidate or his authorized representatives had been provided or not with the copies of the PEC protocols on the voting results, the reference by Surakhanisecond Con.EC # 31, dated 2 January 2020 points out that the observers representing the interests of M.R.Huseynov did not participate in the PECs # 6, 12, 16, 17, 18, 19, 21, 22, 23, 29 of the election constituency and those polling stations were not required to give copies of the protocols. On the voting day M.R.Huseynov visited the polling station # 6 at 18.55 and after he observed the vote counting and compilation of the voting results protocol, he left the polling station without requesting the copy of the protocol. On the same day at 10.00 he came to the PEC # 13 with 6 persons, left there after observing for some minutes and his observer who remained in the polling station left there after an hour. Neither M.R.Huseynov nor any of his authorized representative requested a copy of the protocol from that polling station. I.V.Gorilova, observer of M.R.Huseynov observed the voting process from 08.00 till 19.00 in the PEC # 15. The registered candidate and the authorized representative conducted observation in the polling station from 11:00 till 11:15. M.R.Huseynov conducted observation with the person videotaping together from 09:30 till 09:40. After M.R.Huseynov conducted observation together with his authorized representatives in the PEC # 22 for 5 minutes at 10:15, they left that polling station.

Ibrahim RafiqHuseynov, authorized representative of the registered candidate was in the PEC 3 24 at 12:45, 13:45 and 18:50 with a distinctive jacket on him, considered for the media representatives with the words "PRESS" (Voice of Azerbaijan) on it. The candidate himself came to that polling station at 16:00 and left there after 10 minutes. TeymurMerdanKerimov observed and videotaped till the end of the voting. M.Huseynov and his authorized representative also visited the PECs # 25, 28 and 32, observer Kamalebabayeva was in the PEC # 28 from 08:25 till 20:40 and RamazanliElmar was in the PEC # 32 till 19:30. They did not report in written or verbal form on the observation of any violation in the observed polling stations. Nobody from them wanted the copy of the PEC final voting results protocol in those polling stations.

It should be also noted that according to the acts submitted by the PECs # 22, 23, 25 and 26 of Surakhani first Con.EC # 30, registered candidate to municipality membership M.R.Huseynovnad the observers representing his interests did not conduct observation in those polling stations on the voting day and did not want a copy of the voting results protocol.

It is worth noting that neither M.R.Huseynov nor observers representing his interests appealed to the election commission in regard with the violations claimed to have been committed in the polling stations on Garachukhur municipality on the voting day or the proceeding day.

During the investigation the videotaped records in the electronic data carrier attached to the complaint of M.R.Huseynov against the decision # 24/279 of Surakhani second Con.EC # 31, dated 28 December 2019, were viewed and the records were found out

to be the same with the video records posted on the social websites on the voting day. Some of those videotaped records made out of the polling station were aimed at forming the supposition as if voters had voted in the polling stations where they had not been included in the registration. Instead of enquiring a voter if they have been included or not in the voter list of that polling station, the polling station where they are in the registration is put forward to form confusion among the people. It is necessary to state on the issue that pursuant to Article 47.2 of the Election Code, a voter may be included in the voter's list under the relevant precinct on the basis of the voter's permanent place of residence (i.e. the place a voter has resided for at least 6 out of 12 months prior to the day of official publication of the decision (order) on the appointment of elections) as determined by the body responsible for recording citizens' place of residence or place of stay.

The videotaped records presented to the investigation displayed the election commission dealing with election documents and offending the rules defined in the legislation for security of those documents. It was determined as a result of the investigation that that case was the election violation recorded in the PEC # 30 of Surakhani second Con.EC # 31. So, the election commission did not fulfill its duties undertaken as in comply with the Election Code properly. This issue justified upon the record should be accounted as a case which did not allow to determine voters' will who have participated in the voting during the vote count as a strict violation of the rules for dealing with election documents.

Although the words "open the door for him to leave" was voiced in another video record, the person went away from the window making noise and he echoed the claim that he had not been allowed to enter from the door. But however, the commitment of any violation in the polling station he left was not reported. The other two videotaped views recorded the talks of the police officers standing far away from the polling station to M.R.Huseynov. And the video views recorded at the entrance of the PEC # 1 of Surakhani second Con.EC # 31 shows M.R.Huseynov talk to the observer that everything is in order and there is not any violation in this polling station.

Another videotaped views presented showed ballot papers with cut corners on the table before the PEC chairman. Through the investigation that polling station was found out to be the PEC # 24 of SurakhanifirstCon.EC # 30. The fact recorded refers to the violation of Article 104.8 of the Election Code. That article implies that while a voter is issued a ballot paper, its numbered left corner shall be cut through the cutline by the PEC member and remained at that member. The PEC was discovered to have offended the requirement of the Election Code. The case should be considered as an incident when the PEC cannot arrange its function as in compliance with the Election Code, thereby making impossible to determine voters' will consequently.

Upon investigating the views through webcams installed in the polling stations on Surakhani second Con.EC # 31 on the voting day in the Municipal Elections held on December 23, 2019, the cases were found out which allowed the violation of the election legislation in the voting and compiling of the protocols after determining the voting results.

Through the investigation legal grounds were defined to re-count and annul the voting results on the PECs # 22, 23, 25, 26 of Surakhani first Con.EC # 30 and the PECs # 6, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 28, 29, 32 of Surakhani second Con.EC # 31 that covered Garachukhur municipality.

It is worth noting that when M.R.Huseynov appealed to the Con.EC to investigate the election violations claimed to have been committed during the Municipal Elections on December 23, 2019 and to undertake relevant measures, he did not attach the evidences proving the violations claimed to have been committed on the voting day in the polling stations indicated in his appeal as in compliance with Article 112 of the Election Code 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", i.e. the opinions of the observers who observed the voting and compilation of the voting results protocols and of other election stakeholders defined in Article 40.2 of the Election Code regarding the supposed law violations, compiled in accordance with Articles 41 and 42 of the Code, acts and copy of the voting results protocol of election commissions to his complaint. The plaintiff counted the polling stations of the Con.ECs that covered the territory of the municipality and claimed law violations to have been committed in those polling stations. Despite all the above-mentioned, the Con.EC had conducted a thorough investigation on the claimed cases. The cases indicated in the appeal were not justified though the reports on not recording the violation incidents in the voting process and compilation of the voting results protocols, provided by the observers representing different political parties and registered candidates, other election stakeholders, election commission members, even registered candidates not elected according to the voting results. The mentioned facts prove that the Con.EC had conducted a fair and impartial investigation.

Notwithstanding these, legal grounds are defined as a result of the investigation of the complaint filed against the Con.EC decision to invalidate the voting results protocols of the PEC # 24 of Surakhani first Con.EC # 30 and the PEC # 30 of Surakhani second Con.EC # 31 due to the violation of the election legislation in their activity during the elections to Garachukhur municipality on December 23, 2019, thereby to undertake relevant measures.

Basing on the above-mentioned, the complaint filed by M.R.Huseynov, registered candidate to Garachukhur municipality of Surakhani second Con.EC # 31 against the Con.EC decision, dated 28 December 2019 shall be partly implemented, the Con.EC decision shall be partly annulled on the part regarding the PEC # 24 of Surakhani first Con.EC # 30 and the PEC # 30 of Surakhani second Con.EC # 31 and upon invalidating the voting results protocols of those PECs in elections to Garachukhur municipality on December 23, 2019, the PECs shall be dismissed.

Pursuant to 19.4, 28.2, 23.2, 104.8, 112, 112-1 of Election Code of the Republic of Azerbaijan and items 1, 2, 4, 6, 7 and 8 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 # 54, dated 2 January 2020 filed by MehmanRafiqHuseynov, registered candidate to Garachukhur municipality of Surakhani second Con.EC # 31 in the Municipal Elections held on December 23, 2019 shall be partly implemented, the decision # 24/279, dated 28 December 2019 of Surakhani second Con.EC # 31 shall be partly annulled on the part regarding the PEC # 24 of Surakhani first Con.EC # 30 and the PEC # 30 of Surakhani second Con.EC # 31 and that decision shall be remained enforced in the remaining parts without making amendments.

2. The voting results protocols of the PEC # 24 of Surakhani first Con.EC # 30 and the PEC # 30 of Surakhani second Con.EC # 31 in the elections to Garachukhur municipality on December 23, 2019 shall be considered as invalid.
3. The PEC # 24 of Surakhani first Con.EC # 30 and the PEC # 30 of Surakhani second Con.EC # 31 shall be dismissed.
4. The decision shall be enforced upon its publication.

CEC Chairman

MazahirPanahov

CEC Secretary

ArifaMukhtarova

CEC Secretary

MikayilRahimov