

OPINION

of Ramiz Ibrahimov, member of Expert Group established under Central Election Commission for investigating the complaints about the actions (inactions) violating citizens' election rights on the appeal by Mustafa Hajili, authorized representative of registered candidate to presidency Jamil Hasanli in Presidential Elections of the Republic of Azerbaijan to October 9, 2013

Baku city

15 October 2013

Investigating the appeal #19 dated October 14, 2013 by Mustafa Hajili, authorized representative of 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 – Ramiz Ibrahimov, I determined that:

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 and consideration of the appeals and complaints to the Central Election Commission and Constituency Election Commissions of the Republic of Azerbaijan” dated August 12, 2008 and submitted within the period implied for the complaint, it was accepted for investigation.

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 and suggested to present the evidences if he had got any additional evidences related to the cases indicated in the appeal.

Complainer Mustafa Hajili came to the Central Election Commission on October 15, 2013, submitted an act on the appeal, dated 9 October 2013 and signed by two authorized representatives and took part at the investigation. At the same time he informed that there were many acts on the violations committed on the Election Day which he would submit to the court.

The followings were determined at the results of the investigating the complaint:

Appealing to Khatai third Con.EC # 35 with a complaint on 11 October 2013, Mubariz Aghasala oghlu Salayev, authorized representative of the registered candidate for presidency Jamil Poladkhan oghlu Hasanli informed that a carbonized protocol had not been compiled legally under the observation of commission members with consultative rights and observers, the principle of interruptedness for vote counting was offended, a copy of the protocol was not provided to observers and therewith, the third copy of the protocol was not

displayed on the advertisement board in all the polling stations and therefore, requested to adopt a decision on the invalidation of the election results in all the polling stations on the constituency.

The complaint was investigated and relevant opinion was provided by the member of Expert Group established under the Con.EC. It was determined at the result of investigation that members with consultative rights and observers of National Council present at the polling stations had not expressed any remarks on law violations till the end of the voting. Not any fact was neither mentioned by the representatives of OSCE Election Observation Mission regarding the visit and leaving of the the Con.EC by the commission chairpersons until the PECs turned over the protocols. Applicant Mubariz Salayev who conducted observation at the Con.EC after 20.00 p.m. on the voting day did not express any remarks. The member of the Expert Group arrived at a conclusion that the cases mentioned by the complainer in the appeal are groundless. The complaint was reviewed at the Con.EC session on October 12, 2013 and the protocol # 6/1 was adopted which includes that the facts indicated in the complaint had not been justified in the session minute #2. The opinion of the Expert Group member and the copy of the decision were submitted to the complainer.

The complaint was reviewed at the Con.EC session on October 12, 2013 and the protocol # 6/1 was adopted which includes that the facts indicated in the complaint had not been justified in the session minute # 2. The opinion of the Expert Group member and the copy of the decision were submitted to the complainer.

Obviously, the Con.EC had conducted relevant investigation on the complaint, held discussion at the session and adopted a decision protocol. In this case, procedural violation was found out to have been committed during the adoption, justification and compile of the decision by the Con.EC. Therefore, the consequence on this protocol shall be regarded invalid due to incompatibility with legislation. Considering disagreement of the complainer with the investigation held by the Con.EC and the complainer's request to adopt a decision on the issue, an investigation was re-conducted.

While conducting a new investigation, the commission members representing different political forces and observers who had observed the election process in the polling stations of the constituency provided explanations and the acts compiled by the observers and commission members who had monitored the voting process from the beginning till the end and attached to the PEC protocols. Representatives of Justice Party who had observed in the following polling stations on the voting day – Arzu Rza gizi Aliyeva at the PEC # 2, Shahla Alashraf gizi Farajova at the PEC # 4, Sahiba Jabbar gizi Abduallayeva

at the PEC # 6, BAXCP representatives – Jamila Mammadali gizi Ismayilova at the PEC # 3, Elkhan Ahad oghlu Ahmadov at the PEC # 5, Kifayet Maharram gizi Maharramova at the PEC # 8, ASDP representatives – Minaya Amirkhan gizi Abbasova at the PEC # 5, Sayali Bayram gizi Gurbanova at the PEC # 6, on their own initiatives – Nella Baba gizi Salimova at the PEC # 1, Elshan Alish oghlu Ismayilov at the PEC # 6, Yasaman Fatali gizi Asgarova at the PEC # 14, Tuunzala Murad gizi Mammadova at the PEC # 16, YAP representatives – Valida Ali gizi Gulmammadova at the PEC # 2, Tarana Fazil gizi Salimova at the PEC # 3, Rafiq Huseyn oghlu Mammadov at the PEC # 4 and more than hundred observers provided in their explanations that they had observed the election process since the start of the voting until the vote counting and compile of the protocols and witnessed the conduct of the voting process in comply with legislation on the voting day, they did not observe any fact on law violation committed by the PEC members and other election actors.

Acts compiled jointly by the observers representing different political forces and the members of PECs # 5, 6, 9, 13, 14, 15, 16 and 18 covered by the constituency who had observed the voting process within the whole day after the end of the voting process on October 9, 2013 and attached to the protocols determine that the voting process was conducted legitimately and transparently under the observation of domestic and international observers and counting the votes before all the interested sides observing the election process, protocols were compiled, the main copy of the protocol was turned over to the Con.EC, one copy was displayed on the advertisement board in the polling station and the copies of the protocol were provided to observers.

Regarding the investigation, the letter submitted by Khatai third Con.EC # 35 indicates that the observers, as well as, other persons observing the voting procedure in the polling stations in the Presidential elections of the Republic of Azerbaijan conducted on October 9, 2013 had not filed any official complaint on the violations to the PECs and Con.EC.

Since the act dated 9 October 2013 submitted as an evidence for the investigation by the complainer Mustafa Hajili covered all the polling stations by being of a general nature and signing it by two authorized representatives did not enable to determine this act belonged to which polling station and factually based on whose observation, as well as, as the requirements of Article 41 of the Election Code which imply the principles of observation was offended, it was impossible to estimate it as an evidence.

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factually based on whose observation, as well as, as the requirements of Article 41 of the Election Code which imply the principles of observation was offended, it was impossible to estimate it as an evidence.

Taking the above mentioned as a basis, pursuant to Articles 2.6, 19.4, 19.14, 28.2, 28.4, 41, 112, 112-1 of Election Code of the Republic of Azerbaijan and items 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 August 12, 2008, **I came to opinion:**

1. The appeal # 19 dated 14.10.2013 by Mustafa Hajili, authorized representative of registered candidate for presidency Jamil Poladkhan oghlu Hasanli shall be partly implemented.

2. As the consequence on the protocol # 2 dated 12 October 2013 of Khatai third Con.EC # 35 basing on the complaint of Mubariz Aghasala oghlu Salayev was incompatible with the legislation requirements regarding the compile of the decision, it shall be regarded invalid.

3. The appeal shall not be implemented due to groundlessness in the part on invalidation of the election results on Khatai third Con.EC # 35.

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

Ramiz Ibrahimov