

## INTERIM REPORT No. 1

28 August – 12 September 2013

### I. EXECUTIVE SUMMARY

- On 2 August, the Central Election Commission (CEC) set the date for the presidential election to 9 October. The president is elected by absolute majority through a popular vote for a five-year term.
- Thus far, nine presidential candidates have been registered by the CEC, including the incumbent President Ilham Aliyev, who is running for his third term in office. No women were nominated as candidates. The CEC has until 16 September to decide on the registration of a further three nominated candidates. Two candidates were rejected for lacking sufficient support signatures.
- The Election Code was last amended in April 2013. With the exception of reducing the complaint adjudication period, no other OSCE/ODIHR previous recommendations have been addressed in the amendments to the law since the 2010 parliamentary elections.
- The election is administered by the CEC, 125 Constituency Election Commission, and some 5,300 Precinct Election Commissions. The formula for their composition *de facto* gives the parliamentary majority a decision making majority in all commissions. The technical preparations for the election are on track, with the CEC adopting the requisite regulations.
- Approximately five million citizens will be eligible to vote. Voter lists were posted for public scrutiny on 4 September. Voters may apply for de-registration voting cards, which allows them to vote in a polling station outside the place where they are registered.
- OSCE/ODIHR Election Observation Mission (EOM) interlocutors have expressed concerns about the media environment, including the government's control over all television stations with nationwide coverage. The campaign begins on 16 September and ends on 8 October. On 4 September, the EOM started quantitative and qualitative media monitoring of six television stations and five newspapers.
- A number of non-governmental organizations (NGOs) intend to observe the election. Several OSCE/ODIHR EOM interlocutors assessed the legislation and its current implementation as hampering the ability of NGOs to observe the election process.
- The OSCE/ODIHR EOM commenced its work on 28 August with a 13-member core team in Baku and 30 long-term observers deployed throughout the country.

### II. INTRODUCTION

On 2 August, the CEC set the date for the presidential election on 9 October. Following an invitation from the Ministry of Foreign Affairs and based on the recommendation of a Needs Assessment Mission conducted from 17 to 21 June, the OSCE Office for Human Rights and Democratic Institutions (OSCE/ODIHR) established an Election Observation Mission (EOM) on 28 August.<sup>1</sup> The EOM is headed by Ms. Tana de Zulueta and consists of a core team of 12 experts and 30 long-term observers (LTOs). Members of the EOM are drawn from 22 participating States. The

<sup>1</sup> The Needs Assessment Mission report and other previous OSCE/ODIHR reports are available at: <http://www.osce.org/odihr/elections/azerbaijan>.

OSCE/ODIHR has requested OSCE participating States to second 280 short-term observers to observe voting, counting, and tabulation of results on election day.

### III. BACKGROUND AND POLITICAL CONTEXT

The upcoming election takes place in an environment dominated by one political force. According to international reports, a number of legal amendments made in 2012 and 2013 further limited freedom of expression and assembly, and restricted the functioning of civil society.<sup>2</sup> The incumbent President Ilham Aliyev is standing for a third term, following constitutional amendments confirmed in a 2009 referendum which removed the limitation for a president to serve no more than two consecutive terms.

The ruling New Azerbaijan Party (YAP), one of 11 parties in parliament, is led by the incumbent President and holds a majority of 70 out of 125 seats in parliament. The second largest parliamentary group is composed of 42 independent deputies, who usually vote in support of the ruling party. Opposition parties Musavat and Azerbaijan Popular Front Party (APFP) lost their parliamentary representation in 2010 elections. In 2013, opposition forces established the National Council of Democratic Forces (NCDF) in an effort to nominate a common candidate. A nominated candidate of the opposition Republican Alternative (REAL) Movement, founded in 2009, is in pre-trial detention since February 2013. He faces charges of organizing mass protests leading to violence and disorder.<sup>3</sup>

### IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The presidential election is primarily regulated by the Election Code (last amended in April 2013) and the Constitution (last amended in 2009).<sup>4</sup> With the exception of reducing the complaint adjudication period, no other previous OSCE/ODIHR recommendations have been addressed in the amendments to the law since the 2010 parliamentary elections.

Recent amendments to laws governing freedom of assembly and the work of civil society increased sanctions for public order offenses, including organizing and participating in unauthorized demonstrations, introduced additional bureaucratic steps to receiving funding as a non-governmental organization and increased penalties for non-compliance.

The president is elected by popular vote for a five-year term. To be elected in the first round, a candidate must receive more than 50 per cent of the valid votes cast. Otherwise, a second round between the two candidates with the highest number of votes is held on the second Sunday after the first round.

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<sup>2</sup> See “OSCE media freedom representative concerned about increasing pressure on media in Azerbaijan following online defamation provisions”, press release available at <http://www.osce.org/fom/101513>, and report by the Commissioner for Human Rights of the Council of Europe following his visit to Azerbaijan from 22 to 24 May 2013, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2324128&SecMode=1&DocId=2037462&Usage=2>.

<sup>3</sup> On 28 August, the self-nominated candidate, Mr. Ilgar Mammadov, motioned the Prosecutor General to be released from pre-trial detention, arguing that Article 55.1 of the Election Code guarantees equal opportunities for candidates in the nomination process. As of 12 September, Mr. Mammadov had not received a response from the Prosecutor General.

<sup>4</sup> Other applicable laws are the Law on the Freedom of Assembly 2008 (last amended in 2012); the Law on Non-Governmental Organizations 2000 (last amended in 2013); Law on the State Registration and State Register of Legal Entities 2004 (last amended in 2012); Law on Radio and Television Broadcasting 2004 (last amended in 2012); Law on Access to Information 2005 (last amended in 2012); relevant provisions of the Criminal Code, the Code of Administrative Procedures, and the Civil Procedures Code; and CEC Regulations and Instructions.

## V. ELECTION ADMINISTRATION

The presidential election is administered by a three-tier structure consisting of a Central Election Commission (CEC), 125 Constituency Election Commissions (ConECs) and some 5,300 Precinct Election Commissions (PECs).<sup>5</sup> All commissions are permanent bodies comprising 18, 9 and 6 members respectively, elected for five-year terms. The CEC members are elected by parliament, ConECs are appointed by the CEC, and PECs by the respective ConECs. One third of commission members each are proposed by the parliamentary majority, minority and by independent deputies. By law, chairpersons of all commissions are nominees of the parliamentary majority. Thus, the parliamentary majority de facto holds a decision making majority on all election commissions.<sup>6</sup>

The technical preparations for the election are on track, with the election administration meeting legal deadlines and passing the requisite rules and regulations. CEC holds frequent sessions open to observers and the media, with decisions published on its comprehensive website. The CEC conducted the first in a series of nationwide training sessions for ConECs and PECs on voting procedures and a voter education campaign has been launched with posters and on mass media.

## VI. VOTER REGISTRATION

Azerbaijan has a passive voter registration system. Voter lists are extracted from a permanent voter register maintained by the CEC. The verification of voter lists is handled by PECs in close collaboration with the CEC. Thus far, the total number of registered voters is 4,986,549. According to the CEC, from 4 September VLs are on display for public scrutiny in all polling stations. Voters may also verify their record and request amending it on the CEC website.

The update of the voter lists is to conclude by 14 September; however, citizens are still able to register to vote until and on election day, if they can prove residence on the territory of the precinct. Voters may apply for de-registration voting cards (DVC) until 6 October, which allows them to vote in polling stations outside the places where they are registered. The CEC has printed and distributed some 450,000 DVCs. To date, however, only a few hundred DVCs have been issued to voters.

## VII. REGISTRATION OF CANDIDATES

The candidate registration period runs from 2 August to 16 September. Under the Constitution, the right to stand for president is granted to any voter who is at least 35 years of age, without dual citizenship or obligations before other states, without a previous conviction for a serious crime, who has permanently resided in Azerbaijan for at least 10 years, and has a university degree. Some of these requirements, especially the educational requirement, can be considered as unreasonable restrictions and contrary to good practice.<sup>7</sup>

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<sup>5</sup> Special polling stations will be established in military units, on board of vessels at sea and oil rigs as well as for the out-of-country vote at embassies and consulates of Azerbaijan abroad.

<sup>6</sup> See also joint opinion of the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission) no. 286/2004, available at <http://www.osce.org/odihr/elections/azerbaijan/41715>.

<sup>7</sup> Paragraph 15 of the UN Human Rights Committee General Comment 25 states that "any restrictions on the right to stand for election [...] must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation." [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument). See also Paragraph 1.1(c) of the Code of Good Practice in Electoral Matters, p.5 of The European Commission for Democracy through Law of the Council of Europe [http://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)023rev.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev.aspx).

A candidate may run as self-nominated or as nominated by an initiative group of at least 100 voters, by a registered political party or a coalition of parties. The list of documents to be submitted to the CEC as notification of nomination includes a statement by the candidate expressing a commitment to terminate activities which are incompatible with the elected position. All nominated candidates must collect at least 40,000 support signatures of registered voters and submit a declaration of financial assets. An additional requirement is that at least 50 signatures need to be collected in each of at least 60 of the 125 constituencies.

The CEC accepted nomination documents from 21 prospective candidates. No women were nominated as candidate. The CEC rejected the nomination of Mr. Rustam Ibrahimbayov from the NCDF initiative group of voters on the basis that he has dual citizenship, does not fulfill the 10 year residency requirement and that it lacked sufficient grounds to conclude he does not have obligations before other states.<sup>8</sup> Mr. Ibrahimbayov appealed the CEC decision to the Baku Court of Appeals and subsequently to the Supreme Court, which on 6 September upheld the CEC decision.<sup>9</sup> Meanwhile, the NCDF initiative group nominated a new candidate, Mr. Jamil Hasanli, who was registered by the CEC on 12 September.

By the 9 September deadline, 14 nominated candidates had submitted the required signatures and financial assets documents. The verification of these documents is carried out by a CEC working group and is open to their authorized representatives and observers. The CEC has until 16 September to pass a decision on the registration of candidates.

To date, the CEC has registered nine candidates.<sup>10</sup> Two candidates were not registered because of an insufficient number of valid signatures in support of their candidacy.<sup>11</sup> The registration of candidates ends on 16 September and the final list of candidates is to be published on 19 September the latest.

## VIII. THE CAMPAIGN

The official campaign period starts on 16 September and ends at 08:00 on 8 October. Some nominated candidates raised concerns to the EOM regarding the shortening of the official campaign period, which limits their access to media and gives the incumbent president a disproportional advantage.<sup>12</sup>

The NCDF raised concerns in the media regarding the incumbent president's frequent travels to the regions to inaugurations and public events and the broadcast of his campaign-style speeches.<sup>13</sup>

As part of the registration process candidates are required to open an election fund bank account and submit an initial report on campaign contributions to date and expenses incurred in the signature

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<sup>8</sup> CEC Decision 20/118 of 27/08/2013.

<sup>9</sup> Mr. Ibrahimbayov argued that he meets the constitutional requirements because he has citizenship of two countries that do not have a dual citizenship agreement; that the constitution does not require 10 years permanent residency immediately preceding the election and that he submitted proof that he has no liabilities to the Russian Federation.

<sup>10</sup> Incumbent President Ilham Aliyev (YAP) on 25 August, Mr. Iqbal Agha-zade (the Umid Party) on 3 September and Mr. Zahid Oruj (self-nominated candidate) on 9 September, and Mr. Gudrat Hasanguliyev (United Azerbaijan Popular Front Party); Mr. Hafiz Hajiyev (the Modern Musavat Party); Mr. Araz Alizade (Azerbaijan Social Democrat Party); and Mr. Faraj Guliyev (National Revival Movement Party) on 11 September, and Ilyas Ismayilov (Adalat Party) and Jamil Hasanli (initiative group) on 12 September.

<sup>11</sup> Out of 44,286 signatures submitted by Mr. Fuad Aliyev (self-nominated candidate), the CEC checked 10,000, of which 8,186 were declared invalid. Out of 43,413 signatures submitted by Mr. Ahmad Orujov (Freedom Party), 19,150 were checked and 12,552 found invalid. At this stage, the signature verification process was terminated. The CEC rejected their candidacies with 17 votes in favor and 1 abstaining, and 15 votes in favor and 3 abstaining, respectively.

<sup>12</sup> The official campaign period was shortened from 28 to 23 days following legal amendments in June 2010.

<sup>13</sup> See <http://bbc.in/1fUHv5h>.

collection process. Candidates are required to submit two additional reports on campaign finances: an interim report between 20 and 10 days before election day and a final report no later than 10 days following the publication of final results. The CEC only publishes select information from the candidate reports for large contributions and expenditures.<sup>14</sup>

## IX. MEDIA

The Constitution guarantees freedom of expression, media freedom and the right to access information. However, recent amendments to the legal framework “protecting commercial and other economic interests” unduly restrict constitutional guarantees on access to information.<sup>15</sup> Defamation remains a criminal offense, carrying a penalty of up to three years in prison.<sup>16</sup> The Criminal Code was amended on 4 June 2013 underlining the application of defamation provisions to internet content.<sup>17</sup> On 30 July, a social media user was convicted for libel under these provisions.<sup>18</sup>

OSCE/ODIHR EOM interlocutors have expressed concerns about the media environment being overshadowed by a number of imprisoned journalists (currently eight), the intensification of the practice of unjustified or selective criminal prosecution and reported physical attacks against journalists. All television stations with nationwide coverage are considered to be under government control. Pluralistic political debate is virtually absent on television. Print media is more diverse, despite low circulation rates and sometimes limited distribution in the regions. The internet is, for the most part, considered to be free from restrictions, with an estimated one third of the population regularly using it.<sup>19</sup>

The Election Code provides for free and paid airtime in electronic and print media. However, among the TV stations with nationwide coverage only the public broadcaster ITV has officially announced it will broadcast paid political advertising. The Election Code makes no provisions for balanced coverage of candidates and political parties in news and current affairs programs. On 4 September, the OSCE/ODIHR EOM started quantitative and qualitative media monitoring of six television stations and five newspapers.<sup>20</sup>

## X. COMPLAINTS AND APPEALS

Voters, candidates and submitters of candidate nominations have the right to file complaints to higher-level election commissions, on any decision, action or inaction that violates electoral rights. Decisions of the CEC can be challenged to the Baku Court of Appeals, with the Supreme Court as

<sup>14</sup> The maximum amount a candidate may spend for campaign purposes is AZN 10 million with contribution limits set at: AZN 3,000 from individuals, AZN 50,000 from legal entities, and AZN 250,000 from the nominating party/group. The current exchange rate for EUR 1 is AZN (Azerbaijan New Manat) 1.03.

<sup>15</sup> Amendments to the laws “On the Right to Obtain Information”, “On State Registration and State Registry of Legal Entities” and “On Commercial Secrets” were adopted by parliament on 12 June 2012. Article 19 of the ICCPR allows only exceptional limitations on access to information that must be previously established by law and are necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals, see <http://www1.umn.edu/humanrts/instree/b3ccpr.htm>.

<sup>16</sup> According the Azerbaijani authorities, a *de facto* moratorium on the use of criminal defamation provisions has been in place since 2009. See report by the CoE Human Rights Commissioner (link above).

<sup>17</sup> This was raised as a concern by the CoE and the OSCE Representative on Freedom of the Media; see <http://www.osce.org/fom/102413>.

<sup>18</sup> On 30 July the Astara District Court convicted Mikayil Talibov for libel under Article 147.1 of the Criminal Code and sentenced him to one year of public labor, along with withholding 20 per cent of his monthly revenue. Mr. Talibov had shared critical information about his previous employer, the AccessBank, on Facebook.

<sup>19</sup> See IREX, Media Sustainability Index 2013, available at [http://www.irex.org/sites/default/files/u105/EE\\_MSI\\_2013\\_Azerbaijan.pdf](http://www.irex.org/sites/default/files/u105/EE_MSI_2013_Azerbaijan.pdf).

<sup>20</sup> The monitored television stations are state owned AzTV, the public service broadcaster ITV, and the private ATV, ANS, Lider and Xazar. The monitored newspapers are Azadliq, Azerbaijan, Yeni Mısavat, Yeni Azerbaijan and Zerkalo.

the court of last instance. In line with previous OSCE/ODIHR recommendations, the time allotted for adjudicating complaints and appeals has been reduced to two days for complaints filed within 30 days before election day. Complaints and appeals submitted on election day or afterwards must be adjudicated immediately.

The CEC established a nine person expert group to investigate complaints and advise the commission on the adjudication of individual cases. In this election as in the past, the CEC has decided to appoint CEC members and staff to its expert group as opposed to identifying external experts as provided by law. Complaints are assigned to one expert from the expert group who reviews the matter and hears the complainant's case and then advises the commission on the recommended action. To date, no complaints have been submitted to the CEC.

## **XI. DOMESTIC AND INTERNATIONAL OBSERVERS**

The Election Code provides for citizen and international observation. Citizen observers are registered as individuals or as representatives of candidates, political parties or non-governmental organizations (NGOs). A number of NGOs intend to observe the upcoming election. The Association for Civil Society Development is planning to have observers in all polling stations. The Election Monitoring and Democracy Studies Center (EMDSC) remains without official legal entity status and is therefore accrediting its volunteers as individuals to observe the election.<sup>21</sup> Several OSCE/ODIHR EOM interlocutors assessed the legislation and its current implementation as hampering the ability of NGOs to observe the election process.

## **XII. MISSION ACTIVITIES**

The OSCE/ODIHR EOM commenced its work on 29 August. The EOM met with the Ministry of Foreign Affairs, the CEC, political parties and candidates, governmental institutions, the diplomatic community, civil society and media. The EOM also met with the pre-election delegation of the Parliamentary Assembly of the CoE (PACE). Thirty long-term observers have been briefed and deployed throughout the country as of 11 September. For election day observation, the OSCE/ODIHR EOM will join efforts with delegations from the OSCE Parliamentary Assembly, the European Parliament and the Parliamentary Assembly of the Council of Europe. Mr. Michel Voisin has been appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term observer mission for these elections.

*The English version of this report is the only official document.  
An unofficial translation is available in Azeri.*

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<sup>21</sup> EMDSC has brought two cases against Azerbaijan to the European Court of Human Rights, first, challenging the deregistration of the organization and, second, the refusal of the Ministry of Justice to take action on the new registration application as EMDSC; both cases are still pending.