



**Preliminary Statement by the Election Observation Mission
to the Presidential Election of the Republic of Azerbaijan
11 October 1998**

INTRODUCTION

Upon receipt of an official invitation from the Minister of Foreign Affairs of the Republic of Azerbaijan, the OSCE sent a Needs Assessment Mission to Baku between July 31 and August 4 1998. The OSCE/ODIHR established an Election Observation Mission in Baku on September 11 1998 and started to observe the election process.

The following is a preliminary statement covering the last stages of the pre-election period and the election day. The purpose of the observation is to monitor the compliance with OSCE Commitments undertaken by the Participating States in the 1990 Copenhagen Document. The purpose is not to add legitimacy to an election process. No final conclusions can be drawn until the vote count, the tabulation of the results and the verification procedures have been completed. If necessary, a second statement will be issued upon completion of these procedures. A final report will be prepared and distributed approximately one month after the elections.

The OSCE/ODIHR Election Observation Mission and the Council of Europe Parliamentary Assembly *ad hoc* Committee take this opportunity to acknowledge the co-operation of the authorities of the Republic of Azerbaijan during its stay. The authorities did their utmost to respond in a hospitable manner to all requests for clarifications of the election related Laws and regulations. They readily provided the Mission and the Observers with basic legal documents.

SUMMARY OF CONCLUSIONS

The new Law on the Election of the President of the Republic as amended on July 10 1998 shows significant improvements over the previous existing Law. In this way the authorities responded positively to concerns raised by the International Community and indicated their willingness to improve the election process. Unfortunately its implementation within the overall legal and administrative framework governing the election process fell short in meeting the international standards for a genuine election competition.

The Law on the Central Election Commission did not enjoy a broad consensus among the major political parties in Azerbaijan. It influenced the entire structure and performance of the election administration and undermined the confidence in the election process and its integrity.

The OSCE/ODIHR Election Observation Mission regrets that attempts to open a dialogue among the major political parties, including an appeal by the President to the opposition to participate in these elections and to nominate a number of representatives in the Central Election Commission, were not successful. This led to a decision of some influential opposition parties to boycott the elections.

The Constitution provides for clear guarantees for basic Human Rights, such as the Freedom of Assembly, the Freedom of Association and the Right for Legal Protection. However, the implementation of outdated and deficient legislation, as well as administrative obstacles, compromised respect for these rights and the possibility for all political interests to present fully their views.

The censorship was formally abolished and the printed media, together with some private electronic media with limited coverage, allowed for the expression of a wide variety of views. Despite allocation of air time according to the law, the state media failed to provide balanced and neutral coverage of the main political interests in the country.

The authorities did not behave impartially and gave strong support for the election campaign of the Incumbent President. There was no clear dividing line between state affairs and the Incumbent's campaign.

The observers' reports of election day show a variety of practices. In many polling stations the voting and counting procedures occurred in a calm, orderly and overall correct manner. In these places, the general atmosphere has improved compared to the last elections and the understanding of the voting process has increased, as illustrated by a substantially decreased rate of family voting.

In a number of other polling stations however, very serious irregularities and violations were observed. In several instances, domestic observers and unauthorised local officials behaved intrusively with the work of the Precinct Election Commission (PEC). Moreover, the accuracy and integrity of the voter registers was often questionable, also in comparison with turnout release. Significant discrepancies between the signatures present on the voter list and the ballots found in the box have been observed during the ballot counting. Additionally, observers eye-witnessed clear evidence of ballot stuffing. Further investigation should be carried out to determine the magnitude of these problems.

The aggregation procedures at the Territorial Election Commission (TEC) level also raise serious concerns. Observers could witness in several Territorial Election Commissions that the precinct protocols filled at the precinct level were not final documents but only drafts to be revised by the TEC. This practice

represents a blatant violation of the law and compromises the transparency of the process.

Moreover, it is of great concern that, in few instances, observers were obstructed in their activity both at the level of Precincts and Territorial Election Commissions.

Although noticeable efforts were made to improve the democratic environment, in particular by allowing some political rallies and by releasing the persons arrested on these occasions, the overall election process did not comply with international standards. The OSCE/ODIHR and the Council of Europe will continue to provide assistance to further promote the development of the democratic institutions in Azerbaijan.

THE 1995 OSCE/UN FINAL REPORT

The following extracts reflect the main conclusions of the OSCE/UN Report of the Joint OSCE/UN Election Observation Mission to the 1995 Parliamentary Elections and Constitutional Referendum in Azerbaijan:

... The conclusion of the Mission is that Azerbaijan's first post-independence parliamentary election was a multi-party, multi-candidate election ...

and

... However, the Mission considers that the election campaign, the voting and the counting of ballots did not correspond to internationally accepted norms in many respects ...

THE LEGAL FRAMEWORK

The basic Laws governing this election were the Constitution of the Republic of Azerbaijan, the Law “On Elections of the President of The Republic of Azerbaijan” as amended by the law adopted on July 10 1998, and the Law on the CEC. A new Citizenship law was approved by the Parliament on September 30 1998. In addition to these legal Acts, one should also consider the Law on the Political Parties, the Law on the Public Organisations and the relevant provisions of the Administrative Penalty and Criminal Penalty Codes as well as the Judiciary Law.

The Constitution is directly applicable and it guarantees the basic Human Rights. However according to the Constitution, Transitional Provisions Art.7, a general election for the municipal authorities had to be carried out “within two years after the Constitution had entered into force”, that is by 27 November 1997, and the authorities failed to meet this requirement. This failure has certainly had some influence on the present election process since the only local authorities who are in office today, and are requested to carry out important tasks related to the elections, have never been elected by direct vote, but appointed by the Presidency.

The Election Law was substantially improved much in line with the OSCE Commitments before being finally approved by the Parliament on July 10 1998. It has to be noted however, that even a good election law is only one of the necessary conditions for carrying out a genuine election. It is the overall election related legal framework that has to be considered and only the implementation in good faith of such election related legislation, will provide for a genuine election.

The Law on the Central Election Commission (CEC) approved by the Parliament on May 15 1998 does not provide for an adequate representation of the major political interests in the CEC. On the contrary, it is clearly understood from the OSCE Commitments that a successful CEC has to be formed on the basis of a broad consensus between the influential political parties.

The Law on the Political Parties, the Law on the Public Organisations and the relevant provisions of the Administrative Penalty and Criminal Penalty Codes have not been amended significantly since the Independence. They remain far below OSCE standards. The Law on the Judiciary has been amended in 1997 but it has not been enforced because the Civil Procedure Code has not yet been approved.

THE BOYCOTT

A number of influential political parties, chaired by former senior figures of the Republic, have refused to stand in the Presidential contest, claiming that basic conditions for holding free and fair elections were not met. An appeal by the President, released on August 4 1998, offering 4 seats in the CEC, in addition to a fifth seat from the Parliament quota, was in the end rejected. Consequently, these major opposition parties decided to boycott the elections and called for a general abstention from the polling.

It must be noted that in the last weeks before election day, the main request to the authorities concerned a postponement of the elections, indicating that in the meantime conditions had improved, perhaps due to the presence of the OSCE/ODIHR Election Observation Mission and other international observers in the country.

THE PRE-ELECTION PERIOD

The Selection and Composition of Election Commissions

Half of the members of the Central Election Commission are appointed by the Parliament and half by the President. Such a provision favours the Incumbent who is running as a candidate, even more so since at the time of this particular election, the Parliament is dominated by the President's party with an overwhelming majority. Representation of the opposition has been guaranteed only by a provision, included in the July 10 amendments to the Election Law, allowing each registered candidate to appoint one representative in all commissions.

The Mission regrets to report that very few Presidential candidates did appoint their representatives in the commissions and, in many instances at Territorial and Precinct level, those appointed were neither formally included in the lists of the commissions nor in the regular work of the election administration. In this way, the implementation of the Election Law failed to meet its own criteria.

The Media

Within the air-time allocated by the CEC for political campaigning, the State TV Channel 1, which is the only electronic media with complete coverage of the territory of Azerbaijan, performed generally in line with the instructions of the CEC.

The printed media allowed, with few exceptions, for the expression of a wide diversity of opinions.

However, the news coverage and the political advertising on the State TV was severely biased in favour of the Incumbent campaigning for a renewed mandate, and lacked any tolerance for the views of the boycotting parties. Frequently, the main news extensively covered events with the participation of this Candidate, which were not related to the execution of his official duties as Head of State. The air-time for political advertising given to the Incumbent was considerably higher than that of the other candidates. Once again, the implementation of the Election Law did not to meet its own criteria.

For more details the Election Observation Mission would like to refer to the Report on the Media by the European Institute for the Media.

Posters

The poster campaign was carried out overwhelmingly in favour of the Incumbent compared to all other candidates altogether. Posters of other candidates were also being displayed during the final phase of the campaign. Campaign posters were also displayed on public buildings and even inside many Precincts during the pre-election period which contradicts the spirit and the letter of the Election Law.

Rallies

The Incumbent held many campaign rallies and public meetings, including many which were not related to the elections. Normally these meetings were characterised by heavy police and military presence. The meetings were frequently attended by large numbers of school children, brought to the meetings in an organised manner by their teachers. This organised involvement of children in political campaigning is not acceptable, it is a misuse of state position and runs contrary to the spirit of the UN Convention on the Rights of the Child.

In some instances, the opposition parties, and particularly those who boycotted this election, encountered administrative obstacles by the local branches of the state

authorities concerning the conduct of rallies in proper locations. Apart from the September 12 rally in Baku when clashes occurred, the demonstrators and the police generally showed a high degree of restraint.

On September 12 and even some days later the police arrested a number of demonstrators and held approx. 40 of them in jail. They were sentenced in line with the provisions of the Soviet era Administrative Penalty Code to 3-15 days of imprisonment. For many of them, such sentences were followed by criminal charges without specific accusations. The lack of specific accusations raises concerns that the detentions were politically motivated. After several weeks these individuals were released, with one exception, but the criminal charges are still pending.

The above mentioned events illustrate that at the present time the Freedom of Assembly and the individual Human Rights in Azerbaijan are issues of serious concern.

The Voter Registers and ID Papers

Voters' registers are to be drawn by PEC's on the basis of information provided by local branches of the central executive authorities outlining the number of the citizens living in the precinct area. There are serious concerns about the regular updating of the voters' registers. Moreover, both the Election Law and the CEC Rules and Regulations, do not prevent double entries.

Voters identify themselves to the PEC by presenting a passport or a certificate known as "Form N 9". While criminal penalty is envisaged in the case of eventual multiple voting, there are no guarantees to prevent such a possibility.

The Ballot Printing and Distribution

The Election Law contains provisions necessary to achieve a certain level of accountability during the production and dissemination of the ballot papers. There was also a political will to augment the above provisions. The accountability could have been improved upon by an appropriate Regulation of the CEC providing for the numbering and the packing of the ballots into compact books. Unfortunately, necessary steps were undertaken too late to be implemented, which raised complaints on the part of some of the contesting candidates.

The Domestic Observers

The admittance of non-partisan domestic observers to each stage of the election process is considered as one of the substantial improvements of the Election Law. Five local organisations approached the Election Observation Mission as non-partisan domestic election observation organisations. Two of these were not registered due to administrative obstacles that run contrary to the Freedom of Association and to the principles of election observation. Another one was not able to implement its project due to a lack of funds. The last two deployed their observers.

However, the NGO “For the Sake of Civil Society” has filed complaints because its observers have not been accepted in approx. ten territories by the relevant Territorial Election Commissions.

The Centre for Democratic Elections has deployed observers in most of the Precincts. However its non-partisan nature raises questions due to significant visible funding of unidentified origin and the behaviour of its observers, sometimes acting even as members of Election Commissions.

THE ELECTION DAY

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Moreover, it is of great concern that, in few instances, observers were obstructed in their activity both at the level of PEC and TEC.

COMPLAINTS

A number of complaints have been filed at the CEC during the entire election process, mostly by the representatives of the Azerbaijan National Independence Party. They refer to the procedures of appointment of Territorial and Precinct Election Commissions, to the difficulties encountered by the candidates’ representatives in the Commissions and, during election day, to a number of alleged instances of fraud. On election day also, a number of irregularities and violations were reported to the CEC. The Mission was not able to follow the response of the CEC to such complaints because the CEC did not provide the Mission with the relevant information on this issue to this date.

Mr. Nikolai Vulchanov, ODIHR Election Advisor, was appointed as the OSCE On-Site Co-ordinator for the Election Observation Mission and Mr. Eugenio Polizzi, partially seconded by the Government of Italy, was appointed as his Deputy and Legal Advisor to the Mission. In addition to the 13 Long Term Observers, seconded by OSCE Participating States and deployed in different areas of Azerbaijan during the week of September 14, some 148 Short Term Observers from 28 Participating States were deployed all over the country in advance of election day.