



Office for Democratic Institutions and Human Rights

REPUBLIC OF AZERBAIJAN

PARLIAMENTARY ELECTIONS
7 November 2010

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

21 - 24 June 2010



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

On 18 June, in accordance with OSCE commitments, the Permanent Mission of the Republic of Azerbaijan to the OSCE invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 7 November 2010 parliamentary elections. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Azerbaijan from 21 to 24 June 2010. The OSCE/ODIHR NAM was composed of Nicolas Kaczorowski, Head of the Election Department, and Jonathan Stonestreet, Senior Election Expert.

The purpose of the OSCE/ODIHR NAM was to assess the conditions and level of preparation for the upcoming parliamentary elections, and to advise on the deployment of a possible OSCE/ODIHR election observation activity. The OSCE/ODIHR NAM held meetings in Baku with representatives of the authorities, election administration, political parties, media, civil society and the diplomatic community (see Annex 1 for a complete list of meetings).

The OSCE/ODIHR expresses its appreciation to the Ministry of Foreign Affairs for the timely invitation to observe and to the Central Election Commission, the Parliament, the Presidential Administration and all other interlocutors for taking the time to share their views with the NAM. The OSCE/ODIHR is grateful to the OSCE Office in Baku for the support and assistance provided.

II. EXECUTIVE SUMMARY

The Milli Majilis, the unicameral parliament of Azerbaijan, is elected for a five-year term from 125 single mandate constituencies. The previous parliamentary elections were held in November 2005. The parliamentary elections have not yet been formally decreed but in conformity with the constitution must be held this year on the first Sunday of November.

Although efforts have been made to improve the technical organization of elections, Azerbaijan continues to face challenges in ameliorating the democratic context of elections. Freedom of assembly is very limited in practice, as political parties are routinely denied permission to assemble, particularly in central Baku. Detentions, defamation lawsuits and other forms of pressure on journalists constrain freedom of the media in Azerbaijan and create an atmosphere that is not conducive to the free expression of ideas inherent in a democratic election process.

Significant amendments to the Election Code were made in June 2010 with little public discussion. The amendments eliminated state financing for candidates and further shortened the overall election period, including the campaign period, which had already

been halved by amendments made in June 2008. Since the 2005 parliamentary elections, the time available for the election campaign has thus decreased from 60 days to 23 days. The official campaign period provides specific rights to candidates and parties in terms of the ability to conduct meetings and rallies and to appear in mass media. Given the existing constraints on the exercise of civil and political rights in the period between elections, the recent changes to the Election Code effectively limit the ability of candidates and parties to communicate their views to voters.

Since the 2005 parliamentary elections, some steps have been taken to improve the Election Code, including the prohibition of interference by state officials in the election process, the creation of expert groups to consider complaints and appeals, and the inking of voters' fingers to prevent multiple voting. However, other important issues, *inter alia* the composition of election commissions, invalidation of results and military voting have not been addressed, despite longstanding recommendations.

Elections in Azerbaijan are conducted by a three-tiered election administration comprised of the Central Election Commission (CEC), Constituency Election Commissions, and Precinct Election Commissions. The formula for composition of election commissions remains a highly contentious issue, since in practice it gives pro-government forces a decisive majority at all levels and undermines confidence in the impartiality of the election administration.

Preparations for the elections have been ongoing since January 2010, and the CEC is organizing training for lower level commissions, particularly in voting and counting, the completion of results protocols, and the role of observers. The voter lists have been updated, and there appears to be ample opportunity for citizens to request corrections and additions. The number of voters on the voter lists (4,829,888) is lower than the figure for the 2008 presidential election. The CEC affirmed that candidate registration would be inclusive, as in the 2005 parliamentary elections.

The consideration of complaints and appeals has been observed as an area of weakness in previous elections. The European Court of Human Rights recently issued a decision in a case related to the 2005 elections which was critical of the courts and election commissions in securing electoral rights for candidates. The CEC is confident that the expert groups created under the 2008 Election Code amendments as well as more detailed procedures for considering complaints will improve the adjudication of electoral disputes in the upcoming elections.

In accordance with its OSCE commitments, Azerbaijan provides for access of domestic and international observers. Several domestic organizations plan to conduct long-term observation activities in some constituencies. One such group, the Election Monitoring and Democracy Studies Centre, has been denied registration as an organization. A predecessor had its registration revoked prior to the 2008 presidential election.

Most interlocutors stated that an OSCE/ODIHR election observation activity for the upcoming parliamentary elections would be useful. Representatives of official bodies emphasized that the election process would be fully transparent and that observation by the OSCE/ODIHR and any potential recommendations for improvement of the process

would be welcome. Other interlocutors noted the challenging environment for the elections and the need for full observation of the process.

In accordance with the findings described in this report, the OSCE/ODIHR NAM recommends the deployment of a standard Election Observation Mission (EOM) to observe the parliamentary elections. The OSCE/ODIHR will request the secondment by OSCE participating States of 30 long-term observers to follow the campaign and election preparations throughout the country and 450 short-term observers to observe election day procedures, including voting, counting of votes and tabulation of results. The OSCE/ODIHR may consider the early deployment of experts to follow the process of candidate registration.

III. FINDINGS

A. BACKGROUND

The Republic of Azerbaijan has a strong presidential system in which the executive branch exercises broad authority relative to the Milli Majilis (parliament). Among numerous other responsibilities and powers, the President appoints the Cabinet of Ministers, appoints the executive authorities at central level, and appoints, dismisses, and defines the scope of authority of the heads of Executive Committees, which exercise executive power in the regions.

The unicameral parliament is composed of 125 deputies, who serve for a five-year term. Deputies are elected by simple majority from 125 single-mandate constituencies. The previous parliamentary elections were held on 6 November 2005. The 2010 elections have not yet been formally decreed by the President, but the Constitution specifies that the parliamentary elections be held on the first Sunday of November.

The New Azerbaijan Party (YAP) is the largest party in the country and holds the majority of seats in parliament (63 deputies). The second largest parliamentary group is composed of deputies who are not affiliated with a political party (45 deputies), although in practice these ‘independent’ deputies usually support the ruling party. There are several other parties with representation in the parliament, the largest of which is the opposition Musavat (four deputies).¹

The authorities noted that the parliamentary elections will take place in the context of the ongoing conflict with Armenia and the occupation of a sizeable part of the territory of Azerbaijan. They reiterated that this situation complicates the conduct of elections, in particular the organization of voting for a large number of internally displaced persons (IDPs).

The OSCE/ODIHR has observed a number of elections in Azerbaijan since 1995. The most recent OSCE/ODIHR Election Observation Mission was deployed for the 15

¹ In addition, the outgoing parliament has three deputies from the Civil Solidarity Party, two from Ana Vatan, and one each from Adalat, Azerbaijan Democratic Reforms Party, Civic Unity Party, Great Creation Party, People’s Party, Social Prosperity Party, Umid Party, and United Azerbaijan Popular Front.

October 2008 presidential election. The mission concluded in its final report that “while the presidential election marked considerable progress towards meeting OSCE commitments and other international standards, in particular with regard to some technical aspects of election administration, the election process failed to meet some OSCE commitments. The election took place in a peaceful environment, but was characterized by a lack of robust competition, a lack of vibrant political discourse, and a restrictive media environment, and thus did not reflect some of the principles necessary for a meaningful and pluralistic democratic election.”²

The 2008 final report contained a number of recommendations for improving the conduct of elections. However, in contrast to the final reports from previous election observation missions, the authorities did not respond to offers by the OSCE/ODIHR to discuss the findings and recommendations of the 2008 report. The OSCE Office in Baku has recently organized a series of roundtable on electoral issues to foster a political dialogue before the forthcoming parliamentary elections.

B. LEGAL FRAMEWORK

The Election Code is the primarily legislation regulating elections in Azerbaijan and has been amended on several occasions. On the proposal of the presidential administration, amendments to the Code were made in 2005 and 2008, some of which addressed previous recommendations made by the OSCE/ODIHR and the Venice Commission of the Council of Europe. The 2008 amendments included the prohibition of interference in the election process, the creation of expert groups to consider complaints and appeals, and the inking of voters’ fingers to prevent multiple voting. However, several other amendments were made in 2008 which were not considered as positive, such as the shortening of the election campaign period by more than 50 per cent.³

In June 2010, Parliament rapidly adopted amendments to the Code proposed by YAP deputies. These amendments further shortened the election period from 75 days to 60 days, and reduced the campaign period by an additional 20 per cent, from 28 days to 23 days. The YAP informed the OSCE/ODIHR NAM that the election period and campaign period were shortened in order to reduce election expenditure and to match practice in other countries. Opposition parties and civil society groups criticized the shortening of the campaign period as a further constraint on parties which already have limited access to make their views known to voters (see Section D and E on Campaign Environment and Media Environment). They were also critical of the fact that these major changes were made shortly before the start of the election period with little public discussion.

The amendments also eliminated the provisions for state funding for campaign expenses. YAP stated that the amount of money per candidate (approximately 200 Euros) was insignificant to support a campaign and that the money served as an

² OSCE/ODIHR Election Observation Mission Final Report on the 15 October 2008 Presidential Election in the Republic of Azerbaijan, www.osce.org/odihr-elections/32175.html.

³ See Joint Opinion on the Draft Law on Amendments and Changes to the Electoral Code of the Republic of Azerbaijan, CDL-AD(2008)011, 16 June 2008; and Final Opinion on the Amendments to the Election Code of Azerbaijan, CDL-AD(2005)029, 25 October 2005. Both documents are available at www.osce.org/odihr-elections/13447.html.

incentive for frivolous candidacies. YAP also noted that most candidates in 2005 who did not receive sufficient voter support (three per cent of votes cast) to be eligible for state financing failed to reimburse the money. Other interlocutors said that while the state campaign funding was indeed low, the amount was not insignificant, especially outside of Baku. They further noted that other measures could have been taken, including providing financial support retroactively to those candidates who reached the threshold for reimbursement.

Despite the opportunity provided by the recent adoption of amendments to the law, and despite initiatives by some deputies, since 2008 the authorities have not addressed significant legal issues that have been the subject of longstanding OSCE/ODIHR and Venice Commission recommendations, in particular the formula for composition of election commissions, the conduct of military voting, and invalidation of results.

C. ELECTION ADMINISTRATION

The election administration consists of three levels: the Central Election Commission (CEC), 125 Constituency Election Commissions (ConECs), and over 5100 Precinct Election Commissions (PECs). Election commissions are composed based on representation of political forces in parliament according to the following formula: one-third of commission members are proposed by the majority party, one third by minority parties, and one third by independent deputies. The formula remains a highly contentious issue, since in practice it provides pro-government forces with a decisive majority in all commissions and undermines confidence in the impartiality of the election administration. This situation is aggravated by the legal provision that the chair of each commission represent the ruling party. At the time of the OSCE/ODIHR NAM, the CEC was not fully constituted (it has 16 of its 18 members), since the Musavat party has since 2005 refused to nominate its representatives in protest over the formula for composition of election commissions. Election commissions at lower levels are fully staffed.

The CEC informed the OSCE/ODIHR NAM that preparations for the parliamentary elections have been ongoing since the beginning of the year and that the work of election administration would not be adversely affected by the shortening of the election period. The CEC has initiated training of lower level commissions, preparation of instructions, and voter information. The CEC stated that its training and information efforts are particularly focused on encouraging citizens to check their voter registration data, discouraging interference in the process by executive and municipal authorities, preventing family voting, and improving the conduct of vote counting by PECs.

The updating of the voter lists was finalized in May 2010, and there appears to be ample opportunity for citizens to check their registration and request corrections and additions. The voter lists are available for review at PECs, and citizens can also check their registration through the CEC website, by telephone, or at ConECs. The CEC decision on approving the voter lists states that there are 4,829,888 registered voters in Azerbaijan. This number is lower than the figure of 4,927,561 who were on the voter lists for the 2008 presidential election. Voters can be added to the voter list up to and including on election day.

The CEC is responsible for determining constituency boundaries every five years based on the voter lists, and this was last done before the 2005 elections. After the updating of the voter lists, the number of voters in some constituencies is higher or lower than the five per cent variation from the average permitted by law (ten per cent in exceptional cases).⁴ The CEC informed the OSCE/ODIHR NAM that the final definition of constituency boundaries is still underway.

The period of candidate registration begins after the parliamentary elections are formally called. Each potential candidate must submit 450 signatures of registered voters, and voters are not allowed to sign in support of more than one candidate. Under the shortened time period for the elections, parties and candidates will have less time to collect support signatures and submit the required documentation. ConECs will also have less time to review the nominations and verify the signatures, but the CEC stated that there would be no difficulties in this respect. They also reiterated that candidate registration will be inclusive, as in the 2005 parliamentary elections, and that potential candidates will have sufficient opportunity to correct any errors in their applications.

Due to the ongoing conflict with Armenia, there are nine constituencies whose voters are IDPs. These voters are dispersed throughout the territory of Azerbaijan, making the organization of the elections for these constituencies more complex. For parliamentary elections, the Election Code excludes the participation of registered voters who are outside of Azerbaijan on election day, although out-of-country voting is organized for presidential elections.

The CEC stated that there are no plans to change the organization of military voting for these elections. By law, military voters must generally vote in civilian polling stations, with a few exceptions. However, in previous elections military voting has taken place largely on military bases, as in practice the military determines which units fall under the exceptional rules. The OSCE/ODIHR has previously recommended that military personnel vote in civilian polling stations, with exceptions strictly limited.

D. CAMPAIGN ENVIRONMENT

A number of interlocutors indicated that Azerbaijan continues to face significant challenges with respect to the exercise of fundamental freedoms in the pre-election period. As in 2008, they cited constraints on the ability of political parties and citizens to freely express political views due to restrictions on the freedom of assembly and the freedom of association, and due to the media environment. They also expressed concern that the shortening of the campaign period and the elimination of campaign funding by the state would present additional barriers to their ability to communicate their views to voters. Nevertheless, all of the opposition parties met by the OSCE/ODIHR NAM indicated their intention to participate in the elections, either separately or in blocs of parties.

Despite the adoption of a new Law on Peaceful Assembly in 2008, the ability for citizens to exercise their constitutional right to freedom of assembly in a manner consistent with international standards remains a serious concern. Authorization for

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See www.infocenter.gov.az/v3/index.php.

rallies, demonstrations and other forms of assembly in central Baku is routinely denied on various grounds, and gatherings held without authorization are quickly dispersed by law enforcement authorities. The Baku executive authorities continue to allow assembly only in specific venues on the outskirts of the city. The representatives of opposition political parties stated that similar obstacles to peaceful assembly exist in the regions.

Several opposition political parties stated that they no longer have office space in Baku since the 2005 parliamentary elections and that their activities are routinely restricted in the regions. Ali Kerimli, the leader of the Azerbaijan Popular Front Party, is unable to travel abroad, as he has not been issued a passport since 2005.

In the 2005 parliamentary elections, there were significant problems due to interference in the election process by local executive authorities and others. In response to an OSCE/ODIHR recommendation, a prohibition on interference in the election process was introduced in the Election Code in 2008. De-registration of candidates was also a significant problem identified by the 2005 OSCE/ODIHR Election Observation Mission. Although the grounds for de-registration have not been reduced as recommended, the Election Code was positively amended in 2008 to provide that a candidate may be de-registered only if there is a court verdict or decision in force for an electoral offense. However, in amendments made at the end of 2008, several references to warnings for candidates were deleted from the law. The OSCE/ODIHR NAM was informed that these were technical changes to eliminate repetitions and that Article 113.1 still requires that candidates be warned for violations before other punitive action is taken.

E. MEDIA ENVIRONMENT

The media environment is also an area of serious concern. Despite the existence of several television stations with national coverage, citizens have limited access to diverse political views in the electronic media outside the election period. The OSCE/ODIHR NAM was told by most interlocutors that State TV continues to cover the activities of the authorities and the ruling party extensively and positively, to the virtual exclusion of other political actors, and that pressure on some private television stations results in self-censorship. Opposition leaders or their views are rarely shown on television. Public television makes some effort to provide balanced news coverage, and broadcasts programs on political issues each week; however, the Director General of the public TV stated that it does not provide direct airtime to opposition leaders.

The print media is more diverse, with some opposition-oriented or independent newspapers. However, these have low circulations and are not widely available in the regions. Since 2008, Radio Free Europe/Radio Liberty, Voice of America, and BBC are no longer accessible to listeners on FM radio.

Detentions, defamation lawsuits and other forms of pressure on journalists still affect freedom of the media in Azerbaijan and create an atmosphere that is not conducive to the free expression of ideas inherent in a democratic election process. At the time of the OSCE/ODIHR NAM, a newspaper editor, Eynulla Fatullayev, remained in prison

despite a European Court of Human Rights decision that he be immediately released.⁵ The OSCE Representative on Freedom of the Media has termed the case against Mr. Fatullayev “a gross violation of OSCE commitments on press freedoms.”⁶ It has also criticized the imprisonment of two internet bloggers, Emin Abdullayev and Adnan Hajizade, on charges widely viewed as fabricated in response to satirical postings.⁷

Given the overall media environment, it is questionable whether all parties and candidates will have unimpeded access to the media, as specified in the 1990 Copenhagen Document. Political parties participating in at least 60 constituencies are eligible for free airtime on Public TV and for free space in State-owned newspapers. However, the recent changes to the Election Code further reduce the time period in which parties will have free airtime/space. Amendments to the Election Code in 2008 excluded State TV from involvement in the election campaign, removing a primary source of election campaign information. In past elections, most television stations have, in their news coverage of the campaign, reported favourably of the ruling party and the State authorities.

Paid political advertisements are permitted, but interlocutors stated that in the past these have not been widely used, due both to high cost and to reluctance by media to broadcast them. The private television station ANS, which has had its license suspended on several occasions – most recently after the 2005 parliamentary elections – noted that it had recently received two warnings from the National Television and Radio Council. As ANS does not wish to incur a third warning and risk a possible suspension or withdrawal of its license, the station does not plan to offer advertising and stated that it will exercise caution in covering the campaign.

F. COMPLAINTS AND APPEALS

The resolution of election complaints and appeals was a major problem in the 2005 parliamentary elections, as well as in previous elections. The OSCE/ODIHR Election Observation Mission Final Report from the 2005 elections found that complaints were frequently not dealt with or were decided in a non-transparent manner by election commissions. Also, in court hearings after election day the legal framework and evidence provided by plaintiffs were widely disregarded. In a suit filed by a candidate in those elections, the European Court of Human Rights decided in favour of the applicant, finding that “In the present case... the conduct of the electoral commissions and courts and their respective decisions revealed an appearance of lack of any genuine concern for the protection of the applicant's right to stand for election.”⁸

⁵ European Court of Human Rights, *Case of Fatullayev v. Azerbaijan*, Judgment, 22 April 2010, para 175, at www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/.

⁶ Statement by the OSCE Representative on Freedom of the Media of 1 November 2007, www.osce.org/fom/item_1_27685.html. See also the statements of 30 December 2009 and 22 April 2010, at www.osce.org/fom/item_1_42272.html and www.osce.org/fom/item_1_43601.html.

⁷ See the statement by the OSCE Representative on Freedom of the Media of 10 September 2009, at www.osce.org/fom/item_1_39507.html.

⁸ European Court of Human Rights, *Case of Namat Aliyev v. Azerbaijan*, Judgment, 8 April 2010, para 90, at www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/.

In a partial response to recommendations made by the OSCE/ODIHR, the Election Code was amended in 2008 to provide for the creation of expert groups within the CEC and ConECs. The expert groups are responsible for investigating complaints and reporting to the respective commission.

The rules for composing the expert groups are determined by the CEC, and in practice these groups are composed entirely by commission members and staff and do not include independent experts. Their effectiveness remains to be seen, as their composition does not appear to increase the capacity of election commissions to respond to complaints and appeals.⁹ The CEC informed the OSCE/ODIHR NAM that the work of the expert groups will be open to all interested parties, including civil society. The CEC stated its belief that the expert groups and more detailed rules of procedure would improve the resolution of complaints and appeals in the forthcoming elections. The OSCE/ODIHR NAM was not able to ascertain whether any changes have been made which could improve the consideration of complaints and appeals by the courts.

G. DOMESTIC OBSERVERS

In accordance with its OSCE commitments, Azerbaijan provides for access of domestic and international observers. Several domestic organizations plan to conduct long-term observation activities in at least some constituencies. One such group, the Election Monitoring and Democracy Studies Center (EMDSC) has been refused registration as an organization; its case is now before the Supreme Court. A predecessor, the Election Monitoring Center, had its legal registration revoked prior to the 2008 presidential elections, for apparently minor errors in its registration papers; this case is currently pending before the European Court of Human Rights. Some civil society groups reportedly face difficulties in organizing meetings and trainings in some towns in the regions, due to pressure by the local executive authorities.

IV. CONCLUSIONS AND RECOMMENDATIONS

Most interlocutors stated that an OSCE/ODIHR election observation activity for the upcoming parliamentary elections would be useful. Representatives of official bodies emphasized that the election process would be fully transparent and that observation by the OSCE/ODIHR and any potential recommendations for improvement of the process would be welcome. Other interlocutors noted the challenging environment for the elections and the need for full observation of the process.

In accordance with the findings described above, the OSCE/ODIHR NAM recommends the deployment of a standard Election Observation Mission (EOM) to observe the parliamentary elections. The OSCE/ODIHR will request the secondment by OSCE participating States of 30 long-term observers to follow the campaign and election preparations throughout the country and 450 short-term observers to observe election

⁹ OSCE/ODIHR and Venice Commission Joint Opinion, 2008, para 45, op. cit. "Authorities in Azerbaijan have stated that the primary reason for the failure to provide an effective process for the protection of electoral rights is that election commissions do not have the capacity to develop the facts upon which an adjudication of legal rights can be based."

day procedures, including voting, counting of votes and tabulation of results. The OSCE/ODIHR may consider the early deployment of experts to follow the process of candidate registration.

The OSCE/ODIHR encourages the authorities of Azerbaijan to take steps to address the issues outlined in this report in order to improve public confidence in the election process, in particular with respect to ensuring freedom of assembly, improving the media environment, and the composition of election commissions.

ANNEX

LIST OF MEETINGS OF THE OSCE/ODIHR NEEDS ASSESSMENT MISSION

Officials

Mahmud Mammad-Quliyev, Deputy Foreign Minister
Mazahir Panahov, Chairperson of the CEC
Safa Mirzayev, Head of Staff, Parliament
Shahin Aliyev, Head of the Legal Department, Presidential Administration

Political Party Representatives

Igbal Agazadeh, Umid Party
Ali Ahmedov, Yeni Azerbaijan Party
Isa Gambar, Musavat Party
Sardar Jalaloglu, Azerbaijan Democratic Party
Ali Kerimli, Azerbaijan Popular Front Party

Media Representatives

Ismail Omarov, Director General of Public TV (ITV)
Vahid Mustafayev, President of ANS TV
Mehman Aliyev, Turan News Agency
Emin Huseynov, Institute for Reporters' Freedom and Safety
Alasgar Mammadli, International Research and Exchanges Board (IREX)

Election-Related Civil Society Groups

Intigam Aliyev, Legal Education Society
Mireli Huseynov, Democracy Learning Public Association
Anar Mammedli, Election Monitoring and Democracy Studies Center

International Community

Ambassador Bilge Cankorel, Head, OSCE Office in Baku
Jacqueline Carpenter, Head, Democratization Unit, OSCE Office in Baku
Peter Booms, First Secretary, Embassy of Belgium
Catherine Cleeve, Second Secretary, British Embassy
Jaimy Smith, Political Officer, Embassy of the United States
Brigitte Buchet, Deputy Political Officer, Embassy of the United States
Jerome Pons, Head of Section Political, Economics, Press & Information, European Delegation
Philippe Wieber, First Secretary, French Embassy
Mr Alex Grigoryevs, National Democratic Institute