



Situation prior to the Parliamentary Elections on 7 November 2010

REPORT



Address: 3 Vagif Avenue 156, Baku AZ 1007
Fax: (994 12) 596 22 94;
Tel: (994 12) 596 22 94;
E-mail: emc.az2001@gmail.com ; aspyo@yahoo.com
Web: www.smdt.az

I. SUMMARY

Election Monitoring and Democracy Studies Center (EMDS) is an independent and impartial non-governmental organization which work for holding free and fair elections, development of civil society and democracy in Azerbaijan. EMDS believes that free and fair elections will be a significant contribution to promotion of democratic traditions, to enhancement of well-fare of citizens and to human rights protection.

The main goal of EMDS in parliamentary elections on 7 November 2010 is to support to hold free and fair elections through the citizens involvement to election process which will meet the international standards and the national legislation, and will reflect the voters' will. To this end EMDS will conduct the long-term observation of elections, events on the raising awareness among voters, improvement of election practice and on the increasing the voters participation. In order to conduct the observation of the parliamentary elections EMDS will provide legal and technical assistance to 80 long-term and 2000 short-term observers.

EMDS believes that the establishment of the democratic pre-election circumstances is essential for holding free and fair parliamentary elections on 7 November 2010. However the current situation – the problems regarding to freedom of speech and media, freedom of peaceful assembly and freedom of association creates serious restrictions for holding free and fair Parliamentary Elections on 7 November 2010.

EMDS expects the Central Election Commission to increase its efforts in future and to provide a sufficient inquiry to investigate the difference between the figures of permanent voters' list and that of State Statistical Commission, and the disparity in distribution numbers of voters among election constituencies.

EMDS expects the government to put forward significant efforts to build the public trust in holding the free and fair elections on 7 November 2010 through the actions aimed to lift the crisis in human rights protection created after the previous elections.

EMDS believes that releasing the persons, whose arrest were politically motivated, such as Adnan Hajizadeh, Emin Abdullayev (Milli) and Eynulla Fatullayev, moreover establishment of the political pluralism in television, especially in Public Television would be a significant contribution to the protection of freedom of speech in the country.

EMDS notes the essence of lifting the current restrictions to the freedom of peaceful assembly and freedom of association for holding the free and fair elections on 7 November 2010 and calls government to conduct the relevant actions in this regard.

II. INTRODUCTION

Election Monitoring and Democracy Studies Center (EMDS) is an independent and impartial non-governmental organization which work for holding free and fair elections, development of civil society and democracy in Azerbaijan.

EMDS was founded on 1 December 2008 by founders and members of Election Monitoring Center (EMC) registration of which was annulled by Khatai District Court on the basis of illegal claims of Ministry of Justice on 14 may 2008.

EMDS (EMC) carries out the following actions:

- Short-term and Long-term election observation
- Election Code improvement initiatives
- Assistance to increase the voter turnout
- Assistance to enhance the citizen participation in state administration
- Voter education
- Monitoring of the elected bodies activities (parliament and municipalities)

EMDS members (either as EMC or EMDS) have observed 11 elections (including repeat parliamentary elections, referendum, parliamentary, presidential and municipal elections) conducted in the Republic of Azerbaijan. In total over 9,566 volunteer observers were trained in 481 trainings, and legal

and technical assistance was provided for volunteers' accreditation with the election commissions.

In 2006-2009, members of EMDS (either as EMC or EMDS) implemented programs in various election constituencies to strengthen the citizen-government relations, to study the voters' opinions on the local and national problems and to build relations between the voters and the parliament. Within the framework of these programs the monitoring of the MPs activities were also conducted. To this end the opinion of voters about their MPs were studied in the territories of the constituencies and the parliament sessions were observed.

EMDS is a member of the European Network of Election Observation and Monitoring (ENEMO) which unites 22 national NGOs from 17 OSCE member states. More than 360 members of EMDS have participated in International Election Observation Mission conducted by ENEMO. In general, EMDS's members have been involved in observation of elections in 11 states within the international observation missions of ENEMO and OSCE/ODIHR.

EMDS cooperates with local civil groups, independent mass media and local NGOs in 11 regions of Azerbaijan – Baku, Sumgait, Ganja, Shaki, Jalilabad, Goychay, Sabirabad, Beylagan, Khachmaz and Nakhchivan.

EMDS's programs is being implemented by the financial and technical support of US International Development Agency (USAID), US National Democracy Institute (NDI), US National Endowment for Democracy (NED), Baku office of OSCE, German Marshal Foundation (GMF), Canadian Embassy and British Government.

Regarding to the parliamentary elections on 7 November 2010 along with election observation, EMDS conducts events on the raising awareness among voters, improvement of election practice and increasing the voter participation. Up today, EMDS conducted Civil Forums on the improvement of election practice in 22 cities of the country. After the election race starts, EMDS will publish the booklets and flyers on the increasing the voter participation and raising

awareness among voters, moreover 20 public discussions - "Weekend election lectures" will be conducted.

EMDS will observe the upcoming parliamentary elections through the cooperation with 80 long-term observers, and 2000 short-term observers on the Election Day. To this end 90 trainings will be conducted to train impartial and professional observers. EMDS will organize the Statistically Based Observation for the fourth time on the Election Day on 7 November 2010. We would like to remind you that EMDS is the only NGO in the country which conducts the monitoring of the election day through Statistically Based Observation method and had used this method to observe 2 elections and the referendum.

III. GENERAL INFORMATION ON THE PARLIAMENT ELECTIONS

There are three branches of government in Azerbaijan, which is presidential republic: Executive, legislative and judicial (all branches are elected except the judicial branch). Presidential and parliamentary elections take place in every 5 years.

The members of Milli Majlis of Azerbaijan Republic are elected through the majoritarian electoral system by secret voting on the basis of direct election rights. Parliament elections are conducted for 125 election constituencies according to the single-mandate (majoritarian) election system. According to the Article 84 of State Constitution, the fourth parliamentary elections must be held on 7 November 2010.

As all other elections, parliament elections are conducted by election commissions. The elections commissions' term is 5 years. Election commissions system is following:

a) Central Election Commission (CEC)

Central Election Commission consists of 18 members. 6 members represent the party which has majority of seats in parliament, the other 6 members represent MPs who does not belong to any political party (independent MPs) and rest 6 members represent the minority parties in Milli

Majlis which nominated them. However, meantime CEC has 16 members. Candidates for empty 2 places must be presented by Musavat party and independent MPs. But, Musavat party refused to send its representative to CEC and lower commissions as a protest to current rules of composition of election commissions.

b) District Election Commission (DEC)

District Election Commissions consist of 9 members appointed by 3 groups represented in CEC each of which appoints 3 members.

c) Precinct Election Commission (PEC)

Precinct Election Commissions consist of 6 members appointed by respectful DEC. Each of 3 parties represented in DEC selects 2 members of PECs.

IV. PREPARATIONS TO THE PARLIAMENTARY ELECTIONS

a) Composition of Voters List

According to the Election Code, the permanent list of voters for all election precincts is confirmed in the form determined by CEC.

According to the announcement made by CEC prior to the 2010 parliamentary elections, there are 4 829 888 voters in the country. However, this figure significantly differs from the figures presented by State Statistical Committee of Azerbaijan. According to the State Statistical Committee 70 percent of the population (Population 8 944 237) have a right to vote. But, CEC's argues that only 54 percent of population is voters. Consequently there is 16 percent difference between the figures revealed by two state bodies.

It must be noted that in 2009, two elections (referendum and municipal elections) were held and number of population for that year was 8 896 900. Despite the fact that number of population was same, in the municipal elections on 23 December 2009 voters number (4 612 727 total) decreased by 305 078 people compared to

the referendum (4 917 805 total) held on 18 march 2009.

According to the CEC's and State Statistical Committee's official figures overall population growth during the 2009-2010 was 47 337 while the number of registered voters increased by 97 673 people. The growth of registered voters' number was two times more than overall population growth. It must be noted that despite the concerns of local NGOs and media none of the states bodies mentioned above brought a light to the non-compliance of the figures.

b) Re-organization of the election district locations

EMDS noted violations related to composition of some district election commissions prior to the elections. CEC have not form some DEC according to the legislation and disparities in voters' number occurred in some election districts. For instance, Article 29.1 of Election Code states: *“CEC shall form 125 election districts every five years. Election districts shall, as a rule, be formed on the basis of the average voter representation norm. The average voter representation norm is determined by dividing the total number of registered voters in the country by 125.”*

According to the article mentioned above the average voter representation norm must be 38 639 people. However, the last official numbers announced by CEC shows that there is a significant disparity in average voter representation norm number. For instance, there are 29 572 voters in the Shahbuz-Babak election district number 5 while the Sabunchu First election district number 26 has 48 817 voters and Shabran-Siyazan election district number 54 has 48 162 voters.

It must be noted that according to the Article 29.3.1 of Election Code, *“As a rule, the number of registered voters should be approximately equal among the election districts within the boundaries of the administrative-territorial units of the Republic of Azerbaijan, but no more than 10% higher/lower than the average representation norm in distant or impassible places and no more than 5% higher/lower than*

the average representation norm elsewhere". It is obvious that even if 10% variation applies here, there would not be such disparity. Because, if 10% difference occurs, the 3 800 voters should be added or subtracted from 38 639 - the average representation norm.

c) Voters Education

In 2010, few NGOs conducted the educational initiatives on the forms of conduct of election process and voting rules.

EMDS conducted the Civil Forums in Baku, Ganja, Sumgait, Mingachevir, Beylagan, Sabirabad, Jalilabad, Masalli, Barda, Shamakhi, Goychay, Shirvan Imishli, Shamkir, Zardab, Yevlakh, Lankaran, Gazakh, Goygol, Aghjabadi, Zagatala, Shaki and held the discussions on the participation opportunities in parliamentary elections on 7 November 2010. These forums were attended by members of municipality, political parties, NGOs, Mass Media, teachers, students and volunteers – 1033 people in total (931 male and 102 female).

Social Strategic Studies and Analytical Investigations Public Association, Legal Education Society, Women Rights Protection Society, Center of Free Consulting and Support for Civil Society, Democracy Society Public Union, Legal Initiatives Center and Law and Development Public Union implement programs on the conduct of domestic observation, election rights protection, election commissions' activities, and election participation.

V. PRE-ELECTION POLITICAL AND LEGAL ENVIRONMENT

a) Political Processes

The parliamentary election to be held on 7 November 2010 will be conducted in the light of the political crisis of human rights and freedoms in the country which occurred after previous elections (15 October 2005 presidential and 6 November 2005 parliamentary). It must be noted that the participation of the opposition was very

low in the elections held after 6 November 2005 (15 October 2008 presidential and 23 December 2009). Opposition, especially the powers which was the main alternative to the government in all elections in the last 7 years, boycotted the presidential elections held on 15 October 2008. Consequently, the elections took place without political alternatives.

Since the peaceful action held by Azadlig bloc on 26 November 2005 in Baku, none peaceful protest action was permitted in the centre of the city in the last 5 years. For instance, members of Musavat, Popular Front Party and Union for Democracy have tried 9 times in 2010 to hold pickets and meetings. However, Baku City Executive Power did not permit the actions, and protest actions were dispersed by police, and participants were detained.

Prior to the parliamentary elections, OSCE conducted 3 discussions with the participation of both pro-government and pro-opposition parties, NGOs and mass media representatives. Recommendations of the OSCE Office for Democratic Institutions and Human Rights on the 15 October 2008 presidential elections, also election administration, freedom of assembly and role of media in elections were the main topics of discussions. In the last such discussion held by the Baku office of OSCE on 24 August 2010, Ali Hasanov, the chief of public-policy department of the Presidential Apparatus, said that public resources will not be used to restrict the Media participation in the upcoming elections.

Approximately 40 candidates filed complaints to European Court of Human Rights regarding the results of 5 November 2005 parliamentary elections and violations that took place during the election period. On 6 April 2010, European Court ruled a verdict on the one of the complaints – Namat Aliyev's case, the candidate from 93rd Barda city election district. Court decided that Aliyev's election right, provided by the Article 3 of protocol number 1 of Convention, was violated and the government shall compensate him 7500 Euros.

Meantime, about 20 cases regarding to the elections held in Azerbaijan are in the implementation process in European Court which already have passed the communication stage.

EMDS believes that if all the complaints will be granted and court will rule that applicants' rights were violated, those decisions may affect the Azerbaijan legislation.

b) Amendments and changes made to the Election Code

On 18 June 2010, amendments were made to the Election Code in parliament (Milli Majlis) of Azerbaijan Republic. The bill, introduced by a group of MPs belonging to the New Azerbaijan Party (YAP), contained three main amendments:

- To reduce the election campaign period from 75 days to 60 days
- To abolish the allocation of funds from state budget
- To reduce the pre-election campaign period from 27 days to 22 days

While the bill was discussed in the parliament, EMDS noted that the abolishment of the funds allocated from state budget for the registered candidates to conduct the election agitation campaign and reduction of election campaign from 75 days to 60 days will negatively affect the participation of political powers on the basis of equal opportunities and the election process in general.

It should be noted that the bill was introduced by YAP just less than 3 months before the parliamentary elections and was accepted without holding any public discussions and studying the opinion of Venice Commission of Council of Europe.

c) Freedom of speech and media

There was no any positive change on the situation of the freedom of speech and media prior to the 7 November 2010 parliamentary elections.

On 22 April 2010, the European Court of Human Rights ruled a verdict against Azerbaijan in case of imprisoned journalist Eynulla Fatullayev. Verdict says that Fatullayev must be immediately released and Azerbaijan government shall pay

him 25 000 Euros as a compensation. However Azerbaijan government have not implemented the verdict and on 15 July 2010 appealed the decision to the Grand Chamber of European Court of Human Rights. It must be noted that Fatullayev was sentenced to 8 and half years of prison on the charges of intimidation with terror, incitement to racial hatred rivalry and tax evasion.

Moreover on 12 December 2009, as a result of search conducted in his cell, 0.22 grams of heroin was discovered in journalist's clothes and shoes. On 6 July 2010, Garadagh District Court sentenced Fatullayev to two and half years of prison on charges drug possession. Eynulla Fatullatev, as well as local and international community argues that it was a set up and the narcotics were dropped to him intentionally.

On 10 March 2010, Court of Appeal refused the complaint of youth bloggers Adnan Hajizade and Emin Milli (Abdullayev). The Judge Gail Mammadov held the decision of the Sabail District Court. Adnan Hajizade and Emin Milli were arrested on 8 July 2009 after the incident in Lebanese restaurant, on the charges of hooliganism and intentionally inflicting minor bodily harm. On 11 November 2009, Sabail District Court sentenced the young bloggers Adnan Hajizade and Emin Milli to 2 and 2.5 years of prison respectfully. On 26 June 2010, hearing on the freeing of Adnan Hajizade on the early release took place in Garadagh District Court. However court refused his application. Local and international community states that youths were arrested for their public activities.

On 21 August, Khazar District Police Department finished the investigation of the case of Emin Badalov, "New Musavat" newspaper reporter, and Anar Garayli, deputy chief editor of "Milli Yol" (National Way) newspaper, and refused to open the criminal case. Badalov and Garayli were faced the physical abuse on 28 July while preparing the reportage. The camera belonging to New Musavat newspaper was damaged. The victims argued that they were beaten by guards detaining 3 hours and were released after the photos were erased from camera while taking photos of estate assumed to belong Ziya Mammadov, Ministry of Transport.

Institute of Reporters Freedom and Security (IRFS) conducted the monitoring of AzTV, Public Television (ITV), Sport-Azerbaijan, Leader, ANS, Space, ATV and Khazar TV during the first 6 month (January-June) of 2010. Results of the monitoring show that on these televisions, 94% of agitation was devoted to government. During 6 months, only 6% of air time was allocated to opposition representatives (mainly regarding the foreign policy).

d) Freedom of association

Prior to the parliamentary elections, Ministry of Justice refused to register the Election Monitoring and Democracy Studies Center (EMDS), independent domestic election observation organization. EMDS filed a complaint to the Yasamal District Court, but the court ruled the decision for Ministry of Justice. Although EMDS appealed the decision to Baku Court of Appeal, the court of appeal held the decision of lower court. On 13 August 2010, Supreme Court did not grant the EMDS's claim and the case was sent back to Baku Court of Appeal.

We would like note that the "Human Rights – 2003" Public Association, Television and Alternative Media Development Center, Support to Municipality Development Public Association, Society for Democratic Reforms, Law Initiative Center, Media Monitoring Institute and other NGOs applied for state registration to Ministry of Justice, but their applications were sent back on the illegal bases.

According to the non-official studies there are 3500 NGOs in the country. Only 2500 of them have state registration, while 1000 NGOs operate without registration.

e) Freedom of assembly

Prior to the parliamentary elections citizen's right to the freedom of assembly were faced serious restrictions. The Baku city Executive Power did not permit political parties to conduct protest actions. Unauthorized actions were dispersed by police, and participants were detained.

19 June, 4 persons were sentenced to 10 days of prison, and 6 persons faced the 20 AZN fine after the action in centre of Baku conducted by Azadlig bloc with demands of to form election commissions on the paritet basis, to free political prisoners, to lift restrictions to freedom of assembly.

On 31 July, tens of people were detained while opposition tried to hold a meeting. Sabail District Court sentenced 7 persons to 10 days, 1 person to 8 days and 2 persons to 7 days of prison.

NGOs also faced the obstacles created by local executive powers to conduct various events, especially events regarding elections, human rights and democracy in the regions prior to the elections. The social-political department of local executive powers illegally demands permission from Presidential Apparatus to hold such events. When the demand is not met, NGO representatives face pressures or police forces involves. For instance, representatives of local executive power did not permit the EMDS to conduct the civic forums on the voter education in Jalilabad, Sumgait, Sabirabad, Mingachevir and Shaki in March-April. EMDS addressed the issue to the State NGO Support Committee under the Azerbaijani President.

On 19 August, meeting held by Azerbaijan Network of South Caucasus Human Rights Defenders in Ganja was intervened. Ganja city executive power stated that if Intigam Aliyev, the coordinator of network and chairman of Law Education Society, joined the meeting, the meeting will not be allowed. For this reason meeting was held without Intigam Aliyev.

On 25-26 August representative of "Kur" civil society headquarters, organization conducting the monitoring in flood regions, Oktay Gulaliyev, co-chairman of Society for Democratic Reforms, and other representatives were detained by police in Sabirabad region and were not allowed to place of monitoring.

VI. PRE-ELECTION SITUATION MONITORING RESULTS AND RECOMENDATIONS

Regarding to the situation prior to the parliamentary elections to be held on 7 November 2010, EMDS comes to the following conclusions:

- No significant actions were undertaken to democratize the political conditions to hold free and fair elections since the last parliamentary elections
- The improvement of the Election Code based on the recommendation of the Venice Commission of Council of Europe did not take place. The amendments made to the Election Code in the last 2 years carried out without studying public needs and opinion of Venice Commissions of Council of Europe.
- No positive changes in the situation of freedom of peaceful assembly took place and activities of political parties and NGOs were accompanied with serious restrictions.
- No achievements in freedom of speech and media were succeeded, promotion of political pluralism in television was not provided. Despite the calls of local and international human rights organizations, government refused to free Eynulla Fatullayev, the chief editor of “Gundalik Azerbaijan” (Daily Azerbaijan), and bloggers – Adnan Hajizade and Emin Milli (Abdullayev).
- The transparency of the process of preparing the voters list by CEC was not provided. The difference between the information provided by State Statistical Committee and permanent voters list was not investigated.
- The number of voter in the territories of constituencies did not meet the requirements of legislation

EMDS proposes the following suggestions regarding to the situation prior to the parliamentary elections to be held on 7 November 2010

- Freedom of speech and media must be provided to hold free and fair elections and imprisoned journalists must be released
- The places for holding the pickets, meetings and rallies must be determined and security of actions must be provided
- Debates of opposition and independent candidates must be conducted on televisions, as well as on Public Television and the pluralism of thoughts must be provided
- The disparities occurred while forming the constituencies must be investigated
- Relevant actions must be undertaken to improve the defects related to CEC voters list
- Legal initiatives of local and international organization to improve the Election Code must be supported

EMDS Executive Board

2 September 2010, Baku