

OSCE/ODIHR
Election Observation Mission
Republic of Azerbaijan
Parliamentary Elections 2005
6/10 V. Mustafazade, 3rd floor
Icheri Sheher, Baku AZ 1000
Tel: +994 12 4975708
Fax: +994 12 4975715
e-mail: office@odihr.az



INTERIM REPORT No. 3
8 October – 21 October 2005

Executive Summary

- Senior government officials have stated to the OSCE/ODIHR EOM that the executive authorities continue to interfere with the election process, in violation of the law and the 11 May Presidential Decree.
- The Central Election Commission (CEC) continues to hold sessions regularly, but the working atmosphere and collegiality of its sessions have been deteriorating. The OSCE/ODIHR EOM has received inconsistent and conflicting data from the CEC on the updating of voter lists and issuance of voter cards.
- Delays and failures in issuing new ID and voter cards may disenfranchise eligible voters. It remains unclear whether voter cards are required in order to vote.
- Candidates continue to hold numerous rallies across the country, but the campaign has been marred by widespread police arrests and intimidation of opposition party members and supporters.
- Election commissions are not effectively responding to complaints, as they often do not issue reasoned decisions or respect legal deadlines.
- The expected return of candidate and Democratic Party Chairman Rasul Guliyev on 17 October triggered a major national security operation. The Minister of Interior accused 'the radical opposition' of planning to use force against the security forces and numerous nationwide arrests took place. The government defended its actions as necessary to prevent a coup d'etat.
- After the 17 October operation, the Minister of Economic Development and the Minister of Health have been removed from their posts and arrested on suspicion of plotting a forcible seizure of power.
- State-funded TV channels continue to distribute free airtime to the four major political parties and blocs, but their news programs favor the incumbent political forces. In connection with the 17 October events, State TV suspended live broadcasts of free and paid airtime for candidates of Azadliq, an opposition bloc, for three days and pre-screened the content of campaign broadcasts.
- There have been several cases in which journalists have been detained or assaulted while covering election related events.

I. The Election Administration

The CEC continues to hold sessions regularly, but the working atmosphere and collegiality of its sessions have deteriorated, reflecting the rising level of political tension. On 18 October, a CEC session was adjourned because members could not agree on an agenda, with insufficient votes to support the Chairman's proposal. Opinions split over the October 17 decision of AzTV to suspend candidates' live broadcasts (see below), with opposition CEC members demanding the suspension to be discussed under a separate item on the agenda. The CEC is failing to adjudicate complaints lodged by opposition candidates in an effective manner.

In constituency election commissions (ConECs) and precinct election commissions (PECs) throughout the country, OSCE/ODIHR EOM long-term observers reported widespread uncertainty and confusion on the interpretation of legal and procedural issues. Inconsistent and poor application of the law was observed in relation to voter card issues, military voting, criteria for PEC membership and complaints.¹

The Voter List

Under Article 45 of the Election Code, the CEC is responsible for the integrated voter list. The CEC's Election Information Centre (EIC) is responsible for the electronic database of voters, submitted by constituencies.² Following a request, the CEC and the EIC independently provided the OSCE/ODIHR EOM with data on the number of registered voters per constituency, and the number of voter cards distributed to constituencies. This data, when cross-referenced, disclosed inconsistencies regarding voters' lists³ and important anomalies in the amount of voter cards distributed to constituencies.⁴ Further, the data appears to indicate that the average number of voters in some constituencies deviates from the requirement established by law, which would not be consistent with the principle of equal suffrage.⁵

A CEC official justified the inconsistencies in its data stating that several constituency boundaries were modified in June this year and that, in some instances, voter cards had been redistributed.⁶ The OSCE/ODIHR EOM is concerned that the CEC has so far not provided consistent and reliable data as to the number of registered voters and issued voter cards per constituency. The EOM has renewed its request for this and other official data.

¹ For example, ConEC 104 stated that voter cards cannot be issued to voters that are registered through a Court decision, while ConEC 109 stated that it was awaiting a CEC Instruction on the issue. ConEC 106 does not keep a register of voter cards delivered to voters; neither do several PECs in Constituency 96. ConEC 74 would not issue a replacement voter card to voters who have lost their card. ConEC 86 believes that teachers are not allowed PEC membership, and considers illegal the composition of most their PECs.

² Art. 110 of the Election Code.

³ For instance, ConEC 50 had, according to EIC data, 31461 registered voters as of 30 May 2005. In July, this figure had increased to 44179, according to data provided by the CEC. In October, new EIC data lists 31158 voters.

⁴ For instance, ConEC 50 had received 45,063 voter cards in July. If EIC data on registered voters from May is compared, voter cards amount to 143 percent of the registered voters, well above the 102 percent envisaged by law.

⁵ Art. 29.3 of the Election Code allows for up to 10 percent deviation from the average number of registered voters per constituency when determining constituency boundaries. Constituency 43 displays a 28 percent deviation above the average, while constituency 74 is 20 percent below the average.

⁶ The OSCE/ODIHR EOM has so far identified 44 such modifications.

The process of issuing new IDs to citizens does not show uniform progress. There are credible reports that bribes are sometimes necessary in order to speed up the issuing process.⁷ Police authorities in some districts have recently stopped issuing regular IDs to new applicants, who instead obtain a temporary ID.⁸ Although valid as a voter ID, this substitute is less secure than a regular ID. CEC data discloses that seven ConECs have already distributed voter cards to every single registered voter but that other ConECs have not completed distribution. Failures in issuing both new ID and voter cards may disenfranchise eligible voters throughout the country. It remains unclear whether voter cards are required in order to vote.

Complaints and Appeals

Senior government officials have stated to the OSCE/ODIHR EOM that executive authorities continue to interfere with the election process, in violation of the law and the 11 May Presidential Decree. A quarter of the 437 complaints registered thus far with the CEC concern violations and interference by local executive authorities and other state bodies. The continuing failure of election commissions and the prosecuting authorities to address or rectify serious violations by executive authorities and candidates has had a marked and negative impact on the election process.⁹ As a result of these delays and omissions, many election violations in constituencies have been allowed to take place and reoccur with impunity.

The CEC has still only issued a handful of decisions on the 437 complaints it has registered. The CEC has no rules of procedure for complaints and has not issued any instruction for dealing with complaints. It has not issued any guidelines stipulating what steps lower commissions should follow in adjudicating cases. In violation of the Election Code, most commission decisions fail to meet the requirements that their decisions are reasoned. The authorities have now accepted an offer from the Council of Europe's Venice Commission for guidance and assistance with complaints.

The Election Code's provisions on complaints are ambiguous in several respects. The interpretation of Article 112 permits many procedural variations for complaints. Many complaints have been sent to the CEC directly and not to the ConECs. The CEC has previously stated that the CEC would assume jurisdiction in cases in which there was a ConEC decision or action or inaction by the ConEC, in accordance with the law. Nevertheless, nearly all complaints have been returned to the lower commissions for a decision, even when the issue concerned actions of the ConEC.

Despite the number of cases in which state and local officials appear to have interfered in the election process, no prosecutions have commenced to date. The Prosecutor General's Office claimed that the CEC was itself violating the Code under Article 112 by referring cases to the prosecutor without first investigating and deciding the complaint itself. Although other officials told the OSCE/ODIHR that they did not agree with the Prosecutor General, this dispute highlighted the continuing impunity enjoyed by election and State officials who act contrary to the law.

The EOM is aware of 14 cases (out of 437) in which ConECs have upheld complaints submitted by independent or opposition candidates. A significant number of constituency

⁷ OSCE/ODIHR EOM reports from Baku, Jalilabad, Lankaran and Barda.

⁸ The temporary ID is known as "form number 7".

⁹ Although several warnings have been issued by ConECs, the OSCE/ODIHR EOM is not aware of any cases in which other penalties have been issued, under article 116 of the Election Code.

commissions have not dealt with complaints in accordance with the law. A candidate in constituency 20 has received only one response from the ConEC for three complaints and no response from the prosecutor's office. When one candidate attempted to submit a video to ConEC 90, the chairman refused to accept it stating that it was not evidence. Some ConECs persist in denying to the OSCE/ODIHR EOM that they have received a complaint when there is proof that they have done so. In ConEC 33, a candidate from the majority New Azerbaijan Party (YAP) whose company had provided extensive services to voters free of charge, was belatedly issued a warning after the chairman delayed taking decisions in the case for two weeks.¹⁰ The warning does not appear to have had an effect.

On 21 October, the Constitutional Court overturned a CEC decision which had cancelled the registration of Hajiaga Nuri, a candidate of the For Azerbaijan election bloc, who was described in the bloc's nomination papers as a representative of the Islamic party (see Interim Report 1). The Islamic party has been denied state registration from the Ministry of Justice and is not permitted to field candidates for the parliamentary elections. The Constitutional Court decision allows Mr. Nuri to be reinstated as a candidate.

II. The Campaign Environment

8 - 16 October

A significant number of candidates have not resigned from official duties and continued to use official or administrative resources, both clear violations of the Code under Art. 69.¹¹ The OSCE/ODIHR EOM continues to receive a number of credible reports about school directors and state enterprise heads who collect signatures of staff with a stated promise to vote for particular candidates. The EOM has also observed and received several reports of undue influence and intimidation of teaching staff and parents of students to vote for particular candidates.¹²

Although across the country candidates have been holding hundreds of small meetings with voters, the campaign has been seriously marred by numerous police arrests of opposition candidates and party members, who were either detained briefly or sentenced for up to two weeks imprisonment, often 'for resisting police instructions' under article 310 of the Administrative code.¹³ Candidate proxies have been in some instances arrested or harassed while traveling, meeting voters, or distributing posters.¹⁴ In some cases, journalists, election commission members, and candidate relatives have also been detained.

Restrictions by government and local executive authorities on freedom of assembly continue. At the unsanctioned Azadliq rally in Baku on 9 October, the EOM observed numerous instances where the police and security forces used disproportionate and unprovoked force against demonstrators and journalists. The opposition parties published the names of more than 100 persons who were detained at the rally and reported that 55 persons were injured. At

¹⁰ Reports of services or goods provided free of charge by candidates are frequent. Candidates finance asphaltting of roads, residential renovations or host traditional Ramadan-season charitable dinners ("iftars") in their constituency.

¹¹ Constituency 2, 4, 65, 104 and 105.

¹² Constituency 34, 37, 44 and 56.

¹³ Convictions and custodial sentences under the Administrative Code can be imposed in the absence of oral testimony from police officers.

¹⁴ On 10 October, two activists were arrested in Tovuz and Ganja. On 13 October, a chairman of the local Democratic Party branch was arrested in Aghjabadi. On 16 October, an independent candidate for constituency 33 was arrested 'on suspicion of being a pickpocket'. This is a violation of the candidate's immunity under the Election Code.

least two candidates were seriously injured, and three candidates were detained. There were several reported cases of party members being temporarily detained by security personnel and removed to the city outskirts and released there. The police stated that only 30 persons were detained and that 11 police officers were injured.

Opposition Azadliq leaders campaigned in western and central districts of the country. They were able to meet with voters, but generally under close and restrictive surveillance by the police.¹⁵ In most instances the police did not otherwise interfere with these rallies; however, in one instance, police broke up an outdoor rally and forcibly moved participants into the allocated venue, which was too small to accommodate the number of participants present.¹⁶ OSCE/ODIHR EOM observers noted police roadblocks between Tovuz and Gadabey, and in the Balakan region, seemingly to control and prevent attendance at the Azadliq meeting. Executive authorities also refused Azadliq permission to organize a rally in Aghjabadi. Often, opposition candidates do not have access to venues for meetings under the same conditions as pro-government candidates and are denied permission to hold meetings in venues in which other candidates have received permission to hold meetings.¹⁷

17 - 21 October

In response to the expected return to Azerbaijan of exiled ADP chairman and candidate Mr. Rasul Guliyev on 17 October, a major security operation was mounted throughout Azerbaijan.¹⁸ The Minister of Interior accused ‘the radical opposition’ of planning to use force against the security forces and numerous nationwide arrests took place. Widespread restrictions on freedom of movement were imposed during this period. Large numbers of Azadliq supporters were arrested and detained throughout the country or arbitrarily prevented from traveling. The Minister of Interior acknowledged that approximately 80 – 100 persons were detained, while other sources reported hundreds of detentions. In Baku, at least 30 persons who had come to the airport to greet Mr. Guliyev were sentenced to imprisonment for resisting police instructions under the Administrative Code, and others were charged with criminal offences.¹⁹ Mr. Guliyev did not arrive in the country but landed in Ukraine, where he was briefly detained. Subsequently, Ukrainian courts rejected the enforcement of the Azerbaijan arrest warrant.

The government defended its actions as necessary to prevent a coup d’etat. In the immediate aftermath of the 17 October events, two Cabinet Ministers and the government’s chief of staff were removed from their posts. The Minister of Economic Development Farhad Aliyev and the Minister of Health Ali Insanov were arrested on suspicion of conspiring with Rasul Guliyev to forcibly seize power. A former Minister of Finance had been arrested on similar charges and for financing unauthorized opposition rallies.

The intimidation of those who responded to opposition calls to go and meet Rasul Guliyev in Baku, continued after their return to the regions. In a serious incident, on October 19, seven

¹⁵ Opposition leader Isa Gambar was stopped by the police in Aghstafa region, when he tried to visit of a memorial to veterans of the Nagorno-Karabakh conflict, allegedly because it was not on the schedule of his campaign tour.

¹⁶ Rally observed by the OSCE/ODIHR EOM on 18 October in Balakan constituency 109. The organizers had been denied an appropriate rally venue.

¹⁷ OSCE/ODIHR EOM reports from constituency 4, 10, 21, 38, 45, 51, 109 and 112.

¹⁸ Rasul Guliyev is a former Speaker of Parliament who has been charged with embezzling large amounts of public funds. The courts have ruled that his status as a candidates does not give him immunity from arrest. The authorities have previously stated publicly that he would be immediately arrested if he returns to Azerbaijan.

¹⁹ Including the nephew of Rasul Guliyev.

Democratic Party members, including four candidates to the Majlis of the Nakhchivan Autonomous Republic and two proxies, were reportedly abducted by police at Nakhchivan Airport upon their return from Baku and taken to a place 10 km from the airport, where it was reported to OSCE/ODIHR observers that they were seriously beaten by several police officers and abandoned.

Withdrawals

As of 21 October, 116 candidates, mostly non-partisan, had withdrawn from the parliamentary elections. There are instances of serious allegations of pressure on some candidates to withdraw. Two candidates in constituencies 40 and 42 have so far resisted pressure to withdraw, despite receiving frequent death threats.

IV. The Media

The State-funded TV channels monitored by the OSCE/ODIHR EOM continue to distribute free airtime equally to the four major political parties and blocs.

In its prime time news and current affairs programs, however, the State TV channel *AzTV* clearly favored incumbent political forces. In the first six weeks of the campaign, *AzTV* provided 97 percent of its political and election prime time news coverage to the activities of the incumbent President, the government, the presidential administration and the YAP party. This coverage was overwhelmingly positive in tone. In contrast, activities of opposition candidates continue to be mostly ignored by the news programs on *AzTV*.²⁰ In so doing, *AzTV* has thus far not met its obligation under the Election Code and OSCE commitments to create equal conditions for the candidates and political parties.²¹

The possibility for opposition candidates to conduct their media campaigns is confined to free and paid political advertising. On 17 October, *AzTV* banned live broadcasts by Azadliq candidates. *AzTV* alleged that some broadcasts had included incitements to change the government by force in violation of the Election Code.²² *AzTV* insisted that all broadcasts be pre-recorded (so that they could be checked for content), in contrast with previous practice, which always permitted live broadcasts on a paid or free basis. Azadliq candidates denied the allegations of *AzTV* and claimed that *AzTV* ‘censorship’ would further limit their opportunities to campaign.

On 18 October, Azadliq formally complained to the CEC that *AzTV* continued to show live broadcasts from other candidates without restriction (confirmed in at least one case by the EOM) and that *AzTV* was violating the equal conditions criteria for candidates in the campaign. At its 20 October session, the CEC did not consider or adjudicate this complaint but referred the case to its media working group.²³ *AzTV* subsequently lifted its ban on showing live campaign broadcasts by Azadliq after three days. The CEC has apparently not addressed the complaint.

²⁰ Since the beginning of the campaign, the YAP party received 1 hour and 17 minutes on *AzTV* prime time news. By comparison, in the same period, the Azadliq bloc received a total of 19 minutes. The OSCE/ODIHR EOM assessed that 73 percent of this coverage was negative in tone.

²¹ Art. 69.1 and 77.1 of the Election Code and paragraph 7.8 of the OSCE Copenhagen Document

²² Art. 88.1 of the Election Code

²³ The CEC has a special media working group composed of its own members and journalists from various media outlets, which assists the commission. This group reported to the OSCE/ODIHR EOM that its last working session took place in September.

As in the case of *AzTV*, *Public TV (ITV)* devoted most of its prime time news coverage (68 percent) to the incumbent President, the government and the YAP party. This coverage was almost exclusively positive or neutral in tone. The opposition election bloc *Azadliq* received 23 percent of such airtime. Of this coverage, 53 percent was assessed as negative in tone, while 1 percent was assessed as positive by the OSCE/ODIHR EOM. *Public TV*, however, continues to offer its viewers more political information than *AzTV* through its political and analytical programs.

Privately owned *Lider TV*, *Space* and *ATV* demonstrate a pattern of political favoritism very similar to the one of *Public TV*. *Lider TV* also produced some prime time news items discrediting opposition candidates.

ANS remains the only TV station to provide a generally more balanced coverage of the campaign. Similarly to the other broadcasters monitored by the EOM, this station devoted most of its prime time news coverage to the incumbent President and the government. The tone of the coverage was mainly positive or neutral. However, in sharp contrast to the other monitored TV channels, *ANS* provided the ruling YAP party and the opposition bloc *Azadliq* with approximately equal proportions of positive or neutral prime time news coverage.

State-funded newspapers continue to provide free and paid advertising space to candidates, but remain openly biased towards incumbent political forces. For example, *Azerbaijan* allocated 90 percent of its political and election coverage to the incumbent President, the government and the YAP party, of an overwhelmingly positive tone. The two other monitored State-funded newspapers, *Respublika* and *Khalq Gazeti*, adopted a similar pattern.

In sharp contrast, the newspapers presenting opposition viewpoints continue to offer a platform to opposition candidates and criticize the ruling forces. The independent newspaper monitored by the OSCE/ODIHR EOM – *Zerkalo* – has so far offered a more balanced picture of the campaign.

The media environment has also been affected by confirmed instances of violence and intimidation against journalists. These incidents include physical and verbal attacks. During the 9 October opposition rally, unidentified individuals physically attacked and injured a *Zerkalo* journalist, clearly identified by his blue Press jacket. On October 11, a journalist and two other persons were beaten outside a Baku printing house by unknown men. Subsequently, police arrested the journalist with his colleagues, and all three men were sentenced to 15 days detention for resisting police orders. Meanwhile, international and local media organizations have expressed concern about the increased threat to media freedom and harassment of journalists in the run-up to election day.²⁴

V. EOM Activities

The OSCE/ODIHR EOM has continued to meet with representatives of official agencies, civil society groups, the media and parliamentary candidates. The Head of Mission has continued the regular dialogue with the Ministry of Foreign Affairs, the Presidential Administration and the Central Election Commission, and has met the Minister of Interior. He paid a working visit to Lankaran, Masalli and Salyan regions and separately, to the Shaki and Ismayilli regions. The EOM held its third bi-weekly meeting with diplomatic missions of OSCE participating States.

²⁴ Statements issued by *Article 19* and *Reporters Sans Frontiers* (altogether 4 statements) and *RUH Committee for Protection of Journalists* (3 statements).

Planning proceeded for the deployment of more than 600 short-term observers, including 150 observers from four parliamentary assemblies (European Parliament, NATO Parliamentary Assembly, OSCE Parliamentary Assembly and the Parliamentary Assembly of the Council of Europe). Apart from observing voting and counting processes in polling stations, teams of observers will be assigned to ConECs across the country to observe the tabulation and transmission of precinct results to the CEC. The OSCE/ODIHR EOM will not observe elections to the Majlis of the Nakhchivan Autonomous Republic, which are held concurrently with the parliamentary elections in Azerbaijan.