



Office for Democratic Institutions and Human Rights

**PRESIDENTIAL ELECTION IN THE REPUBLIC OF  
AZERBAIJAN**

**11 OCTOBER 1998**



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## **INTRODUCTION**

Upon receipt of an official invitation from the Minister of Foreign Affairs of the Republic of Azerbaijan to observe the 11 October Presidential Election, the OSCE/ODIHR sent a Needs Assessment Mission to Baku between 31 July and 4 August 1998. The OSCE/ODIHR established an Election Observation Mission in Baku on 11 September 1998. Mr. Nikolai Vulchanov, ODIHR Election Adviser, was appointed to serve as the On-Site Co-ordinator and Mr. Eugenio Polizzi, partially seconded by the Government of Italy, was appointed as Deputy Co-ordinator.

The Election Observation Mission closely followed the election process from 11 September until 16 October 1998. The observation covered the election campaign period and the administrative preparation for the election day but, unfortunately, the mission was not able to observe the registration of the candidates, and the appointment of the election commissions at territorial and precinct level, as these procedures had been completed before the establishment of the mission. A six-person core team was based in Baku and 11 long-term observers were deployed throughout the country. OSCE/ODIHR kept a presence in Azerbaijan until 31 October in order to observe the completion of the appeal process.

On election day the OSCE/ODIHR Election Observation Mission deployed 148 observers in all administrative regions of Azerbaijan to observe the voting, counting and aggregation procedures.

The Parliamentary Assembly of the Council of Europe (PACE) joined the OSCE/ODIHR Election Observation Mission to follow the election day procedures. A joint press release was issued on 12 October containing a joint preliminary assessment of the election process.

The purpose of the observation was to monitor the compliance of the election process in its integrity with OSCE commitments taken by the participating States in the 1990 Copenhagen Document on Human Dimension.

The OSCE/ODIHR Election Observation Mission avails itself of this opportunity to stress the good co-operation with the authorities of the Republic of Azerbaijan during its stay in the country. The executive authorities did their utmost to respond in an open and hospitable manner to all requests for clarifications of the election-related legislation by providing the mission with basic legal documents. The election authorities also co-operated with the Election Observation Mission in a constructive manner, however unfortunately they chose not to provide the Mission with documentation concerning complaints and the tabulation of the results.

## **SUMMARY OF CONCLUSIONS**

**Clear political will was demonstrated by the authorities of the Republic of Azerbaijan to significantly improve on the election practice of the country. The efforts in this direction were initiated in the late spring of 1998 by a review of the election legislation to put it in line with OSCE commitments, by the formal abolishment of censorship in August 1998 and by the final approval of the new Citizenship Law in late September 1998. In this way the authorities responded positively to concerns raised by the international community and indicated their willingness to meet international standards in the conduct of the election process.**

**The new Law on the Election of the President of the Republic, as amended on 10 July 1998, shows significant improvements over the previously existing law. Unfortunately, the implementation of the new Election Law, within the overall legal and administrative framework governing the election process, fell short of meeting the international standards for a genuine election competition. Additional time would probably have facilitated a more careful implementation of the reforms, introduced shortly before the election, by the state authorities and the election administration.**

**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 by 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 fully present their views.**

**Censorship was formally abolished and the printed media allowed to express a wide variety of views. Despite the fact that the allocation of air-time for all registered candidates complied with the Election Law, the state electronic 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 to 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 the majority of the polling stations the voting and counting procedures occurred in a calm,**

orderly and generally correct manner. In these places, the general atmosphere was improved compared to the last elections and the understanding of the voting process has increased, as illustrated by a substantially decreased family voting and significantly decreased presence of unauthorized persons in the precincts during the 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 interfered with the work of the Precinct Election Commission. Moreover, the accuracy and integrity of the voter registers was often questionable, also in comparison with the turnout released. Significant discrepancies between the signatures present on the voter lists and the ballots found in the boxes were observed during the ballot counting. Additionally, observers witnessed clear evidence of ballot stuffing. Further investigation should be carried out to determine the magnitude of these problems. It is encouraging that positive steps were taken by the authorities to investigate a number of alleged violations.

The aggregation procedures at the territorial election commission level also raise serious concerns. Observers witnessed in several Territorial Election Commissions, that the precinct protocols, prepared 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 Election Law and compromises the transparency of the process.

Moreover, it is of great concern that, in a 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 on the grounds of outdated legislation, the overall election process fell short of meeting OSCE commitments and international standards. The OSCE/ODIHR will continue to provide assistance to the newly elected authorities of the Republic of Azerbaijan to further promote the development of democratic institutions in the country.

## **THE 1995 OSCE/UN FINAL REPORT**

Azerbaijan experienced a troubled parliamentary election in 1995. 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 ...*

Therefore the 1995 election is not an appropriate standard for assessing a genuine election process in line with OSCE commitments

## **THE CANDIDATES AND THE FINAL RESULTS**

Six candidates were finally registered by the Central Election Commission for the 11 October Presidential Election and they engaged in a real electoral contest, particularly in last weeks of the campaign. They were: the President in office, Mr. Heydar Aliyev, elected in 1993 and nominated by the New Azerbaijani Party; Mr. Etibar Mamedov, nominated by the Azerbaijan National Independence Party; Mr. Firudin Hassanov, appointed by one of the three registered Communist Parties, Mr. Khanhusein Kazimili, Chairman of the Social Prosperity Party; Mr. Ashraf Mehtiyev, Chairman of the Association of Victims of Illegal Political Repression, Mr. Nizami Sulimanov, Chairman of the Independent Azerbaijan Party.

According to the Final Protocol published by the Central Election Commission on 22 October, 3,289,221 voters went to the polls (around 77% of the registered electorate). Mr. Aliyev received 2,556,059 votes, Mr. Mamedov 389,662 votes, Mr Sulimanov 270,709 votes, Mr. Hassanov 29,244 votes, Mr. Mehdiyev 28,809 votes, Mr. Kazimili 8,254 votes.

## **THE LEGAL FRAMEWORK**

The basic laws governing this election process were the Constitution of the Republic of Azerbaijan, the Law on Elections of the President of the Republic of Azerbaijan (referred to in what follows as the Election Law) as amended by the law adopted on 10 July 1998, and the Law on the Central Election Commission (CEC), adopted on 15 May 1998. A new Citizenship law was adopted by the Parliament on 30 September 1998. In addition to these legal acts, the Law on Political Parties, the Law on Public Organizations and the relevant provisions of the Administrative Penalty and Criminal Penalty Codes as well as the Judiciary Law also have to be considered.

### **The Constitution**

The Constitution, approved in November 1995 by a referendum held simultaneously with the parliamentary elections, is directly applicable and it guarantees 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. It is of concern that the authorities failed to organize and conduct municipal elections. The absence of genuinely elected local authorities certainly had influence over the present election process. The present local executive authorities, which played an important role in the election process, are local branches of the central executive authorities, appointed by the President.

### **The Election Law**

The Election Law was substantially improved, generally in line with OSCE commitments, before being finally approved by the Parliament on 10 July 1998. The main positive amendments are related to the compositions of the election commissions. Each registered candidate was granted the right to appoint one representative, with equal rights to all other commission members, in the Central Election Commission (CEC), in each of the 82 Territorial Election Commissions (TEC) and in each of the approximately 4,300 Precinct Election Commissions (PEC). Domestic and international observers, including representatives of the media, were given access to observe all stages of the election process. The presence of unauthorised persons in the precincts was explicitly prohibited. Numerous improvements referring to the formulation of a level playing field for all candidates and the general transparency and accountability of the election process were introduced in the new Election Law. Certain requirements of the opposition parties who decided to boycott the elections were also included in the legal framework.

However important issues, like the procedures for establishing the voters registers at the Precinct level, unambiguous rules regulating the campaign, the ballot printing and security and the aggregation of the election results still need to be addressed in a transparent way to minimize the possibility of election irregularities.

It has to be concluded that a good election law is only one of the necessary conditions for conducting a genuine election. The overall election-related legal framework has also to be considered and only the implementation in good faith of all election-related legislation will provide for an election to comply with international standards.

### **The Law on the Central Election Commission**

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

Some amendments were entered in the Law on the Election of the President of the Republic, which aimed to improve the implementation of the Law on the CEC. But these provisions were neither clear, nor did they appear to have won the confidence of the main political parties.

### **The Citizenship Law**

One of the consequences of the Nagorno Kharabakh conflict was that approximately 260, 000 refugees entered Azerbaijan after 1988. The right of refugees to vote was questionable for the simple reason that formally they were not citizens of the country. Yet they had taken part in previous elections, they served in the army and were therefore generally regarded as citizens of Azerbaijan.

The issue was solved, at the last minute, through the final approval of the new Citizenship Law, which had already undergone two previous readings in Parliament, and which granted full citizenship to refugees living on the territory of Azerbaijan from 1<sup>st</sup> of January 1988 till 1<sup>st</sup> of January 1992 .



### **Administrative Penalties Code**

Paragraph 8 of the Transitional Provisions of the 1995 Constitution stipulates that laws and existing normative acts shall remain in force in those parts that do not contradict the Constitution. Yet, the Administrative Penalty Code is still widely implemented, even though this Code should be considered in contradiction with important constitutional guarantees by allowing detention of a person up to 15 days without a public hearing and without the intervention of a lawyer, even without a record of the defendant's testimony or pleas. Such procedures were used during the pre-election period against political opponents, in order to curb the protest of boycotting opposition parties.

### **Other Legislation**

The Law on Political Parties, the Law on Public Organizations and the relevant provisions of the Administrative Penalty and Criminal Penalty Codes were not amended significantly since independence. Their provisions and implementation remains far below OSCE standards.

### **The Judiciary**

A new Law on the Judiciary was approved in 1997 but it has not been enforced allegedly because the Civil Procedure Code has not yet been approved. The presently acting Law on the Judiciary is the one inherited from the pre-independence period. The Prosecutor's Office still occupies a predominant place in the judicial system by supervising the preliminary investigations, by mandating the police and by filing protests with the superior jurisdiction to challenge decisions of a lower court even after they have become *res judicata*. The provisions governing the Prosecutor's Office are the same as the ones in force in the former USSR.

The 1995 Constitution guaranteed the President of the Republic a firm control over the judiciary. The judges in the Courts of Law in Azerbaijan are appointed directly by the President. The judges of the Constitutional Court, the Supreme Court and the Economic Court are appointed by the Parliament, upon proposal of the President of the Republic. Their removal follows the same procedure. It is again the President of the Republic who appoints the chairpersons and deputies of each court, as well as the chairpersons to boards of courts, according to the present Law on the Judiciary. The term of office is five years for low court judges, and ten years for high court.

The system is deemed to establish a judiciary with a limited degree of independence, due to the lack of any self-governing body of the judiciary, and the power of the President to re-appoint a judge or not, after his/her term has expired.

Following the disputed 1995 Parliamentary elections, the Parliament is completely aligned to the President. The absence of any balance between the legislative and executive powers has largely affected the already weak judiciary, which, in turn, has made the establishment of the rule of law in the country difficult: citizens have no real recourse to courts to be redressed for any wrong doings.

A Constitutional Court Law has been approved by the Parliament, but not all the judges have been appointed yet. It is the Constitutional Court that has to announce the official results of the elections.

The Supreme Court too has played a sensitive role in the electoral process, as the ruling on appeals concerning the final results falls under its jurisdiction. The way the appeal introduced by the defeated candidate Etibar Mamedov has been examined and rejected on the basis of formal arguments (see below: Complaints) raises concern.

## **BASIC HUMAN RIGHTS AND FREEDOMS**

The human rights situation in the country is portrayed by authoritative international sources as quite poor. The Election Observation Mission had the possibility to verify directly some of the reported allegations in the course of the pre-election campaign.

### **Freedom of Association**

Several opposition political parties have been denied registration by the Minister of Justice, with questionable motives. The parties Halq Azadliq, Vahdat, Azerbaijan Democratic Party, National Democratic Party and Caqdash Turan had their appeals for registration rejected.

In spite of constitutional provision that all citizens shall have the right to participate without hindrance in the political life of the society and the state, administrative obstacles were set forth, in a politically selective manner, by the authorities, hindering the freedom to establish political parties and thus effectively violating Paragraph 7.6 of the OSCE Copenhagen Document on the Human Dimension, which calls on the participating States to respect the rights of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.

Appeal to the court against such refusals has not been considered as a remedy, often due to mistrust in the independence of the judiciary or in its power. The Azerbaijan Democratic Party (ADP) did lodge an appeal to the Supreme Court and won its case, but the Minister of Justice still refused to comply raising a different issue. A second Supreme Court decision followed, requesting the ADP to modify the Charter according to the recommendation of the Minister of Justice.

The existing registration procedure of non-governmental organizations (NGO s) by the Ministry of Justice has been used selectively by this body to refuse registration at least to two domestic NGO s that were willing to participate in election observation. The Ministry has shown double standards in refusing registration to organizations close to the opposition, such as Movement for Election Reform and Democratic Elections (SIDSU) while registration has been immediately granted to organizations close to the ruling party, like the Centre for Democratic Election (CDE).

### **Freedom of Assembly**

Freedom of gatherings is also openly upheld by Art. 49 of the Constitution: Every person shall have the right to freely gather with others. Everybody shall have the right, upon notification to corresponding government bodies in advance, to peaceful,

unarmed gatherings, meetings, demonstrations, rallies, street processions, pickets together with others .

In spite of such a clear provision, during the pre-election campaign, administrative obstacles were set forth in order to refuse the exercise of such a political right to the boycotting opposition parties. The local authorities refused to allow several demonstrations or indicated another venue than the one requested by the organizers, on the basis of questionable security reasons. On 12 September and, to a lesser extent, on 9 October, instances of violence were observed when the police intervened to disperse the demonstrators.

The restrictive policy adopted by the authorities throughout Azerbaijan vis-à-vis freedom of assembly, represents a violation of Paragraph 9.2 of the OSCE Copenhagen Document on the Human Dimension by which the participating States reaffirm that everyone has the right of peaceful assembly and demonstrations. Any restrictions which may be placed on the exercise of these rights will be prescribed by the law and consistent with international standards

In the days preceding the election a new draft law on freedom of assembly was presented to the Parliament and approved on the first reading. The draft law establishes a number of limitations to the freedom of gatherings, in order to legitimize the behaviour of local branches of the executive authorities and it has attracted severe criticism by the opposition. This draft bill is currently under revision, and the ODIHR has been asked to provide technical advice to the Azeri authorities.

## **ADMINISTRATION OF THE ELECTIONS**

### **Election Administration Structure**

A three-level election administration was approved in the framework of the new Election Law. According to the law a permanent 24 member Central Election Commission (CEC) represents the highest level of the election administration. At the second level, 82 Territorial Election Commissions (TEC) were appointed by the CEC 70 days before election day, following the casting of lots at the territory (rayon) level to determine the nine members of each TEC. A similar procedure was implemented not later than 44 days before election day to form the approximately 4300 PECs, each consisting of seven members selected by lot and appointed by the respective TEC.

After the registration of the presidential candidates had been completed, each registered candidate was given the opportunity to appoint an additional member in the election commissions at all levels. These additional commissioners were to enjoy the same rights as the ones appointed before the registration of the candidates. Thus the new Election Law gave the minimum guarantees, the guarantee to be informed, to all registered candidates.

### **The Selection and Composition of Election Commissions**

According to the Law, half of the members of the Central Election Commission are appointed by the Parliament and the other half by the President. Such a provision favoured the incumbent who was running as a candidate, even more so since at the

time of this particular election, the Parliament was dominated by the President's party with an overwhelming majority.

Following opposition complaints, the incumbent President took the initiative to offer to the boycotting opposition parties four seats out of his 12 member quota, while the Parliament left vacant one of its seats for these parties. However, final agreement could not be reached and the CEC functioned with 19 members until the registration of candidates was completed. After the registration four of the registered candidates appointed their representatives to the CEC, and the CEC functioned then with 23 members until the completion of the election process.

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 commission members nor in the regular work of the election administration. In this way, the implementation of the Election Law failed to meet its own criteria.

### **Voter Registers and ID Papers**

Voters registers are to be drawn up by PECs on the basis of information provided by local branches of the central executive authorities, in particular the so called JEKs (executive authorities officials responsible for the maintenance of buildings), outlining the number of the citizens living in the precinct area. According to Article 23 of the Election Law the respective organs of the Local Executive Authorities shall elaborate lists of registered voters every year by 1<sup>st</sup> of January and 1<sup>st</sup> of July. Respective Executive Authorities shall pass the information about electors to the election Commission at least 40 days before the date of the election. Serious concerns were raised by the observers about the regular updating of the voters registers. Moreover, both the Election Law and the CEC Rules and Regulations, did not provide for a mechanism to prevent potential double entries.

Voters identify themselves to the PEC by presenting a passport or a certificate known as Form N 9, which is a substitute for ID papers issued to voters by the Ministry of Interior. While criminal penalty is envisaged in the case of eventual multiple voting, there are no effective guarantees to prevent such a possibility.

### **Ballot Printing and Distribution**

The Election Law contains provisions necessary to achieve a certain level of accountability during the production and distribution of the ballot papers. There was also a political will to augment the above provisions. The observers were invited by the CEC to attend the printing of the ballots. The election authorities have to be commended for their efforts in trying to organize proper ballot printing procedures. However, it is of concern that it was not possible to have a clear figure on the number of ballots produced. Moreover the OSCE/ODIHR observers were invited to attend the destruction of the printing plates in the printing house, only to find an extra printing plate a few days later.

Accountability could have been improved by an appropriate Regulation of the CEC providing for the numbering and the packing of the ballots into compact books. Unfortunately, despite all the endeavours and the financial commitment of the British

and American governments, due to logistics complications, the necessary steps were undertaken too late to be implemented. This raised complaints on the part of some of the contesting candidates.

### **Candidate Registration**

According to Article 33 of the Election Law a candidate to be registered has to collect not less than 50,000 signatures [...] at least 0.4 percent of total signatures need to be collected from more [than] half of each of the regions . Electors have the right to sign for several candidates for the Presidency . It is noteworthy that this latter provision was introduced in the Election Law on 10 July upon the request of the opposition parties.

The signatures need to be presented to the Central Election Commission 60 days before the date of the election and, according to Article 34 of the Election Law the CEC has to take the decision on registration of the candidate at least 50 days before the election .

Therefore, when the OSCE/ODIHR commenced its observation activity, the registration procedures were already completed and it was not possible to formulate any assessment on this phase of the election process.

### **IFES/ODIHR Training Programme**

Upon receipt of a voluntary contribution from the Norwegian Government, the ODIHR conducted, in co-operation with the International Foundation for Electoral Systems (IFES), a project to assist the Central Election Commission of Azerbaijan to train the election officials. The training programme was particularly necessary in light of the adoption of the new Election Law shortly before the Presidential Election.

The programme was divided into two phases. During the first phase, which took place in the month of July, the ODIHR and IFES assisted the CEC in drafting the Official Election Day Manual to be distributed to all election officials. The manual was adopted by a formal decision of the CEC, thus becoming an official regulation to be applied during the election process.

During the second phase, which took place at the end of September-early October, five international trainers conducted a series of training sessions in co-operation with members of the CEC in all TEC s. The participation of the international trainers was included in a more comprehensive training programme organized and carried out by the Central Election Commission.

Unfortunately, during the training session the international trainers received the impression that the Official Election Day Manual had not been fully endorsed by the CEC. Moreover during the training sessions the advice given to the election officials by the CEC members was not always consistent.

It is the opinion of the Election Observation Mission that the training programme could have produced more positive results if the training sessions had been prepared further in advance and in better co-ordination with the international trainers.

## **THE PRE-ELECTION PERIOD**

### **The Boycott**

A number of influential political parties, chaired by former senior figures of the Republic, refused to stand in the Presidential contest, claiming that basic conditions for holding democratic elections were not met. An appeal by the President, released on 4 August 1998, offering four 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 from the boycotting parties to the authorities concerned a postponement of the elections, indicating that in the meantime conditions had improved.

### **Posters**

The poster campaign was carried out overwhelmingly in favour of the incumbent compared to all other candidates taken together. Posters of other appeared 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.

Article 42 of the Election Law regulates the posting of campaign material. In compliance with this article, the executive power of Baku released an order on 4 September to all regional executive bodies. According to the order, executive bodies of the city of Baku had to confirm where campaign material would be posted. When asked by the observers which measures had been taken in compliance with the above mentioned order, the head of one of the regional executive bodies replied that a list of streets where the posting was allowed had been forwarded to the competing candidates. However, campaign material posted in other streets was not removed and no specific space allocation had been foreseen for each candidate. Moreover, according to the official interviewed, the posting of campaign material on public buildings was perfectly legitimate. Article 37 of the Election law clearly states that It is forbidden for the following organs to hold election campaign or to disseminate pre-electoral materials: state organs, municipality organs as well as the officials of these organs .

Although the above mentioned article was interpreted with ambiguity by the public authorities, the Election Observation Mission is of the opinion that at least the spirit of the law was clearly violated.

### **Rallies**

The incumbent held many campaign rallies and public meetings, including many which were not related to the elections. Usually these meetings were characterized by heavy police and Ministry of Interior troops. The meetings were frequently attended by large numbers of school children, brought to the meetings in an organized manner by their teachers, and state employees. The organized 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 suitable locations. Apart from the 12 September rally in Baku, when clashes occurred, the demonstrators and the police generally showed a high degree of restraint.

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

### **The Role of Public Authorities**

The public authorities often openly supported the incumbent. The presence of campaign material mainly supporting the incumbent on public buildings; the organized presence of school children and state employees at the President's rallies; the activity of the state media; the obstructive attitude of the local authorities vis-à-vis the campaign initiatives of the opposition; and finally the lack of balance in the examination by the judiciary of the election complaints are mentioned in this report.

This represents a violation of Paragraph 5.4 of the OSCE Copenhagen Document on the Human Dimension which indicates that a clear separation between the State and Political Parties is one of the essential elements for the full expression of the inherent dignity and the equal and unalienable rights of all human beings.

## **VOTER AND CIVIC EDUCATION**

The lack of capacity of the voters to fully understand the voting practices in a developed democracy, as well as the proper handling of the voting procedures, was singled out, by the Observation Mission, as a major problem during the 1995 Parliamentary Election.

Thanks to a voluntary contribution offered by the British Government, the ODIHR conducted a voter education programme in co-operation with the BBC World Service. The education programme was based on a series of radio programmes where indications on how to vote were given.

IFES also initiated a comprehensive voter education programme based on leaflets, posters and TV spots. In addition, the Open Society Institute also contributed with a publication.

## **THE DOMESTIC OBSERVERS**

The admittance of non-partisan domestic observers at each stage of the election process is considered as one of the substantial improvements of the Election Law. Five

local organizations approached the Election Observation Mission as non-partisan domestic election observation organizations. Two of these, the SIDSU and the Centre for Support of Democratic Elections, 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.

The introduction in the election legislation of provisions allowing the presence of domestic non partisan observers is a significant positive development which is fully in line with Paragraph 8 of the OSCE Copenhagen Document according to which the presence of observers, both foreign and domestic, can enhance the electoral process .

However, the NGO For the Sake of Civil Society filed complaints because its observers have not been accepted in approximately ten territories by the relevant TEC.

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

The Centre for Democratic Elections proved to be particularly confused on its role and its relationship with the Election Observation Mission. On 29 September in a press release it stated that joint monitoring would be organized with the OSCE. Obviously this was the fruit of a misunderstanding, as the ODIHR encourages and favours domestic non-partisan observation but keeps its observation activity clearly separated from any domestic observation effort.

The Election Observation Mission is of the opinion that there is a need to clarify the role and function of the domestic non-partisan observers and to improve the implementation of the legal provisions related to non-partisan domestic observers.

## **THE MEDIA**

The OSCE/ODIHR Election Observation Mission s findings regarding the activity of the media during the Presidential campaign are mainly based on the monitoring of electronic and print media conducted by the European Institute for the Media (EIM) from 20 September to 10 October. The Election Observation Mission would like to express its thanks to the EIM for making available valuable information on the media situation. The European Commission under the Tacis Democracy Programme has financed the EIM media-monitoring mission. The OSCE/ODIHR Election Observation Mission also relied on a media expert who monitored the main public TV channel (AZ TV 1) during the three weeks preceding election day and whose findings fully converge with the EIM final conclusions.

### **The Media Situation**

In Azerbaijan the electronic media largely dominates the media landscape. The state TV, AZ TV 1, is the only electronic outlet able to cover the whole country. It broadcasts from 8:00 am. until 1:30 am. and gives extensive coverage of political



events. The second state channel, AZ TV 2 broadcasts only in the region of Baku from 6:00 p.m. to 11:30 p.m. and mainly broadcasts entertainment programmes. There are also three private TV channels in Azerbaijan broadcasting in the region of Baku. Two of them, Space TV and ANS TV, give broad coverage of political events.

The print media play a secondary role in providing information on political development in general and the presidential election campaign in particular. However there are about 200 newspapers regularly published throughout Azerbaijan. As a result of the presence of several independent and party newspapers, a broad variety of opinions can be conveyed to the electorate.

### **The Abolition of Censorship**

On 8 August the President issued a decree that abolished the government's censorship body, the Department for Protection of State Secrets in the Press and other Media. This represents a significant step forward in the direction towards the establishment of a pluralistic information structure, and compliance with international standards. However, the state authorities still retain leverage over individual journalists and independent media outlets and several cases of intimidation and violence vis-à-vis journalists have been reported in the run-up to the election, in contradiction with Paragraph 7.8 of the Copenhagen Document.

### **The Media Legal Framework**

The Law on the Election of the President of the Azerbaijan Republic regulates the activity of the media during the election campaign in Articles 6, 38, 39 and 40. Specifically Art. 6 states that the State shall guarantee that all candidates for the Presidency have equal coverage by the public media and shall, in accordance with the laws of the Republic of Azerbaijan, ensure equal conditions for the coverage by non-governmental media. Article 38 forbids any abuse of the media freedom in election propaganda, specifically any calls for the violent overthrow of the constitutional state structure. According to Article 39, all Presidential candidates have the right to equal access to free airtime on the state media, and to purchase additional paid airtime on terms that must be the same for all candidates. Moreover the CEC is responsible for defining the order of use of free air-time by candidates for the Presidency by casting lots. Also private TV and radio shall provide equal conditions of broadcast for all candidates in terms of prices and fixed time. According to Article 40, official print media of organs of the executive, legislative, judicial and municipal authorities are not allowed to publish material concerning candidates.

On 12 August the CEC supplemented the provisions of the law with more specific regulations. According to these regulations each candidate is allocated six hours of free airtime on AZ TV-1 plus one hour on state radio. The CEC regulation also stated, Art. 1.2, that during the pre-election campaign, officials holding state positions, registered as candidates for the Presidency of Azerbaijan, may not use speeches, conferences or meetings related to their official activities to directly benefit their own campaign. Art 1.3 of the same regulation bars the media from giving preferential treatment to any of the candidates.

AZ TV-1 broadcast daily one hour of free election-related broadcasting from 1 September till 9 October. As stipulated by the law, the sequence of airtime was allocated by the CEC on a random basis.

In addition to this all Presidential candidates were allowed 1 minute of coverage nightly during the news broadcasting, for which they were allowed to provide their own pre-recorded footage.

### **Basic findings**

Within the air-time allocated by the CEC for political campaigning, the state AZ-TV 1, performed generally well, abiding by the instructions laid down by the CEC, and offered to each candidate the agreed upon air time.

Likewise, the performance of the print media was overall in line with international standards. A wide range of opinions was able to reach the electorate and all candidates and other political interests were in a position to convey their message.

On 4 October AZ TV-1 organized a live joint press conference to which all candidates were invited. Only the incumbent decided not to participate. Despite the tone of the debate, which focused on the candidates personal history and not on the political programmes, and the fact that the most prominent candidate decided not to participate in this event, it has to be considered as a positive development.

However, the news coverage and the political advertising both on the state TV and private channels was severely biased in favour of the incumbent, and generally lacked any tolerance for the view of the boycotting parties. Regularly the main news extensively covered the activities of the incumbent. Generally the airtime given to the incumbent was considerably higher than that given to the other candidates. For example, according to the monitoring undertaken by the ODIHR media monitor on 7 October, before the main news on AZ TV-1, the Incumbent had 130 seconds of campaign advertisement, while the other five candidates altogether had 110 seconds. The Centre for Democratic Elections received 60 seconds. On the same evening, after the main news, the incumbent had campaign advertisement of 50 seconds, while other candidates altogether had 55 seconds and the CDE had 20 seconds.

According to the European Media Institute, in quantitative terms AZ TV-1 devoted disproportionately large amounts of both news, editorial coverage and special programming to the incumbent. Over the three weeks leading up to the election, 20 hours of prime-time television were devoted to covering his activities. He was followed by Etibar Mamedov with approximately 5 hours, and SIDSU, with approximately 4 hours. Moreover AZ TV1 coverage of the incumbent was almost exclusively positive in tone. Its coverage of both the boycotting leaders and Mamedov was, by contrast, negative in tone. Criticism of Mamedov became increasingly vituperative in the last week of campaigning.

Neither of the two private TV stations compensated for the clear partisanship of AZ TV-1. ANS was inconsistent in its coverage of the incumbent, while Space TV was similarly positive in its coverage of the incumbent and negative in its coverage of the remaining candidates and the boycotting parties.

Despite the correct allocation of the free airtime, as far as the electronic media are concerned, the implementation of the Election Law failed to meet its own criteria, and, specifically, Article 6 of the Law on the Election of the President of the Republic of Azerbaijan as well as Articles 1.2 and 1.3 of the Instruction issued by the CEC were repeatedly violated. Moreover, Paragraph 7.8 of the Copenhagen Document, in which participating States declare to commit themselves to provide that no legal or administrative obstacles stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process was not met.

## **ELECTION DAY**

On election day the OSCE/ODIHR Election Observation Mission deployed 148 observers throughout Azerbaijan. Overall observer teams visited 643 out of the approximately 4300 polling stations in Azerbaijan (which equals 15.7%). Observers were present in 65 Precincts during the opening procedures, they filled in 690 voting forms and observed the counting procedures in 73 Precincts.

The observer reports of election day show a wide variety of situations. In many polling stations the voting and the counting procedures occurred in a calm, orderly and overall correct manner, and in these instances, the general atmosphere had improved over last elections. Also the voters understanding of election process was reported to have increased. In a number of other polling stations, however, very serious irregularities and violations of the election law were observed during the voting, counting and, particularly, the aggregation phase.

### **Voting**

For a majority of the polling stations monitored by OSCE/ODIHR observers, the general impression of the conduct of the poll was positive and the voting procedures were generally conducted according to the Law - in 56.6% the overall opinion was good or very good and in 39% of observations it was fair. However in 13,3% of the visited polling stations the observers rated the voting activities as bad or very bad.

The presence of unauthorized persons in the polling stations was observed in 16% of the polling stations visited during the voting hours. In 9.6% of PEC s representatives of the local authorities were observed inside the polling stations. Intimidation was observed only in very few instances. However, observers reported that unauthorized personnel often behaved intrusively and heavily influenced the activity of the polling station commissions.

In 11.2% of the Precincts visited, the ballot papers had not been properly stamped and signed before being handed over to the voters. In several instances ballots were signed and stamped before being issued to the voters, which constitutes a violation of the regulations issued by the Central Election Commission and eliminates an important measure of ballot security.

Observers reported that in the majority of the Precincts visited the Election Commissions encompassed representatives of candidates, particularly representatives of H. Aliyev and E. Mamedov. However the representatives of Mr. Mamedov were often not fully integrated in the PEC or they were openly marginalized.

The voter registers proved to be an unreliable tool and in several instances inaccuracies were often observed. Moreover observers witnessed forgeries of signatures on the registers. A widespread and often massive use of the supplemental voters' register highlighted the necessity for revision of the registration procedures.

### **Counting**

Observers attended the counting in 73 precincts. The overall assessment of the counting procedures was rated good or very good in 44%, fair in 34%, bad or very bad in 22% of the visited precincts, therefore, according to the observers reports, the counting phase proceeded in a much less regular way when compared to the voting phase. The observers findings were that in a high number of instances the ballots were not counted accurately.

The number of unauthorized persons present in the polling stations during the counting increased compared with the voting. The presence of unauthorized persons was observed in 23.3% of the Precincts visited. The issue of unauthorized person should be addressed before future elections.

In several instances the number of signatures on the voters list did not match with the number of ballots found in the ballot box. These discrepancies and other evidence such as stacks of ballots taken out of the ballot boxes, indicate that ballot box stuffing took place in a few instances. International observers witnessed clear evidence of ballot box stuffing in at least 7 precincts. Further investigation should be carried out to determine the magnitude of this very serious problem.

### **Aggregation**

The aggregation procedures at the Territorial Election Commission level also raised serious concerns.

The first aggregation of the results took place in the 82 Territorial Election Commissions (TEC). According to Article 52 of the Law on the Election of the President of the Republic of Azerbaijan the TEC shall sum up the poll on the basis of protocols of Precinct Election Commission and shall determine the results of the poll at this territory not later than 2 days after the date of the election . However, observers witnessed in several TEC that the protocols filled at the Precinct level and delivered by the PEC Chairperson at the TEC were not final official documents, but mere drafts to be revised by the TEC. This practice represents a blatant violation of the law.

Also, it is of concern that, in the large majority of cases, neither the representatives of opposition parties at the TEC, nor the members of the CEC appointed by the opposition candidates, nor the international observers received copies of the final TEC protocols and the aggregation tables, tabulating the results of the individual PEC.

In the days following the elections ODIHR observers repeatedly applied for these documents both at the TEC level and the CEC level, but the election authorities eluded the demands. Only in one circumstance, for Territory <sup>1</sup> . 6 of Yasamail, in the region of Baku, did the TEC Chairman agree to produce a copy of the Final Protocol. Once compared with copies of official protocols collected by international observers and made available by members of the PEC, a significant discrepancy between the results became evident. The final result of the Yasamail Territory <sup>1</sup> . 6 is attached in Annex 1 as well as the tabulation prepared by the OSCE/ODIHR Election Observation Mission on the basis of the PEC official protocols. Further investigations should be carried out to clarify the reason for the discrepancy and to verify that similar inconsistencies did not occur in other territories.

It is noteworthy that the OSCE/ODIHR post-election follow-up representative strove unsuccessfully to receive copies of these important documents, although members of the CEC had previously promised to the OSCE/ODIHR Head of Mission to immediately produce the documentation.

The behaviour of the election authorities represents a violation of the spirit of Articles 18 and 56 of the Election Law, and of Paragraph 8 of the OSCE Copenhagen Document in which the participating States commit themselves to invite observers from any other OSCE participating States [...] to observe the course of their election proceedings, to the extent permitted by the Law .

## **COMPLAINTS AND THE APPEAL PROCESS**

A number of complaints have been filed with 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 Election Observation Mission was not able to follow the response of the CEC to such complaints because the CEC has not provided the Mission with the relevant information on this issue to this date.

The defeated candidate Etibar Mamedov filed a complaint on the final results, as certified by the Constitutional Court on 15 October, to the Supreme Court on 16 October. The Supreme Court Collegium for Civil Cases decided on 17 October to reject the appeal by the presidential candidate Etibar Salidar oglu Mamedov to annul the results of the presidential elections announced by the Central Election Commission protocol of 15 October 1998 and to institute criminal proceedings in connection with cases of violations of the law during the polling process, because the complaint was groundless .

During the proceeding, which was attended by an OSCE/ODIHR observer, the jury rejected all the requests advanced by Mr Mamedov s lawyer. Particularly the Court rejected the request to postpone the final decision on the appeal in order to allow the Court to examine new elements of proof that Mr Mamedov wanted to present.

Moreover, the Court refused to allow at the proceeding evidence presented by Mr Mamedov s lawyers because, according to the Court, the elements of proof already acquired were enough .

Finally, the Court declared that the acquisition from the CEC of the TEC s Aggregation Tables and the Protocols was not relevant for the legal proceeding.

A more open attitude of the Court would have increased the confidence in the process among all contestants.

After the completion of the Election Observation Mission, the ODIHR was informed that, due to several serious violations of the Election Law that occurred on election day, the election results have been invalidated in 17 Precincts (14 of these Precincts are located in the Yasamail TEC N. 6, see Annex I), located in three different Territories. Also, the General Prosecutor s Office has been requested to investigate a number of alleged violations. It is expected that the results of this investigation will be made available to the public and actions will be taken to eventually sanction the authors of illegal activities.

## **RECOMMENDATIONS**

- I. All efforts to establish an open and committed dialogue between the major political parties in the republic of Azerbaijan, both parliamentary and non parliamentary, to discuss improvement of the electoral framework, in order to create a stable and predictable environment in which main political forces can compete with confidence in future elections, should be undertaken.
- II. The Azeri authorities should amend the Law on the Central Election Commission and the Election Law to ensure full-fledged multi party election commissions at all levels and throughout the entire election process. While it is recognized that political parties and candidates can presently place members on the election commissions after the registration of the candidates has been completed, this is not a substitute for full-fledged multi-party commissions. Moreover, the decision-making mechanism at all levels should require that the decisions are based on more than simple majority vote.
- III. The Election Administration at the central and territorial level should set forth timely and clear guidelines necessary for achieving a transparent, uniform and accountable election process. Only a common interpretation and standard application of the law can ensure the holding of genuine elections.
- IV. In order to enhance the transparency of the process and the confidence of the electorate, the CEC should organize an information flow by announcing preliminary results of the election, including voter turnout figures, to keep the electorate regularly updated on intermediate results of the vote, until the vote count and the final aggregation are completed. When the final results are announced, all parties and candidates contesting the election should be provided, by the CEC, with detailed results by PEC s and TEC s.

- V. Article 56 of the Election Law states that the Central Election Commission is responsible for publishing final results of the Presidential Election one month after the conduct of the poll at the latest. It is strongly recommended that the publication list detail results at precinct and territorial level. This would increase the transparency and the confidence in the process.
- VI. The accuracy of the voter register is best assured if extracted from a permanent and centralized civil register. The right to easily inspect the voter register should be assured in practice, as stated in the law, and the process for amending the register should be clearly explained to the electorate.
- VII. Clear and unambiguous provisions should be set forth in the law and properly implemented to regulate the posting of campaign material.
- VIII. Clear lines have to be specified in the Law and carefully enforced to maintain the distinctions between the official duties of state authorities and campaigning activities of the incumbents and to ensure the impartiality of state institutions and other state bodies during the campaign.
- IX. The implementation of the legal provisions related to non-partisan domestic observers should strictly correspond to the spirit of the law, OSCE commitments and international standards.
- X. The state media should become truly independent and politically impartial. The order and content of television news items, which heavily favoured the incumbent candidate in these elections, also need to be improved. The selective coverage of opposition campaign events has to be avoided.
- XI. Efforts have to be undertaken to correct the consequences of decades of censorship in Azerbaijan. The systematic selective presentation of information, even in media, both electronic and printed, that claim to be independent, should also be addressed.
- XII. All safeguards concerning the complete accountability for ballot paper production, packing and distribution should be specified and implemented in a timely and comprehensive manner. Particularly the numbering and the validation time of the ballot papers should be implemented in future elections.
- XIII. Rigid anti-fraud measures need to be introduced against ballot box stuffing and tampering with PEC protocols at the TEC level. The transparency of the aggregation procedures at the TEC level and CEC level need to be significantly improved. This should also include clear provisions for allowing both international and domestic observers, as well as candidates representatives, to immediately receive copies of protocols and aggregation tables at the TEC and CEC level.
- XIV. Basic human rights and fundamental freedoms, guaranteed by the Constitution, should be upheld by adequate legislation and be implemented in good faith. In

particular, clear provisions in line with OSCE commitments on freedom of assembly and association, should be adopted and properly implemented.

- XV. Municipal Elections, as envisaged by the Constitution should be carefully prepared and held with the consensus of all main political interests within a reasonable period of time and in line with OSCE commitments.



**ANNEX I**  
**YASMAL I DISTRICT: Figures from PEC s Protocols**

Precinct N°	Valid ballots	Heydar Aliev	Etibar Mamedov	N. Suleymanov
1	645	435	117	46
2	341	216	78	39
3	357	219	81	39
4	310	207	57	22
5	336	226	62	27
6	340	213	71	22
7				
8	660	313	180	135
9	752	432	192	60
10	542	315	138	50
11	704	386	190	68
12	621	193	319	87
13	568	303	190	42
14	1120	607	360	79
15	728	386	213	71
16	576	270	205	41
17	522	181	259	53
18	502	235	176	68
19	412	134	174	94
20	637	319	220	72
21	515	187	218	95
22	534	220	259	53
23	210	119	55	27
24	669	449	150	67
25	524	285	157	56
26	535	185	207	120
27	590	296	201	74
28	588	311	198	56
29		175	177	39
30	510	292	138	46
31	577	280	218	77
32	503	258	169	57
33	359	151	167	24
34	320	145	130	52
35	614	300	204	90
36	621	386	133	43
37	801	519	196	54
38	677	356	243	81
39	595	339	168	60
40	464	255	138	49
41	245	106	97	25
42	347	162	125	41
43	392	160	153	60
44	1204	970	346	54
<b>TOTAL</b>	<b>23067</b>	<b>12496</b>	<b>7529</b>	<b>2515</b>

