

## ASSESSMENT REPORT

### On the Follow-up of the Electoral Recommendations in Azerbaijan

*By the Election Monitoring and Democracy Studies Centre/Azerbaijan*

#### I. SUMMARY

Stressing the need for reform of electoral legislation and practice in Azerbaijan in line with standards defined by the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE), Election Monitoring and Democracy Studies Centre (EMDS) carried out assessment of implementation of election related recommendations of these institutions.

The Assessment Report refers to recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on 2013 Presidential Elections and previous elections, opinions of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, and judgments of the European Court of Human Rights (ECtHR). The report lists main directions of recommendations produced by international organizations since 2002 and assesses the progress (or lack of such) of the country in these directions. The OSCE/ODIHR's final report on results of monitoring of 2013 Presidential Elections is given a particular attention in analysis as it is the most recent document of its kind and includes more comprehensive recommendations.

The report analyzes the situation of the fundamental freedoms of expression, assembly and association which are the prerequisites for establishment of an environment conducive for democratic elections as recommended by the OSCE/ODIHR. EMDS notes with regret that the government has taken steps towards restricting freedom of expression on the internet. In March 2017, the law was amended allowing the government and courts to block websites granting them almost unlimited powers.<sup>1</sup> Furthermore, the Parliament disproportionately harshened criminal and administrative punishment for organizing unauthorized assemblies specifying up to three months of imprisonment and fines in very large sums.<sup>2</sup>

Starting from the end of 2013, operation of NGOs has been effectively prohibited in Azerbaijan. The Prosecutor General launched several criminal investigation into NGOs, arrested a number of NGO leaders, imposed travel bans on activists and NGO leaders, and froze bank accounts of organizations. Furthermore, draconian amendments adopted by the Parliament made it extremely difficult to access the foreign funding – the main source of funding for NGOs and literally paralyzed their work.

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<sup>1</sup> BM Morrison Partners - Mustafa Salamov (2017) Regulation of Online Content [Online].

<https://www.lexology.com/library/detail.aspx?g=7bd6c7a5-2a31-4f1a-a94d-1851b9f62250>

<sup>2</sup> In March 2016, new Code of Regulatory Offences passed by Parliament [Online]. <http://e-qanun.az/code/24>

EMDS concludes that analysis of implementation of recommendations suggest that Azerbaijan lacks legislative framework and practices necessary for holding free and fair elections, and the government does not demonstrate a political determination necessary to ensure these.

EMDS believes that with intention of implementing international recommendations on elections, the government should carry out improvement of election legislation in an inclusive process involving discussions with all stakeholders, as well as civil society. At the same time, the government should lift legal and practical restrictions on fundamental freedoms of expression, assembly and association, stop persecution of people with dissenting political views and release political prisoners in order to create an enabling political environment prior to the 2018 Presidential Election.

The Secretary General, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe should examine the implementation of joint recommendations of the Venice Commission and the OSCE/ODIHR regarding the Election Code of Azerbaijan and the judgments of the European Court of Human Rights. They should exert pressure on the Azerbaijani government to carry out necessary electoral reforms.

The Ministerial Council, the Parliamentary Assembly and the Permanent Council of the OSCE should investigate the implementation status of recommendations of the OSCE/ODIHR election observation missions covering elections during 2003-2013 and should encourage Azerbaijani government for closer cooperation with the OSCE/ODIHR.

The European Commission and the European Parliament should consider the implementation of the recommendations of the Venice Commission and the OSCE/ODIHR as a priority in bilateral discussions with Azerbaijani government.

The report was prepared for relevant state bodies, election commissions, members of parliament, political parties and NGOs in Azerbaijan, as well as relevant bodies of the Council of Europe and the OSCE, international election experts, scholars and media.

EMDS is a non-profit and non-governmental organization working towards holding free and fair elections, and supporting civil society and democracy in Azerbaijan since 2001.

## **II. INTRODUCTION**

Noting the lack of comprehensive monitoring of recent elections (2014 Municipal Elections and 2015 Parliamentary Elections) by international observers<sup>3</sup> and lack of discussions over implementation of election related recommendations in the last four years, EMDS decided to assess the situation of their implementation.

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<sup>3</sup> The Office for Democratic Institutions and Human Rights, which has observers all elections held in Azerbaijan since 1995, were not able to monitor the 2015 Parliamentary Elections. For more details - <http://www.osce.org/odihr/elections/azerbaijan/181611>

The organization referred to Azerbaijan's international commitments with regards to free and fair elections, recommendations of the OSCE/ODIHR and the Venice Commission, as well as the judgments of the ECtHR while developing the assessment report.

The report was prepared for relevant state bodies, election commissions, members of the parliament, political parties and NGOs in Azerbaijan, as well as relevant bodies of the Council of Europe and the OSCE, international election experts, scholars and media.

## **Methodology**

With regards to Azerbaijan's international commitment on ensuring election rights, the report refers to Article 25 of the International Covenant on Civil and Political Rights, and Article 3 of the Protocol no. 1 to the European Convention on Human Rights, as well as the Copenhagen document of the OSCE. Following sources have also been used in preparation of the report:

- The Constitution of the Republic of Azerbaijan;
- The Election Code of Azerbaijan;
- The Code of Good Practice in Electoral Matters of the Venice Commission (2002);
- Recommendations and analysis of the Venice Commission and the OSCE/ODIHR on election legislation of Azerbaijan;
- Final reports of the OSCE/ODIHR on results of monitoring of parliamentary and presidential elections held in Azerbaijan from 2005 to 2013;
- Handbook on Follow-up of Election Recommendations by the OSCE/ODIHR;
- Judgments of the ECtHR on election related cases in Azerbaijan (see more references below);
- Decisions of the Department for Execution of Judgements of the Committee of Ministers (see more references below).

The report only covers the recommendations and issues related to presidential and parliamentary elections. It does not touch upon referendum or municipal elections.

While reviewing the recommendations on election legislation, we analysed joint recommendations of the Venice Commission and the OSCE/ODIHR on improvement of the Election Code. Said amendments to the Election Code entered into force on 30 June 2003. The Venice Commission and the OSCE/ODIHR produced six joint recommendations on the election legislation during 2002-2008. These recommendations include assessment of overall law as well as its individual articles, fair and more representative composition of election commissions, opinions and suggestions with regards to amendments and additions to the Election Code by the Parliament.

The report also includes comparative analyses of recommendations noted in final reports of the OSCE/ODIHR on results of monitoring of presidential and parliamentary elections held in Azerbaijan during 2005-2013. These reports point out shortcomings in the Election Code for ensuring free and fair elections, as well as regarding functioning of election commissions, situation of voter lists, registration of candidates, election campaigning and voting process.

Judgments of the ECtHR related on complaints of candidates from conduct of and results of the 2005 and the 2010 parliamentary elections were also investigated as a part of the assessment. The ECtHR recognized the violation of election rights in majority of cases and in some instances, the Azerbaijani government acknowledged the violation of requirements of the convention or resolved them through friendly settlement process.

In majority of cases<sup>4</sup>, the ECtHR concluded that election authorities and domestic courts committed following violations of applicants' rights with their groundless or unjustified decisions or proceedings which failed to ensure effective legal protection:

- *Refused complaints which claimed violation of electoral legislation or electoral process;*
- *Cancelled candidacy of applicants or annulled the results of their elections;*
- *The Constitutional Court annulled the results of some election constituencies in a non-transparent process and without providing sufficient or relevant reasoning, or ensuring procedural requirements including participation of parties in the trial investigation.*

The ECtHR recognized following violations of the Convention in decisions of the election commissions:

- *Complaints and evidences submitted by applicants were refused without any justification;*
- *Witness testimonies and depositions against applicants were accepted without a proper verification of their authenticity and reliability;*
- *There was no independent investigation or reasoning in decisions about cancelling candidacy of applicants or annulling their election results;*
- *Applicants' participation in the investigation was not ensured.*

In the judgment on the case of Gahramanli and others v. Azerbaijan, the ECtHR noted that Azerbaijan should be encouraged to make an effort to reform the structural composition of electoral commissions in order to increase efficiency of investigation of individual complaints.

The ECtHR recognized following violations of the Convention in decisions of domestic courts:

- *Refusal to investigate submitted evidence, failure to take measures in line with its mandate in order to clarify disputed issues, and carrying out proceedings for the sake of formality;*
- *Confirming the decisions of the election commission in an automatic manner;*
- *Failure to provide sufficient time for applicants to prepare their defence;*
- *Erroneous application of electoral legislation.*

In September 2013, the Committee of Ministers of the Council of Europe decided to examine implementation of judgments and decisions of the ECtHR. The Committee of Ministers stressed

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<sup>4</sup> For the ECtHR cases see: group of cases *Namat Aliyev v. Azerbaijan* (22 cases) which is under the Committee of Ministers' monitoring: <http://hudoc.exec.coe.int/eng/?i=004-1773> [Accessed 14 August 2017]; *Abil v. Azerbaijan* (2006); *Annaghi Hajibayli v. Azerbaijan* (2011); *Aslan İsmayilov and others v. Azerbaijan* (2011); *Atakishi v. Azerbaijan* (2006); *Baghirov and others v. Azerbaijan* (2011); *Gasimli and others v. Azerbaijan* (2011); *Gaya Aliyev and others v. Azerbaijan* (2011); *Hajili v. Azerbaijan* (2006); *Karimov v. Azerbaijan* (2006); *Karimli and Alibayli v. Azerbaijan* (2006); *Karimova v. Azerbaijan* (2006); *Khanhuseyn Aliyev v. Azerbaijan* (2006); *Mammadli v. Azerbaijan* (2006); *Mammadov v. Azerbaijan* (No.2) (2006); *Orujov v. Azerbaijan* (2006); *Samadbayli and others v. Azerbaijan* (2011); *Shukurov v. Azerbaijan* (2011); *Soltanov and others v. Azerbaijan* (2011); *Tahirov v. Azerbaijan* (2011).

that the lack of procedures before the electoral commissions and the national courts did not afford safeguards against arbitrariness and invited the authorities to urgently take measures to put in place such safeguards.<sup>5</sup>

### **About the organization**

Election Monitoring and Democracy Studies Centre (EMDS) is a non-partisan and non-profit organization working towards holding free and fair elections and promoting human rights and democracy in Azerbaijan.

EMDS was founded in December 2008 by founders and members of Election Monitoring Centre (EMC), the registration of which was annulled by Khatai District Court of Baku on the basis of illegal claims of the Ministry of Justice on 14 May 2008.

EMDS (also as EMC) has carried out monitoring of all referendums, presidential, parliamentary and municipal elections held in Azerbaijan during 2001-2013. Furthermore, members of the organization participated in monitoring of elections in the OSCE member states as a part of election missions of the European Network of Election Monitoring Organizations (ENEMO), European Platform for Democratic Elections (EPDE) and the OSCE/ODIHR.

## **III. IMPLEMENTATION STATUS OF RECOMMENDATIONS**

The report examines recommendations of international organizations with regards to free and fair elections and their implementation. However, the final report of the OSCE/ODIHR's election mission on 9 October 2013 Presidential Elections has been given more attention since it is the most recent document in the last five years and includes more comprehensive list of recommendations.

### **1. Bringing national legislation on freedoms of speech, assembly and association in line with international standards**

#### **Recommendation:**

A review of the current legal framework for freedom of assembly, expression and association should be undertaken to bring national legislation in line with international standards. Consultations on the current legislation and necessary amendments should be conducted through a public inclusive process.

#### **Implementation status:**

Legal and practical restrictions on the freedom of speech remain unaddressed. The ECtHR demanded Azerbaijani government to change the defamation laws in its judgments on cases of

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<sup>5</sup> Committee of Ministers (2013) 1179 meeting/réunion - 24-26 September/septembre 2013 (DH) - Decision cases No. 2 [Online]. Available: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2013\)1179/2](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2013)1179/2) [Accessed 14 August 2017]

Fatullayev, Mahmudov and Aghazada.<sup>6</sup> The ECtHR concluded that Azerbaijan should decriminalize the defamation and specify concrete provisions regarding the civil defamation in the relevant legislation. However, the government has not adopted a new defamation law and has halted all initiatives in this regard. On the contrary, measures significantly restricting freedom of speech on the internet were introduced. The country introduced internet defamation (*expressis verbis*), and later criminalized defamation using fake names on social media.<sup>7</sup> Furthermore, in March 2017, the Parliament adopted amendments to the legislation granting the government and courts effectively unlimited powers to block access to websites.<sup>8</sup> As a result, new legal restriction on freedom speech has been introduced since 2013.

The practical situation has further deteriorated during the period. Authorities continue to criminally or administratively prosecute critics of the government and high level officials, particularly the President and his family members on social media using other charges like drugs possession, hooliganism, resisting police etc., and imprison them.

In addition to previous shortcomings with regards to the freedom of assembly remaining unaddressed, new restrictions were introduced. Local executive authorities continue to refuse authorising assemblies in relevant venues and places, instead suggest distant and unsuitable locations to organizers. Furthermore, the Parliament disproportionately harshened criminal and administrative punishment with regards to holding assemblies. According to the amendments to the Administrative Code, violation of rules of assembly is punishable by three months of imprisonment and/or fines in very large sums.<sup>9</sup>

The freedom of association was subjected to the most dramatic restrictions over the last four years. Starting from the end of 2013, operation of NGOs has been effectively prohibited in Azerbaijan. The Prosecutor General launched several criminal cases into NGOs and as a part of the case, arrested a number of NGO leaders, imposed travel bans, froze bank accounts of NGOs and their leaders, raided their offices and confiscated their properties. Furthermore, draconian amendments adopted by the Parliament made it extremely difficult to access the foreign funding – the main source of funding for NGOs – and put it at a discretion of the Ministry of Justice. These amendments has literally paralyzed the work of NGOs. Administrative sanctions with regards to accountability of NGOs were also toughened<sup>10</sup> and the Ministry of Justice was granted new very broad powers to inspect and scrutinize NGOs.

In addition, problems in registration of NGOs remain unaddressed with the Ministry of Justice continuing to deny state registration to NGOs on groundless basis.<sup>11</sup>

## 2. Language of election legislation

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<sup>6</sup> Committee of Ministers Mahmudov and Agazade v. Azerbaijan [Online]. <http://hudoc.exec.coe.int/eng?i=004-1709>

<sup>7</sup> May 2013 and November 2016 Amendments to Criminal Code, Article 147 and 148 and 148-1 [Online]. <http://e-qanun.az/code/11>

<sup>8</sup> BM Morrison Partners - Mustafa Salamov (2017) Regulation of Online Content [Online]. <https://www.lexology.com/library/detail.aspx?q=7bd6c7a5-2a31-4f1a-a94d-1851b9f62250>

<sup>9</sup> In March 2016, new Code of Regulatory Offences passed by Parliament [Online]. <http://e-qanun.az/code/24>

<sup>10</sup> See EMDS briefing on NGOs

<sup>11</sup> Currently, there are around 40-50 communicated applications before ECtHR about refusal of registrations of NGOs by Ministry of Justice: <http://hudoc.echr.coe.int>

### **Recommendation:**

Legal norms should be expressed using unambiguous, understandable and simple language. In the current form, the Election Code is far too complex and uses expressions and terms that are not clear on a number of occasions.<sup>12</sup> The Election Code should be simplified.<sup>13</sup>

### **Implementation status:**

There has been no measures taken to simplify the electoral legislation and to make it more understandable.<sup>14</sup> The current language of the Election Code does not allow larger population of the country to fully understand electoral procedures and rules, and is expressed in a way that is comprehensible for a small group of experts. Furthermore, the Election Code includes many repetitions. Although the document consists of general and special parts, some provisions stated in the first part are repeated in the second one.

Electoral terminology remains imprecise as some actions or norms are expressed using two different wording. The document does not make a good use of abbreviations.

Furthermore, there are inconsistencies and contradictions between the Election Code and other electoral legislation. Complexity and repetition of the Election Code create confusion among election participants and obstruct citizens from fully realizing their election rights.

## **3. Conduct of elections by an impartial body**

### **Recommendation:**

The election commissions should enjoy the confidence of all major election stakeholders. To achieve this goal they should not be dominated by pro-government forces. The openness of the appointment and the transparency of the work of the commissions are essential to establish the legitimacy of the electoral process.<sup>15</sup>

The OSCE/ODIHR, the Venice Commission and the Committee of Ministers of the Council of Europe called Azerbaijan to take necessary steps addressing independent and impartial functioning of election commissions.<sup>16</sup> The joint recommendations of the OSCE/ODIHR and the Venice Commission<sup>17</sup> point out other important aspects of election commissions' composition which should be considered:

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<sup>12</sup> Venice Commission and OSCE/ODIHR (2004) *Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan* [Online] – p. 3. Available: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2004\)016rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)016rev-e) [Accessed 14 August 2017]

<sup>13</sup> Ibid.

<sup>14</sup> The Election Code was adopted on 27 May 2003 and entered into force on 30 June 2003. The Parliament adopted amendments to the Election Code several times since, but none of the amendments constituted a measure towards simplification of the Election Code.

<sup>15</sup> (2004) Joint Recommendations *ibid.*, §§ 9-10

<sup>16</sup> Committee of Ministers (2017) *H46-4 Namat Aliyev group v. Azerbaijan* [Online]. Available: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2017\)1280/H46-4E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2017)1280/H46-4E) [Accessed 14 August 2017]

<sup>17</sup> 2004 Joint Recommendations *ibid.*, § 12

- i. The Election Code gives large powers to the Chairperson of an election commission. Hence, it would be preferable to appoint chairpersons representing different political parties. This measure will increase the confidence in the work of the commissions. The ruling party should not monopolize the chair positions across the election administration.
- ii. The Election Code should provide for a clear and transparent procedure of nomination and appointment of all commissioners.
- iii. The 5 years term of office for regular members of Constituency Election Commission (ConEC) acting only during election periods and for all Precinct Election Commission (PEC) members, acting during election periods and annual drafting of the voters' lists, looks excessively long and should be revised. This will decrease the cost of elections.
- iv. The residence restrictions for PEC membership appear artificial and irrelevant for constituencies organized for Internally Displaced Persons and refugees from the occupied territories and should be revised.
- v. Further, decisions of the commissions should require a quorum of two-thirds and a majority of two-thirds. This would require a high level of consensus to make the commissions operative.

### **Implementation status:**

The Election Code stipulates creation of three level election commissions for preparation and conduct of elections – the Central Election Commission (CEC), Constituency Election Commissions (ConECs) and Precinct Election Commissions (PECs). Election commissions operate in a collegial form and on a permanent basis.<sup>18</sup>

The CEC is a countrywide body with 18 members elected by the Parliament. 6 of its members are nominated by the party holding majority of seats in the parliament, 6 members by independent (not representing any parties) MPs and the remaining 6 members are nominated by all other parties represented in the Parliament. Two of the candidates of independent MPs should be agreed with other groups – one with the majority party and one with minority parties.<sup>19</sup>

A ConEC is comprised of 9 members, while a PEC include 6 members. These two commissions are formed in line with the same 1/3 principle used in composition of the CEC.<sup>20</sup> Chairs of the election commissions are elected among members of the ruling party. Election commissions are considered functional with 2/3 of appointments are completed. The quorum required for commissions is 2/3, while the decisions are adopted by 2/3 majority of participating members.<sup>21</sup>

Despite the repeated recommendations of international organizations calling for changes to composition of election commissions and ensuring their impartiality and independence since 2002, the government has failed to address the issue. Election commissions responsible for conduct of elections in Azerbaijan are not independent or impartial as required by international standards.

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<sup>18</sup> The Election Code, Article 18.1

<sup>19</sup> Ibid., Article 24

<sup>20</sup> Ibid., Article 30

<sup>21</sup> Ibid., Articles 19.3, 19.9, 19.10



#### 4. Effective mechanism for registration of candidates

##### **Recommendation:**

In its final report on results of monitoring of the 2013 Presidential Election, the OSCE/ODIHR recommended to lift the educational and residential requirements for candidacy.<sup>22</sup> The report also called for simplification and increase of the transparency of verification of election documents. It also stated that candidates should be provided with genuine opportunity to participate in verification process. Furthermore, decisions to reject candidacies should be well-grounded and reasoned, while minor technical mistakes or inaccuracies should not be grounds to restrict the fundamental right of citizens to stand for office, according to the report.<sup>23</sup>

##### **Implementation status:**

The current legislation specifies only one mechanism for candidate registration – signature collection. Amendments to the Election Code adopted in 2008 eliminated an alternative option of deposit mechanism.<sup>24</sup> Along with collecting required number of signatures, candidates should also provide a range of documents (income statement, declaration of assets and other details).<sup>25</sup> Legislation also allows for opportunity to correct unintentional errors and technical mistakes. However, the process of verification of signature sheets and other registration documents is overly complicated, unclear and repetitive.<sup>26</sup> These shortcomings create conditions for election commissions to abuse the provisions of the legislation.<sup>27</sup>

Grounds for refusal of the registration are also complicated, ambiguous and in many cases repetitive. Inaccurate information in signature sheets or in other registration documents along with failure to collect the requisite number of valid support signature could be grounds for refusal of the registration.<sup>28</sup> A candidate nominated for parliamentary elections should collect at least 450 support signatures of registered voters from the area of their respectful constituency. During parliamentary elections, each citizen can only provide a support signature in favour of one candidate.<sup>29</sup>

Presidential candidate nominees have to submit at least 40,000 support signatures of registered voters with a minimum of 50 signatures from at least 60 election constituencies. Each registered voter could only provide a signature for one candidate.<sup>30</sup>

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<sup>22</sup> OSCE/ODIHR 2013 *ibid.*, p. 9

<sup>23</sup> *Ibid.*, 10

<sup>24</sup> The Election Code, Articles 56-57; the Parliament eliminated deposit mechanism by amendments to the Election Code adopted on 02 June 2008. For the law please see (Azerbaijani version): <http://e-qanun.az/framework/14930> [Accessed 14 August 2017]

<sup>25</sup> *Ibid.*, Articles 58-59

<sup>26</sup> *Ibid.*, Articles 59-60

<sup>27</sup> Ogtay Tahirov v. Azerbaijan, no. 31953/11, §§ 63-66, ECHR 2015 [Online]. Available: <http://hudoc.echr.coe.int/eng?i=001-155093> [Accessed 14 August 2017]

<sup>28</sup> OSCE/ODIHR (2013), Azerbaijan, Presidential Election, 9 October 2013: Final Report [Online] p. 10. Available: <http://www.osce.org/institutions/110015> [Accessed 14 August 2017]

<sup>29</sup> Election Code, Article 147

<sup>30</sup> *Ibid.*, Article 181

The government did not take any steps toward simplification of and increasing the efficiency of candidate registration process. Legislation and practice which facilitate refusal of registration on groundless basis remain in place as the authorities continue to ignore recommendations of international organizations.

Azerbaijan does not have an efficient system for registration of candidates or other election participants. As a result, many opposition and independent candidates are denied their right to participate in election by the authorities on groundless basis even before voters go to polls.

## **5. Election complaints and effective remedy**

### **Recommendation:**

The OSCE/ODIHR's final report on results of monitoring of the 2010 Parliamentary and the 2013 Presidential Elections noted that election commissions and courts should review complaints and appeals in an open and transparent manner, and should examine all evidence including testimonies of witnesses in order to render grounded and reasoned decisions in conformity with the Election Code.<sup>31</sup> Furthermore, members of the experts group established within election commissions should be appointed from persons independent from election commissions and should not share common interests with them, should be appointed from outside of the election commissions and should possess necessary legal qualifications.<sup>32</sup>

In addition to revisiting the composition of the expert group for complaints as previously recommended, procedures for the review of complaints should be amended to ensure complaints are reviewed by a multi-expert panel. Complainants should be invited to attend the review in person, state their case, and to participate at the time when the evidence is being considered by the experts. Review by the expert group should be open to observers.

All arguments of appellants should be addressed by the courts in hearings and written decisions (both approval and refusal). Courts should fully explain the legal basis for the decision. Rejections of appellants' motions to review additional evidence should be clearly grounded in the law and procedural omissions made by the CEC should be addressed upon appeal. The Election Code should set out concrete provisions on powers of the prosecutor to investigate election related cases.<sup>33</sup>

### **Implementation status:**

The government attempts to present establishment of expert groups by election commissions for investigation of complaints in 2008 as a reform.<sup>34</sup> However, independence and impartiality of these experts groups were not ensured.<sup>35</sup>

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<sup>31</sup> OSCE/ODIHR 2013 *ibid.*, pp. 16-18; OSCE/ODIHR (2010) Azerbaijan, Parliamentary Elections, 7 November 2010: Final Report p. 22 [Online]. Available: <http://www.osce.org/odihr/75073> [Accessed 14 August 2017]

<sup>32</sup> *Ibid.*,

<sup>33</sup> *Ibid.*,

<sup>34</sup> Committee of Ministers (2015) Cases no 1 Cases against Azerbaijan Namat Aliyev (Group) [Online]. Available: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2015\)1222/1](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2015)1222/1) [Accessed 14 August 2017]

<sup>35</sup> *Ibid.*,

The 2015 Parliamentary Election showed that there was no improvement in the field of investigation of complaints by election commissions and courts. For example, administrative court did not grant any election related complaint in 2015.

Candidates and other election subjects do not have an effective dispute resolution or remedy mechanisms for alleged election violations. The government failed to carry out adequate reforms for guaranteeing the right to fair trial with regards to election related cases.

## **6. Campaign financing**

### **Recommendation:**

In order to increase transparency and accountability, campaign finance reports should be published immediately upon submission. An independent professional body should audit campaign finance reports on the basis of fair and objective criteria. Additionally, consideration could be given to reintroducing public campaign financing as a means to level the playing field between candidates.<sup>36</sup>

Provisions on campaign financing are overly complex and their simplification should be considered.<sup>37</sup> Restrictions placed on subjects who are allowed to donate should be reviewed. For example, restrictions imposed on NGOs and stateless people in this regards are not necessary in democratic society.

### **Implementation status:**

Political parties cannot be funded from the state budget for campaign purposes (such provision existed earlier, but was removed later with amendments to the Election Code).<sup>38</sup>

Political parties or individual candidates should establish an election fund which should be in a form of a bank account and which should be the only place where donations can be received. Candidates or parties should publish interim reports during elections and final report after elections, while the CEC should publish periodical reports on election campaign financing. However, the CEC does not produce such reports in practice.<sup>39</sup>

There is no audit of election campaign financing and public is not informed about financial situation (declaration of assets) of elected officials.<sup>40</sup> The Election Code sets out restrictions on who could provide donations to campaigns (NGOs, charities, religious communities, stateless people and others are prohibited).<sup>41</sup>

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<sup>36</sup> OSCE/ODIHR 2013 *ibid*

<sup>37</sup> *Ibid.*,

<sup>38</sup> Removed from the Election Code by the amendments adopted on 18 June 2010

<sup>39</sup> The Election Code, Articles 90-94

<sup>40</sup> OSCE/ODIHR 2013 *ibid.*, p. 12

<sup>41</sup> The Election Code, Article 90.2

Situation of election campaign financing in Azerbaijan is at odds with the requirements of international standards. The authorities has not taken any measures to ensure transparency of campaign financing. In addition, the lack of public funding for campaigning puts political parties in a disadvantaged position in the current political context.

## **7. Election campaigning**

### **Recommendation:**

The restrictive approach of the executive authorities regarding the allocation of official venues for the conduct of the campaign should be reviewed. Contradictions between the Election Code and the Law on Freedom of Assembly on the notification or application for holding a public gathering should be eliminated and candidates should only be required to notify executive authorities of their intent to hold a gathering.<sup>42</sup>

Authorities should undertake further measures to ensure that election campaigning be conducted in an atmosphere free from intimidation and fear of retribution. Authorities and political parties should refrain from coercing public-sector employees, campaign activists and others to attend campaign events of incumbents, as well as disrupting campaign events of the opposition.<sup>43</sup> Fundamental freedoms of peaceful assembly and expression should be respected during the campaign period. Undue interference of local executive authorities in the election process, in particular regarding the failure to provide conditions for free and equal campaigning and the misuse of administrative resources in favour or certain candidates, should be addressed by the authorities.<sup>44</sup>

Duration of election campaign period should be extended. 23 days are not sufficient for candidates to carry out an election campaign – reach out to voters and convey their ideas to them. Private media outlets should be compelled to cover candidates and political parties in line with their right to equal treatment.

### **Implementation status:**

An election campaign can be carried out by election subjects. Some individuals (physical persons) and legal entities are prohibited from organizing an election campaign (for example, persons without citizenship, foreign legal entities, members of election commissions, public officials, military personnel and others).<sup>45</sup>

An election campaign should start 23 days before and end 24 hours before the Election Day (it was reduced from 60 days in 2010).<sup>46</sup> Political parties or blocs of parties with 60 registered candidates have the right to free of charge access to public media. However, there are a number of restrictions to this right.<sup>47</sup>

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<sup>42</sup> OSCE/ODIHR 2013, pp. 10-12

<sup>43</sup> Ibid.,

<sup>44</sup> Ibid.,

<sup>45</sup> Election Code, Article 74

<sup>46</sup> Ibid., Article 75.2

<sup>47</sup> Ibid., Article 80.1

The CEC and local executive authorities allocate designated venues for campaign related gatherings. However, these venues are usually in remote locations or have limited capacity and poor conditions.<sup>48</sup> Election campaign materials (including speeches) should not incite violence, hate speech, or violate intellectual property.<sup>49</sup>

In addition, systematic restriction of the fundamental freedoms of speech, assembly and association obstructs political parties and candidates from conducting an effective election campaign. There are also widespread cases of intimidation of candidates, campaign staff members, and voters by representatives of authorities or the ruling party.

The government has not taken any steps towards addressing these recommendations. On the contrary, duration of election campaign period has been reduced since 2003. Adequate measures to ensure free and fair election environment were not taken while undue interference of local authorities, law enforcement bodies and others to election process continue.

There is no environment for free and fair election which could ensure fair and equal election campaign process.

## **8. Domestic election observation**

### **Recommendation:**

The authorities should ensure that citizen observer groups are able to register without undue restrictions and carry out their activities without impediments to freedoms of association and assembly.<sup>50</sup>

Measures to ensure that domestic and international observers have opportunity to monitor all stages of voting process, particularly during voting, vote counting and tabulations process effectively and without any impediments, and to guarantee their free and unobstructed movement in polling stations.

### **Implementation status**

According to the law, activities of election commissions should be open for public, while all citizens holding the right to vote are eligible to act as an observer. They have to register at election commissions certain days before the Election Day as specified in the law. Media can participate in covering the work of election commissions.<sup>51</sup> International observers can participate in monitoring of elections upon an invitation of the CEC.<sup>52</sup>

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<sup>48</sup> OSCE/ODIHR 2010 and 2013 *ibid*

<sup>49</sup> The Election Code, Article 88

<sup>50</sup> OSCE/ODIHR 2013 *ibid*, pp. 19-20

<sup>51</sup> The Election Code, Articles 40-41

<sup>52</sup> *Ibid.*, Article 44

Observers can observe all aspects of the work of election commissions. The Election Code sets out observers' responsibilities and non-exhaustive list of their rights. The main responsibility of observers is to avoid from conducting actions obstructing the work of an election commission and refrain from influencing the voters' will.<sup>53</sup> In practice, actions of members of election commissions, especially their chairpersons obstruct the work of observers.

A number of reports on election monitoring point out that undue interference of members of election commissions and representatives of candidates (especially those from the ruling party) is one of the major shortcomings of elections in Azerbaijan. The authorities has not carried out any effective measures to prevent such interference, while pressure on domestic election observation organizations continue with many denied state registration.

## **9. Voter registration**

### **Recommendation:**

The CEC should develop comprehensive instructions regulating all procedural and operational aspects of the process of voter list verification and updating, with clear assignment of responsibilities for every aspect of the process.<sup>54</sup>

The CEC should take measures to improve the transparency of the voter registration process by publishing detailed preliminary and final information on the voter list verification and updating process, including a detailed breakdown of the number of voters added and removed. Data of voters who register to vote on supplementary lists should be systematically gathered and entered into the permanent register.

### **Implementation status:**

According to recommendations of international organizations, the voter list should be maintained on permanent basis and should be regularly updated at least once a year. The voter lists should be published. There should be a judicial procedure, allowing for the registration of a voter who was not registered.<sup>55</sup>

Electoral legislation of Azerbaijan stipulates creation of the single voter list by the CEC. Voter cards confirm the registration in the voter list, while the voter list is based on place of residence and is updated based on information provided by state registration bodies. All citizens with the right to vote are registered in the voter list.

However, due to the lack of common guidelines, it is not clear how the verification of the voter list is carried out. There is a very large discrepancy between figures on population above 18 years

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<sup>53</sup> The Election Code, Article 42

<sup>54</sup> OSCE/ODIHR 2013 *ibid*, pp. 8-9

<sup>55</sup> Code of Good Practices in Electoral Matters, p. 6

old provided by the State Statistic Committee and number of registered voters provided by the CEC.<sup>56</sup> Election commissions, including the CEC do not inform public about the methodology behind compilation of the voter list.

Another issue is related to voters casting ballots in other constituencies than their residence using de-registration cards. There is a very large difference between the number of published and issued de-registration cards.

The most pertinent issue related to the voter registration is caused by internal migration from rural areas to capital Baku in search for better job opportunities in the last twenty years. As a result, hundreds of thousands of citizens, who live in capital Baku on permanent basis, still have their official residence in other regions. Hence, they are registered as voters in areas of constituencies where they no longer live which limits their ability to exercise their election rights. This issue is not likely to find its solution until the authorities start carrying out a register of internal migration.

Registration of International Displaced Persons (IDP) from occupied territories as voters is also an area of major concern. Shortcomings in registration of IDPs in their temporary places of residence create problems regarding to their registration as voters.

The CEC has not produced any guidelines or instructions about voter registration. Furthermore, the government lacks a policy on internal migration and its registration. There is no single, reasonable and open to public rules or policies regarding the voter registration and compilation of the voter list. Elections are carried out without guaranteeing legitimacy of registration of voters – the main subject of the electoral process.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **Conclusion:**

Azerbaijan continues to fail the implementation of recommendations of international organizations with regards to democratic elections. Analysis of implementation status of the recommendations suggest that the country lacks legislative framework and practices necessary for free and fair elections. This is predominantly caused by the lack of political determination of the government.

##### **Recommendations:**

###### ***To the Azerbaijani government***

- The government should demonstrate a political will to improve election legislation in an inclusive process involving discussions with all stakeholders, including civil society.
- In order to create an enabling political environment prior to the 2018 Presidential Elections, the government should lift legal and practical restrictions on fundamental freedoms of

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<sup>56</sup> The Election Code, Articles 45-47

expression, assembly and association, stop persecution of people with dissenting political views and release political prisoners.

- To restore confidence in electoral administration, the Parliament should ensure removal from their posts of members of election commissions, including the Central Election Commission who are linked to violations of election rights recognized in judgments of the European Court of Human Rights.

#### ***To international organizations***

- The Secretary General, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe should examine the implementation of joint recommendations of the Venice Commission and the OSCE/ODIHR on the Election Code of Azerbaijan and the judgments of the European Court of Human Rights, and should exert pressure on the Azerbaijani government to proceed with electoral reforms.
- The Ministerial Council, the Parliamentary Assembly and the Permanent Council of the OSCE should investigate the implementation status of recommendations of the OSCE/ODIHR election observation missions covering elections during 2003-2013 and should encourage Azerbaijani government to closer cooperation with the OSCE/ODIHR.
- The European Commission and the European Parliament should consider the implementation of the recommendations of the Venice Commission and the OSCE/ODIHR as a priority in bilateral discussions with Azerbaijani government.

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