

INTERNATIONAL ELECTION OBSERVATION MISSION

Republic of Azerbaijan — Presidential Election, 9 October 2013

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Baku, 10 October 2013 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the OSCE Parliamentary Assembly (OSCE PA).

Michel Voisin (France) was appointed as Special Co-ordinator by the OSCE Chairperson-in-Office to lead the short-term OSCE observer mission. Doris Barnett (Germany) headed the OSCE PA delegation. Tana de Zulueta (Italy) is the Head of the OSCE/ODIHR Election Observation Mission (EOM), deployed from 28 August 2013.

The assessment was made to determine whether the elections complied with OSCE commitments and international standards for democratic elections, as well as with Azerbaijan's international obligations and domestic legislation. This statement of preliminary findings and conclusions is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, including the count, the tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The OSCE PA will present its report at its Standing Committee Meeting in Budva on 13 October.

PRELIMINARY CONCLUSIONS

The 9 October election was undermined by limitations on the freedoms of expression, assembly, and association that did not guarantee a level playing field for candidates. Continued allegations of candidate and voter intimidation and a restrictive media environment marred the campaign. Significant problems were observed throughout all stages of election day processes and underscored the serious nature of the shortcomings that need to be addressed in order for Azerbaijan to fully meet its OSCE commitments for genuine and democratic elections.

Overall, the Central Election Commission (CEC) efficiently administered the technical preparations for the election, respecting legal deadlines. The CEC held regular sessions open to observers and media, publishing decisions in a timely manner. Nevertheless, the formula in which all election commissions are structured gives pro-government forces a *de facto* decision-making majority in them. As a result of this, opposition representatives expressed a lack of confidence in the election administration's impartiality.

Ten candidates were registered for the election. Candidates could be registered independently, as well as by political parties. Four nominees were not registered by the CEC for failure to collect the requisite number of valid support signatures. The rejected nominees challenged the CEC expert group's criteria for disqualifying signatures, but none of the appeals to court were successful. Restrictive candidate eligibility requirements, in particular to hold a university degree, is at odds with international standards.

The CEC pre-approved 152 campaign venues for candidate rallies and authorities interpreted this list as exhaustive, thereby limiting citizens' freedom of assembly. Given that political contestants' opportunity to reach out to voters is limited to the formal 22-day campaign period, this interpretation further restricted their ability to campaign. Credible reports of candidate and voter intimidation arose throughout the campaign, raising concerns about candidates' ability to campaign in a fair atmosphere, as well as voters' ability to cast their vote "free of fear of retribution," as required by paragraph 7.7 of the 1990 OSCE Copenhagen Document.

Overall, candidates were provided with insufficient access to the media, and a balanced and open exchange of views on political alternatives was lacking. The internet is mostly considered to be free and its usage increasing. However, recent legal amendments made criminal defamation explicit with regard to online content. Detentions, criminal prosecutions, testimony of physical attacks and other forms of pressure on journalists negatively impacted the media environment. The restrictive legal framework and disproportionate coverage of the incumbent President during the campaign period contributed to the lack of a level playing field among candidates. This is at odds with paragraph 7.8 of the 1990 OSCE Copenhagen Document.

Despite recent amendments, the majority of previous OSCE/ODIHR recommendations remain unaddressed in the law, including key provisions related to the composition of election commissions and candidate registration. The overall timeline for the conduct of the election is condensed and was, at times, insufficient to ensure adequate preparations and allow for legal remedy. This underscores the need for continued electoral reform in an inclusive format.

The review of election appeals lacked impartiality and failed to provide appellants sufficient guarantees of effective redress and ensure that adverse decisions be justifiable. There was a lack of genuine judicial supervision insofar that procedural deficiencies in the first instance were not addressed by the courts upon appeal.

Voter lists are extracted from a permanent voter register maintained by the CEC that is based on local residency data. Voters were able to review the lists and request amendments, but the PEC's legal basis for making modifications based on door-to-door checks was unclear. The final voter lists included some 1.8 million people less than the voting-age population as recorded by the State Statistical Committee. While the authorities noted that the population data also includes citizens of Azerbaijan residing abroad and foreign citizens and that such differences could also partly be explained by the different methodologies, the lack of public information to explain this gap impacts negatively upon public confidence in the voter lists.

There were no women candidates for president. Women were significantly underrepresented at all levels of the election administration, including at PECs observed on election day. There were no measures to promote gender balanced membership of election commissions.

The CEC informed the OSCE/ODIHR EOM that all candidates complied with legal provisions on campaign financing and the reporting deadlines. The lack of information available for public scrutiny and the absence of audits, however, limited transparency and accountability.

In an inclusive process, the CEC and ConECs registered some 45,868 party and citizen observers. The citizen observer group Election Monitoring and Democracy Studies was not granted legal status and had to accredit observers individually.

On election day, IEOM observer reports indicated a high turnout; the CEC announced that it was 72.3 per cent. Opening procedures were assessed negatively in almost 20 per cent of observations, a

significantly high number, which indicates serious problems. Procedural shortcomings were frequently noted, including failure to cancel de-registration voter cards and record the number of received ballots and the serial numbers of ballot box seals. IEOM observers assessed the voting process negatively in 11 per cent of polling stations observed. IEOM observers reported clear indications of ballot box stuffing in 37 polling stations, bypassing critical measures to ensure accountability and deter potential fraud, and noted a number of other procedural violations.

The counting was assessed in overwhelmingly negative terms, with 58 per cent of observed polling stations assessed as bad or very bad, indicating serious problems. In 15 observed counts, IEOM observers reported manipulation of voter list entries, results or protocols, including cases of votes being reassigned to a different candidate. Tabulation was observed in 95 of 125 ConECs. Key procedures on the checking of precinct-level results and their processing were frequently not followed.

PRELIMINARY FINDINGS

Background

The 9 October presidential election was set by the Central Election Commission (CEC) on 2 August. In the previous presidential election in 2008, Ilham Aliyev of the New Azerbaijan Party (YAP) was elected for a second term in office with 88.7 per cent of the vote. In the 2010 parliamentary elections, YAP won a majority of the 125 seats in parliament and currently holds 69 seats, while the opposition parties Musavat and the Azerbaijan Popular Front Party (APFP) lost their parliamentary representation. The second largest parliamentary group is composed of 42 independent deputies, who usually vote in support of the ruling party.¹ Ten political parties hold the remaining 12 parliamentary seats and 2 seats are vacant. On 7 June 2013, opposition forces established the National Council of Democratic Forces (NCDF) and announced their intention to nominate a joint presidential candidate. On 24 July, the incumbent President announced that he would stand for a third term.

Election System and Legal Framework

The presidential election is primarily regulated by the 2003 Election Code (last amended in April 2013) and the 1995 Constitution (last amended in 2009).² The president is elected by popular vote for a five-year term. To be elected in the first round, a candidate must receive more than 50 per cent of the valid votes cast. Constitutional amendments in 2009, confirmed by a national referendum, removed the limitation on the number of consecutive terms a person can serve as president. The Council of Europe's Commission for Democracy through Law (Venice Commission) stated that explicit constitutional limitations on successive presidential terms are important for Azerbaijan in consolidating its democracy.³ On 2 October, Jamil Hasanli (NCDF) appealed the registration of the incumbent on the basis that he was elected and sworn into office under the old constitution; the appeal was rejected by the CEC.

¹ This qualification is based on stenograms of the parliament – almost all decisions and votes in parliament were adopted with only few votes against. Available at: <http://meclis.gov.az/?/az/stenogram/>.

² Other applicable laws are the 1998 Law on the Freedom of Assembly (last amended in 2012); 2000 Law on Non-Governmental Organizations (last amended in 2013); 2004 Law on the State Registration and State Register of Legal Entities (last amended in 2012); 2004 Law on Radio and Television Broadcasting (last amended in 2012); 2005 Law on Access to Information (last amended in 2012); relevant provisions of the Criminal Code, the Code of Administrative Procedures, and the Civil Procedures Code; and CEC regulations and instructions.

³ 2009 Venice Commission opinion on draft amendments to the Constitution of the Republic of Azerbaijan, CDL-AD(2009)010, paragraph 10. Available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)010-e).

The Election Code was amended in June 2010, February 2011, April 2012, and April 2013. The 2010 amendments removed the possibility for candidates to receive public campaign funding and shortened the campaign period to 22 days. Given that political contestants may not campaign outside of this formal period, these amendments further restrict their ability to reach out to voters. Although elements of the complaints and appeals framework were amended, no other previous OSCE/ODIHR recommendations were addressed in the law, such as to revise the composition of the election commissions and expert groups on complaints, reintroduce the option of a financial deposit, and review the deadlines for candidate registration.

The election timeline provided for in the Election Code is condensed and, at times, insufficient to ensure adequate preparations and allow for legal remedy when necessary. Administrative obstacles in the approval of nomination documents for certain potential candidates meant that they had less time than others to collect signatures, while candidate registration appeals that were still pending more than half-way into the campaign caused a delay in the ballot printing and would have limited the campaign period for successful appellants.

Legal amendments made in 2012 and 2013 to a number of laws increased sanctions for public order offenses, including organizing and participating in unauthorized demonstrations, and introduced additional burdensome procedures to register and to receive funding as a non-governmental organization and increased penalties for non-compliance with these procedures.⁴ These amendments further limited the freedoms of expression and assembly and restricted the functioning of civil society.

Election Administration

The presidential election was administered by a three-tier structure consisting of the CEC, 125 Constituency Election Commissions (ConECs) and 5,273 Precinct Election Commissions (PECs), with 18, 9 and 6 members respectively. An additional 181 PECs were established in special locations, such as military units, prisons, hospitals, and off-shore oil drilling platforms, as well as 38 PECs at diplomatic missions and consulates to facilitate out-of-country voting.

Overall, the election administration met legal deadlines and passed the requisite regulations for the efficient conduct of the election. The CEC held regular sessions open to observers, the media and candidate representatives. CEC decisions were largely reached in a collegial manner and decisions were published on its website in a timely manner.

All commissions are permanent bodies appointed for five-year terms. The CEC members are elected by the parliament, ConECs are appointed by the CEC, and PECs by the respective ConECs. One third of CEC members each are proposed by the parliamentary majority, minority, and by independent deputies. By law, chairpersons of all commissions are nominees of the parliamentary majority. Thus, the parliamentary majority *de facto* holds a decision-making majority in all election commissions.⁵ As a result of this, opposition representatives expressed a lack of confidence in the impartiality of the election administration.

The CEC produced manuals and organized a series of trainings for members of ConECs and some 32,000 PEC members on election day procedures and produced voter information posters and

⁴ See also, comments from Special Rapporteurs of the UN Human Rights Council on 4 October, available at: <http://www.un.org/apps/news/story.asp?NewsID=46193&Cr=azerbaijan&Cr1=#.UIJkvVCnrG4>.

⁵ See also, 2004 Joint Opinion of the OSCE/ODIHR and the Venice Commission (no. 286/2004): “The commissions should enjoy the confidence of all major election stakeholders. To achieve this goal they should not be dominated by pro-government forces. The existing provisions are not sufficient to ensure that”. Available at: <http://www.osce.org/odihr/elections/azerbaijan/41715>.

television spots. The CEC also undertook trainings for members of the police force and employees of institutions in charge of overseeing the vote in prisons, military units, and at diplomatic missions and consulates, in line with previous OSCE/ODIHR recommendations.

Web cameras were installed in 1,000 polling stations throughout the country. On 5 June, the CEC issued an instruction regulating the use of web cameras and clarifying that recordings of the voting and counting process may be used as evidence during the investigation of complaints.

There is no gender quota for membership of election commissions. The CEC informed the OSCE/ODIHR EOM that some 15 per cent of ConEC members and IEOM observers reported on election day that 29 per cent of PEC members were women. Four out of the eighteen CEC members are women.

Voter Registration

All citizens over 18 years of age have the right to vote, except those recognized as incapable by a court decision. Voter registration is passive and voter lists are extracted from a permanent voter register that is maintained by the CEC. Voters are registered according to their place of permanent residence, provided they have been resident for at least 6 of the last 12 months prior to the announcement of the election. Efforts to invite citizens to verify their voter data were observed at all levels of the election administration, with information posters displayed prominently in public spaces and voter lists posted for public scrutiny at polling stations. Voters could also verify their record and request amendments via the CEC website or telephone hotline. The CEC informed the OSCE/ODIHR EOM that they received and processed some 4,000 voter list inquiries.

In line with the law, an update of the voter lists was concluded on 14 September with a total number of 5,016,365 registered voters.⁶ This is approximately 30,000 higher than after the annual update in May. Although not required by law or addressed in CEC regulations, the CEC informed the OSCE/ODIHR EOM that most PECs verify voter lists through door-to-door checks. In the absence of regulation, it is unclear on what legal basis the PECs decide on modifications to voter lists during such verification. Although the OSCE/ODIHR EOM requested a breakdown of the number of voters removed and included following the 14 September update to better understand the discrepancy, this was not provided by the CEC. Publicizing such information would aid transparency and confidence.

The State Statistical Committee (SSC) informed the OSCE/ODIHR EOM that according to official data as of 1 January 2013, the country's population above the age of 18 years is some 6.8 million. The final voter lists included some 1.8 million people less than the voting-age population as recorded by the State Statistical Committee.⁷ While the authorities noted that the population data also includes citizens of Azerbaijan residing abroad and foreign citizens and that such differences could partly be explained by the different methodologies used for collecting population data and compiling voter lists, the lack of public information to explain this gap impacts negatively upon public confidence in the voter lists.

Eligible voters could be registered on supplementary voter lists on election day at PECs, provided that they could prove current residence within that precinct. Although inclusive, voter registration

⁶ On 4 October, the CEC informed the OSCE/ODIHR EOM that some 130,000 additional voters were registered to vote in military units, prisons, hospitals, and off-shore drilling platforms.

⁷ At the same time, according to the General Directorate of Passport, Registration and Migration, the official number of identification documents issued by them to citizens of Azerbaijan above the age 16 is some 6.3 million. Furthermore, the CEC did not provide data about the number of citizens not meeting the six-month residency requirement.

on election day is not in line with international good practice.⁸ This may also lower the incentive of authorities and citizens to ensure that all voters are included in the voter lists prior to election day. There is no legal provision that ensures that the data of voters who register to vote on supplementary lists on election day is entered into the permanent voter register, although the CEC informed the OSCE/ODIHR EOM that they do this in practice.

By law, voters could apply for a de-registration voting card (DVC), allowing them to vote in polling stations outside their registered PEC. The CEC printed some 450,000 DVCs. According to the CEC, some 30,000 DVCs were provided to voters by ConECs and PECs within the legal deadline and were used to vote on election day.

Candidate Registration

The official candidate registration period was from 2 August to 16 September. Under the Constitution, the right to stand for president is granted to any voter who is at least 35 years of age, without dual citizenship or obligations before other states, without a previous conviction for a serious crime, who has permanently resided in Azerbaijan for at least 10 years, and has a university degree. The requirements to hold a university degree and be resident for 10 years are unreasonable and at odds with international standards.

A candidate could be self-nominated or nominated by a registered political party, a coalition of registered parties, or an initiative group of at least 100 voters. All nominated candidates had to submit at least 40,000 support signatures of registered voters with a minimum of 50 signatures from at least 60 constituencies, and disclose their financial assets.

The CEC accepted nomination documents from 21 prospective candidates. The CEC rejected the nomination of Rustam Ibrahimbayov (NCDF) on the basis that he had dual citizenship, did not fulfill the 10-year residency requirement and that it lacked sufficient grounds to conclude he does not have obligations before other states. Mr. Ibrahimbayov appealed the CEC decision to the Baku Court of Appeals and subsequently to the Supreme Court, which on 6 September upheld the CEC decision. Meanwhile, the NCDF nominated a new candidate, Jamil Hasanli, who was registered by the CEC on 12 September.

The verification of registration documents was carried out by a CEC working group of experts. In line with the law, authorized candidate representatives and observers had the right to be present. However, several nominees claimed they were not informed about the time of the verification of their documents.⁹ Fourteen prospective candidates submitted the required documents, out of which four were rejected after the signature verification process where the number of valid support signatures fell below the requisite amount.¹⁰ While detailed procedures for signature verification are included in CEC instructions, the disqualification of seemingly identical signatures based on the practice of “assumption” could potentially lead to arbitrary decisions.¹¹ The rejected nominees challenged the CEC decision in court but were not successful. (*see Complaints and Appeals*).

⁸ Paragraph 1.2 (iv) of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends: “In any event polling stations should not be permitted to register voters on election day itself”.

⁹ Article 59.3 of the Election Code provides that candidates or their authorized representatives may be present for the verification of signatures and that the election commission “should inform ...about examination of documents in advance.”

¹⁰ Fuad Aliyev (self-nominated) on 6 September; Ahmad Orujov (Freedom Party) and Ali Aliyev (Citizen and Development Party) on 8 September; and Ilgar Mammadov (self-nominated) on 9 September.

¹¹ Rejected candidates challenged that the CEC expert working group disqualified signatures by stating in their report that signatures were ‘assumed identical’ or ‘assumed to be written by the same group of people’. According to the law, the CEC is not required to verify with any of the voters if they actually signed the list, but rather compare voters’ signatures against one another.

The election was contested by ten candidates, of which eight were nominated by political parties, one by an initiative group of voters and one was self-nominated. There were no women candidates.

Campaign Environment

The official campaign period began on 16 September. Although campaign activities intensified slightly towards election day, overall the campaign was subdued and appeared to generate limited public interest.

The CEC published a list of 152 indoor and outdoor venues designated for campaign activities free of charge. Generally, candidate requests to organize meetings at these locations were accommodated; candidates standing against the incumbent President were able to hold five rallies in Baku. Several candidates informed the OSCE/ODIHR EOM that they consider some of the campaign venues to be unsatisfactory for holding public events. As well, the authorities interpreted this list of pre-approved venues as exhaustive, thereby limiting citizens' freedom of assembly. Given that political contestants have limited opportunity to campaign outside of the formal 22-day campaign period, this interpretation further restricted their ability to reach out to voters. The OSCE/ODIHR EOM observed one campaign event on behalf of the incumbent President that was held in Imishly at a location outside the officially allocated venues. Several candidates displayed their posters on the officially designated notice boards outside polling stations. Four people were detained for intentional destruction of campaign materials and convicted for disobeying police orders and sentenced to between 25 and 35 days for these offences.¹²

In total, the OSCE/ODIHR EOM observed 52 campaign events. Overall, the campaign lacked substantive debate and focused on personality rather than concrete political platforms. Nevertheless, the campaign of the incumbent President emphasized regional stability, economic progress and other achievements during his presidency, while the campaign of other candidates to some extent addressed socio-economic issues, corruption and some candidates appealed for the restoration of civil and political rights and the abolition of the presidential system of governance.

YAP's campaign on behalf of the incumbent President appeared well-organized and resourced, including rallies and concerts. While the incumbent President did not directly campaign, he toured the country in his official capacity and frequently appeared at public events. The campaigns of the other candidates were more modest, involving small-scale meetings, door-to-door canvassing, and social media on the internet, with few large-scale rallies. Some of the candidates did not hold any rallies or produce posters.

Credible reports of candidate and voter intimidation arose throughout the campaign, including incidents affecting the families of political figures.¹³ The OSCE/ODIHR EOM observed instances of apparent coercion to attend YAP rallies and attempts to disrupt NCDF rallies.¹⁴ On 12

¹² Three people were detained following the rally of the NDCF on 22 September in Baku and sentenced to between 25 and 35 days. On 28 September in Baku, one person was sentenced to 25 days for defacing posters of Mr. Hasanli (NCDF). All decisions were upheld on appeal.

¹³ On 23 September, the 16 year-old son of the spokesperson of Mr. Hasanli (NCDF) was stabbed by unknown assailants in Baku. The son of Ali Kerimli (leader of APFP) was among the three detained following the NCDF rally on 22 September. In addition, three campaign activists that distributed NCDF campaign materials were later detained by police (two in Ganja City, one in Gabala District), one was convicted of hooliganism and sentenced to seven days imprisonment on 4 October.

¹⁴ The OSCE/ODIHR EOM observed participants being prevented from leaving YAP rallies before the end at in Qakh on 20 September, Shamakhi on 23 September, Mingachevir on 25 September, Balaken on 30 September, Qusar on 3 October, and at a United Azerbaijan People's Front Party rally in Baku on 27 September. The

September, seven youth political activists who have been in detention since March, were indicted on new charges of organizing mass disorder accompanied with violence, which carries sentences of up to 12 years imprisonment. Since the OSCE/ODIHR EOM began observations, the Prosecutor General's office summoned four members of the NCDF for questioning, issued a public warning to participants of the NCDF rally on September 22 to abide by the law, and made a statement to the media about their ongoing investigation of activities of NCDF members. Some contestants experienced difficulties in renting private premises for their activities due to alleged pressure by the local authorities.¹⁵ Collectively, this raised concerns about candidates' ability to campaign in a fair atmosphere, as well as voters' ability to cast their vote "free of fear of retribution," as required by paragraph 7.7 of the 1990 OSCE Copenhagen Document.¹⁶

National minorities represent some nine per cent of the population. The Constitution provides for linguistic, cultural, educational and other rights of minorities residing in the country. There is no legal requirement for producing ballots or other election material in minority languages. Minority issues did not feature prominently in the campaign.

Campaign Finance

Candidates are required to open a dedicated bank account for campaign financing and should submit reports on campaign contributions and expenses three times: an initial report at the time of registration; an interim report between 10 and 20 days before election day; and a final report no later than 10 days after the publication of the final election results. All contributions must be made through transfer to the candidate's campaign bank account and individuals must provide their personal details when making contributions.¹⁷ As candidates can only solicit contributions once they have opened this dedicated bank account, it significantly restricts their ability to raise campaign funds. Several candidates also called for the reintroduction of public campaign funding to contribute to a more level playing field among candidates.

According to the CEC, all candidates have thus far complied with the reporting requirements. The CEC is only obliged to publish select information from the candidate reports for large contributions and expenditures,¹⁸ and no information on the individual finances and assets of the candidates.¹⁹ Candidate campaign finances are not subject to an audit at any stage of the election process. The lack of information available for public scrutiny and the absence of audits limited the transparency and accountability of campaign finance.

OSCE/ODIHR EOM also observed citizens being discouraged from attending rallies by the NCDF in Mingachevir on 29 September, Shaki on 2 October, Agdash on 3 October, and Sabirabad on 4 October.

¹⁵ The Musavat Party and the Azerbaijan Popular Front Party (APFP) in Mingachevir; the Musavat Party, the APFP and the Umid Party in the Nakhchivan Autonomous Republic.

¹⁶ Paragraph 7.7 of the 1990 OSCE Copenhagen Document states that "participating States must ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere... or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution".

¹⁷ The maximum amount a candidate may spend for campaign purposes is AZN 10 million with contribution limits set at: AZN 3,000 from individuals, AZN 50,000 from legal entities, and AZN 250,000 from the nominating party/group. The current exchange rate for EUR 1 is AZN (Azerbaijan New Manat) 1.05.

¹⁸ The CEC is obliged to publish limited information on campaign expenses from the financial reports, once the candidate spends over AZN 10,000. The CEC is also obliged to publish the names of any legal entities that contributed over AZN 5,000 and the number of individuals that contributed over AZN 250.

¹⁹ Mr. Hasanli wrote to the CEC to request information on all candidate's finances and personal assets. The CEC responded that the law did not require them to disclose this information. His subsequent complaint on this matter was rejected by the Baku Court of Appeals.

Media

The Constitution guarantees freedom of expression, media freedom and the right to access information. However, defamation remains a criminal offense, with a penalty of up to three years in prison, and Article 106 of the Constitution and Article 323 of the Criminal Code prohibit insulting the honour and dignity of the president, presenting unjustifiable limitations on freedom of expression that is contrary to international standards.²⁰ While the internet is mostly considered to be free and its usage increasing, the Criminal Code was amended on 4 June to explicitly extend the application of defamation provisions to internet content. In addition, recent amendments to the legal framework unduly restrict constitutional guarantees on access to information.²¹

Detentions, criminal prosecutions, testimony of physical attacks and other forms of pressure on journalists negatively impacted the media environment, including coverage of the campaign.²² On 17 September, the journalist Parviz Hashimli was detained on the grounds of illegal possession of weapons. On 4 October, the OSCE Representative on Freedom of the Media stated that “violence against journalists continues to endanger media freedom situation in Azerbaijan”.²³

While television is the primary source of political information, several OSCE/ODIHR EOM interlocutors stated that there is direct government influence on all broadcasters that leads to a virtual absence of pluralism. Candidates informed the OSCE/ODIHR EOM that the campaign period is almost the only opportunity to receive television coverage. CEC decisions, including in respect of free and paid political airtime did not favour candidate access.

The CEC allocated free airtime for candidates in the form of roundtables on the public broadcaster, *İctimai Televiziya və Radio Yayımları Şirkəti* (ITV).²⁴ In total, each candidate was allocated 36 minutes of free airtime per week during the roundtables, 18 minutes on television and 18 minutes on radio. Two presidential candidates objected to the roundtable format decided by the CEC, stating that it was an ineffective method to convey their message and that they should have discretion in how they use their free airtime.²⁵ Following the 19 September roundtable, when a heated discussion ensued in respect of alleged foreign assets of the incumbent President and members of his family, Mr. Hasanli was issued a ‘serious’ warning for violating Article 106 of the Constitution on the stated grounds that he insulted the honour and dignity of the President and his family (see *Complaints and Appeals*).²⁶

While paid political advertising is permitted, only ITV offered the possibility. ITV informed the OSCE/ODIHR EOM that it received only one request from Mr. Hasanli that was rejected as it was received after the legal deadline for allocation of paid airtime. A complaint by Mr. Hasanli against

²⁰ See *Lingens v. Austria*, Application No. 9815/82, Judgement of 8 July 1986 and other cases. See also, Article 19 of the 1966 International Covenant on Civil and Political Rights and paragraph 13 of the 2011 UN Human Rights Committee General Comment 34.

²¹ Amendments to the laws “On the Right to Obtain Information”, “On State Registration and State Registry of Legal Entities” and “On Commercial Secrets” were adopted by parliament on 12 June 2012.

²² The OSCE/ODIHR EOM observed cases where journalists were obstructed or physically attacked during their attempt to cover rallies, including at NCDF rallies on 28 September and 4 October.

²³ Available at: <http://www.osce.org/fom/106710>.

²⁴ One-hour roundtables were broadcasted on radio (at 21:00) and on television (at 19:00), three times a week, allocating each candidate six minutes to speak.

²⁵ Mr. Iqbal Agha-zade (Umid Party) and Jamil Hasanli (NCDF). Mr. Hasanli’s written request to use his six minutes at his own discretion and to be broadcast “within the time most viewers can watch it”, as required by law, was rejected by the CEC. ITV informed the OSCE/ODIHR EOM that the audience share for the roundtables broadcast on 17 and 19 September was 2.8 and 3.6 per cent respectively.

²⁶ The law does not define the term ‘serious’ warning, nor the implications pertaining. In addition, Mr. Hajiyev (Modern Musavat Party) was issued a ‘regular’ warning for use of insulting language under Article 88.1 of the Election Code.

ITV for refusing to broadcast his political advertising was rejected by the CEC and the decision was upheld upon appeal.

The OSCE/ODIHR EOM was informed by ITV management that they would not cover candidates in current affairs programmes in order to comply with the Election Code that prohibits the public broadcaster from campaigning for or against candidates. On 25 September, the CEC media working group issued a statement calling on three media outlets – the Azerbaijani service of Radio Liberty (*Azadliq*), the British Broadcasting Company (BBC), and Voice of America – to cease violating Article 74.4.1 of the Election Code that prohibits campaigning and distribution of campaign materials by foreign legal entities.²⁷ This appeared to have limited editorial coverage of the campaign in the media.

OSCE/ODIHR EOM media monitoring during the campaign revealed limited coverage of candidates and a lack of pluralism.²⁸ The monitored television channels, including ITV, provided a total of 15 hours 44 minutes of coverage in their primetime news programmes; an average of some 7 minutes per day. Of this, 92 per cent was dedicated to the incumbent President, with some 8 per cent to the remaining nine candidates. Coverage tended to focus on information regarding the technical aspects of the election. None of the monitored television stations broadcast programmes that provided an opportunity for journalists, experts or the public to put questions to candidates (including the incumbent) or for candidates to debate with each other.

Private print media provided voters with a wider coverage of candidates, including some analytical articles. However, private print media is constrained by low circulation and limited distribution in the regions.

Overall, candidates were provided with insufficient access to the media, and a balanced and open exchange of views on political alternatives was lacking. The restrictive legal framework and disproportionate coverage of the incumbent President's institutional appearances during the campaign period contributed to the lack of a level playing field among candidates. This is at odds with paragraph 7.8 of the 1990 OSCE Copenhagen Document and limited the possibility for voters to make an informed choice.²⁹

Complaints and Appeals

Voters, candidates and submitters of candidate nominations have the right to file complaints to higher-level election commissions, on any decision, action, or inaction that violates electoral rights. Decisions of the CEC can be challenged to the Baku Court of Appeals, with the Supreme Court as the court of last instance. Following judicial reforms in 2011 that included the adoption of the Administrative Procedure Code, election complaints and appeals are heard by the newly established Administrative and Economic Chambers in appellate courts (Baku) and the Supreme Court. This reform rectified the previously confusing role of district and appellate court civil chambers, thereby addressing a prior OSCE/ODIHR recommendation.

²⁷ In their deliberations, the CEC media working group pointed to a live broadcast on *Azadliq* from the NCDF rally on 22 September. *Azadliq* informed the OSCE/ODIHR EOM that they consider the quoted legal provision as restricting media freedom, since balanced reporting on the campaign should not be considered campaigning.

²⁸ The OSCE/ODIHR EOM monitored the prime time (18:00 to 24:00) coverage of six television channels: the state-owned AzTV, the public broadcaster ITV, and the private ATV, ANS, *Lider*, and *Xazar*; and five newspapers: *Azadliq*, *Azerbaijan*, *Yeni Məsəvat*, *Yeni Azərbaycan* and *Zerkalo*.

²⁹ Paragraph 7.8 of the 1990 OSCE Copenhagen Document requires participating States to “provide that no legal or administrative obstacle 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”.

The CEC established a nine-person expert group to investigate complaints and advise the commission on the adjudication of individual cases. In this election, as in the past, the CEC decided to appoint CEC members and staff to its expert group rather than identifying external experts as provided by law. Complaints are assigned to one expert from the group who reviews the matter and then advises the commission on the recommended action. In accordance with good practice, the CEC and ConECs maintain a registry of complaints and appeals received.

In the pre-election period, the CEC received a total of 15 complaints on violations of campaign regulations and obstructions to campaigning. Complaints were reviewed by experts from the CEC expert group at times without the participation of the complainants. In multiple cases, Mr. Hasanli disputed that he was not given an opportunity to participate in the expert review and to present additional evidence as guaranteed by the law. Initially, in cases where accusations were made against another candidate, the CEC did not notify the subjects of the complaints of the existence of the complaint against them or ask for their positions on the matter.³⁰

Since the CEC set the date for the election, the Baku Court of Appeals has received 18 appeals, primarily related to candidate registration, candidate roundtables, and exit-poll accreditation. Nine decisions were subsequently appealed to the Supreme Court. All complaints and appeals were heard in an expeditious manner within the two-day deadline for review. The OSCE/ODIHR EOM monitored all election hearings during the observation period, and noted that the courts repeatedly denied appellants motions to provide additional evidence without justification, limited appellant's lines of questioning, strongly challenged appellant's arguments while minimally questioning the CEC's arguments, and did not address all the appellant's arguments in their decisions.

In appeals challenging the CEC decisions on candidate registration, appellants made two primary arguments: that candidates or their authorized representatives were not informed by the CEC when the review of their signatures was scheduled, as required by law; and that the "assumption" of handwriting experts from the CEC working group that signatures were false is not sufficient to deny registration. In the consideration of appellants' arguments, the Baku Court of Appeals questioned the appellants whether they indicated to the CEC that they wanted to be present for signature verification or not, although there is no legal requirement for candidates to do so. The court found that the lack of notification is not sufficient to annul the CEC decision or require that the signature verification process be repeated.

Appellants also challenged the invalidation of signatures on the ground that they "appeared" to have been falsified, that is "executed by one person in the name of other persons," an argument made in multiple cases pending with the European Court of Human Rights (ECtHR).³¹ The Baku Court of Appeals did not address the lawfulness of the CEC basing decisions on working group assumptions; rather, they upheld the CEC decisions because they found that the candidate lacked sufficient signatures to be registered.

In the hearings of the three people convicted of disobeying police orders, the Baku Court of Appeals rejected without justification the appellant's motion that video surveillance footage be reviewed.

³⁰ While Article 112-1.7-9 of the Election Code guarantees the right of a complainant to be present and provide evidence, it does not require the CEC to notify the subject of a complaint that a complaint has been submitted against them or give them the opportunity to present their opinion to the expert assigned to the case. In complaints reviewed following the publication of the OSCE/ODIHR EOM second interim report, the CEC notified subjects of a complaint against them and gave them an opportunity to respond.

³¹ See, *inter alia*, *Annagi Hajibeyli v. Azerbaijan* (ECtHR, 2011) and *Behbudov v. Azerbaijan* (ECtHR, 2011), in both cases the court is in communication with the parties and has asked the government of Azerbaijan to elaborate on the signature verification procedures including the safeguards to prevent arbitrary decisions.

Overall, appellants in election matters did not enjoy their right to effective remedy. Contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document, the review of election appeals lacked impartiality and failed to provide appellants sufficient guarantees of effective redress and ensure that adverse decisions be justifiable. Additionally, there was a notable lack of judicial supervision over the procedures followed by the CEC and the Baku Court of Appeals; procedural deficiencies were not addressed by the courts upon appeal.

Citizen and International Observers

The Election Code provides for citizen and international observation. Citizen observers could register as individuals or as representatives of candidates, political parties, or non-governmental organizations. In an inclusive process, the CEC and ConECs registered 51,898 observers.³² The Election Monitoring and Democracy Studies Center (EMDSC) remains without official legal status and therefore accredited its observers individually. EMDSC informed the OSCE/ODIHR EOM that some observer training sessions in private homes were interrupted by the police or local executive authorities. This limited their right to free association.³³

The CEC registered four organizations to conduct separate exit polls on election day. One organization, “Legal Education of Sumgayit Youth”, was denied registration on the basis of not meeting the relevant experience requirement. Although the CEC did not provide explanation of what qualifies as sufficient experience, the organization’s appeal was rejected by the Baku Court of Appeals and the Supreme Court.

Election Day

On election day, IEOM observer reports indicated a high voter turnout; the CEC announced that turnout was 72.3 per cent. The CEC posted preliminary results on its website shortly after 22:00 on 9 October and continued updating them throughout election night. By 5:30 on 10 October, the CEC had posted most preliminary ConEC results protocols on its website.

Opening procedures were assessed negatively in almost 20 per cent of polling stations visited, a significantly high number, indicating serious problems. Procedural shortcomings were frequently noted, including failure to count and announce the number of received ballots (39 per cent) and record the serial number of ballot box seals (19 per cent). Contrary to requirements, PECs did not destroy the unused de-registration voter cards (totaling some 420,000 across the country) in 30 per cent of observed polling stations, bypassing a critical measure to ensure accountability and deter potential fraud.

IEOM observers assessed the voting process negatively in 12 per cent of observations, which is significant. PECs’ and voters’ understanding of procedures was assessed positively. IEOM observers reported clear indications of ballot box stuffing in 37 polling stations. They also reported from seven polling stations that voters who had already been inked were allowed to vote. IEOM observers noted a number of procedural violations, the most widespread concerned lack of safeguards against multiple voting: in 19 per cent of polling stations visited, voters were not always

³² Some 6,030 citizen observers were registered by the CEC and 45,868 observes by ConECs. From the total number of observers some 26,335 were registered individually or as candidates’ observers, 5,033 as observers representing non-governmental organizations and 20,530 political parties and movements. The CEC also registered some 1,295 international observers.

³³ See also, paragraph 8 of the 1990 OSCE Copenhagen Document, which stipulates that “the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place.”

checked for traces of invisible ink, and in 11 per cent, ink was not always applied. Other violations included ballot boxes which were not sealed properly (4 per cent) and series of seemingly identical signatures on the voter list (4 per cent). Group voting was observed in 7 per cent of polling stations visited. In 9 per cent of polling stations observed, not all voters marked their ballots in secrecy. IEOM observers reported isolated cases of intimidation and attempts to influence voters choice. In 8 per cent of those polling stations visited that had cameras installed, IEOM observers assessed that their placement did not completely safeguard the secrecy of the vote.

In 10 per cent of observed polling stations, not all phases of the process were visible to the PEC or observers, thereby reducing the transparency of the process. Citizen observers were present in 78 per cent of polling stations, but frequently could not inform IEOM observers which organization they represented. There were 61 reports of unauthorized persons interfering in or directing the work of PECs. IEOM observers reported that in 3 per cent of the polling stations visited, they were not able to carry out their activities without restrictions or granted full co-operation by the PEC.

The count was reported as overwhelmingly negative, with 58 per cent of the observed polling stations assessed as bad or very bad, indicating serious problems. Indications of ballot box stuffing were noted by observers in 19 counts observed. A significant proportion of PECs did not perform basic reconciliation procedures, such as counting the number of signatures on the voter lists and mandatory crosschecks. The vote count often lacked transparency. IEOM observers reported that in 24 polling stations observed, they did not have a clear view of the counting procedures and that one-third of counts, observers were not able to clearly see how ballots had been marked. Ballots were not determined in a reasonable and consistent manner in 20 counts observed. In 12 polling stations observed, people other than PEC members participated in the count. In 15 counts observed, IEOM observers reported falsification of voter list entries, results or protocols, including cases of votes being reassigned to a different candidate.

In 42 counts observed, PECs had difficulties completing the results protocol, which in a number of cases was not completed by pen as required. IEOM and candidate observers frequently did not receive copies of protocols upon request. In more than half of polling stations observed, the PEC did not post the results protocol for public familiarization as required by law. Several observers reported that after the count was finished and the protocol had been filled in, the PEC delayed delivery of election material to the ConEC for no apparent reason. In 17 of the polling stations observed, the PEC chairperson was not accompanied by two PEC members during protocol delivery to the ConEC.

IEOM observers observed the tabulation process in 95 of the 125 ConECs. In 23 ConECs, the process was assessed negatively. Several procedural shortcomings were noted including PECs filling in protocols at the ConEC premises (observed in 18 cases). In 22 cases, observers did not receive copies of the tabulation protocols. Key procedures on the checking of precinct-level results and their processing were frequently not followed.

***The English version of this report is the only official document.
An unofficial translation is available in Azeri.***

MISSION INFORMATION & ACKNOWLEDGEMENTS

Baku, 10 October 2013 – The OSCE/ODIHR EOM opened in Baku on 28 August. It includes 13 experts in the capital and 30 long-term observers deployed throughout Azerbaijan.

On election day, 345 observers from 41 countries were accredited, including 319 long-term and short-term observers deployed by the OSCE/ODIHR, as well as 26 parliamentarians and staff from the OSCE PA.

Voting was observed in 1,151 of 5,273 polling stations across the country. Observers reported on 105 counting processes. The tabulation process was observed in 95 out of 125 ConECs.

The observers wish to thank the authorities of the Republic of Azerbaijan for the invitation to observe the elections, the Central Election Commission for its co-operation and for providing accreditation documents, and the Ministry of Foreign Affairs and other authorities for their assistance and co-operation. The observers also wish to express appreciation to the embassies and international organizations accredited in Azerbaijan for their co-operation and support.

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