



Office for Democratic Institutions and Human Rights

REPUBLIC OF AZERBAIJAN

PRESIDENTIAL ELECTION

October 2008

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

17-20 June 2008



Warsaw
11 July 2008

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

The Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to the Republic of Azerbaijan from 17 to 20 June 2008. The NAM was composed of Mr. Konrad Olszewski, Deputy Head of the OSCE/ODIHR Election Section, and Mr. Jonathan Stonestreet, OSCE/ODIHR Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess the conditions and level of preparation for the presidential election scheduled to be held in October 2008, and to advise on the deployment of a possible OSCE/ODIHR Election Observation Mission (EOM). The OSCE/ODIHR NAM held meetings in Baku with representatives of the authorities, election administration, political parties, potential candidates, media, civil society, and the diplomatic community (see Annex 1).

The OSCE/ODIHR expresses its appreciation to the Ministry of Foreign Affairs, the Central Election Commission, representatives of other state institutions, and other interlocutors for their co-operation. The OSCE/ODIHR is grateful to the OSCE Office in Baku for the assistance provided during the NAM.

II. EXECUTIVE SUMMARY

The Presidential election in Azerbaijan is expected to be called for 15 October 2008, in line with constitutional requirements, although it has yet to be formally announced. The election system provides for a second round if no candidate receives an absolute majority of votes. A number of individuals have indicated their potential candidacy, although some opposition leaders have suggested that they may boycott the election.

The authorities stated that an OSCE/ODIHR Election Observation Mission would be welcomed and that an invitation would be forthcoming. However, in contrast to previous elections, several interlocutors raised concerns about the credibility of the upcoming election process, and in this context questioned the utility of election observation.

The Election Code has recently been amended after discussions with the OSCE/ODIHR and the Venice Commission of the Council of Europe. Some of the amendments have the potential to improve the election process if fully and appropriately implemented, including: changes to the consideration of complaints and appeals; an explicit prohibition against interference in the election process; the inking of voters as a safeguard against multiple voting; and the elimination of envelopes from the voting process.

However, some of the amendments could negatively affect the election process, particularly those regarding the election campaign. Several potential candidates expressed concern that the reduction of the official campaign period by more than half, together

with other changes, could limit their ability to campaign effectively and for voters to receive information. The authorities stated that the reduction of campaign period was the initiative of Parliament and that the changes related to the campaign period correspond to practice in other OSCE participating States. The amendments also significantly shortened the timeframe for the organization of the election process, although the Central Election Commission stated that this would not hamper preparations.

In addition, the amendments did not address some previous OSCE/ODIHR and Venice Commission recommendations, including the composition of election commissions in a manner which would ensure public confidence. The authorities stated that they could not propose changes to the composition of election commissions as there was no consensus among political parties.

A number of interlocutors expressed concern that the pre-election environment is not conducive to free competition of political ideas and platforms, due to constraints on freedom of assembly and on the media. A new Law on Freedom of Assembly was recently adopted which could partially alleviate these concerns. However, interlocutors underscored that the law will have a positive impact only if it is implemented so as to genuinely expand the ability for citizens to assemble peacefully, and for political parties and potential candidates to communicate their views to voters, both prior to and during the official election campaign.

Since the 2005 parliamentary elections, the electorate would appear to have more limited access to diverse political views. There are few independent media, and pressure on journalists - and in some cases their detention - has been denounced by a number of organizations, including the OSCE Representative on Freedom of the Media. Despite the recommendation of the OSCE/ODIHR and the Venice Commission, the recent Election Code amendments exclude State TV, which covers 100 per cent of Azerbaijan, from providing campaign information to voters. As a result, free airtime for candidates will only be available on Public TV, which does not cover the entire country. The authorities stated that the amendments take into account the forthcoming privatisation of State TV and that the free airtime provided on Public TV, as well as campaign advertising on private TV channels, will be sufficient to ensure voter's access to campaign information.

An additional concern that was expressed by some was the potential for interference from executive and local authorities in the campaign and in the work of the election administration, an issue which the OSCE/ODIHR has identified in previous elections. The authorities again stated that they would take steps to prevent and redress any such interference.

Election observation by domestic partisan and non-partisan observers is permitted under the Election Code, in accordance with Azerbaijan's OSCE commitments. However, the non-governmental election observation organisation "Election Monitoring Centre" was recently de-registered at the petition of the authorities, representing a challenge to the effective realization of this right.

In considering an observation activity, the OSCE/ODIHR is aware of distinct concerns regarding the upcoming election process, as raised by some interlocutors in meetings with the NAM, but also received assurances from the authorities that the conduct of the

presidential elections will reflect improvements. To realise this objective, the OSCE/ODIHR encourages the authorities to take steps to strengthen public confidence and to ensure an improved election process.

In anticipation of an invitation, and in expectation that the candidate registration process will be inclusive, the OSCE/ODIHR recommends the deployment of a standard Election Observation Mission. In addition to the deployment of a core team of experts in late August, the OSCE/ODIHR requests OSCE participating States to second 30 long-term observers to be deployed at the beginning of September, and will request 450 short-term observers to be seconded for election day observation.

III. FINDINGS

A. BACKGROUND

The Republic of Azerbaijan has a strong presidential system in which the executive branch exercises broad authority relative to the legislative branch. Among numerous other responsibilities and powers, the President appoints the Cabinet of Ministers, which he chairs, appoints the executive authorities at central level, and appoints, dismisses, and defines the scope of authorities of the heads of Executive Committees, which exercise executive power in the regions.

The President is directly elected by popular vote for a five-year term and may not serve more than two consecutive terms. The President is elected by the absolute majority of votes cast; in the event that no candidate receives more than half of the votes, a second round of elections is held on the second Sunday after the first round between the two candidates with the highest number of votes. The incumbent, President Ilham Aliyev, was elected in 2003, and is expected to be a candidate in the upcoming presidential election.

The Central Election Commission (CEC) has stated that the election will be called for 15 October 2008, in accordance with constitutional provisions. Under recent amendments to the Election Code, an election must be called at least 75 days in advance (previously 120 days). The CEC expects to issue its formal decision on the election at the end of July.

The OSCE/ODIHR has observed a number of elections in Azerbaijan since 1995. The most recent OSCE/ODIHR EOM, for the 6 November 2005 parliamentary elections, found that the elections “did not meet a number of OSCE commitments and other international standards for democratic elections.”¹ The mission noted some improvements, particularly in the inclusive candidate registration process, the technical administration of the process, the establishment of a public television channel, and the inking of voters’ fingers.

However, a number of important shortcomings were also identified, including the interference of local executive authorities in the campaign and in the work of the election administration, the composition of election commissions, restrictions on freedom of

¹ OSCE/ODIHR Election Observation Mission Final Report on the 6 November 2005 Parliamentary Elections in the Republic of Azerbaijan. www.osce.org/odihr-elections/14352.html

assembly, harassment, intimidation and de-registration of candidates, an ineffective complaints and appeals process, and serious irregularities during the voting, counting and tabulation of results.

The authorities underlined that the elections will take place in the context of the ongoing conflict with Armenia and the occupation of a sizeable part of the territory of Azerbaijan. They reiterated that this situation has created a large number of internally displaced persons (IDPs), presenting additional challenges for the election administration.

B. LEGAL FRAMEWORK

In 2004, the OSCE/ODIHR and the Venice Commission of the Council of Europe issued Joint Recommendations for improvement of the electoral process, particularly regarding the Election Code.² Following the 2005 parliamentary elections, the authorities of Azerbaijan initiated discussions regarding potential amendments to the Election Code based on this document and on recommendations contained in OSCE/ODIHR EOM Final Reports.

The OSCE/ODIHR, the Venice Commission and IFES met representatives of the authorities on four occasions from 2006 to 2008 in Strasbourg and Baku in order to review various sets of draft amendments. In May 2008, the Presidential Administration submitted a set of draft amendments to Parliament, which approved the amendments on 2 June 2008 with some modifications.³

In June 2008, the OSCE/ODIHR and the Venice Commission published a joint final opinion on the amendments, finding that while some positive steps were taken to address previous recommendations, other amendments are problematic and have the potential to negatively impact upon the election process. In addition, several important recommendations were not considered or were not adequately addressed.⁴

Amendments that address previous recommendations include the creation of expert groups within election commissions to advise and assist the commissions in dealing with complaints; a provision to prohibit interference in the election process by executive and local authorities; and the inking of voters' fingers (previously implemented by Presidential decree).

Among the amendments which could not be assessed as positive were provisions which, taken together, could potentially reduce the scope for competition and limit the amount of political information available to voters. These include the reduction of the campaign period from 60 to 28 days prior to election day; the elimination of State TV as a medium for candidates to conduct their campaigns and exemption of State TV from the requirement to ensure equal conditions for candidates; new rules on the posting of campaign materials; and the elimination of the possibility for candidates to make a financial deposit in lieu of signatures to support their registration.

² Joint Recommendations on the Electoral Law and the Electoral Administration in the Republic of Azerbaijan (CDL-AD(2004)016rev), June 2004, www.osce.org/odihr-elections/13447.html

³ The President signed the amendments into law on 23 June 2008.

⁴ Joint Opinion on the Draft Law on Amendments and Changes to the Electoral Code of the Republic of Azerbaijan, 26 June 2008. www.osce.org/odihr-elections/13447.html

Finally, several long-standing recommendations were not addressed or were insufficiently addressed, including: the composition of election commissions; de-registration of candidates; the conduct of military voting; and invalidation of results. Given the extent of discussions with the authorities on these issues, it is of concern that they were not fully addressed in the amendments.

In the view of the authorities, the amendments represent significant improvement and will make the election process simpler and more transparent, but acknowledged that practical implementation would be important. Opposition parties and several civil society groups strongly objected to several of the changes, which they interpreted as limiting the ability to campaign effectively, especially in view of existing imbalance in access to the media and restrictions on the right to assemble. The impact of the amendments will ultimately be determined by the level of political will exhibited by State institutions responsible for implementing and upholding the law.

C. ELECTION ADMINISTRATION

The election administration consists of three levels: the Central Election Commission (CEC); Constituency Election Commissions (ConECs); and Precinct Election Commissions (PECs). The composition of these commissions has changed due to the expiry of the transitional formula for composition after the 2005 parliamentary elections. The current formula increased the number of members on each commission, but still effectively provides pro-government forces with a decisive majority. Election commissions have not been fully composed since 2005, due to the refusal by some opposition parties to take part in the nomination process.

The issue of the formula for the composition of election commissions, which was not addressed by the June 2008 amendments to the Election Code, was identified by opposition representatives and by civil society organizations as a key obstacle to the development of public confidence in the election administration. The Presidential Administration stated that it could not propose changes to the composition of election commissions as there was no consensus among political parties. They noted that most opposition parties did not attend a November 2007 roundtable on this topic.⁵

Despite the concerns of some interlocutors that the reduced timeframe for conducting the elections could affect the work of the election administration, the CEC indicated that it did not expect difficulties and stated its belief that the amendments would improve the conduct of the elections. The CEC stated that it is organizing trainings for lower level commissions.

The CEC identified the creation of expert groups within the CEC and the ConECs to investigate complaints and prepare decisions as an important step in giving the higher level commissions greater control over the process. The CEC is now preparing instructions on the implementation of this provision and informed the OSCE/ODIHR NAM that the expert groups would work closely with candidate representatives and

⁵ Two roundtables were held in November 2007 on the topics of composition of election commissions and complaints and appeals. Most opposition parties declined to attend either event, although some had submitted written proposals for amending the Election Code.

observers to ensure transparency. The Minister of Justice informed the OSCE/ODIHR NAM that the creation of additional Courts of Appeal in the regions, as well as a planned 50 per cent increase in the number of judges in first instance courts, would improve the consideration of any election-related court cases.

The CEC also identified the elimination of envelopes from the voting process as a step that would simplify the vote count and the result protocols and would facilitate any eventual recounts.

The new amendments to the Election Code reduced the number of signatures required for candidate registration to 40,000; however, potential candidates can no longer submit a monetary deposit in lieu of signatures.⁶ Opposition representatives and several other interlocutors highlighted the increased importance of the signature verification process in view of the elimination of the deposit and expressed concern that the verification process may not be transparent and could result in the denial of registration of potential candidates.

The CEC and the Presidential Administration assured the OSCE/ODIHR NAM that candidate registration would be inclusive. In a positive step, the CEC said that there would be no upper limit on the number of signatures submitted, if candidates wish to safeguard against possible errors. However, several political party representatives, including the ruling New Azerbaijan Party (“YAP” in its Azeri acronym), understood that there will be a maximum limit on the number of signatures collected, as was the case in 2003.

In another change to the Election Code, additions to the voter list within 35 days of the election day, or on election day itself, will now be made at the polling station rather than at a court, as was previously the case. While this provision could potentially enfranchise voters who would otherwise be excluded due to inaccuracies in the voter list, it also opens the potential for abuse. The CEC’s instruction on this point will be of fundamental importance in preventing possible multiple voting. The authorities noted that voters can already check their registration status on the internet.

In Presidential elections, voters residing abroad are eligible to cast votes at polling stations organized in Azerbaijani consular representations. The CEC stated that such voters would have to obtain de-registration cards in advance from their home constituencies in Azerbaijan.

D. CAMPAIGN ENVIRONMENT

A number of representatives of opposition political parties and civil society organizations met by the OSCE/ODIHR NAM indicated that Azerbaijan faces significant challenges in the upcoming election period. They cited constraints on the ability of political parties and citizens to freely express political views due to restrictions on freedom of assembly and the overall media environment, including harassment and detention of journalists.

⁶ The amendments reduced the number of required signatures from 45,000. However, they did not remove the prohibition on voters signing petitions for more than one potential candidate, as had been previously recommended.

1. Freedom of Assembly

The ability for citizens to exercise their constitutional right to freedom of assembly in a manner consistent with international standards remains a serious, ongoing concern. Authorisation for rallies, demonstrations and other forms of assembly in central Baku is routinely denied on various grounds, and gatherings held without authorisation are quickly dispersed by law enforcement authorities. Similar difficulties reportedly occur in the regions.

In recognition of the need to address this issue, a new Law on Freedom of Assembly was drafted, which was adopted by Parliament in May 2008. The draft of the law was assessed by the Venice Commission as reflecting significant improvement in the legislation. However, OSCE/ODIHR NAM interlocutors, including the authorities, did not expect any major departure from the current practice of not permitting political rallies in central Baku. The Presidential Administration informed the OSCE/ODIHR NAM that during the election campaign itself, two venues for campaign rallies and meetings would be identified in the area covered by each polling station, but that this was an exceptional measure, only for the 28 days of the official campaign.

In order for the Law on Freedom of Assembly to have a positive impact on the election process, interlocutors stressed that it will be important that it is implemented in a manner that significantly expands the ability for citizens to assemble peacefully, and for political parties and potential candidates to communicate their views to voters, including prior to the start of the official election campaign period.

2. Freedom of the Media

The media environment would appear to have deteriorated since the 2005 parliamentary elections. Although there are seven television channels with national coverage, including Public TV and State TV,⁷ a number of interlocutors indicated that citizens overall have limited access to diverse political views. This is reportedly due to self-censorship by private television and to bias in the broadcasting of State TV. Radio broadcasting tends to provide somewhat more access to divergent opinions. There are also a few opposition-oriented or independent print media, although these have low circulations, are not widely available in the regions and are considered to be under pressure.

The OSCE/ODIHR NAM heard widespread criticism of harassment and arrest of journalists linked to opposition media outlets. Although the President pardoned five imprisoned journalists in December 2007, three journalists remain in jail. The Minister of Justice informed the OSCE/ODIHR NAM that these three individuals had been convicted by courts of serious crimes, not for their work as journalists. The OSCE Representative on Freedom of the Media has called the imprisonment of these journalists a “sign of continued persecution of non-governmental media...[and] part of an ongoing campaign suppressing critical voices in Azerbaijan.”⁸

⁷ In a partial response to joint recommendations from the Council of Europe and the OSCE Representative on Freedom of the Media, a public service broadcaster (Public TV or ITV) was established in 2005. However, State television also remains in operation.

⁸ OSCE Representative on Freedom of the Media, www.osce.org/fom/item_1_30104.html

In addition, several incidents of violence against journalists in recent months were brought to the attention of the OSCE/ODIHR NAM. The OSCE/ODIHR NAM was unable to meet journalist Emin Huseynli as previously planned, due to the fact that immediately prior to the visit he suffered severe injuries after having been detained by law enforcement authorities at an unauthorised gathering. The authorities stated that Mr. Huseynli's injuries did not occur during his detention.

3. Official Campaign Period

The amendments to the Election Code reduced the official campaign period from 60 to 28 days and made other significant changes relevant to the conduct of the campaign. As noted in the Legal Framework section above, these changes may limit the ability of candidates and parties to communicate their views to voters. A particular concern is the removal of State TV from legal obligations to provide equal campaign conditions for candidates. In addition to potentially exempting State TV from providing balanced news coverage, this change means that free airtime for candidates and other programs related to the campaign will only be available on Public TV.

The extent of territorial and population coverage of Public TV is unclear. The Director of Public TV stated that the channel covers up to 85 per cent of the territory of Azerbaijan and that the channel is in addition available by satellite. Other interlocutors believe that its coverage may be significantly lower. In any event, the limited coverage of Public TV will result in a portion of the electorate having no access to the main campaign medium. It was pointed out that this could be corrected through the re-establishment of State TV as a medium for free airtime for candidates, as it reportedly covers 100 per cent of the territory of Azerbaijan.

The authorities stated that the amendments take into account the forthcoming privatisation of State TV and that the free airtime provided on Public TV, as well as campaign advertising on private TV channels, will be sufficient to ensure voter's access to campaign information.

The Director of Public TV informed the OSCE/ODIHR NAM that the channel is working to improve its standards with the assistance of the BBC (in cooperation with the OSCE Office in Baku) and that it includes opposition viewpoints in its news coverage and political programming. He stated that Public TV would ensure equal coverage of all candidates in its news programming. Some interlocutors noted that Public TV is relatively young and agreed that it is making efforts to be more balanced than State TV. Opposition leaders, however, stated that they are never, or very rarely, invited to appear on Public TV despite making repeated requests.

The CEC will set up a media group that will be responsible for media monitoring. According to the CEC, this will not be comprehensive, as the group will request and review recordings from media outlets in the event of complaints. The National TV and Radio Council is not involved in this exercise, and expressed doubts about the utility of non-professional monitoring. It is not known whether the CEC plans to monitor the news coverage of State and Public TV to ensure equality for all candidates in these State-funded media.

Another change to the Election Code was interpreted by several potential candidates to mean that the CEC will determine the content and format of free airtime, rather than candidates. While it is positive that the CEC will organize debates and roundtables, it is hoped that this time will be provided in addition to the candidates' free airtime and does not prevent them from freely presenting their views to voters.

In previous elections, interference by executive and municipal authorities in the campaign and in the administration of the election process has been a serious problem. This has been recognized by the authorities and the YAP, who informed the OSCE/ODIHR NAM that they are conducting trainings so that these officials better understand their roles. While such trainings are considered positive, it was underscored by some that they are likely to be effective only if the election administration, courts, and central executive authorities take action against violators.

E. DOMESTIC AND INTERNATIONAL OBSERVERS

Two domestic observation groups met by the OSCE/ODIHR NAM indicated their intention to deploy observers throughout Azerbaijan, and other groups plan more limited efforts. However, one of the largest organizations, the Election Monitoring Centre (EMC), was recently de-registered as an NGO by a court decision at the request of the Ministry of Justice. The Minister informed the OSCE/ODIHR NAM that the de-registration, which took place only a few months after its registration by the ministry, was due to defects in its registration documents. It is unclear whether the Ministry undertook efforts to notify EMC of any difficulties after accepting its registration.

The Presidential Administration informed the OSCE/ODIHR NAM that EMC was de-registered due to receiving funding from a foreign government. It stated that EMC would still be able to conduct observation activities as planned but that each observer would need to be registered individually. Others noted that this would represent a significant bureaucratic burden and would limit EMC's standing to file potential complaints.

Domestic election observation is a specific commitment undertaken by OSCE participating States in the 1990 Copenhagen Document. Hindrance of these activities would constitute a significant impact on the transparency of the election process. At the time of the OSCE/ODIHR NAM, the court decision was under appeal.

Although an official invitation to observe has not yet been forthcoming, the Ministry of Foreign Affairs stated that the presence of an OSCE/ODIHR EOM would be welcomed, as did the ruling party, some potential candidates, most civil society groups, and the diplomatic community. However, in contrast to previous elections, a number of interlocutors questioned the utility of deploying an OSCE/ODIHR Election Observation Mission, as in their view the process is not sufficiently credible to warrant observation.

IV. CONCLUSIONS AND RECOMMENDATIONS

In considering an observation activity, the OSCE/ODIHR is aware of distinct concerns regarding the upcoming election process, as raised by some interlocutors in meetings with the NAM, but also received assurances from the authorities that the conduct of the

presidential elections will reflect improvements. To realise this objective, the OSCE/ODIHR encourages the authorities to take steps to strengthen public confidence and to ensure an improved election process.

In anticipation of an invitation, the OSCE/ODIHR recommends the deployment of a standard Election Observation Mission (EOM). In addition to the deployment of a core team of experts in late August, the OSCE/ODIHR requests OSCE participating States to second 30 long-term observers to be deployed at the beginning of September, and will request 450 short-term observers to be seconded for election day observation. However, in the event that the candidate registration process is not inclusive, the utility of deploying short-term observers could be reconsidered.

ANNEX 1 – Schedule of the OSCE/ODIHR Needs Assessment Mission

17 June

Mr Alexis Chahtahtinsky, Deputy Head of the OSCE Office in Baku
Mr Mahmud Mammad-Quliyev, Deputy Foreign Minister
Mr Dan Blessington, IFES
Mr Safa Mirzayev, Head of Staff, Parliament
Mr Ismail Omarov, Director General of Public TV (ITV)

18 June

Mr Eldar Namazov, Public Forum for Azerbaijan
Mr. Fikrat Mammadov, Minister of Justice
Mr Shelly Markoff, IREX
Mr Isa Gambar, Musavat Party
Mr Nushiravan Maharramov, Chairman of the National Television and Radio Council
Mr Iqbal Agazadeh, Umid Party
Mr Ali Ahmedov, Yeni Azerbaijan Party
Ms Joan Polaschik, 1st Secretary, Embassy of the United States of America

19 June

Ambassador Vassili Istratov, Embassy of the Russian Federation
Mr Mazahir Panahov, Chairman of the CEC
Ms Claire Delessard, Political Advisor, Council of the European Union
Mr Colin Wells, Deputy Head of Mission, Embassy of the United Kingdom
Mr Ali Hasanov, Head of the Socio-Political Department, Presidential Administration
Representatives of Media Organization and Journalists
Mr. Erkan Özoral, Counselor, Embassy of Turkey

20 June

Mr Sardar Jalaloglu, Azerbaijan Democratic Party
Azadliq Political Party Bloc:
- Dr. Lala Shovket, Liberal Party of Azerbaijan
- Mr Ali Kerimli, Azerbaijan Popular Front Party
Ms Veronika Kotek, Special Representative, Council of Europe Office in Azerbaijan
Representatives of Domestic Election Observation NGOs:
- Mr Anar Mammedli, Election Monitoring Centre
- Mr Eldar Ismailov, “For the sake of civil society”
- Mr Chingiz Dadashov, “My Vote” Coalition
- Mr Sahib Farzaliyev, “Potential”
Representatives of embassies of OSCE participating States