



Office for Democratic Institutions and Human Rights

REPUBLIC OF AZERBAIJAN

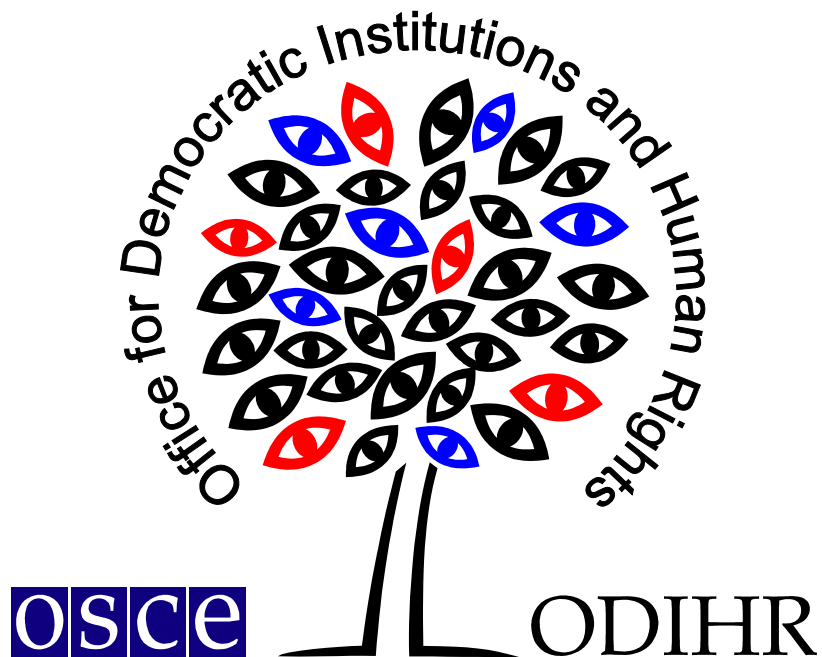
PRESIDENTIAL ELECTIONS

15 October 2003

OSCE/ODIHR

NEEDS ASSESSMENT MISSION REPORT

9-12 JULY 2003



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TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. EXECUTIVE SUMMARY.....	1
III. FINDINGS.....	3
A. POLITICAL CONTEXT.....	3
B. LEGAL FRAMEWORK.....	5
C. ELECTION ADMINISTRATION.....	6
D. THE MEDIA.....	7
E. INTERNATIONAL AND DOMESTIC OBSERVERS.....	8
IV. CONCLUSIONS AND RECOMMENDATIONS.....	8
ANNEX: LIST OF MEETINGS.....	9

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation from the authorities to observe the presidential election scheduled for 15 October 2003, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to the Republic of Azerbaijan from 9-12 July 2003. The NAM was composed of Nikolai Vulchanov, Acting Head of the ODIHR Election Section, Nicolas Kaczorowski, ODIHR Election Adviser, and Peter Eicher, prospective Head of the Election Observation Mission.

The purpose of the NAM was to make a preliminary assessment of the conditions and level of preparation for the election, in line with OSCE commitments, and to advise on the establishment of an Election Observation Mission (EOM).

The NAM held meetings in Baku with representatives of the Government authorities, the election administration, political parties, civil society, the media and the international community (see annex for list of meetings).

The ODIHR is grateful to the OSCE Office in Baku and to the Azerbaijani authorities for the assistance they provided during the NAM.

II. EXECUTIVE SUMMARY

The presidential election scheduled for 15 October will be an important test for Azerbaijani democracy, particularly since previous elections in Azerbaijan have not met international standards for democratic elections. The upcoming presidential election will be held under a new Electoral Code and a newly amended constitution. It will be the first presidential election since Azerbaijan assumed additional human rights responsibilities through membership in the Council of Europe.

The pre-election political environment in Azerbaijan is dynamic. The political party scene is characterized by a sharp polarization between pro-government and opposition parties. Although the "official" election campaign period does not begin until 16 August, a great deal of political activity is already underway. In contrast to the opposition boycott of the 1998 presidential election, opposition parties have already put forward a number of candidates for the presidency. Over 20 candidacies had been put forward by parties or citizen initiative groups at the time of the NAM, offering the prospect of a genuine choice for the electorate.

The Central Election Commission (CEC) has so far accepted about 15 applications for candidacy and has rejected about 5. Among the latter, the rejection of an application

by Rasul Guliyev, a well-known opposition party leader now in exile, is of particular concern. The reasons advanced by the CEC for rejecting the application are not persuasive. At the time of the NAM, the case was under appeal to the Supreme Court. According to reports received subsequently, the Supreme Court upheld the CEC decision on 14 July.

Opposition representatives and domestic and international non-governmental organizations expressed concern to the NAM over incidents of harassment, detention, intimidation and violence against opposition supporters. Government representatives denied these assertions. Although the NAM was not in a position to verify these reports independently, the nature and consistency of the complaints presented was a cause of substantial concern.

The new Election Code is a clear improvement over the previous law. Although a final assessment of the Code by experts of the ODIHR and the Council of Europe's Venice Commission is still pending, an analysis of near-final drafts of the Code suggest that it will provide a basis upon which to conduct elections in line with international standards. The key to its success will be the impartial, neutral and consistent application of its provisions. The new Code incorporates a number of ODIHR and Venice Commission recommendations as well as additional, helpful safeguards intended to prevent fraud.

A new, 15-member Central Election Commission was established on 13 June and has begun to operate. The composition of the CEC has been a matter of sharp political controversy. The authorities modified a proposal by the ODIHR and the Venice Commission that would have created a CEC with a more equitable balance and some degree of power sharing between government and opposition members. A number of major opposition parties have expressed a lack of confidence in the neutrality and impartiality of the CEC. The CEC has already adopted several controversial decisions on divided votes of 10-5. At least one CEC decision to date – regarding the number of signatures that may be submitted in support of a candidate – appears to be contrary to the Election Code. The process for verification of signatures will be largely in the hands of civil servants responsible to the authorities.

The NAM was not able during its brief visit to undertake a thorough analysis of the media situation. In essence, however, Azerbaijan has a variety of print media, supporting both the government and the opposition. A number of reliable international media watchdogs – including the OSCE Representative on Freedom of the Media – have expressed concern about harassment and pressure against the independent print media in Azerbaijan. Most Azerbaijanis get their news from television rather than from the printed press. NAM interlocutors expressed concern that State television, reportedly the most influential media outlet in the country, has not shown a neutral attitude; this was a problem in previous elections.

Contrary to earlier ODIHR recommendations, Azerbaijan has not modified the NGO law prohibiting election observation by domestic groups that receive foreign State funding. This creates an unwarranted restriction on domestic election observation.

The NAM recommends that a standard EOM be deployed to Azerbaijan in early September. It also recommends that an election expert be deployed well before that

time to observe the work of the new CEC in the period before the arrival of the EOM. It further recommends that the ODIHR request the secondment from participating States of 22 long-term observers and 500 short-term observers to be deployed for the standard periods for an EOM.

III. FINDINGS

A. POLITICAL CONTEXT

The 2003 presidential election could represent an important stage in Azerbaijan's transition to democracy. Past elections have shown progress in some respects, but none have met international standards for democratic elections or complied with all of Azerbaijan's OSCE commitments on elections. Following the last presidential election, in 1998, the ODIHR issued a number of recommendations, only a few of which have been implemented. The upcoming election will also be the first presidential election since Azerbaijan became a member of the Council of Europe in January 2001, at which time it assumed additional commitments and obligations to uphold human rights relevant to elections.

Azerbaijan is a secular republic with a strong presidential system. Broad executive power is vested in the President, who appoints ministers and central and local executive authorities, all of whom are responsible to him. The Parliament (*Milli Mejlis*) does not exercise oversight of the government's activities. The President also appoints judges, the head of State television, the members of the National Television and Radio Council, and many other public officials. The predominance of presidential power in Azerbaijan puts a special responsibility upon the Presidential Administration to ensure the impartiality of State structures during the election period, and to ensure that public resources are not used for the benefit of one candidate or party, to the disadvantage of others.

Azerbaijan has made substantial progress in recent years in reforming its legislative framework to comply with international democratic standards, and it continues to work with the Council of Europe and others on further important reforms. At the same time, however, reports by the Council of Europe and other organizations suggest that the situation of human rights and fundamental freedoms is not yet satisfactory. In particular, freedom of association, freedom of assembly and media freedom – all critical elements of a political campaign – are not always respected. According to the Council of Europe, Azerbaijan continues to hold political prisoners; the existence of political prisoners could be incompatible with a free election.

The conflict with Armenia remains an issue of extreme national concern, with major political, social and humanitarian implications. According to Azerbaijani government documents, the conflict resulted in 18,000 Azerbaijani deaths and created some 800,000 internally displaced persons, many of whom remain in camps. About 20% of Azerbaijan's territory remains under occupation. This issue continues to overshadow the political context.

Azerbaijan has a wide variety of political parties, which operate actively. These include many opposition parties which are vociferous critics of the government. In

2002, several of the principal opposition parties began to co-operate with each other through the creation of the “Co-ordination Council of Opposition”. The Council members have not, however, agreed to support a single candidate. The political party scene is characterized by a sharp polarization and lack of constructive dialogue between the government and opposition, as well as rifts within the opposition. According to Council of Europe reports¹, some political parties have not been granted registration; the NAM was not in a position to look into this issue.

The deadline for submitting candidate registration documents is 6 August. In order to register, candidates must collect 45,000 valid signatures or pay a deposit equivalent to about US\$33,000, a high figure by local standards. At the time of the NAM, over 20 applications had been submitted to the CEC for preliminary approval, a necessary step before the collection of signatures. The nominations were sponsored either by political parties or by citizens’ initiative groups. Of the nominations, 12 had been approved and five denied, while the others were recently submitted and still pending decision. Interestingly, both incumbent President Heydar Aliyev and his son Ilham Aliyev have been nominated as candidates. The likelihood that there will be a variety of candidates should ensure a genuine choice to the voters, a welcome development. During the last presidential election in 1998, a number of opposition parties boycotted the process, limiting the options available to the electorate.

The case of one of the prospective candidates refused by the CEC – Rasul Guliyev, a former speaker of the Parliament now in exile – has sparked a political controversy. The NAM discussed his case with the CEC and found that its arguments for refusing approval to Mr. Guliyev were not persuasive. At the time of the NAM, an appeal of the CEC decision was pending before the Supreme Court. Opposition members of the CEC also asserted that another candidate who was approved had a criminal record and should have been denied; the NAM did not have the opportunity to investigate this case.

Although the “official” campaign period does not begin until 16 August, two months before the election, election-related political activity is already underway. Much of this activity centers around the collection of signatures in support of candidates. Several opposition party candidates asserted to the NAM that they have faced interference from executive authorities and police while trying to collect signatures, particularly outside Baku. Government authorities deny any such interference.

Opposition parties also complained more generally of harassment and intimidation against them and their supporters by the authorities. Some unauthorized demonstrations have been broken up with excessive use of force. A number of opposition activists are reportedly in detention. While the NAM did not have the opportunity to look into these reports in depth during its short visit, the seriousness and consistency of the complaints was cause for concern. The NAM raised this concern with officials of the Presidential Administration, who agreed to investigate any specific cases the EOM brings to its attention.

¹ Parliamentary Assembly of the Council of Europe, Honouring of Obligations and Commitments by Azerbaijan, 13 September 2002.

B. LEGAL FRAMEWORK

The presidential election will be held under a new, consolidated revised Election Code. As part of a process of constructive co-operation with the international community, the authorities shared draft versions of the Code with the ODIHR and the Council of Europe's Venice Commission, which together provided extensive comments and recommendations on the text. Most of these recommendations were included in the final Code. Unfortunately, a similar process of early consultation was not undertaken with opposition parties, which might have helped to develop a Code that enjoyed the support of all political factions. Once the draft Code was finally shared with opposition parties, they chose to boycott ODIHR/Venice Commission-sponsored round tables, which might have offered a constructive venue in which to raise specific concerns about the Code.

At the time of the NAM, the final version of the new Code was under review by experts of the ODIHR and the Venice Commission. Their commentary will be published when that review has been completed.

Near-final drafts of the Code indicate that it should be a significant improvement over the previous law. Provided it is implemented in an impartial, neutral and consistent manner, it should provide a basis for the conduct of elections in line with international standards. However, the Code is voluminous; its length, complexity and occasional internal inconsistencies may make it difficult for candidates and others to understand and adhere to. It includes a number of helpful safeguards, for example, the use of transparent ballot boxes and numbered result protocols, as well as a requirement that ballots be placed in an envelope before being put into the ballot box. Importantly, the Code also requires that the election results, by polling station, be published within two days of the election. This may remedy constant failure of the authorities in all previous elections to publish results detailed by polling stations. The CEC Chairman told the NAM he hopes to publish these results the day after the election. This welcome development would correct a serious deficiency of previous elections

The major controversy surrounding the legal framework for the election centers on the composition of the CEC. The authorities modified a proposal by the ODIHR and the Venice Commission that would have created a CEC with a more equitable balance between government and opposition members. The new CEC composition for this election was not established as part of the Election Code, but in a separate presidential decree issued on 27 May 2003 specifying its make-up. The imbalance in membership has had serious ramifications on the operation of, and confidence in, the CEC (see below, Election Administration).

Another new provision that has caused some controversy states that the election process shall stop and early presidential election should be conducted within three months if the President should die or become incapacitated for health reasons. This provision is operative even if an election period is already underway.

In addition to the Election Code, many other laws will affect the conduct of the election. These include the Political Party Law, media laws, laws affecting freedom of association and assembly, the criminal and administrative codes and other

legislation. Administrative decisions and administrative penalties were particularly problematic in some previous elections.

Equally important as the texts of laws is their implementation in a fair and impartial manner. Candidates and others involved in the election process should have access to a timely and effective complaints and appeals procedure.

C. ELECTION ADMINISTRATION

The Election will be administered by a three-tier election administration headed by the CEC and including some 125 Constituency Election Commissions and some 5,000 Precinct Election Commissions, one for each polling station. CEC meetings are open to the public.

The CEC was established on 13 June and is composed of 15 members elected by the Parliament according to a complex formula:

- 6 members representing the political party which holds the majority of the seats in Parliament that were elected through proportional representation;
- 3 members representing the minority parties in Parliament that were elected through proportional representation;
- 3 members representing the members of Parliament elected from single mandate constituencies, whose political parties failed to win seats through the proportional representation; and
- 3 members representing the 4 political parties, which stood for election in the proportional vote but did not win seats in Parliament.

Lower level election commissions are formed through a variant with similar distribution. Constituency Election Commissions have 9 members and Precinct Election Commissions have 6 members.

While this composition of the CEC would not necessarily be problematic as a theoretical construct, in practice it has meant that the government party and its supporters on the CEC have a commanding majority of two-thirds, sufficient to take decisions over any objections by opposition members. This imbalance has led to a lack of confidence by opposition parties in the neutrality and impartiality of the CEC. In fact, the CEC has already taken a number of controversial decisions, including on candidate registration, on votes of 10-5. Unless the CEC can develop a greater spirit of harmony, collegiality and consensus in its key decisions, then public confidence in its work – and in the electoral process more generally – could be undermined.

One CEC decision to date was of particular concern to the NAM because it appears to be at odds with the Election Code. Under the Code, candidates must submit 45,000 valid signatures to be registered; there is no specified upper limit on the number of signatures that may be submitted. The CEC, however, decided that candidates may receive forms for collecting signatures which would provide for maximum 15% more signatures than the established legal requirement, and could therefore submit a maximum of 51,750 signatures. This decision could become very significant if large numbers of signatures are ruled invalid. Moreover, the CEC Working Group that will rule on the validity of signatures is composed entirely or overwhelmingly of experts

who are civil servants beholden to the government and does not enjoy confidence from the opposition representatives at the CEC.

In a welcome move, the CEC has already begun a large-scale public information campaign intended to promote voter participation. Posters advertising the election are prominently displayed around Baku.

In past elections, the ODIHR has observed unacceptable levels of interference by the executive authorities in the conduct of the elections. For the upcoming election to conform to international standards, it will be imperative that the election administration operate effectively and impartially, and that government authorities refrain from such interference, in accordance with past ODIHR recommendations.

D. THE MEDIA

Due to the short duration of the NAM, its members were not able to undertake an in-depth analysis of the media situation, although they did meet with a number of journalists and regulatory bodies.

Television is by far the most important source of news for most Azerbaijanis. There are several television stations with national reach, as well as a number of local or regional stations. Some stations receive public funding while others do not. State television has not yet been transformed into an independent, public broadcasting service. A National Television and Radio Council was recently formed and has begun to operate, although only 6 of its 9 members have been appointed, all by the President. The Council does not oversee State television or radio, but it will have a role in dealing with complaints in the upcoming election.

Although a number of independent stations exist, most NAM interlocutors asserted that all television broadcasters are essentially pro-government and that a plurality of political views is not adequately represented to the public. Opposition parties complained that they do not have access to television, particularly State television. Government interlocutors asserted that opposition parties are adequately covered by independent television stations. In past elections, State television has failed to meet its responsibility to present neutral and balanced election coverage.

Azerbaijan has a variety of newspapers representing a broad range of views, including those of the opposition. However, newspaper readership is said to be limited to a small proportion of the population.

A number of reliable international press freedom organizations – including the OSCE Representative on Freedom of the Media – have frequently expressed concern about harassment and pressure against the independent press and against journalists. In one incident on 5 May, a group of attackers forced their way into the offices of an opposition newspaper, threatened the staff and vandalized the office.

E. INTERNATIONAL AND DOMESTIC OBSERVERS

All interlocutors welcomed the prospect of an ODIHR observation of the presidential election and requested a significant number of observers. The Parliamentary Assemblies of the OSCE and of the Council of Europe are also expected to send observers to the election. The Ministry of Foreign Affairs and the CEC are compiling a list of international groups which will be invited to observe the election.

The NGO law prohibits NGOs that receive more than 30% of their funding from foreign State sources from registering as election observers. This is an onerous and unnecessary restriction that is not in line with international best practices. The restriction will work against several domestic NGOs that hope to observe the presidential election. Government officials argue that the restriction is not a problem since members of these groups can register individually as observers. Individual observation, however, is not a satisfactory substitute for organized observation by NGOs. If the legal restrictions on NGO observation are not lifted, it will have the effect of reducing the transparency of, and public confidence in, the elections. The restriction is contrary to Azerbaijan's commitments under the OSCE Copenhagen Document, and reflects a failure to implement an ODIHR recommendation from previous elections.

IV. CONCLUSIONS AND RECOMMENDATIONS

The NAM recommends that an Election Observation Mission be deployed in Azerbaijan in early September. As a first step in this process, it recommends that an election expert be deployed as soon as possible to observe the work of the new CEC in the crucial weeks before the deployment of the EOM. The NAM considers that the ODIHR should request the OSCE participating States to second 22 long-term observers to enable the EOM to follow the election process in all parts of the country, and 500 short-term observers for the observation of election day proceedings.

ANNEX: LIST OF MEETINGS

AUTHORITIES

Presidential Administration

Mr. Ramiz Mehdiyev, Head of the Presidential Apparatus
Mr. Shahin Aliyev, Head of the Legal Department
Mr. Fuad Aleskerov, Head of the Law Enforcement Bodies Department
Mr. Ali Hasanov, Head of Social-Political Department

Ministry of Foreign Affairs

Mr. Mahmud Mamedguliev, Deputy Foreign Minister
Fuad N. Ismayilov, Deputy Head, Department for Human Rights, Democratization, and Humanitarian Affairs

Central Election Commission

Mr. Mazahir Panahov, Chairperson (YAP)
Mrs. Svetlana Qasimova, Deputy Chairperson (YAP)
Mr. Ingilab Nasirov, Secretary (“Independent”)
Mr. Vidadi Mahmudov, Secretary (Musavat)
Rovzat Gasimov, Head of Department

POLITICAL PARTIES

Mr. Ali Ahmedov, Executive Secretary, New Azerbaijan Party (YAP)
Mr. Isa Gambar, Chairman and presidential candidate, Musavat Party
Mr. Sardar Jalalov, General Secretary, Democratic Party of Azerbaijan
Mr. Ali Kerimli, Chairman and presidential candidate, Popular Front Party
Mr. Etibar Mamedov, Chairman and presidential candidate, National Independence Party

MEDIA

Press Council

Mr. Aflatun Amashov, Chairman
Mr. Elchin Shikhli, Deputy Chairman, Editor-in-Chief of the “Zerkalo Daily”
Mr. Arif Aliyev, Member, Head of the Azerbaijani Union of Journalists “Yeni esil”

National Television and Radio Council

Mr. Nushiravan Maharramov, Chairman

Internews

Mr. Ilham Safarov, Managing Director
Mr. Rashid Hajili, Director of the Institute for media Defence, Education and Advocacy
Mr. Khayal Tagiyev, TV Producer
Mr. Kenan Guluzade, Producer

CIVIL SOCIETY

Mr. Eldar Ismaylov, Chairman, For the Sake of Civil Society
Mr. Anar Mamedly, Executive Secretary, Election Monitoring Centre
Mrs. Novella Jafaroglu-Applebaum, Secretary, SOS'03 Electoral League and Chairman, Association for the Protection of Women's Rights after D. Aliyeva

INTERNATIONAL COMMUNITY

OSCE Office in Baku

Ambassador Peter Burkhard, Head of the OSCE Office
Mr. Robin Seaward, Deputy Head of Office

Council of Europe, Office of the Special Representative

Mrs. Inkeri Aarnio-Lwoff, Special Representative of the Secretary General

Monitoring Group of the Council of Europe Committee of Ministers

Ambassador Pietro Ercole Ago, Chairman
Ambassador Athanassios Theodoracopoulos
Ambassador Johannes Landman
Ambassador Gheorghe Magheru
Ambassador Mats Aberg
Ambassador Jean-Claude Joseph
Ambassador Numan Hazar
Ambassador Gilles Chouraqui
Mr Marc Scheuer, Directorate General of Political Affairs
Mrs Mireille Paulus, Secretariat of the Committee of Ministers

Embassy of Germany

Ambassador Klaus W. Grewlitch

Embassy of France

Ambassador Chantal Poiret

Embassy of Georgia

Ambassador Zurab Gumberidze

Embassy of Greece

Leonidas Haritos-Lirza, Second Secretary

Embassy of Italy

Ambassador Margherita Costa

Embassy of Israel

Ambassador Eitan Na'eh

Embassy of Kazakhstan

Ambassador Andar Shukputov

Embassy of Norway

Ambassador Steinar Gill

Embassy of Netherlands

Mr. Rein F.C. Boermans, Counsellor

Embassy of Poland

Mr. Wojciech Gorecki, First Secretary

Embassy of Turkey

Ambassador Ahmed Unal Chevikoç

Embassy of the United Kingdom

Ms. Paula Nobes, Deputy Head of Mission, Consul

Embassy of the United States

Mrs. Caryn R. McClelland, Chief, Political-Economic Section

Embassy of Romania

Mr. Dan Nedelcu, Counsellor

Embassy of Uzbekistan

Mr. Kuanyshbek Urazbayev, First Secretary

International Foundation for Election Systems (IFES)

Mr. Charles Lasham, Project Director

Ms Anna Wiktrowska, Deputy Project Director, IFES

International Republican Institute (IRI)

Mr. Jeff Greene, Acting Country Director

Mr. Fariz Ismailzade, Senior Programme Assistant

National Democratic Institute for International Affairs (NDI)

Ms. Mjusa Sever, Senior Political Trainer

Ms. Adrienna Stone, Programme Officer