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Observation of the early presidential election in Azerbaijan (11 April 2018)

Election observation report

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1. Introduction

1. On 5 February 2018, the President of Azerbaijan, Mr Ilham Aliyev, declared an early presidential election for 11 April. On 8 February, Mr Ogtay Asadov, Chairperson of the Parliament of Azerbaijan, sent the Parliamentary Assembly an official invitation to observe the early presidential election. The Bureau of the Assembly, through a written consultation, decided to observe the early presidential election. It also decided that, if the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) were – for any reason – unable to deploy its mission, the observation mission of the Assembly would be cancelled. It decided to set up an ad hoc committee for this purpose composed of 33 members as follows: EPP/CD – 10; SOC – 10; EC – 5; ALDE – 3; UEL – 2; FDG – 1 and the two co-rapporteurs of the Monitoring Committee. On 15 March, the Bureau of the Assembly confirmed its decision to observe this election in co-ordination with the OSCE/ODIHR and the Parliamentary Assembly of the OSCE (OSCE-PA), approved the list of members of the ad hoc committee to observe this election provided that the respective declarations on conflict of interest were submitted prior to the mission and appointed Mr Viorel Riceard Badea (Romania, EPP/CD) as Chairperson of the Ad hoc Committee. The list of members appears in Appendix 1.

2. In accordance with the co-operation agreement signed between the Parliamentary Assembly and the European Commission for Democracy through Law (Venice Commission) on 4 October 2004, a representative from the Venice Commission was invited to join the ad hoc committee as an adviser.



3. The ad hoc committee (Assembly delegation) visited Azerbaijan from 9 to 12 April 2018. It operated as part of an International Election Observation Mission (IEOM) together with delegations from the OSCE-PA and the OSCE/ODIHR electoral observation mission (EOM). The programme of the delegation's meetings is set out in Appendix 2.

4. On polling day, the Assembly delegation split into 19 teams which observed the elections in Baku and the surrounding region, as well as in the following areas: Sumgayit, Khachmaz, Sheki, Guba, Shamaki and Lenkeran.

5. The ad hoc committee wishes to thank the head and members of the parliamentary delegation of the OSCE-PA and the OSCE/ODIHR EOM for their excellent co-operation within the IEOM. The ad hoc committee wishes also to thank the secretariat of the delegation of Azerbaijan to the Assembly for its constructive co-operation.

2. Principal conclusion

6. The Assembly's ad hoc committee concluded that the early presidential election in Azerbaijan took place within a restrictive political environment and under laws that curtail fundamental rights and freedoms, which are prerequisites for genuine democratic elections. It stressed that fair and free elections are not possible in a repressive political environment where democratic principles are compromised and the rule of law is not observed. Against this backdrop and in the absence of pluralism, including in the media, the election lacked genuine competition. Other candidates refrained from directly challenging or criticising the incumbent, and a distinction was not made between his campaign and his official activities. The press release by the IEOM is set out in Appendix 3.

3. Political context

7. The Republic of Azerbaijan has a presidential system of government under which the president exercises wide constitutional powers relative to the parliament. The president appoints and chairs the cabinet of ministers and appoints the vice presidents as well as the central and local executive authorities. The president also nominates the judges of the Constitutional Court, Supreme Court and courts of appeal, and the Prosecutor General, who are then formally appointed by parliament. Since 2016, the president can also dissolve the parliament, which effectively renders the parliament largely ineffective as a countervailing power to the president.

8. The Venice Commission concluded that the provision allowing for the incumbent president to call for an early presidential election is incompatible with democratic standards.

9. The early presidential election took place within a political environment dominated by the ruling New Azerbaijan Party (YAP), which holds a majority in parliament. President Aliyev, Chairperson of YAP, stood for a fourth consecutive term.

10. Some opposition parties boycotted the election, referring to a non-competitive environment and pointing to limitations related to citizens' participation in public life. Other parties chose not to put forward their candidates saying that the early election date left them with insufficient time to meaningfully participate. Several interlocutors noted that Ilgar Mammadov was prevented from running in this presidential election since he remains in prison, despite judgments of the European Court of Human Rights.

4. Key findings

11. Election day was characterised by a widespread disregard for mandatory procedures, numerous instances of serious irregularities and lack of transparency. The Central Election Commission (CEC) announced that turnout was 74.5%. It posted detailed preliminary election results from most polling stations at around 02:00 hrs on 12 April.

12. IEOM observers negatively assessed 23 of the 138 observed openings of polling stations. Precinct election commissions (PECs) often did not perform such mandatory procedures as counting and recording the number of received ballots (37 and 49 observations, respectively), counting and cancelling de-registration voting cards (25 observations), showing ballot boxes to be empty and sealing them securely (13 observations), and recording the serial numbers of the ballot box seals (34 observations). All these are important safeguards against electoral malfeasance.

13. Voting was assessed negatively in 12% of more than 1 300 polling stations observed, which is a very high number and is of serious concern. While the process was overall orderly and smooth in most polling stations observed, IEOM observers reported that PECs often failed to follow key procedures, lacked transparency and hindered observers' work.

14. IEOM observers reported numerous indications of serious violations, including evidence of ballot box stuffing (4%), series of seemingly identical signatures on the voter list (8%), as well as group, proxy and multiple voting (3%, 2% and 1%, respectively). Procedures related to inking, a safeguard against multiple voting, were frequently disregarded, as voters were not always checked for traces of invisible ink (17%) or were not inked before receiving a ballot (11%).

15. IEOM observers also reported some problems regarding the secrecy of the vote, including not all voters marking their ballots in secret or not folding them before going to the ballot box to deposit them (5% and 12%, respectively). Web cameras were at times placed in a way that could undermine the secrecy of the vote (in 15% of observed polling stations with web cameras installed). More than three quarters of polling stations observed were not readily accessible for voters with physical disabilities, and in 42% of cases, the layout inside the polling station was not suitable for such voters.

16. Presidential candidates' observers were present in 88% of polling stations observed, and citizen and self-nominated observers in 72% of polling stations. They were at times interfering in the work of the PECs, and observers often did not know who they represented. The IEOM and other observers were restricted in their observation (4% and 8%, respectively). Notably, many observers were not allowed to scrutinise the voter lists.

17. IEOM observers assessed negatively more than half of the 133 vote counts observed, largely due to an obvious disregard for prescribed procedures or deliberate falsifications. Importantly, almost half of PECs observed did not count the signatures on the voter lists, which made it impossible to reconcile the number of ballots found in the box with the number of people who signed the list. IEOM observers reported 19 cases of indications of ballot box stuffing, as well as 17 instances of evidence of deliberate falsification of voter list entries, results or protocols.

18. A number of legally prescribed procedural steps in the counting were often omitted. Almost one quarter of PECs observed did not cancel unused ballots and about half of them did not enter figures in the protocol before opening the ballot boxes – both important safeguards against manipulations during the count. In more than two thirds of the counts observed, the ballots were not stamped on the back, as prescribed by the law.

19. In some cases, shortcuts were taken during the process, such as establishing the number of ballots cast for the incumbent by subtracting the number of votes cast for other candidates from the total number of ballots found in the box. This further undermined proper reconciliation of key figures. Results protocols were frequently not completed in the prescribed manner, and in half of polling stations observed were not posted for public inspection. There were numerous cases when the IEOM or other observers were restricted in their observation and, in a few instances, intimidated.

20. The reports from Assembly teams of observers concerning election day focused on procedural irregularities (in particular during the counting), but also on ballot box stuffing, similar signatures on the voter lists and lack of interest from the domestic observers (some not even knowing on behalf of which candidate they were observing). A group of about 30 male voters was seen voting in more than one polling station. A couple was seen doing the same (in a different area). Two teams reported being prevented from getting close to the table where the counting took place.

21. There were, however, Assembly members who reported that they didn't observe any irregularities at all.

22. The official results were announced by the CEC on 15 April and confirmed the election of the incumbent with 86.02% of the number of valid votes (3 946 439).

23. The voter turnout, as announced by the CEC, was 74.30% of the total number of voters (5 332 817).

24. The Assembly's ad hoc committee, as part of the IEOM, concluded that the 11 April 2018 early presidential election in the Republic of Azerbaijan took place within a restrictive political environment and under a legal framework that curtails fundamental rights and freedoms, which are pre-requisites for genuine democratic elections. Against this background and in the absence of pluralism, including in the media, this election lacked genuine competition. Other candidates refrained from directly challenging or criticising the incumbent, and a distinction was not made between his campaign and official activities. At the same time, authorities were co-operative and international observers were able to operate freely in the pre-election

period. The election administration was well-resourced and prepared the election efficiently. On election day, international observers reported widespread disregard for mandatory procedures, lack of transparency, and numerous serious irregularities, such as ballot box stuffing.

25. Eight candidates stood in this election, including the incumbent president, nominated by the ruling New Azerbaijan Party (YAP), which maintains the dominant position. Some opposition parties boycotted the election, referring to a non-competitive environment, while other parties did not participate saying that the early election date left them with insufficient time to meaningfully participate. The Venice Commission concluded that the provision allowing for the incumbent president to call for early presidential elections is incompatible with democratic standards.

26. This was the first presidential election since constitutional amendments in 2016 that further increased the powers of the president. A number of constitutionally guaranteed fundamental rights and freedoms related to elections are in practice subject to legal and administrative restrictions, as also concluded by the European Court of Human Rights. Recent case law of the Court suggests systemic problems in Azerbaijan concerning the exercise of freedom of speech and association. The Election Code is detailed and well-structured. While the CEC issued additional regulations, they did not cover all procedural aspects of the election. While a few previous ODIHR recommendations have been partially taken into account, none of the priority recommendations of the Venice Commission and ODIHR, including those related to fundamental freedoms, as well as key recommendations in Venice Commission opinions on constitutional amendments, electoral law and non-governmental organisation (NGO) legislation, were addressed.

27. The election administration at all levels appeared highly organised and well-resourced. The formula for appointing election commissions does not guarantee an impartial election administration, as evidenced by the case law of the European Court of Human Rights, given that there is no political differentiation between the three groups in the parliament that nominate the commissioners. The decision making by the CEC and the Constituency Election Commissions (ConECs) was not fully transparent, as the minutes of their sessions were not made public. The CEC conducted an extensive public information campaign aimed at increasing voter turnout.

28. Around 5.2 million voters were registered in the permanent voter register maintained by the CEC. Voters were provided with ample opportunity to verify their records and could request corrections. Data provided by State authorities show that the number of registered voters is almost two million lower than the approximate number of citizens of voting age, raising questions related to the accuracy of the figures. The CEC registered eight candidates. It denied registration of two nominees, arguing that they lacked sufficient supporting signatures as they submitted a considerable number of duplicate or invalid ones. The verification of support signatures conducted by a CEC working group didn't clearly demonstrate that the process was technically adequate and accountable. Deficiencies in the verification process were previously found by the European Court of Human Rights to contravene Article 3 of the Protocol to the European Convention on Human Rights (ETS No. 9).

29. Overall, the campaign generated limited public engagement. The YAP campaign in favour of the incumbent was well-organised and well-resourced. The president chose not to campaign himself but made visits across the country and received many high-profile foreign dignitaries in his official capacity. The campaigns of the other seven candidates were limited and appeared hampered by a lack of regional structures and resources. As a result of, and within a restrictive political environment, none of the candidates openly challenged or criticised the incumbent and, therefore, the election lacked genuine competition.

30. The IEOM was informed about cases where public-sector employees and university students were compelled to attend YAP campaign activities, as well as several YAP events where those in attendance were prevented from leaving. Such pressure on voters raised concerns as to whether the campaign was conducted in a fair and free atmosphere.

31. Presidential candidates were only allowed to finance their campaigns from private funds and donations. Campaign finance is overseen by the CEC; candidates are obliged to submit campaign finance reports, which the CEC can audit. The CEC published candidates' reports as required by law. The absence of a legal requirement to publish the findings of audits limited the transparency of campaign finance.

32. The media environment is characterised by a highly restrictive legislative framework that challenges the freedoms of expression and the press and which extends to websites and social media content. The fact that defamation is a criminal offence punishable by imprisonment, with additional penalties for defamation of the president, further limits freedom of expression, which is key to political campaigning. As required by law, the public broadcaster allocated free airtime, which was used exclusively for roundtables on television and radio. All TV stations monitored by the OSCE/ODIHR EOM devoted the largest part of their news coverage to the

authorities and their activities. As there are no broadcast or print media that critically analyse government policies, dissenting opinions regarding the authorities' performance were absent from newscasts. Most of the political coverage was given to the incumbent in his official capacity, while all other candidates combined received only a fraction of the time.

33. Election disputes are adjudicated by election commissions and courts. No complaints were filed with election commissions or the courts before election day; several IEOM interlocutors specifically stated that they would not file complaints since they do not trust election commissions and courts to handle their complaints in an impartial and professional manner. In its recent rulings, the European Court of Human Rights has found repeated violations of the European Convention on Human Rights due to the failure of Azerbaijan to properly examine complaints and to investigate allegations concerning electoral irregularities. Given the absence of formal complaints, the IEOM was not in a position to assess the effectiveness and independence of the system and whether it would in practice provide an adequate and effective remedy against violations of electoral rights.

34. Throughout election day, IEOM observers reported indications of ballot box stuffing, series of seemingly identical signatures on the voter lists, and group, proxy and multiple voting. Notably, many observers were not allowed to scrutinise voter lists. IEOM observers assessed negatively more than half of the vote counts observed, largely due to deliberate falsifications (17 cases), along with an obvious disregard for prescribed procedures, which did not allow the PECs to properly reconcile figures.

35. The Assembly delegation stresses that, in a restrictive political environment where democratic principles are compromised and the rule of law is not genuinely observed, holding fair and free elections is hardly possible. The Parliamentary Assembly, in close co-operation with the Venice Commission, will continue to encourage the authorities of Azerbaijan to reorient the country towards a democratic path.

5. Legal framework and electoral system

36. The Assembly's ad hoc committee recalls that Azerbaijan has signed and ratified the European Convention on Human Rights (ETS No. 5) and its Protocol, which enshrine a number of principles crucial for an effective and meaningful democracy, such as the right to free elections (Article 3 of the Protocol), freedom of expression, freedom of assembly and association, as well as prohibition of discrimination (Articles 10, 11 and 14 of the Convention).

37. The Constitution of Azerbaijan guarantees fundamental rights and freedoms, including the freedoms of assembly, expression, association, and access to information, the right to take part in political life and the right to redress. The Constitution also provides for universal, equal and direct suffrage by secret ballot. These constitutional guarantees are in practice restricted by provisions in the Criminal Code, especially those related to defamation, and other legal and administrative restrictions on freedoms of assembly, expression and association. Recent case law of the European Court of Human Rights suggests systemic problems in Azerbaijan concerning the exercise of freedom of speech and association. The space in which civil society organisations, including those involved in election observations, can operate is increasingly confined by restrictive legislation, including on foreign funding. This is likely to have a chilling effect on civil society.

38. Presidential elections are primarily regulated by the 1995 Constitution (last amended in 2016) and the comprehensive 2003 Election Code (amended in 2013 and 2017), which governs all elections and referenda. The Election Code is detailed and well-structured. The CEC has issued a number of regulations and instructions to implement and to further detail the Election Code. Azerbaijan is a party to major international and regional instruments related to the holding of democratic elections. While a few previous ODIHR recommendations have been partially taken into account, none of the priority recommendations of ODIHR and the Venice Commission were addressed, including those related to fundamental freedoms, as well as key recommendations in the Venice Commission opinions on constitutional amendments, electoral law and NGO legislation.

39. The latest constitutional amendments were initiated by the president and enacted by referendum in 2016 through a process which the Venice Commission found to be contrary to the notion of representative democracy and which may undermine the constitutional legitimacy of the reform. They gave the president the power to call early presidential elections without defining specific conditions and introduced the office of unelected vice-president, appointed and dismissed by the president, who could substitute for the president in case of resignation or inability to exercise his office. In February 2017, the president appointed his spouse, Mehriban Aliyeva, as first vice-president. The initiative to amend the Constitution met with resistance from parts of the opposition and from civil society, who claimed that the changes gave the president excessive powers. The amendments and the process in which they were adopted have also been a source of concern to

several international human rights bodies. The Venice Commission concluded that the 2016 amendments allowing for the incumbent president to call for early presidential elections were incompatible with democratic standards.

40. The president is directly elected by popular vote for a seven-year term by an absolute majority of votes cast, without a requirement for a minimum voter turnout. If no candidate receives the required majority, a second round takes place between the two candidates who received the most votes, on the second Sunday after the first round.

6. Election administration

41. The presidential election was administered by the CEC, 125 constituency election commissions (ConECs) and 5 426 precinct election commissions (PECs), with 18, 9 and 6 commission members, respectively. All election commissions are permanent bodies appointed for a five-year term, with the current composition established in 2016. CEC members are elected by parliament, ConEC members are appointed by the CEC, and PEC members are appointed by the respective ConECs. Three of the 18 CEC members are women, including one of the two secretaries. At the ConEC and PEC level, 17% and 36% of members, respectively, are women. Only two out of 125 ConECs are chaired by women, while around half of PEC chairpersons are women.

42. By law, the composition of all election commissions reflects the representation of political forces in parliament: three equal quotas are reserved for members nominated by the parliamentary majority, the minority (defined as the remaining political parties represented in parliament), and parliamentarians elected as independent candidates. As found by the European Court of Human Rights in several cases, and which suggests a systemic flaw in the electoral system of Azerbaijan, the formula for appointing election commissions does not provide for an impartial election administration in practice, given that there is no political differentiation between the three groups in the parliament that nominate the commissioners. Moreover, the chairpersons of all commissions are, by law, nominees of the parliamentary majority. Most candidates expressed their trust in the work of the election administration, while some opposition parties stated that the mistrust in the election administration is one of the reasons for their decision to boycott the election.

43. The CEC is responsible for the overall conduct of elections and has a wide-ranging mandate. It held sessions when required, to which the ODIHR EOM was regularly invited and which were well-attended by the media and some candidate representatives. No dissenting or argumentative opinions were stated during the CEC sessions observed and the majority of members did not engage in any discussion; all observed that sessions only served to formally confirm decisions by a unanimous vote.

44. While many ConECs met their legal obligation to publish decisions on their noticeboards, at least one quarter of those observed did not do that. The transparency of the work of ConECs was further lessened by the fact that ConEC sessions were frequently called on an ad hoc basis and that ConEC decisions were not published online. Minutes of the CEC and ConEC sessions were not published, as this is not required by law.

45. Overall, the election administration at all levels appeared highly organised and well-resourced, administering the election within legal deadlines. In the run-up to the election, the CEC organised training for ConECs and PECs focusing on election day procedures, including on completion of results protocols. In addition, training was conducted for law-enforcement representatives on duty on election day. These training sessions were assessed by ODIHR EOM observers as having been conducted professionally.

46. As in previous elections, the CEC installed web cameras in 1 000 polling stations in order to stream and record voting and the vote count, with the stated aim of increasing transparency and allowing for remote observation. The CEC, on numerous occasions in meetings and sessions, attempted to dispel concerns about the perceived lack of secrecy of the vote.

47. The CEC conducted an extensive public information campaign aimed at increasing voter turnout and distributed information posters and produced television and radio spots, which were broadcast during the pre-election period. The campaign did not, however, focus on informing voters about their rights. The authorities made efforts to facilitate voting for persons with disabilities. The CEC informed the IEOM that it provided braille ballot sleeves for visually impaired voters and installed ramps at all 1 455 polling stations where voters with physical disabilities were registered to vote. All ballot papers, protocols and other official election materials, as well as voter education and information materials, were produced exclusively in the Azerbaijani language.

7. Voter lists and candidate registration

48. All citizens who are 18 years or older by election day have the right to vote, except those declared incapacitated by a court decision. Deprivation of the right to vote on the basis of mental disability is inconsistent with international obligations and standards. In addition to citizens, stateless persons who have resided in Azerbaijan for at least the last five years, have the right to vote.

49. Voter lists are extracted from the integrated nationwide voter register maintained by the CEC. By law, PECs update the lists by 30 May each year, as well as 25 days before election day. In addition, the CEC and ConECs have an established practice to obtain monthly updates on citizens' data from various local bodies of executive authorities. While, according to the CEC and ConECs, this practice improves the accuracy of the voter register, it is not elaborated in existing regulations, which limits the transparency and accountability of this process. The CEC informed the IEOM that a total of 5 192 063 voters were registered in the permanent voter register. Of these, 335 422 are internally displaced persons (IDPs) who were registered to vote in 510 PECs within 10 ConECs.

50. Voters were provided with ample opportunity to verify their voter list records. They could check voter lists through online tools or by using a CEC hotline. The CEC published online the complete set of permanent voter lists, disaggregated by precinct. Preliminary extracts of voter lists were displayed at PECs for public scrutiny from 7 to 17 March, when voters could also check their data in person and request corrections. Until 8 April, voters could request de-registration voting cards (DVCs), which allow them to vote in any polling station in the country. According to the CEC, a total of 150 000 DVCs were printed, of which more than 20 000 were issued to voters by the legal deadline.

51. Data provided by State authorities show that the number of voters in the lists is almost two million lower than the approximate number of citizens of voting age, raising questions related to the accuracy of the figures. By law, citizens can register to vote on election day itself through a decision of the PEC, if they can prove their residence within the precinct. Although inclusive, as an approach, voter registration by PECs on election day is not in line with international good practice.

52. The right to stand for president is granted to voters who have permanently resided in Azerbaijan for at least 10 years, have a university degree, do not hold dual citizenship, and have no responsibilities in another State or a previous conviction for a serious crime. The residency and education requirements are unreasonably restrictive and run contrary to international obligations and good practice.

53. Candidates can be self-nominated or be nominated by political parties (or coalitions) or groups of voters. To be registered, the nominated candidates have to collect at least 40 000 supporting signatures from registered voters. The CEC has seven days to check the submitted signatures. If identified errors reduce the number of valid signatures below the required number, the law does not foresee the possibility for nominees to address shortcomings. Furthermore, a voter can only sign in support of one candidate, which can be seen as a limitation of political pluralism. The combination of these rules may hinder prospective candidacies.

54. The candidate registration period lasted until 12 March. Fifteen prospective candidates were nominated, of whom ten submitted supporting signatures. By 17 March, the CEC had registered eight candidates, all male. The CEC denied the registration of two nominees, arguing that they submitted a considerable number of duplicate or invalid signatures, leading to fewer than 40 000 valid signatures in both cases. Neither of the nominees appealed the CEC's decision before a court, explaining that they lack trust in the integrity of the candidate registration process, the independence of the judiciary and in the possibility for genuine legal redress.

55. The CEC informed the IEOM that it had provided the nominated candidates and their representatives with the possibility to observe the verification process, as required by law. However, the two unregistered nominees both claimed that they had not been invited to observe the verification of their supporting signatures.

56. The verification of the submitted signatures was conducted by a CEC working group and formed the basis for the respective CEC decisions to register or deny registration of candidates. Working group members explained that the process involved visual checks of signature entries, as well as visual checks for suspected duplicate signatures. The working group did not check entries on the signature lists against the electronic and searchable voter lists, but only checked the date of birth and whether ID card numbers were structurally consistent. It relied on a process of comparing signatures solely through visual spot-checks across hundreds of sheets, which cannot be considered to be complete and reliable. The working group was unable to clearly demonstrate that the process was technically adequate and accountable.

57. The European Court of Human Rights has in recent cases found the legal framework for candidate registration and its implementation to be flawed and in violation of Article 3 of the Protocol to the European Convention on Human Rights.¹

8. Election campaign, funding and the media

58. The official campaign period commenced on 19 March and lasted for 22 days, until 24 hours before the start of voting on election day. The CEC designated 168 indoor and outdoor venues throughout the country for campaigning. Overall, the campaign generated limited public engagement.

59. The YAP conducted a well-organised and well-resourced campaign on behalf of the incumbent, which was extensively covered by the media. The incumbent explained that he did not wish to campaign himself since this would put his electoral competitors at a disadvantage and because, after 15 years in office, his public record was well-known. The YAP campaign, which included senior party officials who travelled the country promoting their candidate, focused on highlighting the president's past achievements as head of State, emphasising, among other themes, the importance of stability, regional security and increased economic and social development. The incumbent, in his capacity as president, made visits across the country. A series of high-profile visits by foreign dignitaries also took place during the pre-election period, receiving extensive media coverage.

60. Persistent allegations of the misuse of administrative resources with regard to the YAP campaign reduced confidence in the electoral process. According to the preliminary conclusions of the IEOM, on several occasions, the senior public officials were speakers in YAP-led campaign events that all took place during working hours, or as clearly visible attendees seated in prominent positions. Furthermore, State vehicles appeared to be used in transporting key senior YAP officials to and from campaign activities. Such misuse of administrative resources blurred the line between State and party.

61. In a number of instances, public-sector employees and university students informed the IEOM that they had been compelled to attend election campaign rallies organised by the YAP. On several occasions people attending YAP activities were prevented from voluntarily leaving the event by party officials and/or police. On a number of occasions, the exits from the YAP events were locked, for example at the opening YAP campaign event on 19 March in Baku. Such pressure on voters raised concerns over whether the campaign was conducted in a fair and free atmosphere.

62. The number of campaign rallies organised by the other seven presidential candidates was very limited. These candidates informed the IEOM that, due to limited resources, they planned to focus on door-to-door campaigning and the use of social media. Where they existed, the regional structures of these candidates, indeed, appeared far less developed than those of YAP. The campaign events of these candidates were invariably far smaller in size than those of the incumbent. Although remaining often general in nature, their respective election platforms included such themes as socio-economic development, problems related to corruption, a need to reduce presidential powers and to maintain strong national defence. None of these candidates challenged the incumbent or his policies, or provided distinctive political alternatives. As a result, the election lacked genuine competition.

63. On 10 and 31 March, there were two protest rallies in Baku organised by the opposition. In the periods preceding each protest, organisers from one party stated that many party members had been questioned and some had been detained by police. The Ministry of the Interior informed the IEOM that these allegations were untrue. Both cases raised doubts over the ability of political parties to campaign freely as well as the ability of citizens to engage in political activity without the fear of retribution, challenging Articles 10 and 11 of the European Convention on Human Rights. Moreover, recent case law of the Court suggests a willingness by the Government of Azerbaijan to use unlawful detention and arbitrary application of criminal proceedings to limit freedom of expression and association. This is not indicative of a free campaign environment².

1. See *Tahirov v. Azerbaijan*, Application No. 31953/11, judgment of 11 June 2015, and *Annagi Hajibeyli v. Azerbaijan*, Application No. 2204/11, judgment of 22 October 2015. The Court held that signature verification procedures did not provide sufficient safeguards to prevent arbitrary decisions. The Court therefore concluded the violation of Article 3 of Protocol No. 1 to the European Convention on Human Rights following an arbitrary refusal to register an independent candidate in the last 2010 parliamentary elections. In the *Annagi Hajibeyli v. Azerbaijan* case in 2016, the Court declined to strike out the application under Article 37 of the Convention on the grounds that Azerbaijan had made an unilateral declaration with a view to resolving the issues related to candidate registration. The Court noted that the numerous complaints brought before the Court after each parliamentary election "appear to disclose an existence of systematic or structural issues which call for adequate general measures to be taken by the authorities".

64. A lack of concrete campaign platforms directly addressing gender issues was noticeable, with women generally still referred to in the context of their perceived “traditional” roles as wives and mothers. Women appeared to be under-represented in the campaign both as party officials and as attendees of campaign rallies. National minority issues did not feature prominently during the campaign, and no anti-minority rhetoric was observed.

65. Presidential candidates are only allowed to finance their campaigns from private funds and donations. The law prohibits contributions from foreign countries and citizens, international organisations, State bodies and municipalities, charitable organisations, religious associations and anonymous donors.

66. Nominated candidates must open a special account for their campaign transactions with a bank determined by the CEC who is in charge of overseeing campaign finance. The maximum amount a candidate can spend for campaign purposes is AZN 10 million (around €4.79 million). The ceiling for contributions is set at AZN 3 000 from individuals, AZN 50 000 from legal entities, and AZN 250 000 from the nominating party or group of voters.

67. Presidential candidates participating in elections are required to submit to the CEC three financial reports on campaign contributions received, and their expenditure: an initial report at the time of registration, an interim report between 20 and 10 days prior to election day, and a final report within 10 days of the publication of the final results. The CEC can audit the reports and request additional information from candidates. All registered candidates submitted their first and second financial reports, which the CEC posted on its website as required by law. The absence of a legal requirement to publish the findings of audits limits the transparency of campaign financing.

68. Freedom of expression, media freedom and the right of access to information are guaranteed in the Constitution. However, highly restrictive legislation challenges these constitutional guarantees. Defamation and libel remain criminal offences, from 2016 also applicable to online content, with a penalty of up to three years imprisonment, or up to five years imprisonment if it targets the president. This limits the freedom of expression that is key to political campaigning. Journalists and bloggers are also becoming the subject of arbitrary arrest and detention – on criminal charges that are seemingly unrelated to their professional activities but are viewed by IEOM interlocutors as retaliation for critical reporting. The IEOM was informed by a number of broadcasters about the practice of refraining from any critical coverage of high-ranking government officials and their families.

69. The 11 television stations with nationwide coverage remain the main source of political information in the country. The ownership structures of these broadcasters are opaque. IEOM interlocutors alleged direct government influence on all private broadcasters, with websites and social networks being the only platform for alternative and critical viewpoints. However, the independence of online platforms was limited after the Ministry of Transportation, Communications and High Technologies was authorised by law to block websites based on their content without prior court decision.

70. In line with legal requirements, the public broadcaster allocated free airtime that was used exclusively for nine one-hour-long roundtables on TV and radio respectively, in which seven candidates took part while the incumbent was represented by a proxy. While these roundtables provided candidates with a platform to present their views, their value was diminished by the non-participation of the incumbent. The participation of all candidates in the TV debates is key to allowing electors to make a well-informed choice. The contestants devoted significant time to attacking and condemning the opposition parties, movements and individuals that chose to boycott the election or not participate in it. Three State-owned newspapers provided every candidate with free space.

71. Coverage of the campaign in newscasts was limited and was overshadowed by coverage of the activities of the election administration. All monitored TV channels devoted the largest part of their news coverage to the authorities and their activities. The incumbent received almost all of his media coverage in his capacity as

2. See *Rasul Jafarov v. Azerbaijan*, Application No. 69981/14, judgment of 17 March 2016, and *Ilgar Mammadov v. Azerbaijan*, Application No. 15172/13, judgment of 22 May 2014. In both cases the Court found a violation of Article 18 in conjunction of Article 5 of the European Convention on Human Rights, and which reads: “The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any other purpose other than those for which they have been prescribed.” Finding a violation of this provision requires a very exact standard of proof, and means that the Government of Azerbaijan has acted in bad faith to undermine the rights protected by the European Convention on Human Rights.

president, including through extensive coverage of ceremonial events, such as opening of the roads, hospitals and factories. As there are no broadcast media that critically analyse government policies, dissenting opinions regarding the authorities' performance were absent from newscasts.

72. In particular, during the official campaign period, the public and private media outlets devoted between 48% and 81% of their political and election-related news coverage to the activities of the authorities, including the president (between 26% and 40%), the first vice-president (between 3% and 19%), the government (between 13% and 17%), the presidential administration (between 1% and 5%) and local government (between 1% and 5%). The ruling YAP received between 4% and 19%. This coverage was overwhelmingly positive in tone. By contrast, all the other candidates and political parties received a combined total of between 4% and 20%. In addition, negative coverage of civil activists who were calling for a boycott of elections was observed in all monitored newscasts. The CEC received between 6% and 18% of news coverage by the monitored broadcasters.

73. The coverage of candidates in newscasts was often paid for, although the broadcasters did not consistently identify paid advertisements as such. The definition in the Election Code of what constitutes election campaigning, and the rules for campaign coverage by the media, rendered any election-related current affairs programmes impossible outside of newscasts. State-owned AzTV is by law prohibited from airing any campaign-related materials. It interpreted this limitation as prohibiting them from covering any campaign activities in its newscasts. Consequently, it devoted a total of 17 seconds to all contestants during the entire campaign period. At the same time, it provided extensive coverage of the activities of the president, who received about five hours of coverage.

74. The CEC established a special working group on the media composed of CEC members and representatives of media outlets, to assist the CEC in overseeing compliance with the campaign-related provisions of the Election Code. The group did not convene during the campaign period, and the majority of editors of media outlets who were members of the group appeared to be unaware of their membership.

9. Complaints and appeals

75. According to the Election Code, complaints can be lodged by voters, candidates, political parties or coalitions of parties, agents of registered candidates and observers. A complaint can be filed against a decision or an action (or lack of action) which violates electoral rights. Cases should be filed with the election commission superior to the one whose decisions, actions or inactions are challenged. CEC decisions can be appealed to the Court of Appeal, whose decisions can be challenged before the Supreme Court. The Election Code provides for short deadlines for the filing and adjudication of complaints. The time frame for submitting a complaint or appeal is three days from the day a violation occurred, or a decision was adopted or published, or the day the plaintiff was informed of the decision. Complaints and appeals lodged less than 30 days before election day must be decided upon within two days. Complaints submitted on or after election day must be decided on immediately. The IEOM is not aware and has not been informed of any complaints filed at any level of election administration and the courts before election day. Several IEOM interlocutors specifically stated that they would not file complaints since they do not trust election commissions and courts to handle their complaints in an impartial and professional manner.

76. In recent judgments, the Court has found repeated violations of the European Convention on Human Rights due to the failure of Azerbaijan to properly examine complaints and investigate allegations concerning electoral irregularities. Out of 120 judgments related to Azerbaijan that are partially or fully pending implementation, 48 are directly related to elections. Furthermore, a number of cases related to the 2005 and 2010 parliamentary elections are pending. These cases suggest a structural problem in the application of electoral complaints and appeals procedures in Azerbaijan. The Court noted that the recurrent and relatively numerous complaints brought before the court concerning electoral issues appears to disclose the existence of systematic or structural issues which call for adequate and general measures to be taken by the authorities, which the Court noted Azerbaijan had failed to do.

77. Given the absence of formal complaints, the IEOM was not in a position to assess the effectiveness of the system and whether it would in practice provide an adequate and effective remedy against violations of electoral rights.

78. An infringement proceeding according to Article 46.4 of the European Convention on Human Rights regarding the non-implementation of the Court judgment requesting the release of Ilgar Mammadov from prison is presently pending before the Court.³

10. Citizen and international observers

79. The Election Code provides for citizen and international election observation. Domestic observers can register to observe individually, or as representatives of candidates, political parties or NGOs. According to the CEC, a total of 58 175 domestic observers were registered by the ConECs and the CEC, including 4 041 observers accredited by NGOs; a total of 894 international observers were also accredited. The political parties that were boycotting the election or not participating in it informed the IEOM that they would not observe the election process.

80. While candidates' authorised representatives can by law observe all CEC and ConEC sessions, including before election day, other observers need to obtain special authorisation from the CEC to do so.

81. A number of IEOM interlocutors maintained that restrictive legal provisions related to foreign funding limit the possibility of civil society organisations to train and deploy observers. Some NGOs previously active in election-related activities, including in citizen observation, said that their operational capacities had been heavily restricted by obstacles introduced by the government and the election administration. The Election Monitoring and Democracy Studies Center (EMDS) has significant experience in conducting independent and professional observation both in Azerbaijan and abroad but remains unregistered since 2008 and thus without legal status. Its volunteers therefore had to accredit themselves individually. The EMDS indicated that some of its volunteers had experienced difficulties in acquiring accreditations.

3. See footnote 2.

Appendix 1 – Composition of the ad hoc committee

Based on the proposals by the political groups of the Assembly, the ad hoc committee was composed as follows:

Chairperson: Mr Viorel Riceard BADEA, Romania (EPP/CD)

Group of the European People's Party (EPP/CD)

- Mr Viorel Riceard BADEA, Romania
- Mr Şaban DİŞLİ, Turkey
- Ms Nicole DURANTON, France
- Mr Valeriu GHILETCHI, Republic of Moldova
- Ms Marija OBRADOVIĆ, Serbia
- Mr Aleksander POCIEJ, Poland
- Mr Egidijus VAREIKIS, Lithuania

Socialists, Democrats and Greens Group (SOC)

- Ms Thorhildur Sunna ÆVARSDÓTTIR, Iceland
- Mr José CEPEDA, Spain
- Mr Pierre-Alain FRIDEZ, Switzerland
- Mr Antonio GUTIÉRREZ, Spain
- Ms Marianne MIKKO, Estonia
- Mr Luis Alberto ORELLANA, Italy
- Mr Frank SCHWABE, Germany
- Ms Angela SMITH, United Kingdom
- Ms Adriana Diana TUŞA, Romania
- Ms Daniela WAGNER, Germany

European Conservatives Group (EC)

- Lord David BLENCATHRA, United Kingdom
- Mr Józef LEŚNIAK, Poland
- Mr Arkadiusz MULARCZYK, Poland
- Mr Suat ÖNAL, Turkey
- Mr Tom PACKALÉN, Finland
- Mr Dominik TARCZYŃSKI, Poland

Alliance of Liberals and Democrats for Europe (ALDE)

- Mr Alfred HEER, Switzerland
- Mr Dzheyhan IBRYAMOV, Bulgaria
- Mr Claude KERN, France
- Mr Mart van de VEN, Netherlands

Group of the Unified European Left (UEL)

- Ms Feleknaş UCA, Turkey

Free Democrats Group (FDG)

- Ms Adele GAMBARO, Italy

Co-rapporteurs of the Monitoring Committee

- Mr Stefan SCHENNACH, Austria
- Mr Cezar Florin PREDA, Romania

Venice Commission

- Mr Eirik HOLMØYVIK, Substitute member, Norway

Secretariat

- Mr Bogdan TORCĂTORIU, Administrative Officer, Election Observation and Interparliamentary Co-operation Division
- Ms Danièle GASTL, Assistant, Election Observation and Interparliamentary Co-operation Division
- Ms Anne GODFREY, Assistant, Election Observation and Interparliamentary Co-operation Division
- Mr Gaël MARTIN-MICALLEF, Legal advisor, Venice Commission

Appendix 2 – Programme of the International Election Observation Mission (9-12 April 2018)

Monday 9 April 2018

- 11:00 – 11:15 Opening by the Heads of Parliamentary Delegations
- Welcome message:
- Ms Nilza de Sena, Special Co-ordinator to lead the short-term OSCE observer mission
- Opening remarks:
- Mr Egidijus Vareikis, on behalf of Mr Viorel Riceard Badea, Head of the PACE delegation
 - Ms Margareta Kiener Nellen, Head of the OSCE PA Delegation
- 11:15 – 11:45 Background:
- Mr Zoltán Hernyes, Head of the Council of Europe Office in Baku
 - Ambassador Kestutis Jankauskas, Head of the European Union Delegation to Azerbaijan
- 11:45 – 12:30 Central Election Commission of the Republic of Azerbaijan:
- Mr Mazahir M. Panahov, Chair
- 14:00 – 16:00 Briefing by the ODIHR Election Observation Mission – Part I:
- Welcome and Introduction by the ODIHR Election Observation Mission – Ms Corien Jonker, Head of Mission
 - Political Overview, the Candidates and the Election Campaign – Mr Dan Redford, Political Analyst
 - Media – Mr Egor Tilpunov, Media Analyst
 - Legal Framework, Election System, Complaints and Appeals – Ms Renata Tardioli, Legal Analyst
 - Candidate Registration, Election Administration, Voter Registration and Observers – Mr Goran Petrov, Election Analyst
 - Safety and Security Procedures – Mr Valeriu Mija, Security Expert
- Internal meeting of the PACE delegation
- 16:00 – 18:40 Meetings with presidential candidates and/or their representatives:
- Mr Siyavush Novruzov, Deputy Executive Secretary of the New Azerbaijan Party, Ilham Aliyev campaign
 - Mr Elchin Mirzabayli, Whole Azerbaijan Popular Front Party, Gudrat Hasanguliyev campaign
 - Ms Sevda Aliyeva, Azerbaijan Social Democratic Party, Araz Alizadeh campaign
 - Mr Zahid Oruj, independent candidate
 - Mr Razi Nurullayev, Candidate, Frontiers' Initiative Group
 - Mr Hafiz Hajiyev, Candidate, Modern Equality Party
 - Mr Habib Alakbarov, National Revival Movement Party, Faraj Guliyev campaign
 - Mr Taliyat Aliyev, Deputy Chair of the Azerbaijan Democratic Party, Sardar Jalaloglu campaign

Tuesday 10 April 2018

- 09:00 – 10:00 Panel discussion with leaders and representatives of opposition parties:
- Mr Arif Hajili, Chair, Musavat Party
 - Mr Gulagha Aslanov, Head of the Central Executive Office of the Musavat Party
 - Mr Azer Gasimli, Secretary of Political Affairs, Republican Alternative Movement
- 10:00 – 11:00 Meeting with civil society representatives:
- Mr Mammad Mammadzada, Executive Director of Election Monitoring and Democracy Studies Centre

- Mr Mirali Huseynov, Chair, Learning Democracy Public Union
- Mr Hafiz Hasanov, Chair, Law and Development Public Union
- Mr Asabali Mustafayev, Chair, Democracy and Human Rights Resource Centre Public Union

- 11:15 – 12:15 Panel Discussion with representatives of the Media:
- Mr Anar Yusufoglu, Head of Department for Public-Political Programs, Public TV
 - Ms Khadija Ismayil, Investigative journalist
 - Mr Farid Gahramanov, Rapporteur, Turan News Agency
 - Mr Azar Hasrat, Chair, Central Asian and Southern Caucasian Freedom of Expression Network (CASCFEN)
 - Mr Alasgar Mammadli, Media Lawyer
 - Mr Shahin Asadli, Head of Media and Public Relations, Central Election Commission
 - Mr Gabil Orujov, Chair of the Media Group, Central Election Commission
- 12:15 – 13:15 Briefing by the ODIHR Election Observation Mission – Part II
- Election Day Procedures and Observation Forms – Mr Goran Petrov, Election Analyst
 - Short-Term Observation Reporting – Mr Anders Eriksson, Statistics Expert
- 13:15 – 13:45 Deployment
- Meeting with ODIHR Long-Term Observers based in Baku
- Meeting with interpreters and drivers

Wednesday 11 April 2018

- 08:00 – 19:00 Observation of voting (opening of polling stations, voting process, closing of the polling stations)
- 19:00 Observation of the counting and registration of the results

Thursday 12 April 2018

- 08:00 – 09:00 PACE ad hoc committee debriefing
- 14:30 Press conference

Appendix 3 – Press release issued by the International Election Observation Mission

Azerbaijan election lacked genuine competition in an environment of curtailed rights and freedoms, international observers say

Baku, 12 April 2018 – The early presidential election in Azerbaijan took place within a restrictive political environment and under laws that curtail fundamental rights and freedoms, which are prerequisites for genuine democratic elections. Against this backdrop and in the absence of pluralism, including in the media, the election lacked genuine competition. Other candidates refrained from directly challenging or criticising the incumbent, and distinction was not made between his campaign and his official activities, the international observers concluded in a preliminary statement today. At the same time, the authorities were co-operative and international observers were able to operate freely in the pre-election period, and the election administration was well resourced and prepared the election efficiently.

On election day the observers reported widespread disregard for mandatory procedures, a lack of transparency, and numerous serious irregularities, including ballot box stuffing. More than half of the vote counts were assessed negatively, largely due to deliberate falsifications and an obvious disregard for procedures.

“We have noted the positive attitude displayed by the national authorities of Azerbaijan towards international election observation, as well as the professional work of the Central Election Commission in the pre-election period. We stand ready to continue our co-operation and turn it into a joint effort to tackle the fundamental problems that a restrictive political and legal environment, which does not allow for genuine competition, poses for free elections,” said Nilza de Sena, Special Co-ordinator and Leader of the short-term OSCE observation mission. “I encourage the authorities to take good note of the recommendations ODIHR will make in their final report. We will be ready to assist in this process, if requested by Azerbaijan, and to continue our dialogue on the future development of the country’s democracy.”

The election took place in conditions dominated by the ruling New Azerbaijan Party (YAP), which nominated the incumbent president as one of the eight candidates who took part. Some opposition parties boycotted the election, citing a non-competitive environment, while others not participating said the early election date left them with insufficient time to do so meaningfully.

Overall, the campaign generated limited public engagement. The ruling party campaign in favour of the incumbent was well-organised and well-resourced, while the candidate did not campaign himself but made visits across the country and received many high-profile foreign dignitaries in his official capacity. The campaigns of the other seven candidates were limited and appeared hampered by a lack of regional structures and resources.

“We have to consider that, in a political environment where democratic principles are compromised and the rule of law is not observed, fair and free elections are not possible,” said Viorel Riceard Badea, Head of the delegation from the Parliamentary Assembly of the Council of Europe. “On election day we observed several irregularities, but there is no way to know how this affected the outcome of the election.”

Highly restrictive laws related to the media challenge the freedoms of expression and the press, and extend also to website and social media content. Defamation is a criminal offence, punishable by imprisonment and with additional penalties for defamation of the president, further limiting the freedom of expression key to political campaigning, the observers said. The largest part of the political coverage in media outlets monitored was of the incumbent in his official capacity, while all other candidates combined received only a fraction of the time. As required by law, the public broadcaster allocated free airtime to candidates, although only through roundtable discussions on television and radio.

“A few weeks of campaigning during which candidates could present their views on television cannot make up for years during which restrictions on freedom of expression have stifled political debate,” said Margareta Kiener Nellen, Head of the delegation from the OSCE Parliamentary Assembly. “The OSCE Parliamentary Assembly will certainly continue to support all steps by the authorities that will bring the country forward on a path towards creating the open political environment necessary for truly free and fair elections.”

“Fundamental rights and freedoms, which are pre-requisites for genuine democratic elections, are severely restricted in practice,” said Corien Jonker, Head of the Election Observation Mission from the OSCE Office for Democratic Institutions and Human Rights. “The authorities should deliver on Azerbaijan’s commitment as an OSCE participating State to respect, protect and support the democratic rights of its citizens.”

The election administration at all levels appeared highly organised and well-resourced but, due to the lack of political differentiation between the three groups in parliament that nominate commissioners, there is no guarantee the administration is impartial, the observers said. The Central Election Commission held regular public sessions at which no dissenting or argumentative opinions were stated, and the majority of members did not engage in any discussions.

The CEC denied registration to two nominees after ruling a considerable number of the supporting signatures they submitted as duplicate or invalid, leaving them short of the total required. The CEC working group responsible for the verification of signatures was unable to clearly demonstrate the process was technically adequate and accountable. There is no legal provision for nominees to address errors or shortcomings identified by the CEC in relation to the signatures.

The CEC reported registering a total of 58 175 domestic observers, including 4 041 accredited by NGOs, while a number of the international observers' interlocutors maintained that obstacles introduced by the government and the election administration limit the ability of civil society organisations to operate. One such organisation remains unregistered since 2008, and its volunteers had to accredit themselves individually, some of them facing difficulties.

This was the first presidential election since constitutional amendments in 2016 further increasing the powers of the president. A number of constitutionally guaranteed fundamental rights and freedoms related to elections are subject in practice to legal and administrative restrictions. The Election Code is detailed and well-structured. Although a few previous ODIHR recommendations in this area have been taken into account, none of the priority recommendations by ODIHR and Venice Commission were addressed.