



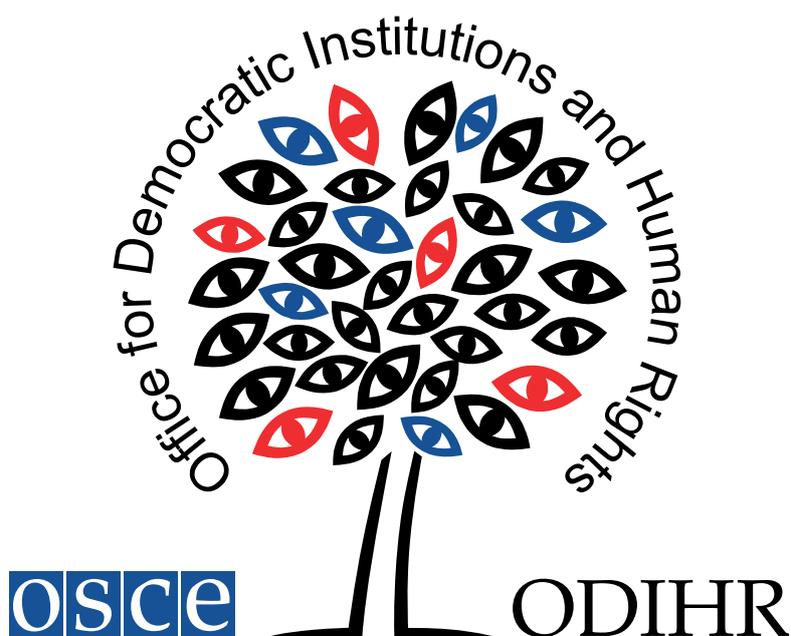
Office for Democratic Institutions and Human Rights

# REPUBLIC OF AZERBAIJAN

## PRESIDENTIAL ELECTION

### 9 October 2013

OSCE/ODIHR Election Observation Mission  
Final Report



Warsaw  
24 December 2013

## TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY</b> .....	<b>1</b>
<b>II.</b>	<b>INTRODUCTION AND ACKNOWLEDGEMENTS</b> .....	<b>3</b>
<b>III.</b>	<b>BACKGROUND</b> .....	<b>4</b>
<b>IV.</b>	<b>ELECTORAL SYSTEM</b> .....	<b>5</b>
<b>V.</b>	<b>LEGAL FRAMEWORK</b> .....	<b>5</b>
<b>VI.</b>	<b>ELECTION ADMINISTRATION</b> .....	<b>6</b>
<b>VII.</b>	<b>VOTER REGISTRATION</b> .....	<b>8</b>
<b>VIII.</b>	<b>CANDIDATE REGISTRATION</b> .....	<b>9</b>
<b>IX.</b>	<b>ELECTION CAMPAIGN</b> .....	<b>10</b>
<b>X.</b>	<b>CAMPAIGN FINANCE</b> .....	<b>12</b>
<b>XI.</b>	<b>MEDIA</b> .....	<b>13</b>
A.	MEDIA ENVIRONMENT .....	13
B.	LEGAL FRAMEWORK .....	14
C.	MEDIA MONITORING .....	15
<b>XII.</b>	<b>COMPLAINTS AND APPEALS</b> .....	<b>16</b>
<b>XIII.</b>	<b>PARTICIPATION OF NATIONAL MINORITIES</b> .....	<b>19</b>
<b>XIV.</b>	<b>CITIZEN AND INTERNATIONAL OBSERVERS</b> .....	<b>19</b>
<b>XV.</b>	<b>ELECTION DAY</b> .....	<b>20</b>
A.	OPENING AND VOTING .....	20
B.	COUNTING .....	22
C.	TABULATION AND ANNOUNCEMENT OF RESULTS .....	22
<b>XVI.</b>	<b>POST-ELECTION DAY DEVELOPMENTS</b> .....	<b>23</b>
A.	POST-ELECTION DAY DEVELOPMENTS .....	23
B.	POST-ELECTION DAY COMPLAINTS AND APPEALS .....	24
<b>XVII.</b>	<b>RECOMMENDATIONS</b> .....	<b>25</b>
A.	PRIORITY RECOMMENDATIONS .....	26
B.	OTHER RECOMMENDATIONS .....	27
	<b>ANNEX: FINAL RESULTS</b> .....	<b>29</b>
	<b>ABOUT THE OSCE/ODIHR</b> .....	<b>30</b>

**REPUBLIC OF AZERBAIJAN  
PRESIDENTIAL ELECTION  
9 OCTOBER 2013**

**OSCE/ODIHR Election Observation Mission Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the Permanent Mission of the Republic of Azerbaijan to the OSCE, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) on 28 August for the 9 October 2013 presidential election. The OSCE/ODIHR EOM assessed the electoral process for compliance with OSCE commitments, other international standards for democratic elections, as well as national legislation. For election day observation, the OSCE/ODIHR EOM joined efforts with an observer delegation from the OSCE Parliamentary Assembly (OSCE PA) to form an International Election Observation Mission (IEOM).

The Statement of Preliminary Findings and Conclusions issued by the IEOM on 10 October 2013 concluded that the election “was undermined by limitations on the freedoms of expression, assembly and association that did not guarantee a level playing field for candidates. Continued allegations of candidate and voter intimidation and a restrictive media environment marred the campaign. Significant problems were observed throughout all stages of election day processes and underscored the serious nature of the shortcomings that need to be addressed in order for Azerbaijan to fully meet its OSCE commitments for genuine and democratic elections.”

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

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

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

Ten candidates were registered for the election. The incumbent stood for a third term, following constitutional amendments that removed the number of consecutive terms a person can serve as

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in Azeri.

president. Candidates could be registered independently, as well as by political parties. Four nominees were not registered by the CEC for failure to collect the requisite number of valid support signatures. The rejected nominees challenged the CEC expert group's criteria for disqualifying signatures, but none of the appeals to court were successful. Candidate eligibility requirements to hold a university degree and ten-year residency in-country are at odds with international standards.

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

Campaign finance regulations are contained in the Election Code. The CEC informed the OSCE/ODIHR EOM that all candidates complied with legal provisions on campaign financing and the reporting deadlines. The lack of information available for public scrutiny and the absence of audits, however, limited transparency and accountability. There are no provisions for public campaign financing.

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

Complaints and appeals can be filed by voters, candidates, political parties and blocs and their representatives, observers, and election commissions. The review of election appeals lacked impartiality and failed to provide appellants sufficient guarantees of effective redress. Court decisions were not fully reasoned and the legal basis for adverse decisions on appellant's motions was not included in court decisions. There was a lack of genuine judicial supervision insofar that procedural deficiencies in the first instance were not addressed by the courts upon appeal.

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

In an inclusive process, the CEC and the constituency election commissions (ConECs) registered some 45,868 party and citizen observers. The citizen observer group Election Monitoring and Democracy Studies Center (EMDSC) was not granted legal status and had to accredit observers individually. EMDSC experienced disruptions of training sessions for observers, and following election day, the General Prosecutor Office conducted a search of their premises and informed the EMDSC Director that he was not permitted to travel abroad due to criminal investigations against his organization.

On election day, IEOM observer reports indicated a high turnout; the CEC announced that it was 71.6 per cent. Opening procedures were assessed negatively in 21 per cent of observations, a significantly high number, which indicates serious problems. Procedural shortcomings were frequently noted, including failure to cancel de-registration voter cards and record the number of received ballots and the serial numbers of ballot box seals. IEOM observers assessed the voting process negatively in 12 per cent of polling stations observed. IEOM observers reported clear indications of ballot box stuffing in 39 polling stations and noted a number of procedural violations, bypassing critical measures to ensure accountability and deter potential fraud. There were no differences in IEOM observers' overall assessment of the processes in polling stations with cameras installed as compared to those without, suggesting that the cameras had only a limited effect.

The counting was assessed in overwhelmingly negative terms, with 58 per cent of observed polling stations assessed as bad or very bad, indicating serious problems. In 14 observed counts, IEOM observers reported manipulation of voter list entries, results or protocols, including cases of votes being reassigned to a different candidate. Indications of a further 23 cases of ballot box stuffing were noted during the count. In 42 counts observed, PECs had difficulties completing the results protocol, which in a number of cases was not completed by pen as required. In 15 counts observed, the official protocol form had been signed by PEC members before the results had been established. IEOM and candidate observers frequently did not receive copies of protocols upon request and in more than half of the observed cases a copy of the results protocol was not put on public display in the polling station as required by law.

Tabulation was observed in 96 of 125 ConECs. In 23 ConECs, the process was assessed negatively. Key procedures on the checking of precinct-level results and their processing were frequently not followed. IEOM observers negatively assessed the transparency of the tabulation and were not granted full co-operation from the ConECs in many cases. Several serious procedural shortcomings were noted, including PECs filling in protocols at the ConEC premises (observed in 18 cases) or correcting protocols without a formal ConEC decision (observed in 11 cases). On a positive note and in what constitutes a significant transparency measure, the CEC began posting preliminary election results by polling stations on its website on election night and updated them thereafter.

There were limited post-election day complaints. The main opposition candidate twice challenged the election results, first in a general complaint regarding alleged violations in 1,085 polling stations across 95 ConECs, and second in an appeal of the results as announced by the CEC. Both challenges were rejected on technical grounds, as the complainant did not submit original affidavits. The final results were announced by the CEC on 17 October and on 19 October confirmed by the Constitutional Court with appeals still pending.

This report offers a number of recommendations to support efforts to bring elections fully in line with OSCE commitments and other international standards for democratic elections. The OSCE/ODIHR stands ready to assist the authorities and civil society of Azerbaijan to further improve the electoral process and to address the recommendations contained in this and previous reports.

## **II. INTRODUCTION AND ACKNOWLEDGEMENTS**

Following an invitation from the Permanent Mission of the Republic of Azerbaijan to the OSCE, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) on 28 August to observe the presidential election. Led by Tana de

Zulueta, the mission comprised a core team of 13 experts based in Baku and 30 long-term observers deployed throughout the country.

For election-day observation, the OSCE/ODIHR joined efforts with an observer delegation from the OSCE Parliamentary Assembly (OSCE PA). Michel Voisin was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term OSCE observer mission. The OSCE PA delegation was headed by Doris Barnett.

On election day, 347 observers from 41 countries were accredited, including 319 long-term and short-term observers deployed by the OSCE/ODIHR, as well as 26 parliamentarians and staff from the OSCE PA. Voting was observed in 1,163 of the 5,454 polling stations across the country.<sup>2</sup> Counting was observed in 105 polling stations. The tabulation process was observed in 96 out of 125 ConECs.

The elections were assessed for their compliance with OSCE commitments and other international standards for democratic elections, as well as national legislation. This final report follows a Statement of Preliminary Findings and Conclusions released at a press conference in Baku on 10 October.<sup>3</sup>

The OSCE/ODIHR EOM wishes to thank the authorities of Azerbaijan for the invitation to observe the election, the Central Election Commission for its co-operation and for providing accreditation documents, and the Ministry of Foreign Affairs and other authorities for their assistance and co-operation. The OSCE/ODIHR EOM also wishes to express appreciation to the OSCE Office in Baku and to the diplomatic representations of OSCE participating States and international organizations for their assistance and co-operation throughout the course of the mission. It also expresses its gratitude to the representatives of political parties, media, civil society, and other interlocutors for sharing their views.

### III. BACKGROUND

Azerbaijan has a strong presidential system with wide powers vested in the Presidency. The President appoints and chairs the Cabinet of Ministers and appoints all executive authorities at central and regional level. The President also proposes the judges of the Constitutional Court, Supreme Court, Economic Court, and other courts, as well as the General Prosecutor to the parliament.

The 9 October presidential election was set by the Central Election Commission (CEC) on 2 August. In the previous presidential election in 2008, boycotted by the main opposition parties, Ilham Aliyev of the New Azerbaijan Party (YAP in its Azeri acronym) was elected for a second term in office with 88.7 per cent of the vote. In the 2010 parliamentary elections, YAP won a majority of the 125 seats in parliament and currently holds 69 seats, while the opposition parties Musavat and the Azerbaijan Popular Front Party (APFP) lost their parliamentary representation. The second largest parliamentary group is composed of 42 independent deputies, who usually vote in support of the ruling party.<sup>4</sup> Ten political parties hold the remaining 12 parliamentary seats and 2 seats are currently vacant.<sup>5</sup>

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<sup>2</sup> The OSCE/ODIHR EOM did not observe election day processes in the 38 out-of-country polling stations.

<sup>3</sup> For all previous OSCE/ODIHR reports on Azerbaijan, see: <http://www.osce.org/odihr/elections/azerbaijan>.

<sup>4</sup> This qualification is based on stenograms of the parliament – almost all decisions and votes in parliament were adopted with only a few votes against. See: <http://meclis.gov.az/?/az/stenogram/>.

<sup>5</sup> The Civil Solidarity Party holds three seats while a further nine political parties holds one seat each: Ana Vatan (Motherland) Party, the Social Welfare Party, the Democratic Reform Party, the Umid (Hope) Party, the United Azerbaijan Popular Front Party (UAPFP), the Civil Unity Party, the Great Creation Party, the Adalat (Justice) Party and the National Revival Movement Party.

The political landscape is dominated by the ruling party with its significant resources, including a large membership base and developed regional infrastructure. The opposition remains fragmented and politically marginalized. In contrast to the previous presidential election in 2008, opposition parties decided to participate in the presidential election this year. On 7 June 2013, opposition forces established the National Council of Democratic Forces (NCDF) with the aim to consolidate the opposition behind a joint presidential candidate. On 24 July, the incumbent President announced that he would stand for a third term.

#### IV. ELECTORAL SYSTEM

The president is elected by popular vote for a five-year term. To be elected in the first round, a candidate must receive more than 50 per cent of the valid votes cast. Otherwise, a second round between the two candidates with the highest number of votes is held on the second Sunday after the first round.

Constitutional amendments in 2009, confirmed by a national referendum, removed the limitation on the two consecutive terms that a person can serve as president. The Council of Europe's Commission for Democracy through Law (Venice Commission) stated that "explicit constitutional limitations on the successive terms of a president are particularly important in countries where democratic structures and their cultural presuppositions have not yet been consolidated. In the opinion of the Venice Commission, the elimination of the present limitation... would therefore constitute a serious set-back on Azerbaijan's road to a consolidated democracy".<sup>6</sup> On 2 October, Jamil Hasanli (NCDF) appealed the registration of the incumbent on the basis that he was elected and sworn into office under the old constitution; the appeal was rejected by the CEC and the CEC decision was upheld by the Supreme Court on 11 October.

#### V. LEGAL FRAMEWORK

The presidential election is primarily regulated by the 1995 Constitution (last amended in 2009) and the 2003 Election Code (last amended in 2013).<sup>7</sup> The Election Code was amended multiple times in the last three years, in June 2010, February 2011, April 2012 and April 2013. The 2010 amendments removed the possibility for candidates to receive public campaign funding and shortened the campaign period to 22 days. Given that political contestants may not campaign outside of this formal campaign period, these amendments further restrict their ability to reach out to voters.

*The definition of campaigning and its interpretation by election authorities should not limit the ability of political actors to pursue political activities outside the official campaign period or restrict media coverage of regular political activities.*

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<sup>6</sup> 2009 Venice Commission opinion on draft amendments to the Constitution of the Republic of Azerbaijan, CDL-AD(2009)010, paragraph 10. Available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)010-e).

<sup>7</sup> Other applicable laws are the 1998 Law on the Freedom of Assembly (last amended in 2012); 2000 Law on Non-Governmental Organizations (last amended in 2013); 2004 Law on the State Registration and State Register of Legal Entities (last amended in 2012); 2004 Law on Radio and Television Broadcasting (last amended in 2012); 2005 Law on Access to Information (last amended in 2012); relevant provisions of the Criminal Code, the Code of Administrative Procedures, and the Civil Procedures Code; and CEC regulations and instructions.

Although elements of the complaints and appeals framework were amended, no other previous OSCE/ODIHR recommendations were addressed in the law, such as to revise the composition of the election commissions and expert groups on complaints, reintroduce the option of a financial deposit in support of candidacy, and review the deadlines for candidate registration.

The election timeline provided for in the Election Code is condensed and, at times, insufficient to ensure adequate preparations and allow for legal remedy when necessary. Administrative obstacles in the approval of nomination documents for certain potential candidates meant that they had less time than others to collect signatures, while candidate registration appeals that were still pending more than half-way into the campaign caused a delay in the ballot printing and would have limited the campaign period for successful appellants. Furthermore, the deadline for finalizing the election results protocol and submitting it to the Constitutional Court does not allow for exhaustion of the time for appeal, and appeals were still pending when the protocol was forwarded to the Constitutional Court.

*The election timeline should be extended to provide greater opportunities for the participation of potential candidates, as well as the effective administration of elections. In particular, deadlines should be adjusted to allow sufficient time for legal remedy when necessary.*

Legal amendments made in 2012 and 2013 to a number of laws increased sanctions for public order offenses, including organizing and participating in unauthorized demonstrations. They also introduced additional burdensome procedures for non-governmental organizations to register and receive funding, and increased penalties for non-compliance with these procedures.<sup>8</sup> These amendments further limited the freedoms of expression and assembly and restricted the functioning of civil society and are contrary to OSCE commitments and international standards.<sup>9</sup>

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

## VI. ELECTION ADMINISTRATION

The presidential election was administered by a three-tier structure consisting of the CEC, 125 Constituency Election Commissions (ConECs) and 5,273 Precinct Election Commissions (PECs), with 18, 9 and 6 members respectively. Of these, 10 ConECs and some 385 PECs were established to facilitate voting of more than 300,000 internally displaced persons (IDPs) from occupied territories. An additional 181 PECs were established in special locations, such as military units, prisons, hospitals, ships-at-sea and off-shore oil drilling platforms, as well as 38 PECs at diplomatic missions and consulates in 31 countries to facilitate out-of-country voting.

All election commissions are permanent bodies appointed for five-year terms.<sup>10</sup> Decisions at all

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<sup>8</sup> Amendments were made to *inter alia* the Law on Freedom of Assembly, the Code of Administrative Offenses, the Law on Nongovernmental Organizations, Public Associations and Foundations, the Law on Grants, the Law on the State Registration and State Register of Legal Entities and the Law on Commercial Secrets. See also, comments from Special Rapporteurs of the UN Human Rights Council on 4 October, available at: [www.un.org/apps/news/story.asp?NewsID=46193&Cr=azerbaijan&Cr1=#.UJkVVCnrG4](http://www.un.org/apps/news/story.asp?NewsID=46193&Cr=azerbaijan&Cr1=#.UJkVVCnrG4).

<sup>9</sup> See paragraphs 9.1 and 9.2 of the 1990 OSCE Copenhagen document, Articles 12, 19, 20 and 21 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and paragraph 19 of the 1996 UN Human Rights Council's General Comment 25.

<sup>10</sup> Election commissions in their current composition were appointed in 2011.

levels require a quorum of no less than two-thirds of appointed members and need to be supported by a qualified majority of two-thirds of members present. CEC members are elected by the parliament, ConECs are appointed by the CEC, and PECs by the respective ConECs. One third of CEC members each are proposed by the parliamentary majority, minority, and by independent deputies. By law, chairpersons of all commissions are nominees of the parliamentary majority while secretaries represent the parliamentary minority and the independent deputies. The parliamentary majority therefore holds a *de facto* decision-making majority in all election commissions.<sup>11</sup> As a result of this, opposition representatives expressed a lack of confidence in the impartiality of the election administration.

*The Election Code should be amended through an inclusive process to revise the composition of election commissions at all levels, with the aim of enhancing impartiality and public confidence in the work of the election administration.*

The election administration in general met legal deadlines and passed the requisite regulations for the efficient conduct of the election. The CEC held regular sessions open to observers, the media and candidate representatives. CEC decisions were largely reached in a collegial manner and decisions were published on its website in a timely manner. Agenda and draft decisions, however, were in most cases not distributed to members of the commission and candidate representatives 24 hours before a commission meeting as required by the Electoral Code.

*The election administration should ensure that all members receive information and material required for their work in a timely manner before a commission meeting, as required by law, allowing them to familiarize themselves with the issues to be discussed and decided.*

ConECs appeared well-equipped and organized. Their sessions were in most instances convened according to operational needs. In some cases, the OSCE/ODIHR EOM encountered difficulties in receiving timely information from ConECs about planned candidate rallies, the schedule of which ConECs are legally obliged to co-ordinate at the local level.

The CEC produced manuals and organized a series of trainings for members of ConECs and some 32,000 PEC members on election day procedures. In line with previous OSCE/ODIHR recommendations, the CEC developed special training materials and trained employees of the Ministry of Justice (responsible for voting in prisons), the Ministry of Foreign Affairs (responsible for out-of-country voting), and the Ministry of Interior (responsible for providing election day security), as well as representatives of the Ombudsperson's office. The CEC also produced voter information posters and television spots. The voter information campaign was generally assessed as adequate by the OSCE/ODIHR EOM.

Web cameras were installed in 1,000 polling stations throughout the country. On 5 June, the CEC issued an instruction regulating the use of web cameras and clarifying that recordings of the voting and counting process may be used as evidence during the investigation of complaints, thereby addressing a prior OSCE/ODIHR recommendation. According to the CEC, the purpose of installing web cameras was to enhance the overall transparency of election day processes and deter potential fraud. On election day, IEOM observers expressed concern that the secrecy of the vote may not be

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<sup>11</sup> Review of the formula for the composition of election commissions is a longstanding recommendation that remains unaddressed. See also the 2004 Joint Opinion of the OSCE/ODIHR and the Venice Commission (no. 286/2004): "The commissions should enjoy the confidence of all major election stakeholders. To achieve this goal they should not be dominated by pro-government forces. The existing provisions are not sufficient to ensure that". See: <http://www.osce.org/odihr/elections/azerbaijan/41715>.

respected in around one third of the observed polling stations where web cameras were installed, due to their placement. While the introduction of web cameras may enhance transparency, there are inherent limitations as to what web cameras can and cannot capture and they can therefore not be regarded as an ultimate safeguard against every possible manipulations.

There is no gender quota for membership of election commissions. Four out of the eighteen CEC members are women. The CEC informed the OSCE/ODIHR EOM that some 15 per cent of ConEC members and some 34 per cent of PEC members were women. On election day, IEOM observers reported 44 per cent women among the present commission members in polling stations observed during voting, and in 31 per cent of the observations the PEC was chaired by a woman.

## VII. VOTER REGISTRATION

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

According to the CEC, most PECs verified voter lists through door-to-door checks. In the absence of regulation, it is unclear on what legal basis the PECs decide on modifications to voter lists during such verification. Eligible voters could be registered on supplementary voter lists on election day at PECs, provided that they could prove current residence within that precinct. Some 69,195 voters were included on the supplementary voter lists on election day, indicating that there is room for improving the accuracy of voter lists. Although inclusive, voter registration on election day may also lower the incentive of authorities and citizens to ensure that all voters are included in the voter lists prior to election day.<sup>12</sup> Although the CEC informed the OSCE/ODIHR EOM that the data of voters who register to vote on supplementary lists on election day is entered into the permanent voter register there is no legal provision in place to ensure this information is systematically gathered and included into the permanent register, as previously recommended by the OSCE/ODIHR.

*The CEC should develop comprehensive instructions regulating all procedural and operational aspects of the process of voter list verification and updating, with clear assignment of responsibilities for every aspect of the process. If election day registration is maintained, data of voters who register to vote on supplementary lists should be systematically gathered and entered into the permanent register.*

In line with the law, an update of the regular voter lists was concluded on 14 September with a total number of 5,016,365 registered voters. This is approximately 30,000 higher than after the annual update in May. Although the CEC published some statistical data regarding the changes in the voter lists, a breakdown of the number of voters removed and included in the voter lists was not provided. Publicizing such information would aid transparency and confidence.

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<sup>12</sup> Section 1.2.iv of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends: "In any event polling stations should not be permitted to register voters on election day itself".

The State Statistical Committee (SSC) informed the OSCE/ODIHR EOM that according to official data as of 1 January 2013, the country's population above the age of 18 years is some 6.8 million. The final voter lists included some 1.6 million people less than the voting-age population as recorded by the SSC.<sup>13</sup> While the authorities noted that the population data also includes citizens of Azerbaijan residing abroad and foreign citizens in Azerbaijan, and that such differences could partly be explained by the different methodologies used for collecting population data and compiling voter lists, the lack of public information to explain this gap impacts negatively upon public confidence in the voter lists.

*The CEC should take measures to improve the transparency of the voter registration process by publishing detailed preliminary and final information on the voter list verification and updating process, including a detailed breakdown of the number of voters added and removed.*

Closer to election day, 129,227 additional voters were registered to vote at special polling stations established in military units, prisons, hospitals, and on ships-at-sea and off-shore drilling platforms, as well as in diplomatic representations of Azerbaijan abroad. In total, 5,214,787 voters were registered to vote on regular and supplementary voter lists.

By law, voters could apply for a de-registration voting card (DVC), allowing them to vote in polling stations outside their registered PEC. The CEC printed some 450,000 DVCs. According to the CEC, some 30,000 DVCs were issued to voters by ConECs and PECs within the legal deadline and about 20,000 DVCs were used to vote on election day. PECs were obliged to cancel the unused DVCs by cutting them in half in the presence of observers on election day prior to the opening of polls. In 30 per cent of observed polling stations, PECs did not perform this procedure, thereby bypassing a critical measure to ensure accountability and deter potential fraud. The discrepancy between the number of printed and issued DVCs also appeared excessive.

## VIII. CANDIDATE REGISTRATION

The official candidate registration period was from 2 August until 16 September. Under the Constitution, the right to stand for president is granted to any voter who is at least 35 years of age, without dual citizenship or obligations before other states, without a previous conviction for a serious crime, who has permanently resided in Azerbaijan for at least ten years, and has a university degree. Some of these requirements, especially the educational and residential requirements, can be considered as unreasonable restrictions and contrary to international standards.<sup>14</sup>

*It is recommended to lift the educational and residential requirements for candidacy as these can be considered unreasonable restrictions that are at odds with international standards.*

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

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<sup>13</sup> At the same time, according to the General Directorate of Passport, Registration and Migration, the official number of identification documents issued by them to citizens of Azerbaijan above the age 16 is some 6.3 million.

<sup>14</sup> Paragraph 15 of the 1996 UN Human Rights Committee General Comment 25 states that "any restrictions on the right to stand for election [...] must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". See also, section 1.1(c) of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

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

The verification of registration documents was carried out by a CEC working group of experts, comprising authorized graphologists among others. Candidates and their authorized representatives had the right to be present at working group sessions. However, contrary to Article 59.3 of the Election Code, several nominees claimed that they were not informed about the time of the verification of their documents. As required by law, the working group for each candidate issued an opinion on the outcome of the verification of the submitted support signatures and financial documentation, which formed the basis for the CEC decision.

Fourteen prospective candidates submitted the required documents, out of which four were rejected after their signature verification process, since the number of valid support signatures fell below the requisite amount.<sup>15</sup> While detailed procedures for signature verification are included in CEC instructions, the disqualification of seemingly identical signatures based on the practice of “assumption” could potentially lead to arbitrary decisions.<sup>16</sup> The rejected nominees challenged the CEC decision in court but were not successful (*see Complaints and Appeals*).

*The implementation of existing legal provisions on candidate nomination and registration should be improved by increasing the transparency of verification rules and procedures, by inviting prospective candidates and their authorized representatives to be present during the verification process, by offering timely information to candidates about the results of the verification and about possible deficiencies in their documentation, and by providing a genuine opportunity to correct them. Decisions to reject candidacies should be well-grounded and reasoned. Minor technical mistakes or inaccuracies should not be grounds to restrict the fundamental right of citizens to stand for office.*

The election was finally contested by ten candidates, of which eight were nominated by political parties, one by an initiative group of voters and one was self-nominated. There were no women candidates. The final list of candidates was published on 19 September in the *Azerbaijan* newspaper.<sup>17</sup>

## IX. ELECTION CAMPAIGN

The official campaign period began on 16 September and ended at 08:00 on 8 October. Some candidates raised concerns to the OSCE/ODIHR EOM regarding the shortening of the official campaign period from 28 to 22 days, which limited their access to media and gave the incumbent

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<sup>15</sup> Fuad Aliyev (self-nominated) on 6 September; Ahmad Orujov (Freedom Party) and Ali Aliyev (Citizen and Development Party) on 8 September; and Ilgar Mammadov (self-nominated) on 9 September.

<sup>16</sup> According to the law, the CEC is not required to verify with any of the voters if they actually signed the list, but rather compare voters' signatures against one another.

<sup>17</sup> Igbal Agha-zade (Umid Party); Ilham Aliyev (YAP); Araz Alizade (Azerbaijan Social Democratic Party); Hafiz Hajiyev (Modern Musavat Party); Gudrat Hasanguliyev (UAPFP); Hasanli Jamil (NCDF); Ilyas Ismayilov (Adalat Party); Faraj Guliyev (National Revival Movement Party); Sardar Jalal Oglu Mammadov Sardar (Azerbaijan Democratic Party); and Zahid Oruj (self-nominated).

President a disproportional advantage.<sup>18</sup> Although campaign activities intensified slightly towards election day, overall the campaign was subdued and appeared to generate limited public interest.

The CEC published a list of 152 indoor and outdoor venues designated for campaign activities free of charge. Generally, candidate requests to organize meetings at these locations were accommodated; candidates standing against the incumbent President were able to hold five rallies in Baku. Several candidates informed the OSCE/ODIHR EOM that they considered some of the campaign venues to be unsatisfactory for holding public events. As well, the authorities interpreted this list of pre-approved venues as exhaustive, thereby limiting citizens' freedom of assembly. Given that political contestants have limited opportunity to campaign outside of the formal 22-day campaign period, this interpretation further restricted their ability to reach out to voters.<sup>19</sup> Furthermore, contradictions in legal requirements caused confusion among contestants as to the applicable procedures.<sup>20</sup>

*In order to further an open campaign environment and in line with previous OSCE/ODIHR recommendations, the restrictive approach of the executive authorities regarding the allocation of official venues for the conduct of the campaign should be reviewed. Contradictions between the Election Code and the Law on Freedom of Assembly on the notification or application for holding a public gathering should be eliminated and candidates should only be required to notify executive authorities of their intent to hold a gathering.*

In total, the OSCE/ODIHR EOM observed 52 campaign events across the country in favour of six of the ten registered candidates.<sup>21</sup> The OSCE/ODIHR EOM observed one campaign event on behalf of the incumbent President that was held in Imishly at a location outside the officially allocated venues. Most candidates displayed their posters on the officially designated notice boards outside polling stations. Four people were detained for intentional destruction of campaign materials, convicted for disobeying police orders and sentenced to between 25 and 35 days for these offences.<sup>22</sup>

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

Overall, the campaign lacked substantive debate and focused on personality rather than concrete political platforms. Nevertheless, the campaign of YAP on behalf of the incumbent President emphasized regional stability, economic progress and other achievements during his presidency. The

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<sup>18</sup> The official campaign period was shortened in June 2010, applying to a presidential election for the first time in 2013.

<sup>19</sup> Jamil Hasanli (NCDF) submitted a complaint to the Baku Court of Appeals arguing that the CEC had no authority to publish a list of campaign venues, that the publication has been wrongfully interpreted as an indication that the list is exhaustive and that the venues on the list are unsuitable for holding campaign events. The Baku Court of Appeals rejected the complaint on 2 October and the decision was upheld by the Supreme Court on appeal on 25 October.

<sup>20</sup> While the Article 5 of the Law on Freedom of Assembly states that the organizer of a public gathering must notify the relevant authorities, Article 86.2 of the Election Code requires an application for holding meetings with voters.

<sup>21</sup> The OSCE/ODIHR EOM observed 33 rallies by the YAP, 9 by the NCDF, 4 by the Umid Party, 3 by the Adalat Party, 2 by the UAPFP and 1 by the Modern Musavat Party.

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

campaign of other candidates to some extent addressed socio-economic issues and corruption, with some candidates appealing for the restoration of civil and political rights and the abolition of the presidential system of governance.

Credible reports of candidate and voter intimidation arose throughout the campaign, including incidents affecting the families of political figures.<sup>23</sup> The OSCE/ODIHR EOM observed instances of apparent coercion to attend YAP rallies and attempts to disrupt NCDF rallies.<sup>24</sup> On 12 September, seven youth political activists who had been in detention since March, were indicted on new charges of organizing mass disorder accompanied with violence, which carries sentences of up to 12 years imprisonment.

In addition, during the OSCE/ODIHR EOM period of observation, the Prosecutor General's office summoned four supporters of the NCDF for questioning, issued a public warning to participants of the NCDF rally on 22 September to abide by the law, and made a statement to the media about their ongoing investigation of activities of NCDF members. Some contestants experienced difficulties in renting private premises for their activities due to alleged pressure by the local authorities.<sup>25</sup> The campaign of a candidate alleged obstruction of their campaign activities by the police.<sup>26</sup> Collectively, this raised concerns about candidates' ability to campaign in a fair atmosphere, as well as voters' ability to cast their vote "free of fear of retribution," as required by paragraph 7.7 of the 1990 OSCE Copenhagen Document.<sup>27</sup>

*Authorities should undertake further measures to ensure that election campaigning be conducted in an atmosphere free from intimidation and fear of retribution. Authorities and political parties should refrain from coercing public-sector employees, campaign activists and others to attend campaign events of incumbents, as well as disrupting campaign events of the opposition.*

## X. CAMPAIGN FINANCE

As part of the registration process candidates are required to open a dedicated bank account for campaign financing, disclose information on their personal finances and assets, and submit an initial report on campaign contributions to date and expenses incurred in the signature collection process. Candidates are required to submit two additional reports on campaign finances: an interim report between 20 and 10 days before election day and a final report no later than 10 days following the

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

<sup>24</sup> The OSCE/ODIHR EOM observed participants being prevented from leaving YAP rallies before the end in Qakh on 20 September, Shamakhi on 23 September, Mingachevir on 25 September, Balaken on 30 September, Qusar on 3 October, and at a United Azerbaijan People's Front Party rally in Baku on 27 September. The OSCE/ODIHR EOM also observed citizens being discouraged from attending rallies of the NCDF in Mingachevir on 29 September, Shaki on 2 October, Agdash on 3 October, and Sabirabad on 4 October.

<sup>25</sup> The Musavat Party and the Azerbaijan Popular Front Party (APFP) in Mingachevir; the Musavat Party, the APFP and the Umid Party in the Nakhchivan Autonomous Republic.

<sup>26</sup> The Umid Party alleged that the police prevented transportation of their supporters to a rally in Aghstafa on 22 September.

<sup>27</sup> Paragraph 7.7 of the 1990 OSCE Copenhagen Document states that "participating States must ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere... or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution".

publication of final results. According to the CEC, all candidates complied with the reporting requirements.

Reports submitted by contestants on their campaign contributions and expenditures are not made available to the public. The Election Code obliges the CEC to publish only select information from the candidate reports for large contributions and expenditures and does not require the CEC to publish information on the individual finances and assets of the candidates.<sup>28</sup> The CEC is legally obliged to publish select details from financial reports once the candidate spends over AZN 10,000.<sup>29</sup> The CEC is also obliged to periodically publish the names of legal entities that contributed over AZN 5,000 and the number of individuals that contributed over AZN 250. No information was published by the CEC in this respect during this election.

The maximum amount a candidate may spend for campaign purposes is AZN 10 million with contribution limits set at: AZN 3,000 from individuals, AZN 50,000 from legal entities, and AZN 250,000 from the nominating party or group of voters. All contributions must be made through transfer to the candidate's campaign bank account and individuals must provide their personal details when making contributions. Multiple OSCE/ODIHR EOM interlocutors raised concerns with the latter procedure, stating that it deterred individuals from contributing to the candidate of their choice due to fear of repercussions from the authorities. Additionally, as candidates can only solicit contributions once they have opened this dedicated bank account, it significantly restricts their ability to raise campaign funds. Several candidates also called for the reintroduction of public campaign funding to contribute to a more level playing field among candidates.

Candidate campaign finances are not subject to an audit at any stage of the election process. The lack of information available for public scrutiny and the absence of audits limited the transparency and accountability of campaign finance.<sup>30</sup>

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

## **XI. MEDIA**

### **A. MEDIA ENVIRONMENT**

Detentions, criminal prosecutions, testimony of physical attacks and other forms of pressure on journalists negatively impacted the media environment, including coverage of the campaign.<sup>31</sup> On 17 September, the journalist Parviz Hashimli was detained on the grounds of illegal possession of

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<sup>28</sup> Mr. Hasanli (NCDF) wrote to the CEC to request information on all candidate's finances and personal assets. The CEC responded that the law did not require them to disclose this information. His subsequent complaint on this matter was rejected by the Baku Court of Appeals on 8 October; the decision was upheld by the Supreme Court on 12 October.

<sup>29</sup> The current exchange rate for EUR 1 is AZN (Azerbaijan New Manat) 1.07.

<sup>30</sup> See Article 7.3 of the 2003 UN Convention against Corruption and paragraphs 198-200 of the 2010 Venice Commission and OSCE/ODIHR Guidelines on Political Party Regulation.

<sup>31</sup> The OSCE/ODIHR EOM observed cases where journalists were obstructed or physically attacked during their attempt to cover rallies, including at NCDF rallies on 28 September and 4 October and at the NCDF post-election day rally on 12 October.

weapons. On 27 September, the OSCE Representative on Freedom of the Media called “on Azerbaijani authorities to stop imprisonment of journalists”.<sup>32</sup>

While television is the primary source of political information, several OSCE/ODIHR EOM interlocutors stated that there is direct government influence on all broadcasters with direct interference into the editorial policy, which leads to a virtual absence of political pluralism in the broadcast media.

## B. LEGAL FRAMEWORK

Freedom of expression, media freedom and the right of access to information are guaranteed in the Constitution. However, defamation remains a criminal offense, with a penalty of up to three years in prison, and Article 106 of the Constitution and Article 323 of the Criminal Code prohibit insulting the honour and dignity of the President, presenting excessive limitations on freedom of expression that is contrary to international standards.<sup>33</sup> Interlocutors reported that civil defamation claims with disproportionate financial sanctions *de facto* lead to the closure of media outlets.<sup>34</sup> While the internet is mostly considered to be free from systematic blocking of websites and direct censorship, online activists are increasingly exposed to detention and intimidation.<sup>35</sup> Furthermore, the Criminal Code was amended on 4 June 2013 to explicitly extend the application of defamation provisions to internet content.<sup>36</sup> Furthermore, recent amendments to the legal framework unduly restrict constitutional guarantees on access to information.<sup>37</sup>

*Consideration should be given to repealing criminal defamation provisions in favour of civil sanctions designed to restore the reputation harmed, rather than compensate the plaintiff or punish the defendant; sanctions should be strictly proportionate to the actual harm caused and the law should prioritize the use of non-pecuniary remedies.*

The Election Code addresses candidates’ rights on direct access to the media by providing for free and paid airtime.<sup>38</sup> However, it does not recognize editorial coverage, which many OSCE/ODIHR EOM interlocutors stated has been interpreted in a way that limits the media’s right to freely report on the campaign in news and current affairs programs. Furthermore, the Election Code defines mass media as a mean to conduct election campaign, thereby *de facto* equating coverage of the campaign with campaigning in favour of a candidate. This is at odds with Council of Europe recommendations,

<sup>32</sup> Available at: <http://www.osce.org/fom/105950>.

<sup>33</sup> See Article 19 of the 1966 International Covenant on Civil and Political Rights and paragraph 13 and 47 of the 2011 UN Human Rights Committee General Comment 34. See also *Mahmudov and Agazade v. Azerbaijan*, Application No 35877/04, Judgment by the European Court of Human Rights (ECtHR) of 18 December 2008, *Lingens v. Austria*, Application No. 9815/82, Judgment by the ECtHR of 8 July 1986, and other cases.

<sup>34</sup> *Azadliq* newspaper informed the OSCE/ODIHR EOM that damages totaling AZN 62,000 in civil defamation cases were awarded against the newspaper. If the newspaper follows a court order received on 15 October to pay AZN 32,000 as part of the total, this would result in the closure of the newspaper.

<sup>35</sup> On 2 October journalist Mehman Huseynov was temporally detained and questioned by the Prosecutor’s office on grounds of “information of criminal nature disseminated on social networks”.

<sup>36</sup> Amendments were made despite the fact that in September 2012 the Presidential Administration requested the assistance of the Venice Commission in drafting a Law on Defamation, as part of a “National Programme for Action to Raise Effectiveness of Protection of Human Rights and Freedoms. See “*Opinion on the Legislation Pertaining to the Protection against Defamation of the Republic of Azerbaijan*”, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)024-e).

<sup>37</sup> Amendments to the laws “*On the Right to Obtain Information*”, “*On State Registration and State Registry of Legal Entities*” and “*On Commercial Secrets*” were adopted by parliament on 12 June 2012.

<sup>38</sup> The Election Code stipulates that free airtime should be allocated equally among all candidates, while the terms of paid airtime should be equal for all candidates. Television and radio stations should, within at least 30 days of the announcement of election day, provide information on the price and conditions for paid airtime.

which stipulate that public service media and private broadcasters, particularly during an election period, should provide fair, balanced and impartial coverage of the election campaign in their news and current affairs programs, including in discussion programs, interviews and debates.<sup>39</sup>

*The Election Code should address the right of voters to receive comprehensive and diverse information about political alternatives through the media. Public service media and private broadcasters should be legally obliged to provide fair, balanced and impartial coverage of the election campaign in their news and current affairs programs. Such provisions should be overseen by an independent body competent to conduct media monitoring.*

### C. MEDIA MONITORING<sup>40</sup>



The CEC allocated free airtime for candidates in the form of roundtables on the public broadcaster, *İctimai Televiziya və Radio Yayımları Şirkəti* (ITV).<sup>41</sup> In total, each candidate was allocated 36 minutes of free airtime per week during the roundtables; 18 minutes on television and 18 minutes on radio. Two presidential candidates objected to the roundtable format decided by the CEC, stating that it was an ineffective method to convey their message, and that they should have discretion in how they use their free airtime.<sup>42</sup> Following the 19 September roundtable, when a heated discussion ensued in respect of alleged foreign assets of the incumbent President and members of his family, Mr. Hasanli (NCDF) was issued a ‘serious’ warning for violating Article 106 of the Constitution on the stated grounds that he insulted the honour and dignity of the President and his family, and Mr. Hajiyev (Modern Musavat Party) was issued a ‘regular’ warning for use of insulting language under Article 88.1 of the Election Code (see *Complaints and Appeals*).

While paid political advertising is permitted, only the public broadcaster ITV offered the possibility. ITV informed the OSCE/ODIHR EOM that it received only one request from Mr. Hasanli, which was rejected as it was received after the legal deadline for allocation of paid airtime. A complaint by Mr. Hasanli against ITV for refusing to broadcast his political advertising was rejected by the CEC and the decision was upheld upon appeal.

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

<sup>39</sup> See Recommendation CM/REC(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns, available at:

<https://wcd.coe.int/ViewDoc.jsp?id=1207243&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFB55&BackColorLogged=FFAC75#>

<sup>40</sup> The OSCE/ODIHR EOM monitored the prime time (18:00 to 24:00) coverage of six television channels: the state-owned AzTV, the public broadcaster ITV, and the private ATV, ANS, *Lider*, and *Xazar*; and five newspapers: *Azadliq*, *Azerbaycan*, *Yeni Müsavat*, *Yeni Azərbaycan* and *Zerkalo*.

<sup>41</sup> One-hour roundtables were broadcasted on radio (at 21:00) and on television (at 19:00), three times a week, allocating each candidate six minutes to speak.

<sup>42</sup> Iqbal Agha-zade (Umid Party) and Mr. Hasanli (NCDF). Mr. Hasanli’s written request to use his six minutes at his own discretion and to be broadcast “within the time most viewers can watch it”, as required by law, was rejected by the CEC. ITV informed the OSCE/ODIHR EOM that the audience share for the roundtables broadcast on 17 and 19 September was 2.8 and 3.6 per cent respectively.

of campaign materials by foreign legal entities.<sup>43</sup> This interpretation, which equates reporting on candidates with campaigning in their favour, appeared to have limited the editorial coverage of the campaign in the media.

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

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

Overall, the OSCE/ODIHR EOM media monitoring results show that candidates were provided with insufficient access to the media, and that a balanced and open exchange of views on political alternatives was lacking. The restrictive legal framework and disproportionate coverage of the incumbent President's institutional appearances during the campaign period contributed to the lack of a level playing field among candidates. This is at odds with paragraph 7.8 of the 1990 OSCE Copenhagen Document and limited the possibility for voters to make an informed choice.<sup>44</sup>

## **XII. COMPLAINTS AND APPEALS**

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

Voters, candidates and submitters of candidate nominations have the right to file complaints to higher-level election commissions, on any decision, action or inaction that violates electoral rights. Decisions of the CEC can be challenged to the Baku Court of Appeals, with the Supreme Court as the court of last instance. In line with previous OSCE/ODIHR recommendations, the time allotted for adjudicating complaints and appeals has been reduced to two days for complaints filed within 30 days before election day. Complaints and appeals submitted on election day must be adjudicated immediately.

The CEC established a nine-person expert group to investigate complaints and advise the commission on the adjudication of individual cases. In this election as in the past, the CEC has decided to appoint

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<sup>43</sup> In their deliberations, the CEC media working group pointed to a live broadcast on *Azadliq* from the NCDF rally on 22 September. *Azadliq* informed the OSCE/ODIHR EOM that they consider the quoted legal provision as restricting media freedom, since balanced reporting on the campaign should not be considered campaigning.

<sup>44</sup> Paragraph 7.8 of the 1990 OSCE Copenhagen Document requires participating States to "provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process".

CEC members and staff to its expert group as opposed to identifying external experts as provided by law. Complaints are assigned to one expert from the expert group who reviews the matter and hears the complainant's case and then advises the commission on the recommended action.

In the pre-election period, the CEC received a total of 15 complaints on violations of campaign regulations and obstructions to campaigning. The CEC informed the OSCE/ODIHR EOM that complainants were contacted and asked if they wanted to present additional evidence, however, complainants were not always given the full opportunity to be present while experts reviewed evidence or to explain their case. Initially, in cases where accusations were made against another candidate, the CEC did not notify the subjects of the complaints of the existence of the complaint against them or ask for their positions on the matter.<sup>45</sup> In response to the four complaints received following a candidate roundtable on ITV, the CEC decided to issue a 'serious' warning to Mr. Hasanli and a 'regular' warning to Mr. Hajiyev (Modern Musavat Party), thus creating a distinction that does not exist in law.

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

Following judicial reforms in 2011 that included the adoption of the Code of Administrative Procedures, election complaints and appeals are heard by the newly established Administrative and Economic Chambers in appellate courts (Baku) and the Supreme Court. This reform rectified the previously confusing role of district and appellate court civil chambers, which no longer have jurisdiction in election matters, thereby addressing a prior OSCE/ODIHR recommendation.

Since the CEC set the date for the election, the Baku Court of Appeals received 19 appeals, primarily related to candidate registration, candidate roundtables, and exit-poll accreditation. Fourteen decisions were subsequently appealed to the Supreme Court. Almost all complaints and appeals were heard in an expeditious manner within the two-day deadline for review.<sup>46</sup> The OSCE/ODIHR EOM monitored all election hearings during the observation period, and noted that the courts repeatedly denied appellants motions to provide additional evidence without justification, limited appellants' lines of questioning, strongly challenged appellants' arguments while minimally questioning the CEC's arguments, and did not address all the appellants' arguments in their decisions. Further, while hearing appeals, the courts did not address incidents where the CEC did not follow procedures prescribed by the Election Code, in particular to give complainants the opportunity to participate in expert reviews and to notify nominees of the signature verification process.

In appeals challenging the CEC decisions on candidate registration, appellants made two primary arguments: that candidates or their authorized representatives were not informed by the CEC when the review of their signatures was scheduled, as required by law; and that the "assumption" of

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<sup>45</sup> While Article 112-1.7-9 of the Election Code guarantees the right of a complainant to be present and provide evidence, it does not require the CEC to notify the subjects of a complaint that a complaint has been submitted against them or give them the opportunity to present their opinion to the expert assigned to the case. In complaints reviewed following the publication of the OSCE/ODIHR EOM second interim report, the CEC notified subjects of a complaint against them and gave them an opportunity to respond. Furthermore, observation of the expert review of complaints was not facilitated by the CEC despite multiple requests from the OSCE/ODIHR EOM.

<sup>46</sup> One notable exception was the challenge brought by Mr. Hasanli to the list of allocated venues and the publication of the list by the CEC that was heard in the Baku Court of Appeals within the deadlines for election cases, but was only heard by the Supreme Court on 25 October although received on 11 October.

handwriting experts from the CEC working group that signatures were false is not sufficient to deny registration.

Article 59.3 of the Election Code provides that candidates or their authorized representatives may be present for the verification of signatures and that the election commission “should inform...about examination of documents in advance.” The CEC argued that upon submission of registration documents, authorized representatives were told that the signatures will be verified within seven days and that they may attend. In the consideration of appellants’ arguments, the Baku Court of Appeals questioned the appellants whether they had indicated to the CEC that they wanted to be present for signature verification or not, although there is no legal requirement for candidates to do so. The court found that the lack of notification was not sufficient to annul the CEC decision or require that the signature verification process be repeated.

Appellants also challenged the invalidation of signatures on the grounds that they “appeared” to have been falsified, that is, “executed by one person in the name of other persons.” In their appeals, they argued that the conjecture and speculation of the CEC working group is not sufficient basis for denying registration, an argument made in multiple cases following the 2010 parliamentary elections pending with the European Court of Human Rights (ECtHR).<sup>47</sup> The Baku Court of Appeals did not address the lawfulness of using the assumption of the working group as the basis for the CEC decisions based on working group assumptions; rather, they upheld the CEC decisions because they found that the candidate lacked sufficient signatures to be registered.<sup>48</sup>

The timeline for candidate registration was insufficient to guarantee the rights of potential candidates. In their appeals, nominees who were not registered stated that they did not have sufficient time to collect signatures and that the signature verification process was too short to provide for a thorough verification. The deadline for signature verification coincided with the start of the campaign. As such, a rejected nominee, even if successful on appeal, would not have been able to campaign for the whole campaign period. Candidate registration appeals were still pending in the Supreme Court 11 days into the 22-day campaign period.

In the hearings of the three people convicted of disobeying police orders, the Baku Court of Appeals rejected without justification the appellants’ motion that video surveillance footage be reviewed. The court also rejected without justification appellants’ motions to review footage from the candidate roundtable during Mr. Hasanli’s appeal.

*All arguments of appellants should be addressed by the courts in hearings and written decisions. In accordance with the law, decisions should include the argumentation of the court, to fully explain the legal basis for the decision. Rejections of appellants’ motions to review additional evidence should be clearly grounded in the law and procedural omissions made by the CEC should be addressed upon appeal.*

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<sup>47</sup> See, *inter alia*, *Annagi Hajibeyli v. Azerbaijan* (ECtHR, 2011) and *Behbudov v. Azerbaijan* (ECtHR, 2011), in both cases the court is in communication with the parties and has asked the government of Azerbaijan to elaborate on the signature verification procedures including the safeguards to prevent arbitrary decisions.

<sup>48</sup> In four cases, the Baku Court of Appeals ordered a handwriting expert to review the signatures for the court.

### XIII. PARTICIPATION OF NATIONAL MINORITIES

National minorities represent some nine per cent of the population according to the 2009 census.<sup>49</sup> The Constitution provides for linguistic, cultural, educational and other rights of minorities residing in the country. The authorities support cultural activities of national minorities and provide the general school curriculum in three languages (Azeri, Russian and Georgian) as well as the teaching at primary school level of several minority languages.

While national minorities are well represented in the public and political life, including in parliament, the Council for National Minorities, created in 1993, does not meet anymore. The latest monitoring report by the European Commission against Racism and Intolerance (ECRI) of the Council of Europe noted that “the legal framework with respect to national/ethnic minorities remains weak. National/ethnic minorities also report facing practical difficulties in their access to the teaching of minority languages.”<sup>50</sup>

There is no legal requirement for producing ballots or other election material in minority languages.<sup>51</sup> In areas with national minority communities, the OSCE/ODIHR EOM generally noted the presence of minority representatives on local councils and election commissions. National minority issues did not feature prominently in the campaign.

### XIV. CITIZEN AND INTERNATIONAL OBSERVERS

The Election Code provides for citizen and international observation. Citizen observers could register as individuals or as representatives of candidates, political parties, or non-governmental organizations. In an inclusive process, the CEC and ConECs registered 51,898 observers.<sup>52</sup>

Two major election observation groups, the Association for Civil Society Development of Azerbaijan (ACSDA) and the Election Monitoring and Democracy Studies Center (EMDSC) conducted long and short term observation and made public their interim and election day findings. EMDSC remained without official legal status and therefore accredited its observers individually.<sup>53</sup> EMDSC informed the OSCE/ODIHR EOM that some observer training sessions in private homes were interrupted by the police or local executive authorities. This limited their right to free association.<sup>54</sup>

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<sup>49</sup> National minorities include Lezgins, Russians, Talysh, Tats, Avars, Ukrainians and Georgians.

<sup>50</sup> See the 2011 ECRI report on Azerbaijan (fourth monitoring cycle). Available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/azerbaijan/AZE-CbC-IV-2011-019-ENG.pdf>.

<sup>51</sup> Paragraph 12 of the 1996 UN Human Rights Committee General Comment 25 states that “...Information and materials about voting should be available in minority languages...”. The 1990 OSCE Copenhagen Document, in particular paragraph 32.5 which addresses the right of national minorities “...to disseminate, have access to and exchange information in their mother tongue”.

<sup>52</sup> Some 6,030 citizen observers were registered by the CEC and 45,868 by ConECs. From the total number of observers some 26,335 were registered individually or as candidates’ observers, 5,033 as observers representing non-governmental organizations, and 20,530 representing political parties and movements. The CEC registered some 1,295 international observers.

<sup>53</sup> EMDSC has brought two cases against Azerbaijan to the ECtHR, first, challenging the 2008 de-registration of the organization and, second, the refusal of the Ministry of Justice to take action on the new registration application of EMDSC; both cases are still pending. See also paragraph 8 of the 1990 OSCE Copenhagen Document, which stipulates that “the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place.”

<sup>54</sup> This is at odds with paragraph 10.3 of the 1990 OSCE Copenhagen Document and Article 22 of the ICCPR.

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

The CEC registered four organizations to conduct separate exit polls on election day. One organization, Legal Education of Sumgayit Youth, was denied registration on the basis of not meeting the relevant experience requirement. Although the CEC did not provide explanation of what qualifies as sufficient experience, the organization's appeal was rejected by the Baku Court of Appeals and the Supreme Court. Another organization, the Law and Development Public Association, appealed the decision of the CEC to pass an instruction containing the experience requirement, arguing that it constitutes a limitation that should be regulated in the Election Code and that it is not within the CEC's rule-making authority to introduce such a requirement. The appeal was rejected by the Baku Court of Appeals and the Supreme Court.

## **XV. ELECTION DAY**

Election day was generally calm and peaceful. IEOM observer reports indicated a high voter turnout; according to CEC data, the preliminary turnout was 72.3 per cent, later corrected to 71.6. The CEC posted preliminary results on its website shortly after 22:00 on 9 October and continued updating them throughout election night and the following days. Together with the distribution of results protocols at polling station level, the timely publication of detailed preliminary results is a significant transparency measure.

### **A. OPENING AND VOTING**

Opening procedures were assessed negatively in 21 per cent of polling stations visited, a significantly high number indicating serious problems. Procedural shortcomings were frequently noted, including failure to count, announce and enter into the protocol the number of received ballots (39 per cent of observations) and to announce and record the serial number of ballot box seals (19 per cent). Contrary to requirements, PECs did not destroy the unused de-registration voter cards (totaling some 420,000 across the country) in 30 per cent of observed polling stations, bypassing a critical measure to ensure accountability and deter potential fraud. In ten cases, IEOM observers reported that not all stages of the opening procedures were clearly visible to all persons present and, in four cases, observers reported that they were restricted in their observations. With a few exceptions, polling stations opened on time; where there were delays, they did not exceed 15 minutes.

IEOM observers assessed the voting process negatively in 12 per cent of observations, which is significant. While PECs' and voters' understanding of procedures was assessed positively, IEOM observers noted a number of procedural violations during polling, including series of seemingly identical signatures on the voter list in 50 polling stations and clear indications of ballot box stuffing in 39 polling stations. Other violations included ballot boxes that were not sealed properly (4 per cent of observation) and multiple voting (1 per cent). In 19 polling stations observed, voters were allowed to vote although they were not able to produce any of the prescribed identity documents. In 99 of the 540 polling stations where DVCs were used while international observers were present, DVCs were not always retained by the PEC.

IEOM observers reported from eight polling stations that voters who had already been inked were allowed to vote. The most widespread procedural violation observed concerned a lack of safeguards

against multiple voting: in 19 per cent of polling stations observed, voters were not always checked for traces of invisible ink, and in 10 per cent, ink was not always applied.

In 9 per cent of polling stations observed, not all voters marked their ballot in secrecy. IEOM observers noted group voting in 7 per cent of polling stations observed. In 16 polling stations they observed the same person “assisting” numerous voters, potentially undermining the secrecy of the vote.<sup>55</sup> In 8 per cent of those polling stations visited that had cameras connected to the internet installed, IEOM observers assessed that their placement did not completely safeguard the secrecy of the vote. There were no differences in IEOM observers’ overall assessment of the processes in polling stations with cameras installed as compared to those without, suggesting that the cameras had only a limited effect.

There were no differences between urban and rural areas in the overall assessment; however, there were some regional variations: IEOM observers based in Lankaran and the Nakhchivan Autonomous Republic were more positive in their assessment, while observers deployed in and around Baku East, Quba, Shaki, Ganja East and Shirvan were more negative in their assessments. The assessment of voting in polling stations in military units and prisons, as well as in polling stations serving IDPs, did not differ significantly from the overall assessment.

Some specific observed violations displayed a regional difference. Group voting was noted more frequently in rural areas (11 per cent) than in urban areas (5 per cent) and seemingly identical signatures in the voter list were noted in 7 per cent of polling stations in rural areas and in 3 per cent in urban. Procedures for ink verification and ink application were less frequently followed in the southern parts of the country than in Baku and the rest of the country.

IEOM observers reported 61 instances of tension inside and outside polling stations, as well as isolated cases of intimidation and attempts to influence voters’ choice. There were also 61 reports of unauthorized persons interfering in or directing the work of PECs. In 10 per cent of observed polling stations, not all phases of the process were visible to the PEC or observers, thereby reducing the transparency of the process. Citizen observers were present in 78 per cent of polling stations, but frequently could not inform IEOM observers which organization they represented.

Although election commission membership is based on political nomination, individual PEC members frequently had difficulties in naming their political affiliation when asked by IEOM observers. This may challenge the pluralism of election commissions and their ability to act efficiently as checks and balances in the process.

More than half of the polling stations (54 per cent) visited by IEOM observers were assessed as not accessible for voters with disabilities. Homebound voting, facilitated by the use of mobile ballot boxes, was observed by IEOM observers in a limited number of instances. In two cases, IEOM observers noted that contrary to legal requirements only one PEC member was escorting the mobile ballot box, which undermined a key security measure to ensure the integrity of the vote.

IEOM observers reported that in three per cent of the polling stations visited, they were not able to carry out their activities without restrictions or were not granted full co-operation by the PEC.

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<sup>55</sup> Paragraph 7.4 of the 1990 OSCE Copenhagen Document requires participating States to “...ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public”.

## **B. COUNTING**

The count was reported as overwhelmingly negative, with 58 per cent of the observed polling stations assessed as bad or very bad, indicating very serious problems. Regarding specific aspects of the count, IEOM observers negatively assessed PEC's understanding of and adherence to procedures, as well as their overall performance. There was a significant regional variation in the overall assessment, with the north and south of the country assessed more negatively than Baku and the west of the country, however, no differences were detected between rural and urban areas in the overall assessment.

Polling stations generally closed on time and voters waiting in line inside PEC premises at 19:00 were allowed to vote. Delays in closing were noted in nine polling stations; where there were delays, they did not exceed 15 minutes.

Indications of ballot box stuffing were noted in 23 of the 131 counts observed. A significant proportion of PECs did not perform basic reconciliation procedures, such as counting the number of signatures on the voter lists (55 observations), determining the number of voters who voted using a DVC (32 observations), and mandatory crosschecks (50 observations), which are essential to maintaining the integrity of the process. In 21 counts observed, the unused ballot papers were not cancelled prior to the opening of the ballot boxes. In 13 polling stations observed, the serial number of the seal was not identical to the number recorded during opening procedures; in 4 polling stations ballot box seals were not intact.

The vote count often lacked transparency. IEOM observers reported that in 24 polling stations observed, they did not have a clear view of the counting procedures and in one-third of counts observers were not able to clearly see how ballots had been marked. In 17 polling stations observed, citizen and international observers were not allowed to examine the ballots upon request. Ballots were not determined in a reasonable and consistent manner in 19 counts observed. In 12 polling stations observed, people other than PEC members participated in the count. In 14 counts observed, IEOM observers reported falsification of voter list entries, results, or protocols, including cases of votes being reassigned to a different candidate.

In 42 counts observed, PECs had difficulties completing the results protocol, which in a number of cases were not completed by pen as required. In 15 counts observed, the official protocol form had been signed by PEC members before the results had been established. IEOM and candidate observers frequently did not receive copies of protocols upon request. In more than half of polling stations observed, the PEC did not post the results protocol for public scrutiny as required by law.

In 18 observed counts, IEOM observers reported that after the count was finished and the protocol had been completed, the PEC delayed delivery of election material to the ConEC for no apparent reason. In 17 of the polling stations observed, the PEC chairperson was not accompanied by two PEC members during protocol delivery to the ConEC.

## **C. TABULATION AND ANNOUNCEMENT OF RESULTS**

IEOM observers observed the tabulation process in 96 of the 125 ConECs. In 23 ConECs, the process was assessed as bad or very bad. Regarding specific aspects of the tabulation, IEOM observers negatively assessed in particular the transparency of the tabulation. Not all persons had clear view of

tabulation procedures in 24 cases, and several observers reported that they were not granted full cooperation from the ConEC or were restricted in their observation of tabulation processes.<sup>56</sup>

*Measures should be taken to ensure genuine and unhindered access of citizen and international observers to the entire electoral process, especially free and unhindered movement within polling stations and tabulation premises during voting, counting, and tabulation processes.*

Several other serious procedural shortcomings were also noted during tabulation, including PECs filling in protocols at the ConEC premises (observed in 18 cases) or correcting protocols without a formal ConEC decision (observed in 11 cases). In such instances, IEOM observers frequently noted alterations of election results and expressed serious concerns about the integrity of the tabulation.

Key procedures on the checking of precinct-level results and their processing were frequently not followed. Contrary to CEC instructions, the entering of PEC protocol data into the ConEC computerized programme often took place without the presence of the respective PEC chair (23 cases observed) and print-outs of the computer entry were either not produced immediately (29 cases) or not checked against protocol data and certified by the signature of the ConEC and the respective PEC chairperson (34 cases). When printouts were produced, in 11 cases they did not reconcile. In 22 cases, observers did not receive copies of the computerized results.<sup>57</sup>

Candidate agents were identified in 47 per cent of the observed tabulations, mainly representing the incumbent President and, to a lesser degree, Mr. Hasanli (33 and 19 per cent of observations respectively). Citizen observers were identified in 32 per cent of observations. The presence of unauthorized persons was noted in five tabulations, however, they were only observed to be interfering in or directing the work of the ConEC in two cases.

The OSCE/ODIHR EOM did not observe and was not informed of any instances of a ConEC invalidating a polling station election result or ordering a recount due to serious procedural violations.

*Political determination should be demonstrated to improve the integrity of the electoral process by preventing serious violations such as ballot box stuffing and alterations of results protocols. The authorities should investigate all allegations seriously and hold accountable those found guilty of violations of the law.*

The CEC published the final election results on 17 October, within the legal deadline. The Constitutional Court confirmed the final results on 19 October, and the inauguration of the President took place on the same day.

## **XVI. POST-ELECTION DAY DEVELOPMENTS**

### **A. POST-ELECTION DAY DEVELOPMENTS**

On 10 October, following the announcement of preliminary results, incumbent President Mr. Aliyev addressed the nation acknowledging his victory in an election, which he characterized as free and transparent. While most other candidates congratulated the president with his victory, the campaign

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<sup>56</sup> IEOM observer teams were not granted full access to observe the computerization of PEC results in several ConECs including ConEC 22, 28, 32, 49 and 110.

<sup>57</sup> Contrary to provisions in the CEC instruction, several ConEC chairpersons told IEOM observers that print-outs of computerized PEC results would only be made available when all protocols had been processed.

headquarters of his main opponent Mr. Hasanli (NCDF) issued a statement in which they refused to recognize the election result alleging large scale election day fraud and called for the result to be annulled and for the election to be repeated.

On 12 October, the NCDF organized a peaceful post-election rally in Baku, which was observed by the OSCE/ODIHR EOM, in support of their claims for a repeat election. Prior to the event, the Baku metropolitan police issued a warning to the NCDF to ensure that their supporters would refrain from chanting unauthorized slogans and to take necessary measures to prevent unrest.<sup>58</sup> When participants were leaving the rally, police blocked their access to the nearby metro station for no obvious reason. During the subsequent commotion police detained six persons, of which four were put under administrative arrest for between 10 and 15 days and two were issued fines by a court decision. On 27 October, the NCDF again held a rally in Baku restating their calls for a repeat election.

On 31 October, the Office of the General Prosecutor conducted a search of the office of the EMDSC, seizing print material including copies of election observation reports, financial documents and two computers for investigation, reportedly in connection with the organization's receipt of foreign funding for its election monitoring activities. In the days prior to the search, EMDSC leaders were summoned to the General Prosecutor's Office for questioning on the same unclear charges. On 25 November, Anar Mammadli, the EMDSC Director, was informed by the General Prosecutor's Office that he would not be able to travel to the European Union's Eastern Partnership Vilnius summit due to criminal investigations against the EMDSC and that an instruction had been sent to all border-crossing points of the country regarding restrictions on his freedom of movement. On 16 December, EMDSC Director Anar Mammadli was reportedly arrested and detained for three months on grounds of alleged illegal entrepreneurship.<sup>59</sup>

In the beginning of November, a further two journalists were sentenced to prison terms. The editor of *Nota Bene* newspaper, Serdar Alibayli, was sentenced to four years in prison on hooliganism charges and the blogger, Rashad Ramazanov, to nine years in prison on charges of drug possession. Both claim that charges against them were fabricated and that they were sentenced for their critical journalism. On 13 November, independent newspaper *Azadliq* ceased circulation after the state-owned *Azerbaijan* printing house refused to prolong the term of the newspaper's debts.

## **B. POST-ELECTION DAY COMPLAINTS AND APPEALS**

The OSCE/ODIHR EOM is aware of five complaints reviewed by ConECs following election day on irregularities observed in the PECs and ConECs and obstructions to observations. All complaints were rejected as groundless by the ConECs.

The CEC reviewed four complaints and appeals in the post-election period. Two were appeals of ConEC decisions; one complaint from an observer and one from Mr. Hasanli on violations noted on election day during voting, counting, and tabulation. The CEC did not guarantee complainants the full opportunity to participate in the expert review of the complaint and present their case. One complaint was forwarded to a ConEC for review, which was then rejected, and the other three matters were rejected directly by the CEC. The CEC decisions were subsequently upheld upon appeal to the Baku Court of Appeals and the Supreme Court.

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<sup>58</sup> Available at: [http://en.apa.az/xeber\\_baku\\_city\\_main\\_police\\_office\\_issues\\_warn\\_201005.html](http://en.apa.az/xeber_baku_city_main_police_office_issues_warn_201005.html).

<sup>59</sup> See: <http://www.osce.org/odihr/109671>.

The NCDF compiled documentation of 2,105 incidents of alleged violations of the Election Code in 1,085 PECs across 95 ConECs. The affidavits of NCDF observers alleging the violations were the basis of Mr. Hasanli's complaint to the CEC and his separate appeal of the results to the Baku Court of Appeals. The first complaint submitted to the CEC on 12 October was rejected on 13 October because the complainant did not submit original affidavits only photocopies. There is no requirement in the Election Code or CEC instructions that originals must be submitted with complaints. The CEC decision to reject the complaint was taken in the absence of Mr. Hasanli's authorized representative, who had been detained by the police for minor alleged administrative infractions on the same day prior to the CEC session. Mr. Hasanli's authorized representative claimed he was on his way to the CEC to deliver the original affidavits at the time of his detention.

On appeal, the courts upheld the CEC decision that the complaint could not be reviewed on substance, dismissing the case on technical grounds that the affidavits were photocopies and not original documents.<sup>60</sup> Mr. Hasanli's later appeal of the results, as decided by the CEC, was rejected by the Baku Court of Appeals on the basis that the affidavits submitted in support of the appellant's case were not previously submitted to the PECs, ConECs or CEC prior to the CEC's decision on the results. The courts did not consider additional evidence (ballot papers, protocols and video evidence) submitted by the appellants.

In total, the Baku Court of Appeals and the Supreme Court heard appeals in four matters; in all cases the courts upheld the CEC decisions. Cases were heard hastily, with little or no time given for the proper review of materials submitted. In two matters, appellants' motions to postpone the hearing to invite witnesses were denied and in one matter the court did not give sufficient notice of the hearing to allow the appellant's lawyer to attend.

On 17 October, when the CEC forwarded the results to the Constitutional Court for certification, one appeal was still pending with the Supreme Court and the time allotted for appeal had not been exhausted in two other matters. The Baku Court of Appeals and the Supreme Court hastily held four hearings on election appeals on 18 October in an attempt to take decisions on all open matters before the Constitutional Court took a decision on the results. Still, on 19 October, when the results were confirmed by the Constitutional Court the time for appeal in three matters had not been exhausted. The Supreme Court heard the final appeals in these three matters on 22 October.

*The Election Code should be amended to guarantee that the time for appeal is fully exhausted before results are forwarded to the Constitutional Court, and the Constitutional Court should not confirm results before the exhaustion of the appeal period and resolution of all open appeals.*

## **XVII. RECOMMENDATIONS**

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in Azerbaijan and to support efforts to bring them fully in line with OSCE commitments and other international standards for democratic elections. Most of the recommendations contained in the 2008 and 2010 OSCE/ODIHR final reports, as well as the 2004 and subsequent OSCE/ODIHR and Venice Commission Joint Opinions on the Election Code and amendments to it, are also directly applicable to the 2013 presidential

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<sup>60</sup> In the ECtHR case *Namet Aliyev v. Azerbaijan* (2010) the court found that photocopies should be considered by courts. The case was filed following the 2005 parliamentary elections. The Court noted the 2002 Venice Commission Code of Good Practices in Electoral Matters, which cautions against excessive formalism in examination of election-related appeals, in particular where the admissibility of appeals is concerned.

election.<sup>61</sup> The following recommendations are complementary to and should be considered and addressed with those prior recommendations. The OSCE/ODIHR stands ready to assist the authorities of Azerbaijan to further improve the electoral process and to address the recommendations contained in this and previous reports.

#### **A. PRIORITY RECOMMENDATIONS**

1. A review of the current legal framework for freedom of assembly, expression and association should be undertaken to bring national legislation in line with international standards. Consultations on the current legislation and necessary amendments should be conducted through a public inclusive process.
2. The election timeline should be extended to provide greater opportunities for the participation of potential candidates, as well as the effective administration of elections. In particular, deadlines should be adjusted to allow sufficient time for legal remedy when necessary.
3. The Election Code should be amended through an inclusive process to revise the composition of election commissions at all levels, with the aim of enhancing impartiality and public confidence in the work of the election administration.
4. The CEC should develop comprehensive instructions regulating all procedural and operational aspects of the process of voter list verification and updating, with clear assignment of responsibilities for every aspect of the process. If election day registration is maintained, data of voters who register to vote on supplementary lists should be systematically gathered and entered into the permanent register.
5. Authorities should undertake further measures to ensure that election campaigning be conducted in an atmosphere free from intimidation and fear of retribution. Authorities and political parties should refrain from coercing public-sector employees, campaign activists and others to attend campaign events of incumbents, as well as disrupting campaign events of the opposition.
6. Consideration should be given to repealing criminal defamation provisions in favor of civil sanctions designed to restore the reputation harmed, rather than compensate the plaintiff or punish the defendant; sanctions should be strictly proportionate to the actual harm caused and the law should prioritize the use of non-pecuniary remedies.
7. The Election Code should address the right of voters to receive comprehensive and diverse information about political alternatives through the media. Public service media and private broadcasters should be legally obliged to provide fair, balanced and impartial coverage of the election campaign in their news and current affairs programs. Such provisions should be overseen by an independent body competent to conduct media monitoring.
8. All arguments of appellants should be addressed by the courts in hearings and written decisions. In accordance with the law, decisions should include the argumentation of the court, to fully explain the legal basis for the decision. Rejections of appellants' motions to review additional evidence should be clearly grounded in the law and procedural omissions made by the CEC should be addressed upon appeal.

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<sup>61</sup> Recommendations no. 1, 4, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25 and 27 from the 2008 OSCE/ODIHR EOM Final Report and recommendations b, c, d, e, and g and no. 1, 2, 4, 5, 6, 7, 8, 11, 12, 14, 15, 16 and 17 from the 2010 EOM Final Report are directly applicable to the 2013 presidential election.

9. Political determination should be demonstrated to improve the integrity of the electoral process by preventing serious violations such as ballot box stuffing and alterations of results protocols. The authorities should investigate all allegations seriously and hold accountable those found guilty of violations of the law.

## **B. OTHER RECOMMENDATIONS**

### **Legal Framework**

10. The definition of campaigning and its interpretation by election authorities should not limit the ability of political actors to pursue political activity outside the official campaign period or restrict media coverage of regular political activities.

### **Election Administration**

11. The election administration should ensure that all members receive information and material required for their work in a timely manner before a commission meeting, as required by law, allowing them to familiarize themselves with the issues to be discussed and decided.

### **Voter Registration**

12. The CEC should take measures to improve the transparency of the voter registration process by publishing detailed preliminary and final information on the voter list verification and updating process, including a detailed breakdown of the number of voters added and removed.

### **Candidate Registration**

13. It is recommended to lift the educational and residential requirements for candidacy as these can be considered unreasonable restrictions on candidacy that are at odds with international standards.
14. The implementation of existing legal provisions on candidate nomination and registration should be improved by increasing the transparency of verification rules and procedures, by inviting prospective candidates and their authorized representatives to be present during the verification process, by offering timely information to candidates about the results of the verification and about possible deficiencies in their documentation, and by providing a genuine opportunity to correct them. Decisions to reject candidacies should be well-grounded and reasoned. Minor technical mistakes or inaccuracies should not be grounds to restrict the fundamental right of citizens to stand for office.

### **Election Campaign**

15. In order to further an open campaign environment and in line with the previous OSCE/ODIHR recommendations, the restrictive approach of the executive authorities regarding the allocation of official venues for the conduct of the campaign should be reviewed. Contradictions between the Election Code and the Law on Freedom of Assembly on the notification or application for holding a public gathering should be eliminated and candidates should only be required to notify executive authorities of their intent to hold a gathering.

## **Campaign Finance**

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

## **Complaints and Appeals**

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

## **Citizen and International Observers**

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

## **Election Day**

19. Measures should be taken to ensure genuine and unhindered access of citizen and international observers to the entire electoral process, especially free and unhindered movement within polling station and tabulation premises during voting, counting, and tabulation processes.

## **Post-Election Day Developments**

20. The Election Code should be amended to guarantee that the time for appeal is fully exhausted before results are forwarded to the Constitutional Court, and the Constitutional Court should not confirm results before the exhaustion of the appeal period and resolution of all open appeals.

**ANNEX: FINAL RESULTS**

<b>Entry into the CEC results protocol</b>	<b>Number</b>
General number of voters	5,214,787
Number of voters included in regular voter lists	5,145,592
Number of voters included in supplementary voter lists	69,195
Number of voters who were issued deregistration voter cards	33,8511
Number of ballot provided to ConECs by the CEC	5,149,255
Number of voters who were issued ballots	3,735,374
Number of cancelled unused ballots	1,409,949
1) By PECs	1,363,786
2) By ConECs	46,163
Number of spoiled ballots	3,932
Number of ballot papers cast in ballot boxes	3,734,592
Number of invalid votes	36,622
<i>Percentage of invalid ballots (based on number of ballots cast)</i>	<i>1.93%</i>
Number of valid votes	3,697,970
<i>Turnout (percentage based on general number of voters)</i>	<i>71.63 %</i>

<b>Candidate</b>	<b>Number of Votes Received</b>	<b>Percentage</b>
Ilham Aliyev	3,126,113	84.54 %
Jamil Hasanli	204,642	5.53 %
Iqbal Agha-Zade	88,723	2.40 %
Gudrat Hasanguliyev	73,702	1.99 %
Zahid Oruj	53,839	1.46 %
Ilyas Ismayilov	39,722	1.07 %
Araz Alizade	32,069	0.87 %
Faraj Guliyev	31,926	0.86 %
Hafiz Hajiyev	24,461	0.66 %
Sardar Mammadov	22,773	0.62 %

Source: CEC Protocol on the Results of the 9 October 2013 Presidential Election.<sup>62</sup>

<sup>62</sup> Available at: [http://www.msk.gov.az/uploads/protokollar/CEC\\_protocol\\_2013.pdf](http://www.msk.gov.az/uploads/protokollar/CEC_protocol_2013.pdf).

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).