

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Report¹

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Observation of presidential elections in Azerbaijan (11 October 1998)

(Rapporteur : Ms BUŠIĆ, Croatia,
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I. Introduction

1. On 11 July 1998, the Speaker of the National Assembly of the Republic of Azerbaijan invited the Parliamentary Assembly of the Council of Europe to observe the presidential elections to be held on 11 October 1998.

2. The Assembly set up an *ad hoc* committee with the following members, on the basis of proposals made by the political groups:

- Zdravka Bušić, Chair and rapporteur, Croatia, EPP/CD;
- Jacques Baumel, France, rapporteur for the accession, EDG;
- Georges Clerfayt, rapporteur for opinion on the accession, Belgium, LDR;
- Agustin Díaz de Mera, Spain, EPP/CD;
- Adolfo Fernández Aguilar, Spain, EPP/CD;
- Ana Guirado, Spain, SOC;
- Georges Lemoine, France, SOC;
- Ismail Ilhan Sungur, Turkey, EDG.

The members of the *ad hoc* committee secretariat were MM. Petr Sich, Bogdan Torcătoriu and Francesc Ferrerã.

The *ad hoc* committee visited Azerbaijan from 9 to 12 October 1998

4. On behalf of the *ad hoc* committee, the rapporteur wishes to thank the authorities of Azerbaijan and, in particular, the National Assembly, for their assistance in organising the visit programme and for their hospitality. Similarly, she expresses her gratitude to the Greek ambassador, Mr George Zois, who, as representative of the Chairman of the Committee of Ministers, organised a meeting with members of the diplomatic corps of the member states of the Council of Europe represented in Baku.

5. She takes this opportunity also to thank the OSCE/ODIHR (Office for Democratic Institutions and Human Rights) for their excellent co-operation throughout the visit to Azerbaijan and, in particular, for their logistic assistance required for the deployment of teams of observers on the ground on polling day.

1. Publication of this report was authorised by the Bureau of the Assembly at its meeting of 3 November 1998.

II. State of relations with Azerbaijan

6. The National Assembly of the Republic of Azerbaijan requested Special Guest status at the Parliamentary Assembly of the Council of Europe on 24 January 1992 and obtained it on 28 June 1996.

7. To reach a decision on that request, the Bureau of the Assembly took into account the findings of the discussion on the geographical limits of the Council of Europe. In its Recommendation 1247 (1994) on the enlargement of the Council of Europe, the Assembly declared, among other things, that, given their cultural links with Europe, Armenia, Azerbaijan and Georgia would be able to request to join the Council of Europe provided that they clearly indicated their desire to be regarded as being part of Europe.

8. The Bureau of the Assembly set up an *ad hoc* committee to observe parliamentary elections in Azerbaijan held on 12 November 1995. This *ad hoc* committee "could not consider these elections to have been free or democratic" but represented "a major, albeit incomplete, step towards the democratisation of Azerbaijan". It called for the Council of Europe to step up its assistance to the country in the field of its competences.

9. On 13 July 1996, a few days after the National Assembly obtained Special Guest status, Azerbaijan applied to join the Council of Europe. The Committee of Ministers asked the Assembly to formulate an opinion on this subject in its Resolution No. R (96) 32 of 11 September 1996.

The Political Affairs Committee and the Committee on Legal Affairs and Human Rights respectively appointed MM. Jacques Baumel and Georges Clerfayt as rapporteurs on Azerbaijan's request to join the Council of Europe. Both rapporteurs have already made a number of study visits to the country.

III. Presidential elections of 11 October 1998

A. The election campaign

a. Legislation

11. The main legislative texts on the electoral process are the Constitution of the Republic of Azerbaijan, the Law on Elections of the President of the Republic of Azerbaijan, as amended by the law adopted on 10 July 1998, and the Law on the Central Election Commission (CEC). Other legislation to be taken into consideration includes the Citizenship Law (passed on 30 September 1998), the Law on the Political Parties, the Law on the Public Associations (1992, amended in 1995) and relevant sections of the Criminal Code and Criminal and Civil Procedure Codes, as well as the Law on the Courts and the Judiciary (1997).

12. The constitution specifically guarantees fundamental human rights such as the freedom of assembly, the freedom of association and the right to legal protection. None the less, the full implementation of these constitutional guarantees is compromised by the fact that certain pieces of legislation (such as the Criminal Code and the Criminal and Civil Procedure Codes) date back to the Soviet period, that newly adopted

laws have yet to be applied in full and that there are numerous bureaucratic obstacles.

13. One example of an outdated legislative provision is that it is possible for someone to be held under arrest for fifteen days without the right to consult a lawyer and without the arrest being registered. That is obviously particularly worrying during election campaigns. Difficulties in registering certain political parties (for example the Democratic Party) were reported. As far as red tape is concerned, national observers had, for example, to form a recognised association in order to operate.

14. The municipal elections due to be held, in accordance with the constitution, in November 1997 at the latest still have not taken place. This has certainly influenced the electoral process since the local authorities, supposed to carry out major tasks connected with the elections, have never been elected by direct suffrage but were appointed by the President.

15. The new Law on Elections of the President of the Republic, as amended on 10 July 1998, is a considerable improvement on the previous law. The authorities have shown their desire to improve the way in which elections are held, taking into account the suggestions made by the OSCE, to which the draft legislation had been sent for comment. The Council of Europe was not asked to give its opinion. Amendments include granting representatives of all candidates a seat (with full voting rights) on the CEC and on the lower level commissions, limiting police access to polling stations – other than to re-establish order at the request of the Election Commission, granting permission to national NGOs to observe the elections, and posting the detailed election results in each polling station. Amendments tabled by the opposition, and accepted, include lowering the turnout threshold for elections in order for them to be valid from 50% to 25% of the electorate.

16. The Law on the Central Election Commission, passed by the National Assembly on 15 May 1998, stipulates that half of the Commission's twenty-four members must be appointed by parliament and the other half by the president. This CEC membership gives the incumbent president an advantage especially since, in the case of these elections, parliament is very much dominated by the president's party. That is why the Law on the CEC did not win a consensus among the main political parties. It has weighed heavily on the whole structure and effectiveness of the election administration and sapped confidence in the correctness and integrity of the election process. Unlike the Law on the Elections, the Law on the CEC was not submitted for opinion to any international body.

17. The National Assembly appointed eleven members of the CEC (but the Azerbaijan Popular Front did not put forward any candidates for the seat reserved for it). The President of Azerbaijan appointed only seven members because, despite the pressure he put on the Popular Front, the Moussavat Party and the Liberal Party, none of them put up a candidate.

b. *The media*

18. Censorship was officially abolished on 6 August 1998. A wide variety of opinions can be expressed in the written press and via the electronic media. The first state television channel (the only one to cover the whole of the country), applying this law, offered equal airtime to all candidates (six hours each). All the candidates were also able to buy extra airtime on the private channels.

19. Nevertheless, the public media considerably favoured the incumbent president by presenting, during the television news bulletins, detailed information on his activities even when they had nothing to do with the performance of his tasks as head of state. At the same time, the information offered by the public media on the main political formations in the country was far from objective, and an intolerant attitude towards opinions of parties that chose to boycott the elections was especially apparent.

c. *Freedom of association and demonstration*

20. The legislation on the freedom of association does not appear to contravene democratic standards. However, its application does not exclude abuses. Sometimes opposition parties – especially those boycotting the elections – came up against administrative obstacles raised by the local authorities, preventing them from holding demonstrations in the appropriate venues.

21. The first protest demonstration in the capital for four years was authorised two months before polling day. Generally speaking the demonstrations took place peacefully except on 12 September 1998 when the police violently dispersed, even before it had really begun, a demonstration by the Popular Front, announced by the organisers but not authorised by Baku town hall. Forty or so demonstrators were arrested and then released (with one exception) a few weeks later, while a number of demonstrators faced criminal charges.

22. Two days before polling day, another demonstration by parties boycotting the elections took place in central Baku, in a location where no authorisation had been given. None the less the organisers negotiated with the police on the spot and, although large numbers of policemen were deployed, no violence was reported.

B. *The candidates*

a. *Candidates taking part in the elections*

23. Apart from the incumbent President, Mr Heydar Aliyev (New Azerbaijan Party), five other candidates took part in the election:

- Mr Firudin Hassanov (Communist Party of Azerbaijan);
- Mr Khanhusseyn Kazimli (Party of National Prosperity);
- Mr Etibar Mamedov (Azerbaijan National Independence Party);

- Mr Ashraf Mehdiyev (Independent);
- Mr Nizami Suleymanov (Independent Party of Azerbaijan).

24. The *ad hoc* committee met all these candidates and discovered that their opinions on the organisation of the electoral process varied: MM. Kazimli and Hassanov felt it was correct and complied with democratic principles whereas MM. Mamedov, Suleymanov and Mehdiyev criticised the way in which the elections were organised and expressed their fears about electoral fraud.

b. Candidates boycotting the elections

25. Certain political parties chose to boycott the presidential elections:

- the Popular Front of Azerbaijan (Party Chairman: Mr Abulfaz Elchibey);
- the Democratic Party of Azerbaijan (Party Chairman: Mr Ilias Ismailov);
- the Liberal Party (Party Chairman: Ms Lala Shovkat Hajiyeva);
- the Moussavat Party (Party Chairman: Mr Isa Gambar).

26. The former Speaker of the National Assembly, Mr Rasul Guliev, currently in the United States, announced that he was also boycotting the elections.

27. The *ad hoc* committee met the chairmen of these parties and took note of their opinion that the basic conditions for organising the elections freely and fairly were not met. The reasons for their boycott included presidential control over the Central Election Commission (and over the whole electoral process) and the fact that municipal elections had not been held before the presidential election.

28. The parties boycotting the elections asked for the elections to be delayed by three months, the time seen as necessary and sufficient for reorganising the Central Election Commission on fair principles, and they appealed to voters not to turn out to vote.

C. Polling day

29. On 11 October, the *ad hoc* committee divided up into six teams deployed in Baku and various places within a radius of around 180 kilometres from the capital. Each team visited a dozen or so polling stations to observe elections and to observe the count in one polling station.

30. As a whole, polling took place smoothly, peacefully and in an orderly fashion. There was even a festive atmosphere, especially in polling stations in provincial towns and in the countryside. Candidates' representatives and independent observers attended. The general atmosphere was an improvement over previous elections and the voting system seemed to have been better understood by voters.

31. Nevertheless, in certain polling stations irregularities, some of them minor, others more serious, were detected. Persons not belonging to the election commissions were present in certain polling stations (including television cameramen who continually filmed polling). Attempts to "mobilise" voting by

commission chairmen were reported to observers by the chairmen themselves who seemed to think that such action was commendable (for elections to be valid a 25% or more turnout is necessary). Officers were seen outside polling stations where their subordinates were voting.

32. Certain polling stations remained open a quarter of an hour later than they were supposed to, thereby allowing late voters to cast their vote. Although certain unauthorised persons were evacuated once the count began, in some cases they were allowed to return to the polling stations after the results had been compiled. During the count, major discrepancies were discovered between signatures on electoral lists and ballots found in the ballot boxes. Some observers, including your rapporteur, were eyewitnesses to ballot box stuffing. Some observers had their activities hampered and in particular were sometimes prevented from comparing the number of votes with the signatures on the electoral lists.

33. The day after polling, the *ad hoc* committee held, together with the OSCE/ODIHR, a press conference during which a joint press release based on the initial information on the elections was presented (Appendix).

34. Bearing in mind the observations made, the *ad hoc* committee pointed out that it would be difficult to conclude that there had been widescale fraud.

35. Apart from the Parliamentary Assembly of the Council of Europe and the OSCE/ODIHR, other international observers were present in Azerbaijan: the delegation of observers of the Interparliamentary Assembly of the Commonwealth of Independent States (CIS), representatives of the Democratic and Republican Parties of the United States, observers of the Central Election Commission of the Russian Federation, the International Republican Institute, the National Democratic Institute, the British Helsinki Human Rights Group, etc.

36. Their comments on the elections the day after polling day ranged from the positive "in keeping with national legislation and international standards" (the delegation of observers of the Interparliamentary Assembly of the Commonwealth of Independent States), "not a single violation in any polling station" (observers from the Central Election Commission of the Russian Federation) to more negative comments: "an improvement over the 1993 and 1995 elections but a missed opportunity falling short of international norms" (International Republican Institute).

D. The results

37. On 15 October 1998 the CEC announced the official results of the presidential elections. Precisely 77.18% of the electorate – a total of 4 253 717 electors – took part in the elections. The incumbent President Heydar Aliyev obtained 76.11% of the vote and was elected to a second term as President. The figures for the other candidates were: Etibar Mamedov 11.6%; Nizami Suleymanov 8.06%; Firudin Hassanov 0.87%; Ashraf Mehdiyev 0.86% and Khanhusseyn Kazimli 0.25%.

38. All candidates, with the exception of Mr Kazimli, declared that the announced results were falsified. MM. Mamedov, Suleymanov and Mehdiyev declared that Mr Aliyev had not actually achieved the two-thirds majority needed to avoid a second round of voting. Election boycotters condemned the election as undemocratic and claimed that the result had been fixed.

IV. Conclusions

39. The *ad hoc* committee considers that, compared with 1995, the elections are a step towards the democratisation of the country. Progress was clearly made in the organisation of the electoral process, as well as of the election campaign. Considering the lack of experience, the organisation of the voting itself was correctly prepared.

40. None the less, the *ad hoc* committee feels that overall the presidential elections of 11 October 1998 were marred by serious shortcomings and that a good many improvements still need to be made before a genuinely democratic climate can reign in Azerbaijan. Most of the problems detected can be put down to habits dating back to the long period of totalitarian rule in Azerbaijan. The *ad hoc* committee feels that a radical change of mentalities, necessary for implementing democratic practices in the country, should be encouraged.

The Council of Europe must continue to lend its assistance to promote the development and consolidation of democratic institutions in Azerbaijan.

APPENDIX

Joint press release of the Council of Europe Parliamentary Assembly and OSCE/ODIHR

Baku, 12 October 1998 – The OSCE/ODIHR and the Parliamentary Assembly of the Council of Europe (PACE) jointly observed the presidential election of the Republic of Azerbaijan which took place on 11 October 1998. More than 150 international observers were deployed on election day in all regions of the country.

The following is a summary of their preliminary findings.

The new Law on the Election of the President of the Republic, as amended on 10 July 1998, shows significant improvements over the previously existing law. In this way, the authorities responded positively to concerns raised by the international community and indicated their willingness to improve the election process. Unfortunately its implementation within the overall legal and administrative framework governing the election process fell short of meeting international standards for a genuine election competition.

The Law on the Central Election Commission did not enjoy a broad consensus among the major political parties in Azerbaijan. It influenced the entire structure and performance of the election administration and undermined the confidence in the election process and its integrity.

We regret that attempts to open a dialogue among the major political parties, including an appeal by the President

to the opposition to participate in these elections and to nominate a number of representatives in the Central Election Commission, were not successful. This led to a decision of some influential opposition parties to boycott the elections.

The constitution provides for clear guarantees for basic human rights, such as the freedom of assembly, the freedom of association and the right for legal protection. However, the implementation of outdated and deficient legislation, as well as administrative obstacles, compromised respect for these rights and the possibility for all political interests to present fully their views.

Censorship was formally abolished and the printed media, together with some private electronic media with limited coverage, allowed for the expression of a wide variety of views. Despite the fact that the allocation of campaign air-time to all candidates respected the law, the state media failed to provide balanced and neutral coverage of the main political interests in the country.

The authorities did not behave impartially and gave strong support for the election campaign of the incumbent president. There was no clear dividing line between state affairs and the incumbent's campaign.

The observers' reports of election day show a wide variety of practices. In many polling stations the voting and counting procedures occurred in a calm, orderly and overall correct manner. In these places, the general atmosphere has improved since the last elections and the understanding of the voting process has increased, as illustrated by a substantially decreased rate of family voting.

In a number of other polling stations however, very serious irregularities and violations were observed. In several instances, domestic observers and unauthorised local officials behaved intrusively regarding the work of the Precinct Election Commission (PEC). Moreover, the accuracy and integrity of the voter registers was often questionable, also in comparison with turnout release. Significant discrepancies between the signatures present on the voter list and the ballots found in the box have been observed during the ballot counting. Additionally, observers eye-witnessed clear evidence of ballot stuffing. Further investigation should be carried out to determine the magnitude of these problems.

The aggregation procedures at the Territorial Election Commission (TEC) level also raise serious concerns. Observers could witness in several TEC that the protocols filled at the precinct level were not final documents but only drafts to be revised by the TEC. This practice represents a blatant violation of the law and compromises the transparency of the process.

Moreover, it is of great concern that, in a few instances, observers were obstructed in their activity both at the level of the PEC and the TEC.

Although noticeable efforts were made to improve the democratic environment, in particular by allowing some political rallies and by releasing the persons arrested on these occasions, the overall election process did not comply with international standards. The OSCE/ODIHR and the Council of Europe will continue to provide assistance to further promote the development of the democratic institutions in Azerbaijan.

The OSCE/ODIHR will prepare and distribute its final report approximately one month after the elections. The Council of Europe Parliamentary Assembly will discuss its report on these elections in November 1998.