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Observation of the presidential election in the Republic of Azerbaijan (15 October 2008)

Report

Ad hoc Committee of the Bureau of the Assembly

Rapporteur: Mr Andres HERKEL, Estonia, European People's Party

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I. Introduction

1. The Bureau of the Parliamentary Assembly decided, at its meeting on 23 June 2008, to set up an ad hoc Committee of 30 members to observe the presidential election in Azerbaijan (15 October 2008), subject to receipt of an invitation, and authorised a pre-electoral mission consisting of five members, one from each political group, who were also members of the ad hoc Committee. On 27 June 2008, the Bureau, subject to the condition mentioned above, approved the composition of the ad hoc committee and appointed me as its Chairman. On 8 August 2008, the Chairman of the Milli Majlis (Parliament) of the Republic of Azerbaijan, invited the Assembly to observe the 15 October presidential election.

2. Following the proposals of the political groups, the ad hoc committee was composed as follows (asterisks indicate those members who also took part in the pre-electoral mission):

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

Mr Rony BARGETZE	Liechtenstein
M. Jean-Guy BRANGER	France
Mr Márton BRAUN	Hungary
Mrs Ingrida CIRCENE	Latvia
Mr Andres HERKEL*	Estonia
Mr Eduard LINTNER	Germany
Mr Egidijus VAREIKIS	Lithuania
Mr Piotr WACH	Poland

Socialist Group (SOC)

Mr Vidar BJØRNSTAD	Norway
Mrs Sinikka HURSKAINEN	Finland
Mrs Evguenia JIVKOVA	Bulgaria
Mr Maximiano MARTINS	Portugal
Mr Ivan POPESCU	Ukraine
Mr Indrek SAAR*	Estonia
Lord TOMLINSON	United Kingdom
Mrs Gisela WURM	Austria

European Democrat Group (EDG)

Mr Mevlüt ÇAVUŞOĞLU*	Turkey
Mr Igor CHERNYSHENKO	Russian Federation
Mr Robert WALTER	United Kingdom
Mr Yury ZELENSKIY	Russian Federation

Alliance of Liberals and Democrats for Europe (ALDE)

Mr Michael HANCOCK	United Kingdom
Mme Nursuna MEMECAN	Turkey
Mrs Kriistina OJULAND	Estonia
Mr Paul WILLE	Belgium

Group of the Unified European Left (UEL)

Mr Hakki KESKIN*	Germany
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3. Following the co-operation agreement between the Parliamentary Assembly and the European Commission for Democracy through Law (Venice Commission), the latter was invited to join this election observation mission. It was represented by Mr Owen Masters (United Kingdom) assisted by Mr Serguei Kouznetsov (Secretariat).

4. Mr Dronov, Mr de Buyer, Ms Jamal, Ms Gastl and Ms Bargellini provided secretarial support to the ad hoc committee. Mr Dronov and Ms Morel provided support for the pre-electoral mission.

5. The pre-electoral mission visited Baku from 16 to 18 September 2008. It met with members of Azerbaijan's delegation to the Parliamentary Assembly, the Chairman of the Milli Majlis, the presidential candidates, including the incumbent President, Mr Aliiev. It also met with the Chairman of the Central Election Commission (CEC), the Ministers of the Interior and Justice, the Chairman of the Constitutional Court, members of the diplomatic corps accredited in Baku, as well as a cross-section of representatives of civil society and the media. In addition, the mission met with the leaders of the five political parties that opted out of the election race.

6. In its statement issued at the end of the visit (Appendix 1), the pre-electoral mission noted legislative improvements conducive to a good election, not least those based on the recommendations of the Venice Commission. It acknowledged, however, that some key issues, such as equitable representation in electoral commissions or fairness in conducting the campaign were more a matter of electoral practice than the letter of the law. The mission was concerned about a presumed lack of public interest in the campaign and regretted the decision by the five opposition parties not to run.

7. The ad hoc committee conducted its observation mission from 13 to 15 October 2008 (see Appendix 2 for the programme of the visit). On election day, the committee was split into 16 teams and observed elections in and around Baku (three teams), Surakhani, Sumgait, Yasamal, Divichi, Ali Bairamly, Hadjiqabul, Salyan, Siyazan, Khatai, Sabail, Sabirabad, Quobustan, Ganja, Yevlakh and Kyurdamir.

8. The ad hoc committee acted as part of an International Election Observation Mission (IEOM) that also included a delegation from the European Parliament (EP) and the OSCE/ODIHR observation mission. Relations with our partners from the EP delegation were cordial. We did however experience frictions in our interplay with ODIHR. A Joint Statement was presented by the Heads of the three delegations constituting the IEOM at a press conference held on 16 October at 5.30 p.m. (Appendix 3).

II. Political background, legal framework, candidate registration, election administration and election campaign

9. Following the 2005 parliamentary elections, relations between the authorities and the opposition have remained tense, with almost no dialogue between the two sides. Five opposition parties decided not to participate in the electoral race, citing obstacles to equal opportunities. However, many of our observers believed that the true reason for this was that the five parties were aware that they stood no chance in winning the race and therefore opted out as a face saving manoeuvre ahead of the next parliamentary elections, where they could still hope to make it to the Parliament.

10. On 30 July 2008, the CEC called the presidential election for 15 October, in accordance with the relevant constitutional provisions. The President is elected by popular vote for a five-year term and may not serve more than two consecutive terms. The President is elected by the absolute majority of votes cast. If no candidate receives more than half of the votes cast, a second round is held. This election was the third presidential election under the current Constitution, adopted in 1995. The incumbent President was first elected in 2003, with 77 percent of the votes.

11. Presidential elections in Azerbaijan are primarily regulated by the Constitution of the country and the Election Code. The Code was last amended in June 2008. Some of the changes addressed earlier recommendations of the Venice Commission and the OSCE/ODIHR and included an explicit prohibition of unlawful interference by State officials and local executive authorities in the election process, and the inking of fingers.

12. Regrettably, the Venice Commission and the OSCE/ODIHR recommendation to revise the formula for the composition of election commissions so that they are not dominated by pro-government forces, was not taken up. Furthermore, recommendations concerning candidate registration, voting by the military, complaints and appeals procedures and invalidation of the results were not addressed or not fully addressed.

13. The Election Code still contains some inconsistencies and ambiguities. Some other relevant pieces of legislation, such as the Civil Procedure Code, should have been amended to avoid discrepancies, for example, on the role of district courts in the election-related complaints and appeals process.

14. The new Law on the Freedom of Assembly represents a significant improvement. However, its implementation was not always in consonance with its letter: in at least one instance it was interpreted and implemented in a restrictive manner by the Baku City Authorities. While the Law states that relevant executive bodies shall provide special venues to conduct rallies and that the list of 'proposed sites' from which the organisers can choose should be published, the Baku executive authorities considered the list as being exhaustive and denied the request by the opposition parties to hold rallies in places not on the list.

15. Ten of the twenty one prospective candidates whose nominations were approved by the CEC submitted the required documents and support signature sheets within the legal time frame. Prospective candidates had to collect 40 000 signatures of registered voters from at least 60 constituencies. The recent amendments to the Electoral Code reduced the number of requisite signatures from 45 000 to 40.000, but also eliminated the possibility for prospective candidates to submit a financial deposit instead of the signatures.

16. The CEC registered seven presidential candidates: the incumbent President Mr Ilham Aliyev (YAP), Mr Iqbal Agazadeh (Umid Party), Mr Hafiz Hajiyev (Modern Musavat Party), Mr Gudrat Hasanguliev (Azerbaijan United Popular Front Party), Mr Fazil Mustafayev (Great Establishment Party), Mr Fuad Aliyev (Liberal-democratic Party) and Mr Gulamhuseyn Alibayli (self-nominated).

17. The registration of two prospective candidates was rejected due to a large number of invalid supporting signatures. Another prospective candidate produced empty signature sheets.

18. This election was administered by a three-tiered election administration consisting of the CEC, 125 Constituency Election Commissions (ConECs) and 5 326 Precinct Election Commissions (PECs). In addition, 33 polling stations for out-of-country voting were established in Azerbaijani diplomatic and consular missions in 27 countries.

19. Election commissions are appointed under a formula whereby nominees represent the parliamentary majority, parliamentary minority and parliamentarians elected as independent candidates, each group accounting for one third of the commission's membership.

20. The CEC was very active in the elaboration of rules and regulations and launched a comprehensive voter education programme and an intensive training programme for election administrators. Preparations for the election went smoothly and within the legal deadlines.

21. Voter lists were made available to the public within the legal deadlines. In an effort to enhance transparency, the CEC published voter lists on its web site and enabled voters to check their accuracy online. A telephone hotline for voter registration information was established. No serious problems or inaccuracies in voter lists were reported.

22. The election campaign was generally low-key, leading some to conclude that there was a general lack of public interest in the vote. However, the voter turnout on the election day was high. The decision of some opposition parties not to put forward their candidates further limited the pre-election suspense. The incumbent candidate opted to abstain from active campaigning in person on the grounds that he wished to give other candidates more opportunities. As a result, the incumbent had little interactive dialogue with voters and no direct debate on policy issues with other candidates.

23. On 6 August, in a welcome development, the incumbent ordered that official portraits and billboards featuring him be removed throughout Azerbaijan, underscoring the need for equal campaign conditions to all candidates. However, billboards depicting the late President Heydar Aliev, sometimes together with the incumbent, remained in place in numerous locations.

24. Overall, all candidates were able to convey their respective messages to the voters without impediments, and their requests to organise rallies were generally accommodated.

25. At the same time, the OSCE/ODIHR mission part of the IEOM reported that it received some corroborated complaints that, in some cases people were made to attend YAP rallies. In two instances, people were also obliged to attend another candidate's rally. University students and uniformed schoolchildren with their teachers were reported to have been seen attending YAP rallies.

III. Media environment

26. Despite a proliferation of media outlets in Azerbaijan, the issue of media independence and freedom in that country remains problematic.

27. A significant number of journalists who had criticised the authorities were the subject of criminal persecution and civil lawsuits, that, in some cases, resulted in prison sentences and fines. In December 2007, the President pardoned five journalists, but three most prominent opposition journalists, Eynulla Fatullayev, Ganimat Zahidov and Sakit Zahidov (Mirza Sakit) are still in jail.

28. The free airtime for candidates, as provided for in the Election Code, was allocated in the form of regular debates on Public TV and radio. The incumbent President chose not to participate in these debates in person and sent proxies to represent him instead. In addition, candidates could convey their message to the electorate through paid political advertising and in print media.

29. In the four weeks preceding the election, Public TV devoted 51 percent of its political and election-related coverage to the President (16 percent), the Government (22 percent), the YAP (10 percent) and the Presidential Administration (3 percent). This coverage was either positive or neutral. By contrast, all other political parties received a total coverage of only 12 percent. At the same time, public TV was the only channel to make an attempt to have more balanced coverage for candidates and political forces.

IV. Election day

30. Election day was generally calm and peaceful, with high voter turnout.

31. However, according to local non-party observers, this election once again witnessed an abuse of administrative resources notably, in coercing people, in particular students and state employees to vote and thus to ensure a higher turnout. These allegations could neither be disproved nor confirmed by the ad hoc committee.

32. The ad hoc committee split into 16 teams. Each team visited between 10 and 15 polling stations, observing the opening of polling stations, the voting and the vote count. The overall impression of the organisation and conduct of the voting was positive. Overall, IEOM observers assessed positively opening procedures in 88 percent of polling stations visited. Voting was assessed positively by IEOM observers in 94 percent of polling stations visited. The count and tabulation were assessed less positively, however Assembly observers did not generally witness serious irregularities.

33. Credit should be given to the election administration, which ensured the efficient and professional conduct of the voting process and the vote count.

V. Results of the elections

34. On 22 October 2008, the Constitutional Court of Azerbaijan ratified the election results and thus officially declared the incumbent President, Mr Ilham Aliev, as the winner in this election. He won the Presidency with 88,73 percent of the votes cast, with a voter turnout of 75,64 percent.

35. Mr Iqbal Agazadeh obtained 2,86 percent, Mr Fazil Mustafayev obtained 2,47 percent, Mr Gudrat Hasanguliev obtained 2,28 percent, Mr Gulamhuseyn Alibayli obtained 2,23 per cent, Mr Fuad Aliyev obtained 0,78 percent and Mr Hafiz Hajiyev obtained 0,65 percent of the votes cast.

36. According to the CEC, no complaints were received after the voting day.

VI. Conclusions and recommendations

37. The ad hoc committee concluded that the results of the presidential election held on 15 October 2008 in the Republic of Azerbaijan were the reflection of the will of that country's electorate.

38. In the presidential election, the people of Azerbaijan voted for the stability and continuity associated with the incumbent President. The re-elected President will have a solid mandate given to him by the majority of Azerbaijanis.

39. The ad hoc committee regretted the decision by five political parties not to participate in the election and called for the beginning of a meaningful dialogue between the authorities and the opposition, which bears its share of responsibility for what was regarded by some as an election with no real choice.

40. The ad hoc committee concluded that the voting was well administered, and that the relevant legislation had been improved. It called on the Azerbaijani authorities to continue co-operation with the Council of Europe in further improving its electoral legislation and practice.

41. In the future, in particular, in the context of the next parliamentary elections, Azerbaijan could score higher if the present level of election administration were to be matched by a real competition of political platform and ideas.

APPENDIX 1

Azerbaijan: statement by PACE pre-election delegation

Strasbourg, 18.09.2008 – A five-member, cross-party pre-election delegation(*) from the Parliamentary Assembly of the Council of Europe (PACE), visiting Azerbaijan ahead of October's Presidential election, has noted improvements that should create conditions for a good election. Those improvements took account of a number of recommendations made by the Council of Europe's Venice Commission, the delegation said. However, not of all of the recommendations were fully addressed.

It nevertheless acknowledged that some key issues, such as equitable representation in electoral commissions or fairness in conducting the campaign, are more a matter of electoral practice than the letter of the law. It is heartened by the assurances it received from top Azerbaijani representatives that their goal is to hold an orderly and well-administered election that complies with European standards.

Concerned about a presumed lack of public interest, the delegation firmly wishes that the electorate will take an increasing interest in the campaign that started yesterday.

Though with seven presidential candidates registered, a plurality of choices and competitiveness are to be expected, the decision by five opposition parties not to participate in the vote is most unfortunate. Even if a political party and its leaders fail to see clear prospects of getting voted into power, or they feel that their democratic rights are being limited or even violated, they should nonetheless participate in the electoral race in the interests of their supporters.

In this connection, the delegation urges all parts of the political spectrum, including those not participating in the election, to act responsibly and to engage in a meaningful dialogue with each other. All political forces, whatever their differences, should go beyond mutual recriminations, addressing instead the issues of substance in a constructive interplay.

The delegation was in Baku from 16 to 18 September 2008 at the invitation of the Speaker of the Parliament of Azerbaijan, to assess the political climate in the run-up to the elections and the state of preparations for the 15 October vote.

It met, among others, the President of Azerbaijan, the Speaker of the Parliament, all the presidential candidates, the leaders of the opposition parties, the Ministers of the Interior and Justice, the Chairman of the Constitutional Court, civil society and media representatives as well as members of the diplomatic corps in Baku. A full 30-member PACE observer delegation will arrive in Azerbaijan in October to observe the actual voting.

(*) Andres Herkel (Estonia, EPP/CD), Head of Delegation, Indrek Saar (Estonia, SOC), Mevlüt Çavuşoğlu (Turkey, EDG), Paul Wille (Belgium, ALDE), Hakki Keskin (Germany, UEL).

APPENDIX 2

**Ad hoc committee to observe the presidential election in Azerbaijan (15 October 2008)
Programme from 13 to 16 October 2008**

Sunday, 12 October 2008

Evening/Night: Arrival of the members of the delegation.

Monday, 13 October 2008

10:00 Ad hoc committee meeting

14:00- 14:15 **Opening by the Heads of Parliamentary Delegations**

. Head of Delegation of the Council of Europe Parliamentary Assembly
. Head of Delegation of the European Parliament

14:15 – 14:45 **Political Background**

. Ms Veronika Kotek, Special Representative, Council of Europe Office in Azerbaijan
. Ambassador Alan Waddams, Head of European Commission Delegation to the Republic of Azerbaijan

14:45 – 16:30 **Briefing by OSCE/ODIHR EOM Core Team**

Introduction

. Ambassador Boris Frlec, Head of Mission

Political overview, campaign activities and media landscape

. Ms Raphaelle Mathey, Political Analyst
. Mr Rasťo Kužel, Media Analyst

Elections framework, polling procedures and observation forms

. Ms Francine Barry, Legal Analyst and Samad Mukhamedov, Junior Legal Analyst
. Mr Rumen Maleev, Election Analyst
. Mr Stefan Krause, Deputy Head of Mission
. Mr Anders Eriksson or Hans Schmidt, Statistics Experts

Observers' Safety

. Mr Emil Pyrich, Security Officer

16:30 – 17:15 **Electoral Administration**

. Mr Mazahir Panahov, CEC Chairperson

17:15 – 18:00 **Panel discussion with international organisations**

. Mr Dan Blessington, International Foundation for Electoral Systems
. Mr Jake Jones, Country Director, International Republican Institute
. Mr Arjen de Wolff, Country Director, National Democratic Institute

18:00 – 18:45 **Briefing by national political experts**

. Ms Leila Aliyeva, Centre for National and International studies
. Ms Irada Bagirova, researcher
; Mr Fariz Ismailzade, Azerbaijan Diplomatic Academy

18:45 – 19:15 Roundtable with observer organisations

- . Mr Anar Mammadli, Executive Director, Election Monitoring Center
- . Mr Maharram Zulfugarli, Director of Election Headquarter, Association for Civil Society Development in Azerbaijan

Tuesday, 14 October 2008

09:00 – 11:45 Meetings with representatives of Political Parties and Blocs (1st session)

- . Mr Igbal Agazade, Ümid Party of Azerbaijan
- . Mr Gulamhuseyn Alibayli, Self-nominated candidate
- . Mr Fuad Aliyev, Liberal Democratic Party of Azerbaijan
- . Mr Ali Ahmadov, Vice Chairman, New Azerbaijan Party
- . Mr Hafiz Hajiyev, Modern Musavat Party

11:45 – 13:15 Meetings with representatives of Political Parties and Blocs (2nd session)

- . Mr Gudrat Hasanguliyev, Unified Popular Front Party
- . Mr Fazil Gazanfaroglu Mustafayev, Great Establishment Party
- . "Joint Statement of Azerbaijani Democratic Political Forces" (Mr Ali, Aliyev, Citizen and Development Party; Mr Ali Karimli, Popular Front Party; Mr Eldar Namazov, Public Forum "For Azerbaijan"; Mr Isa Gambar, Musavat Party; Mr Avaz Temirhan, Azerbaijan Liberal Party)

13:15 – 14:15 Roundtable with Media Representatives

- . Mr Ismayil Omarov, Director, Public TV
- . Mr Elchin Shikhli, Editor-in-Chief, Zerkalo
- . Mr Emil Huseynov, Chairman, Institute for Reporters' Safety and Freedom
- . Mr Galib Bayramov, Deputy Editor-in-Chief, 525 Newspaper
- . Mr Azer Ahmadov, Director, Azadlig

14:15 Concluding remarks

14:25 Deployment

Area specific briefing conducted by OSCE/ODIHR LTO teams 1, 2 and 3
Meeting with interpreters and drivers

Wednesday, 15 October 2008

Observation of the presidential election

Thursday, 16 October 2008

- 08.00 Meeting of the ad hoc committee
- 17.30 Press Conference (*Hotel Hyatt Baku*)

APPENDIX 3

Azerbaijan's presidential poll marked considerable progress, but did not meet all election commitments

Strasbourg, 16.10.2008 - Yesterday's presidential election in Azerbaijan marked considerable progress, but did not meet all of the country's international commitments, observers from the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP) concluded in a joint statement published today.

The election was conducted in a peaceful manner, but was characterized by a lack of robust competition and vibrant political discourse facilitated by the media, and thus did not reflect all principles of a meaningful and pluralistic democratic election. Regrettably, some opposition parties boycotted the election, citing longstanding obstacles. This further limited the scope for meaningful choice for the electorate.

"There were notable improvements in the conduct of this election, but additional efforts are necessary to meet crucial international commitments, especially those related to pluralism, the fairness of the campaign environment, and the media," said Ambassador Boris Frlec, Head of the OSCE/ODIHR election observation mission.

"While the voting day can be generally viewed positively and described as marking considerable progress, election observation is done against a broader background of human rights, democracy and the rule of law. In this connection, the issue of freedom of the media in Azerbaijan remains a source of further concern," said Andres Herkel, Head of the PACE delegation.

"According to our observations on election day, the elections were well prepared and largely carried out smoothly. However, a lack of genuine competition, due to the boycott of major opposition parties, and the absence of a real campaign have to be deeply deplored," said Marie Anne Isler Beguin, Head of the EP delegation.

The authorities made efforts to create more equitable conditions for candidates, and the election was organized in an overall efficient manner, although shortcomings were observed on election day, in particular during the crucial phase of the vote count and tabulation. The observers noted that the campaign was generally low-key, with the incumbent not campaigning personally, and other candidates commanding little apparent public support. The Central Election Commission has reported a high turnout of 75 per cent.

The International Election Observation Mission comprises a total of some 440 observers from 43 countries, including 45 long-term and some 340 short-term observers deployed by the OSCE/ODIHR, as well as 31 parliamentarians and staff from PACE, and 10 from the EP.

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