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### **OPINION**

**on**

### **Implementation of OSCE/ODIHR Recommendations on Democratic Elections in Azerbaijan**

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## INTRODUCTION

After November 7, 2010 Parliamentary Elections, Office for Democratic Institutions and Human Rights (ODIHR) of OSCE submitted a set of 24 recommendations (including 7 priority and 17 secondary recommendations) to the Governmental agencies, political parties and civil society of the Republic of Azerbaijan for conduct of elections corresponding the commitments before OSCE and other international standards on democratic elections.<sup>1</sup> The Recommendations envisage taking measures for improvement of the election legislation and practices.

About 3 years passed from the submission of the Recommendations. During this period, no initiatives have been made to assess the status of implementation of the Recommendations. “Democracy Learning” Public Union finds it expedient to prepare an Opinion on the status of implementation of the Recommendations, taking into account that this document might be important in terms of examining the environment in which the up-coming Presidential Elections will be conducted.

The Opinion is comprised of four sections:

Section One covers the situation with implementation of the seven priority recommendations. The Recommendations are given as they are stated one-by-one, followed by comments on the status of their implementation;

Section Two includes comments on implementation of the Other Recommendations. Other Recommendations are conditionally divided into 2 parts – Legal Recommendations and Practical Recommendations, in order to clearly present their essence and the state of their implementation. Recommended amendments and additions to the legislation and the state of their implementation are commented in the Legal Recommendations sub-section, and the recommendations on improvement of the election practices and the state of their implementation are commented in the Practical Recommendations sub-section.

Section Three focuses on the amendments and additions to the Election Code occurred after the Recommendations. They are presented as they currently stand in order to help readers to get acquainted with their content and nature, and are provided with general comments.

Section Four, the last one, presents main conclusions on the state of implementation of the Recommendations.

The Opinion reflects the changes occurred in the legislation and election practice, attitude of the stakeholders towards the Recommendations, and the efforts and initiatives to address the implementation of the Recommendations. In order to underline the urgency and necessity of implementation of the recommendations, references are made to the facts reflected in OSCE/ODIHR and domestic organizations’ election monitoring report, to ruling of the European Court for Human Rights, to other international organizations’ recommendations and calls, the legislations are commented and suggestions are made.

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<sup>1</sup>See: OSCE/ODIHR EOM Report on November 7, 2010 Parliamentary Elections <http://www.osce.org/az/odihr/elections/azerbaijan/75655>

## I. PRIORITY RECOMMENDATIONS

**Recommendation 1.** *Ensuring an inclusive candidate registration process. The implementation of existing legal provisions on candidate nomination and registration should be improved by increasing transparency of verification rules and procedures, by offering detailed and 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.*

Pursuant to the Election Code, accuracy of information in candidate's signature sheets and other documents are checked by relevant election commissions followed by the actual registration of candidates. The relevant election commission may decide to create working groups of experts invited to check the accuracy of signatures and relevant information.<sup>2</sup>

Pursuant to Item 1.3 of the Regulation "On the Working Group created for checking accuracy of the information in signature sheets and other documents submitted to election commissions" approved by Decision #6/23-2 of the Central Election Commission of the Republic of Azerbaijan dated July 4, 2008, the Working Group can include experts from the Judicial Enquiry Center of the Ministry of Justice of the Republic of Azerbaijan, Ministry of Internal Affairs of the Republic of Azerbaijan, Ministry of Taxes of the Republic of Azerbaijan, State Registry Service for Real Estate, State Committee on State Property Management, State Statistics Committee and etc.

In practice, the signature sheets are usually checked by working groups established by election commissions and composed of representatives of the above-mentioned agencies. The Working Groups are established within Constituency Election Commissions (ConECs) for parliamentary and municipal elections, and within the Central Election Commission (CEC) for presidential elections. Their opinion constitutes the basis of the decision of election commissions regarding the accuracy of the information in the signature sheets.

The facts described in reports of OSCE and local organizations conducting election<sup>3</sup>, including the information directly from candidates themselves and political parties cast serious doubts on the objectivity of the working groups and significantly undermined their trustworthiness. Unsubstantiated invalidation of signatures in many cases, even falsification of true information in the signature sheets, different attitude towards candidates from different political powers were the most observed unlawful deeds committed by the working groups.

Different and biased attitude towards candidates was also seen in the activities of the election commissions. Thus, while all 111 candidates from Yeni Azerbaijan Party (YAP) were registered, only 38 out of 88 candidates from AXCP-Musavat bloc, 34 out of 95 candidates from Qarabag bloc, and 31 out of 97 candidates from Islahat bloc were registered. Overall, only

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<sup>2</sup>Article 59, ElectionCode

<sup>3</sup> During last parliamentary elections, Election Monitoring and Democracy Studies Center (EMDS) and Democracy Learning Public Union conducted election monitoring activities. For the reports of the organizations visit: <http://www.smdt.az/files/file/parlament2010/Yekun%20Hesabat%202010%20Parlament%20-%20SMDT.pdf>  
<http://az.toplum.az/index.php?newsid=159>

690 candidates out of 1412 nominated for the elections were registered. For comparison, 2063 candidates out of 2148 were registered for November 6, 2005 Parliamentary Elections.

Very minor technical mistakes were taken as basis for rejection of candidate registration, no chances were given to the candidates to rectify those mistakes and the signature accuracy checking process was non-transparent. Whilst the Election Code envisages that candidates, their authorized representatives, political party, political party bloc authorized representatives can be present at the relevant election commissions during the process of signature checking. The relevant election commission must provide advance notification to the mentioned persons on the signature list checking event. The relevant election commission should inform the above-mentioned persons about examination of documents in advance. The election commission may not object to or obstruct the participation of the above-mentioned persons sent by a candidate, political party and bloc of political parties in these events.<sup>4</sup> However, election commissions did not observe this provision in the law and many candidates were deliberately kept away from the election process.

CEC received 172 complaints on denial decisions of ConECs to register candidates. Candidates were complaining on biased consideration of the documentation submitted to ConECs for registration, specifically on deliberate invalidation of voter signatures based on subjective suppositions, and on denial of access by the working groups to candidates or their authorized representatives to participate in the signature checking procedures and in ConEC meetings where decisions on registration of the candidates were made. However, the CEC has satisfied only 35 of those complaints.

We consider that 2008 amendments to the Election Code also influenced massive number of candidate registration rejections. According to the amendments made to Article 113.2 of the Code, registration of a candidate can be cancelled based on a court verdict in force on the criminal case or on a court decision in force on the administrative offence. As cancellation of candidate registration is difficult from legal standpoint, artificial obstacles were created for registration of potential candidates.

Other change was about abolishing monetary deposit for registration. Before the amendments were made, monetary deposit can be submitted along with submission of the voter signatures as a guarantee of registration. By withdrawing the provision on deposits from the legislation, the guarantee was abolished and it became easier to find grounds for rejection of candidate registration. Majority of registration rejections during the last parliamentary elections were related namely to signatures.

Notwithstanding the existing problems in the registration process and OSCE recommendations, the government did not take any initiatives to improve candidate registration rules so far.

Unlike the authorities, political parties and civil society welcome OSCE recommendations on candidate registration and come up with suggestions with this regard. Thus, 68 political parties and public organizations signed a Memorandum<sup>5</sup> where underlined changes in candidate

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<sup>4</sup> The Election Code of the Republic of Azerbaijan, Article 59.3

<sup>5</sup> Early this year, a group of civil society representatives and independent experts developed an Election Memorandum comprised of 6 items reflecting the issues important for conduct of free and fair 2013 Presidential elections and presented it for public discussion. The Memorandum mainly containing amendments and additions to the Election Code based on the OSCE recommendations is positively received by opposition political parties

registration rules as one of the important issues to address. It is suggested in the Memorandum that voter signatures for nomination of candidates for presidency should be collected without any threshold and voters must have right to give their signatures to more than one candidate. Registered political parties with regional branches in at least 33% of the country's territory must be eligible to nominate their candidates. The working groups for checking accuracy of the voter signatures and other documents must be composed of independent experts, reasons for rejection of candidate registration should be concrete and deposit must be restored as an alternative tool for registration.

Improvement of the candidate registration rules is crucial for free and fair conduct of 2013 Presidential elections. If remain unchanged, the registration rules increase the risk of having the problems during 2013 Presidential election similar to those occurred during the last parliamentary ones.

***Recommendation 2.*** *Building an election administration which enjoys the confidence of major political stakeholders. The Election Code should be amended through an inclusive process to revise the composition of election commissions at all levels, with the aim of finding a formula that will instill confidence and impartiality in the work of the election administration. In order to increase inclusiveness and build trust, chairpersons of ConECs and PECs could represent different political parties.*

Rules of formation of election commissions was defined in 2003 upon adoption of the Election Code. According to these rules, the election commissions are formed equally by representatives of the majority party in the Parliament, minority parties in the Parliament and the independent MP not representing any political party. Nomination of 2 candidates shall be agreed upon by the interested parties: the political party constituting majority in the Parliament shall agree on one nominee, and representatives of the political parties constituting minority in the Parliament shall agree on the other nominee.<sup>6</sup>

The current model of election commissions' composition guarantees absolute advantage of the ruling New Azerbaijan Party in the commissions. The ruling party, being in majority in the Parliament, as a rule, possesses one third of the seats. The members of commissions representing independent MPs, as a rule, support the representatives of the ruling party. Except small number of the minority parties in the best case, others are usually pro-governmental and therefore, their position does not differ from the position of the ruling party. Such compositions guarantee the ruling party full control over the election commissions and ensures adoption of any desired decision. And the fact that all election commission chairpersons represent the ruling part further strengthens this guarantee.<sup>7</sup>

All elections administered by the election commissions composed on the described principle since 2005 were criticized by international election observation missions. One of the main

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and civil society. The document has been signed by 68 political parties and public organizations. <http://az.toplum.az/index.php?newsid=268>

<sup>6</sup> The Election Code of the Republic of Azerbaijan, Articles 24.3, 30.3 and 36.2

<sup>7</sup> The Election Code of the Republic of Azerbaijan, Article 19.3

recommendations of OSCE/ODIHR in connection with<sup>8</sup> and 2010 Parliamentary elections, as well as 2008 Presidential elections<sup>9</sup> was related to the composition of the election commissions that could gain the trust of all political forces.

PACE in its Resolution 1505 adopted in 2006 also recommended to adopt a formula for composition of election commission that could accommodate trust by all political forces.<sup>10</sup> At the same time, the Venice Commission also had the same position<sup>11</sup>

In 2010, election commissions were re-formed based on the results of the parliamentary elections. 1/3 of the current commissions are comprised of representatives of the ruling party, 1/3 of representatives of the parliamentary minority parties. i.e Umid, Adalet, Unified Azerbaijan Popular Front, Great Revival, Motherland, Civil Solidarity, Civil Unity, Democratic Reforms, National Salvation Movement and Social Welfare Parties, and 1/3 of representatives of non-partisan MPs.

The Government does not accept OSCE recommendations on changing the rules for composition of election commissions. Ali Huseynov, Chairman of the Parliamentary Committee on Legal Policy and Statehood Building, said that no changes will be made to the election legislation with regard to formation of election commissions: “Because there is no necessity for this. We have an election legislation meeting modern standards and during development of the Election Code we took recommendations of all international organizations into consideration. Various international organizations, including OSCE witnessed that some of the recommendations were impossible to endorse. Therefore, one must know that there is no need to make any changes to the election legislation in Azerbaijan, neither now, nor in the future. And the Central Election Commission has been fully formed as a body administering elections and fully ready to conduct the upcoming elections”.<sup>12</sup>

The current rule for formation of election commissions does not satisfy opposition political parties and civil society organizations. The Memorandum adopted by them includes a suggestion on composition of election commissions which calls for balanced composition with equal representation of political forces. The following reasons necessitating formation of election commissions on a new principle were cited in the Memorandum (1) activity of election commissions under the monopoly of the ruling party; (2) recognition of the European Court on Human Rights of the violations of law committed by the existing election commission in 20 constituencies and the Central Election Commission that approved those unlawful decisions; and (3) non-recognition of any past elections by international and independent domestic organization, monitoring those elections, as meeting international standards, fair and objective, and their suggestion to form the commissions anew.

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<sup>8</sup> See: OSCE/ODIHR Final Report on November 6, 2005 Parliamentary Elections  
<http://www.osce.org/az/odihr/elections/azerbaijan/17946>

<sup>9</sup> See: OSCE/ODIHR Final Report on October 15, 2008 Presidential Elections  
<http://www.osce.org/az/odihr/elections/azerbaijan/35625>

<sup>10</sup> See: PACE Resolution # 1505 (2006)  
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1505.htm>

<sup>11</sup> See: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2008\)011-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)011-e)

<sup>12</sup> From the interview of A.Huseynli to APA agency  
[http://www.publika.az/index.php?action=static\\_detail&static\\_id=33753&project\\_id=0](http://www.publika.az/index.php?action=static_detail&static_id=33753&project_id=0)

The existing model of election commissions' composition does not guarantee the representation of political parties that are even in minority in those commissions, in the manner set forth by the law. For example, Gafarov Elshad Mammadoglu, the Chairman of Dashkesan district branch of Adalet Party which is a minority party in the Parliament, filed a complaint to the CEC about appointment of YAP party members in their places in a precinct election commission.<sup>13</sup>

Umid Party came forward with the similar claim. The Party stated that they were not allowed to be represented in precincts of constituencies #2 and 4 of Nakhchivan Autonomous Republic, in Sabunchu constituency of Baku, in constituencies of Sumgayit, Kurdemir, Lerik, Goychay, Gakh and Zagatala districts, people with no affiliation with Umid Party were appointed to ConEcs and PECs using the party name.<sup>14</sup>

Therefore, the above-stated facts give the ground to conclude that the existing model for composition of election commissions provides exclusive advantage for the ruling party to ensure making any decisions in election commissions that fit its interests. This decreases other political forces' faith in election commissions. The trust can be restored only upon formation of election administration bodies based on the formula recommended by OSCE, as well as PACE, Venice Commission, domestic political parties and CSOs.

***Recommendation 3.*** *Allowing for a campaign period where fundamental freedoms of peaceful assembly and expression are respected. The continuous problems regarding undue interference of local executive authorities in the election process, in particular regarding the failure to provide conditions for free and equal campaigning and the misuse of administrative resources in favor of certain candidates, should be resolutely addressed as it is the responsibility of the State to enable contestants to compete on a basis of equal treatment and to ensure that political campaigning is conducted in a free and fair atmosphere. The restrictive approach of the executive authorities regarding the allocation of official venues for the conduct of the campaign should be reviewed. With the official campaign period reduced from 60 to 22 days, efforts should be made to ensure that candidates and political parties can reach out to voters and organize rallies at any time, not only during election periods.*

According to Article 86 of the Election Code State bodies and municipalities should assist the registered candidate, political party, bloc of political parties, and referendum campaign group in organizing and holding meetings and open discussions with citizens.

However, during the parliamentary elections local executive authorities misinterpreted the provision of the law by creating a list of places for public election events which imposed significant limitations to especially opposition candidates to meet with their supporters. The list of the places for public meetings of candidates with voters was established during pre-election campaign period and nowhere else the meetings were allowed to take place. A number of places included in the list was limited and, as a rule, were far from the city center, inappropriate and with limited access for voters. As a result, in majority of the cases, the candidates were either not able to hold the meetings or held them in unfavorable conditions.

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<sup>13</sup> See: CEC decision on consideration of the appeal dated August 23 2011

<http://www.cec.gov.az/az/2011/senedler/Qarar7-20.pdf>

<sup>14</sup> From the interview of T.Aliyev, Deputy Chairman of Umid Party <http://aznews.az/news.php?id=23446#.UarbOUBM9QQ>

Local executive authorities interfered in different forms to the very limited number of meetings held by opposition candidates. Creation of favorable conditions for candidates of the ruling party and illegal use of administrative resources were widespread.

Restriction of freedom of assembly and expression continued even after the post-election period. Contacts of political parties with voters and holding of any meetings were not allowed in this period. Law-enforcement bodies brutally dispersed protests happened in Guba city on March 1, 2012, then in Ismayilli district, Bina trade center, and youth protests in Baku, numerous protesters are arrested, charged with high fines, intimidated and harassed. One of the candidates for Presidency Ilgar Mammadov and deputy chairman of Musavat Party Tofig Yagublu, despite going to Ismayilly after the riots, were arrested on fabricated charges for organization of actions promoting infringement of a social order or active participation in such actions (Article 233, Criminal Code) and application of violence, resistance with application of violence concerning the representative of authority (Article 315.2, Criminal Code). Also 7 activists of NIDA Youth Movement were arrested on fabricated charges for preparation of “Molotov cocktail” for application in mass demonstrations. Meetings of the Popular Front Party branches in Saatli, Sabirabad, Sheki, Agdash and other districts, as well as Umid Party’s Sumgayit branch were violently dispersed by police. Azad Fikir (Free Thought) University, very popular among youth, was found illegal and shut down from April 10 of the current year.

Freedom of assembly is restricted at the legislative level as well. The Parliament made changes to the Code of Administrative Offences (CAO) and Criminal Code (CC) on November 2, 2012, which further limited opportunities to enjoy freedom of assembly.

Article 298 of CAO is changed and presented in new edition. The previous edition of the article read that persons violating rules for holding meetings, demonstrations, street marches and pickets would be reprimanded or charged 7 to 13 AZN. The new edition envisages punishments for organizers and participants of actions, which are highly strict and inadequate to the nature of the violation. According to Article 298.1 of CAO, if the organizer violates the rules set forth by the law for holding meetings, demonstrations, street marches and pickets, then physical persons (the organizer(s)) will be fined from 1500 AZN to 3000 AZN, or based on the aspects of the case and taking into account the personality of the violator, will be charged with 200 to 240 hours of compulsory public works or 15 days of administrative arrest. Persons holding public positions will be fined with the amount from 3000 AZN to 6000 AZN, and legal entities – from 15000 to 30000AZN. According to Article 298.2, persons participating in meetings, demonstrations, street marches and pickets organized with violation of the law will be fined with the amount from 300 AZN to 600 AZN, or depending on the aspects of the case and taking into account the personality of the violator, will be charged with 160 to 200 hours of compulsory public works or 15 days of administrative arrest.

The change in Article 398.1.1 of CAO sets authorizes policeman or military person to arrest (in administrative manner) person(s) upon violation of rules by the person(s) for holding meetings, demonstrations, street marches and pickets.

Based on amendments made to Article 47.2 of CC, the timeframe limit of the punishment titled “public works” is increased from 6-240 hours to 240-480 hours. Amendments made to Article 85.3 public works assigned to a person not reached the age maturity is increased from 40-160 hours to 80-320 hours.

Pursuant to changes made to Article 169.1 of CC, (if organization, holding of or participation in unlawful gatherings causes significant disturbance of citizens' rights and their legal interests) the amount of the fine is increased from 300 AZN to 5000-8000 AZN; to Article 169.2 (carrying fire arms or cold arms, or explosive substances and devices, and other items jeopardizing life and health of people around by the participants during holding meetings) - from 10-500 AZN to 500-8000 AZN; and to Article 233 (organization of or active participation in brutal violation of public order by a group of people or disobedience to lawful requirements of the representative of authorities, or in the actions causing disturbance of normal functioning of transport, enterprises, offices and organizations) – from 100-500 AZN to 5000-8000 AZN.

Tightening of the sanctions was not limited by this. The Parliament adopted new changes to the CAO on May 14, 2013 further restricting freedom of assembly. The term of administrative arrest for participants of unauthorized gatherings was increased from 15 days to 2 months, and the period of arrest for deliberate disobedience to lawful requirements of police or military servant was increased from 15 to 30 days.

Widespread opinion in the general public about the recent amendments to the legislation is that the aim of unnecessary tightening of sanctions is to make people refrain from exercising their right to assemble and expressing their views freely as the most effective way of expressing their protests in the current situation, as well as to keep the most active participants of the political processes in jail in order to isolate them from the election process and create fear among people. The recent changes in the legislation in fact can be assessed as abolishment of freedom of assembly and freedom of expression.

The state of freedom of assembly and expression in the country is the matter of concern of international organization as well. US State Department, as well as Human Rights Watch strictly condemned the limitation of freedom of assembly in Azerbaijan in their 2012 Global Human Rights Reports. The organization "Article 19" called the Government of Azerbaijan to cancel amendments made to the law on freedom of assembly occurred in November 2012 and to release those who have been arrested for trying to exercise their right to express their position freely. During the discussion of General Periodic Report on Azerbaijan of the Human Rights Council of the United Nations in its meeting held on April 31, 2013, among other issues the Government of Azerbaijan was recommended to ensure freedom of assembly.

***Recommendation 4.*** *Developing free and independent media. The editorial line of media outlets should be determined without interference by the authorities, and journalists should not be subject to undue pressure. Media outlets should provide fair, objective and balanced reporting of political forces, especially during an election period, in line with international good practices. The State should ensure that state-owned and funded media in particular treat electoral contestants equally, as provided for by paragraph 7.6 of the OSCE 1990 Copenhagen document and Articles 69.1 and 77.1 of the Election Code.*

The similar situation can be observed with regard to implementation of the recommendations related to the attitude towards media outlets. The vast majority of electronic and print media functions under the control of the government or individual officials. The Government taking advantage of the situation effectively promotes its policy before the voters and holds a discretization campaign of its opponents. Although the official policy is to demonstrate State support to media outlets through agencies like the Council for State Support to Non-

governmental Organizations, as a rule, only the media outlets backing up the government's policy benefit from this support. Presenting different viewpoints is possible only through handful of print media and social media showing increasing coverage recent years. However, the Government doesn't tolerate even these moderate means. Printing media outlets like "Azadlig" and "Musavat" newspapers that criticize the Government are suffocated by court fines, obstruction to circulation, and journalist harassment. Only in 2012, the total amount of fines against free media constituted 5 mln. AZN.<sup>15</sup> The same year, Azerbaijan found itself among non-free countries with 82 points for freedom of press.<sup>16</sup>

Amendments to Articles 147 and 148 of the Criminal Code adopted on May 14, 2013 set forth criminal liability for defamation and slander in Internet. Fine for slander in Internet is set in the amount from 100 AZN to 500 AZN or 240 hours of public works or up to 1 year of correctional works or up to 6 months of imprisonment, and for insult - from 300 AZN to 1000 AZN or 240 hours of public works or up to 1 year of correctional works or up to 6 months of imprisonment.

Tightening of the media legislation was strongly criticized by international organizations. In its May 17, 2013 statement "Human Rights Watch" acutely condemned changes in the legislation: "Recent amendments to Azerbaijani legislation violate the government's international commitments and limit free expression. The amendments will have a chilling effect on the rights to freedom of expression and assembly, violate Azerbaijan's international obligations, and shut down opportunities for legitimate dissent...". Article 19, Freedom House, International PEN-club and Reporters without Borders made statements condemning repressive changes to the legislation.

We consider that non-adoption of the Defamation Law before end of 2012 despite its inclusion in the National Action Plan, further toughening of sanctions for slander and insult, inclusion of the term "Internet" in Articles 147 and 148 of the Criminal Code is the pressure put on information disseminators being very active in rapidly developing social media in recent years.

***Recommendation 5.*** *Improving the conduct of voting, counting and tabulation processes. Serious violations of election-day procedures, including cases of ballot-box stuffing and multiple voting, should immediately be investigated as these practices undermine the integrity of electoral processes. Perpetrators, including election commission members who participate in or tolerate such practices, should be prosecuted in accordance with the law.*

The most encountered procedural violations related to the issue above indicated in OSCE and domestic monitoring organizations' reports on 2010 Parliamentary election are the following: non-checking of finger inking, not putting ink on fingers, ballot stuffing, proxy voting, family voting, allowing to vote without presenting proper ID, not ensuring transparency in ballot counting, vote counting by non-PEC members, improper completion of vote counting protocols, discrepancies in the protocols.

The nature of the violations suggests that they are stemmed not from the legislation, but from its false implementation and activity of the election commissions. Article 37.1.7 of the Election Code makes precinct election commissions responsible for arrangement of voting in election precinct. However, the summary of the violations showed that PEC members did not fulfill their responsibilities in the manner established by the law. For example, as DLPU observed,

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<sup>15</sup> Quote from 2012 Global Human Rights Report of the US State Department

<sup>16</sup>2012 Freedom House Annual Free Media Report

originals of protocols in 42% of the monitored precincts were not completed. In the rest of the cases, only draft protocols were completed and the final protocols were taken to ConECs without completion. In 58% of precincts the figures put in the protocols were falsified and those figures were different from the figures announced during the vote counting<sup>17</sup>.

OSCE Report states that international observers noted 40 cases, when against the requirements of the legislation, precinct election commissions completed protocols in ConECs instead of PECs, and 30 cases when precinct election commissions made rectifications to precinct protocols in ConECs without prior decisions on such actions by the ConECs.<sup>18</sup>

Unprofessional activity of PEC members should have raised red flag for the authorities. But despite the facts, we observed no efforts or initiatives concerning improvement of PEC members' performance during the post-election period. DLPU observed the same type of problems in the activities of commissions during the repeat, by- and new elections for 330 municipal councilors held on November 30, 2011.<sup>19</sup>

As a rule, CEC organizes training for lower election commissions, prepares and presents them certain methodical aids. Nevertheless, given that in majority of cases PEC members are public servants with no experience in elections, the trainings are not effective. The effectiveness of such trainings is reduced even further because of lack of political will of the authorities to conduct free and fair elections in accordance with the legislative requirements.

The European Court for Human Rights so far issued rulings on 20 constituencies in Azerbaijan. In fact, these rulings should have constituted ground for bringing election commissioners to justice or for their dismissal. According to the requirements of Article 22.1 of the Election Code, persons who violated the election legislation in the past, dismissed from commission membership by the higher election commission or if violation of election legislation by them is confirmed by a court decision, may not function as members of election commissions with decisive voting right. At the same time, Article 22.4.7 of the Election Code sets forth that decision of a relevant court confirming violation of the election legislation constitutes ground for termination of authorities of election commissioner with decisive voting right. Since Azerbaijan is within the jurisdiction of ECHR, membership of the commissioners ruled out by the court must have been terminated. However, there are no facts on such terminations based on the mentioned ground concerning any election commissioner.

Position of political parties and the civil society on the recommended issue is that the voting and vote counting procedures must be made transparent and parallel vote counting mechanism must be introduced.

DLPU considers that the main reasons that election commissions do not follow the procedures, do not care about the violations and become part of such violations is that they don't feel liable for such unlawful deeds. For example, while the voting results in Sumgayit 2nd ConEC #42 during 2005 parliamentary elections were invalidated and there were the European Court decision on it, the chairman of the ConEC received mild punishment in the form of a monetary fine, and despite his conviction, was restored to civil service in 2008. Composition of election

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<sup>17</sup>See: DLPU Final Report on November 7, 2010 Parliamentary Elections

<sup>18</sup>See: OSCE/ODIHR EOM Final Report on November 7, 2010 Parliamentary Elections

<sup>19</sup>See: DLPU Report on November 30 Municipal Repeat, By- and New Elections

<http://az.toplum.az/index.php?newsid=159>

commissions of people from the same political camp and lack of checks and balances within the commissions is another reason fostering such violations.

***Recommendation 6.*** *Developing transparent and effective election dispute resolution. The CEC, ConECs and the courts should review complaints and appeals in an open and transparent manner and examine all evidence including testimonies of witnesses in order to render grounded and reasoned decisions in conformity with the Election Code. The Election Code should ensure the right of plaintiffs to a fair hearing, with the participation of both parties.*

Complaints on decisions and actions of election commissions shall be made to the relevant higher election commission by voters, candidates, political parties and blocs of political parties, their proxies within 3 days after such decision is made or action carried out by the commission. One can file complaint on decision and action of the CEC to the Court of Appeal, and on decision of the Court of Appeal to the Supreme Court. Complaints are considered in ConECs and CEC by an Expert Group established within these commissions and comprised of 3 and 9 members respectively. After considering complaints, the Group submits special opinion to the relevant election commission for making decision on the complaint. The Expert Groups are formed of staff members of the secretariat of the relevant election commission and members of election commission.<sup>20</sup>

2010 Parliamentary Elections showed that the current manner of election dispute resolution does not guarantee objective resolution of the disputes. Formation of the Expert Groups only from members of election commissions and staff members of secretariat, as well as control over election commissions by the ruling party and lack of independent courts makes fair consideration of complaints impossible.

OSCE Report on 2010 Parliamentary elections states that the fact-finding mission of the expert groups is one of the matters of concern. Thus, they have been employees of election administration while developing expert opinions and did not address the arguments of the plaintiffs and did not provide legal reasoning in their expert opinions.

Non-objective and non-professional activity of the expert groups is mentioned also in reports of domestic monitoring organizations. Reports of these organizations, as well as complaints of candidates mention the main shortcomings in the activity of the groups as non-consideration or partial consideration of facts on complaints, non-usage of additional evidences and proofs during consideration of complaints, and extension of the consideration period without serious reasons. All these facts primarily affected candidate registration process, vote counting and correct vote tabulation. It is not accidental that complaints were mostly related to the mentioned issues. And all these are the issues that shape destiny of elections.

Political parties and civil society organizations suggest that the expert groups must be composed of independent lawyers, representatives of NGOs and representatives of the political forces participating in elections.

The main shortcomings in the activity of ConECs and CEC were the following: non-acceptance of complaints due to minor technical mistakes, non-consideration of complaints, not providing plaintiffs with information on the time of the complaint consideration, consideration of

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<sup>20</sup> The Election Code of the Republic of Azerbaijan, Articles 112 and 112-1

complaints without participation of complainants, non-transparent decision-making process, non-objective consideration of complaints and making decisions during complaint consideration process referring to the sources sharing interests of the ruling party.

More than 60 complaints were filed with Baku Court of Appeals with regard to the CEC decisions. None of them were satisfied. The court did not properly investigate the plaintiffs claims and held up all the decision of the CEC. Except few cases, no witnesses of plaintiffs were summoned to the court and not questioned. No reasons for not summoning and not questioning of the witnesses were reflected in the court decisions. The Supreme Court considered about 30 cases. The Court did not investigate mistakes and shortcomings committed by the CEC and the Court of Appeals during consideration of complaints and did not satisfy any appeal. Advocates of the plaintiffs claimed that they were notified on the court hearings only one-two hours before. Overall, effective remedies were not used and in some cases even the domestic legislation was violated.<sup>21</sup>

We believe that the legislation regulates dispute resolution issues in the court clearly enough. The main problems on this issue are incorrect application of the law, biased position and lack of liability.

One of the problems in the legislation related to complaints or opening venue for abuse is the possibility to extend the timeframe for consideration of complaints. According to Article 112-1.10 of the Election Code, if there is necessity for additional investigation, the consideration period can be extended for 3 more days. In practice, this provision enables artificial extension of the period and causes exceed of timeframes for election actions envisaged in the law. For instance, during the past Parliamentary elections candidacies of 35 people rejected by ConECs were registered after filing complaints to the CE, and 9 candidacies were registered after positive decisions of the Court of Appeal and the Supreme Court<sup>22</sup>. Therefore, a group of candidates had to start their pre-election campaign later than the period envisaged in the law. Whereas, according to the requirements of the Best Election Practices of the Venice Commission, confirmation of the validity of voter signatures must be finalized before the commencement of pre-election campaign.

As with other recommendations, the authorities did not take any initiative with regard to this one and no changes occurred in election dispute resolution system.

DLPU position on election dispute resolution is that it is not possible to achieve effective results by changing or editing procedures of the existing system. In spite of introduction of a number of mechanisms to prevent election frauds in the election practice of Azerbaijan (finger inking, putting ballots into envelope, transparent ballot boxes, installing web-cams in polling stations and etc.), they could not prevent falsifications. The practice showed that in all cases, application of procedures significantly depends on such subjective factors like objectivity, worldview, independence, and professional ethics of their appliers. Therefore, we find it more correct to approach the problems existing in the complaint considering institution from the prospective of the composition of election commissions and expert groups.

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<sup>21</sup>See: OSCE/ODIHR EOM Final Report on November 7, 2010 Parliamentary Elections

<sup>22</sup> See: OSCE/ODIHR EOM Final Report on November 7, 2010 Parliamentary Elections in the Republic of Azerbaijan <http://www.osce.org/az/odihr/elections/azerbaijan/75655>

***Recommendation 7.*** *The Election Code should be amended to clarify jurisdictions and deadlines, eliminating the ambiguities during recounts and invalidation of results. The grounds for recounts and the conditions under which recounts are to be conducted should be clearly established in the law.*

According to the legislation re-counting of votes is the prerogative of the CEC and ConECs. If ConEC detects mistakes, inadmissible rectifications and discrepancies in PEC protocols (including other documents attached to protocols) and the CEC finds mistakes inadmissible rectifications and discrepancies in ConEC protocols (including other documents attached to them), decision on re-counting of votes in the subject precinct or constituency can be made. Since in all cases, ConECs must submit ConEC protocols to the CEC not later than 2 days after the voting day, re-counting of the votes must take place within that period. If the CEC detects mistakes, inadmissible rectifications and discrepancies in ConEC protocols (including other documents attached thereto) starting the voting day and within 4 days after the day, the CEC can make a decision to conduct re-counting of the votes in the relevant constituency. Re-counting of votes shall be conducted by the relevant constituency election commission, and the persons specified in Articles 40.2-ci<sup>23</sup> and 40.4-cü<sup>24</sup> of the Election Code must be notified in advance on the re-counting of votes.<sup>25</sup>

“Mistakes”, “inadmissible rectifications” and “discrepancies” as grounds for re-counting of votes are pretty general definitions in the Code. As they are not clarified in terms of their concrete manifestation, this allows election commissions to interpret and implement the provision at their own discretion. The above-stated is proven by the cases of invalidation of the voting results and re-counting of votes in some constituencies during last parliamentary elections. The CEC considered results of 43 precincts in 17 election constituencies invalid. No reasons for the invalidation of the results in those precincts were cited during the commission meetings or indicated in the relevant decisions of the CEC. Some votes were re-counted, but no reasons for this were given. The conditions for the vote re-count remained unknown as well.<sup>26</sup>

In the case “Flora Kerimova against the Government of Azerbaijan”, ECHR stated in its ruling that the decision of the CEC of November 8 2005 on invalidation of voting results in the plaintiff’s constituency does not include any concrete description of “inadmissible rectifications” allegedly made in the protocols or other “violations of law”, neither it contains details of those “rectifications” and nature of the “violations”, nor the reasons that led to the damage of the results of the voting in the relevant polling stations and to impossibility of identification of true opinion of voters. In such case, the Court had nothing but to state that the decision of the CEC is absolutely groundless.<sup>27</sup>

The similar situation prevails in invalidation of voting results and outcomes of elections. Article 114 of the Election Code envisages the following as the grounds for cancellation of

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<sup>23</sup> Members of election commissions, candidates registered on the relevant election constituencies and their authorized representative or agents, agents of referendum campaign groups and agents of political parties and political party blocs

<sup>24</sup> Citizens of the Republic of Azerbaijan with active suffrage, including foreign citizens indicated in Article 44 of this Code

<sup>25</sup> The Election Code, Articles 107.6 and 108.4

<sup>26</sup> See: OSCE/ODIHR EOM Final Report on November 7, 2010 Parliamentary Elections

<sup>27</sup> See: The decision of the European Court for Human Rights on the case “Flora Kerimova against the Government of Azerbaijan dated September 30, 2010

decision of election commission on the results of voting and outcomes of elections (referendum):

114.1. The Central Election Commission may appeal to the Court of Appeals, prior to the official publication of election returns, to consider the election of a candidate or outcome of a referendum invalid, if it is discovered, after the preliminary election results are officially published, that a registered candidate, political party, bloc of political parties, or referendum campaign group has committed a violation mentioned in Article 88.4 of this Code that obscures the proper determining of election results..

114.2. A court, determines that violations mentioned in Article 113.2.3-cü<sup>28</sup> of this Code occurred and that the determination of voters' will is not possible as a result, it may cancel the decision of a relevant election commission on election (referendum) results. In such circumstances, the elected candidate will be considered to have lost his/her authority.

114.3. The relevant court may cancel the decision of the election commission on voting results and election (referendum) results for a single-mandate or nationwide constituencies if:

- the rules for compiling the Voters' List, forming election commissions, voting, counting votes, or determining election (referendum) results are violated;
- other violations, as defined by this Code, occur; or
- it is impossible to determine the voters' intention due to the above-mentioned actions (or lack of actions).

114.4. The relevant court or the Central Election Commission may cancel decisions of the Precinct or Constituency Election Commissions on voting results or election results in the circumstances considered by this Code.

114.5. The discovery of irregularities regarding assistance to candidates who are not elected may not be a basis for the cancellation of the decision on election results.

Article 113.2.3. referred to in Articles 114.1 and 114.2 refers to violation of provisions of Article 88.4 as the ground for cancellation of election results. Article 88.4 prohibits candidates, registered candidates, political parties, blocs of political parties, referendum campaign groups, their agents, and other persons and organizations who participate directly in a pre-election campaign from :

- giving money, gifts and other valuable items (excepting badges, stickers, posters and campaign materials with other nominal value) to voters, except for purposes of performing of administrative duties;
- rewarding voters who perform administrative duties, or promising voters a reward, on the basis of election results;

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<sup>28</sup> If rewarding of voters is identified, i.e. candidate, political party, political party bloc, referendum campaign group or their authorized representatives or agents committed the actions prohibited by Article 88.4 of this Code

- selling goods at a discount or providing goods (except for printed materials) free of charge;  
providing free or discounted services;
- influencing voters during the pre-election campaign by promising them securities, money and other goods and services based on grounds that contradict legislation.

It becomes clear from the essence of the law that these violations are those that influence the voters will. In fact, the grounds for cancellation of election commissions' decisions in Articles 114.1, 114.2 və 114.3 of the Code are linked to voters' will. First of all, the term "voters' will" is indefinite enough and impossible to measure, and therefore, cancellation of elections on its basis creates ground for subjectivity of decisions. Secondly, even if taken as a basis, limitation of possible influence over voters' will to the mentioned factors does not reflect the real situation. Other factors like interference of executive authorities in the election process, use of administrative resources, intimidation of voters affect the voters' will and must be included in the list of grounds for invalidation of election results.

The grounds for cancellation of election outcomes are also not concretely indicated in the Code. The provision in Article 114.3 of the Code that reads "other violations, as defined by this Code, occur or it is impossible to determine the voters' intention due to the above-mentioned actions (or lack of actions)" allows interpreting any violation as impeding voters to express their will and to cancel election results. We think that it is very important that the legislation gets rid of such indefinite terms and definitions to prevent their use for ill purposes.

So, OSCE recommendations and decisions of the European Court for Human Rights, as well as current state of the legislation displays the necessity for clearer specification of the grounds in the legislation for re-counting of votes and cancellation of election results. However, there were no initiatives at the official level to address the necessity.

## **II. OTHER RECOMMENDATIONS**

Along with 7 priority recommendations, OSCE presented 17 other recommendations. The recommendations have been addressed to the Government of Azerbaijan on the essence. These recommendations can be conditionally categorized as legal and practical ones.

### ***a. Legal recommendations***

Along with the issues mentioned in the Priority Recommendations, OSCE also recommended to make changes and additions to the Election Code with regard to the issues below:

- The Election Code should ensure that the final results protocol is compiled by the CEC and forwarded to the Constitutional Court for validation only after the expiry of the appeals deadlines and after all appeals are heard by the courts.
- Provisions on the cancellation of candidacy could be reviewed, with a view to reduce the reasons for cancellation, as some of them are disproportionate.

- The deadlines of the process of candidate registration could be reviewed to ensure that reinstated candidates have sufficient time to effectively campaign and reach out to voters.
- Consideration could be given to reintroducing the state funding of individual candidates' campaigns. Public funding could also be extended to all political parties representative of a minimum level of the citizenry's support and presenting candidates in an election, following a public discussion on the issue among all political actors.
- The Election Code should clearly set criteria for the appointment of expert groups to hear complaints and appeals. Furthermore, an upper time limit for the extension of investigation of complaints and appeals should be defined in the Code.
- Should web cameras continue to be used in polling stations, the status and use as evidence during the review of electoral disputes of the footage recorded by these cameras should be regulated by the Election Code.
- Consideration could be given to amending Articles 77, 80 and 83 of the Election Code which stipulate that to be eligible for free airtime and space, a party or bloc needs to register candidates in more than 60 constituencies. One of the main advantages of providing free airtime is to give smaller parties or minor candidates an opportunity to deliver their electoral messages, as they otherwise do not get significant media coverage. Contrary to paid airtime, which is often not affordable for such parties or candidates, the lack of finances should not be an obstacle to access the airwaves or print space.

Except provision of State funds to political parties, no other changes and additions were made to the legislation concerning the above-mentioned issues.

According to Article 17-1 added to the Law on Political Parties on April 20, 2012, 10 percent of funds allocated from the State budget must be divided between the political parties, candidates of which gained at least 3 percent of votes during last elections to the Parliament of the Republic of Azerbaijan, but are not represented in the Parliament, proportionally to the percentage of votes. 40 percent of the funds shall be equally divided among the political parties represented in the Parliament, and 50 percent – proportionate to the number of elected MPs.

The funds from 2013 budget for political parties has been distributed as follows: New Azerbaijan Party - 1 million 145 thousand AZN, Civil Solidarity Party - 136 thousand AZN, Motherland Party – 121 thousand, Social Welfare, Democratic Reforms, Umid, United Azerbaijan Popular Front, Civil Unity, Great Revival, Adalet Parties and National Salvation Movement - 106 thousand AZN each.

The existing mechanism for State funding of political party was protested not only by those political parties which did not get the funding, but also those he were financed. For example, IgbalAgazade, Chairman of Umid Party found the political party funding distribution principle unfair and stated that NAP receives 1 million 145 thousand AZN, when Umid Party only 106

thousand AZN. The political parties that couldn't get seats in the Parliament were not financed at all. It is, in fact, means financing of the ruling NAP party.<sup>29</sup>

Indeed, while even the political party represented with only one MP in the Parliament can benefit from the principle of distribution of State funds, other politically much stronger parties with enough social support like Musavat and Popular Front Party who are not represented in the Parliament are deprived of this opportunity, and this cannot be considered unfair. Such distribution of political party funds creates an impression of strengthening of institutional basis of the ruling and pro-governmental political parties.

### ***b. Practical recommendations***

Majority of the recommendations below are related to improvement of activities of the election administration:

- The CEC should review its current working practice and rules of procedure, particularly with regard to the distribution of work within its administration, and ensure that all CEC members receive information and material required for their work. Agendas and draft decisions should be distributed to members of election commissions and party and candidate representatives before a commission meeting, allowing them to familiarize themselves with the issues to be discussed and decided;
- In order to ensure the equality of the vote, the boundaries of electoral constituencies should be redrawn so that deviations in the number of registered voters are minimized and the current numerous cases of significant deviations in constituency sizes are avoided, as required by Article 29.3.1 of the Election Code.
- In line with legal provisions for military voting, the CEC should grant permission to establish a polling station in a military unit only in certain well-defined cases, and when voters serving in the military are at a great distance from ordinary polling stations. The election administration should retain the responsibility for the organization and conduct of transparent military voting;
- In order to enhance the performance of lower-level commissions, the CEC would need to adopt regulations in a timely manner and provide the necessary effective training to lower-level commissions. This will help ensure uniform implementation of election procedures. Training should especially focus on areas identified as problematic by international and domestic observers, such as the voting, counting and tabulation procedures.
- The independence of public TV should be further strengthened, including through the development of impartial editorial practices, especially in the news programs. Reporting should be balanced and factual, including when covering activities of the authorities, in line with international good practice.

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<sup>29</sup>From the interview of I. Agazade to Mediaforum web-site on February 13, 2013  
<http://www.mediaforum.az/az/2013/02/13/Partiyalar-pul-b%C3%B6lg%C3%BCs%C3%BC-prinsipini-d%C9%99yi%C5%9Fm%C9%99yi-t%C9%99klif-023225740c00.html>

- The CEC, in cooperation with the National TV and Radio Council, should ensure respect for the media-related provisions of the Election Code during the campaign, including equitable news coverage of election contestants on ITV or other state-owned or financed media. Systematic media monitoring by the NTRC during an election campaign period could assist the CEC in carrying out this task.
- The CEC should ensure that inking procedures, which constitute an important safeguard against multiple voting, are strictly and uniformly implemented by election commissions, including checking of voters' fingers for traces of ink and application of ink upon issuance of ballots.

Since majority of the recommendations are related to election day, it will be possible to assess how they are followed by the election administration only during the Presidential election day. However, the fact that majority of the previous election commissioners are represented in the new commissions and the political environment has not changed, reduces the likelihood of positive changes in the practices of the election commissions.

No progress has been made in terms of implementation of the recommendations related to the pre-election period. For instance, according to Article 29.3.1 of the Election Code, As a rule, the number of registered voters should be approximately equal among the election constituencies within the boundaries of the administrative-territorial units of the Republic of Azerbaijan, but no more than 10% higher/lower than the average representation norm in distant or impassible places and no more than 5% higher than the average representation norm elsewhere. During the last parliamentary election, drastic differences were observed in the number of voters in constituencies published by the CEC in its official information. For example, the number of voters in the territory of Shahbuz-Babek election constituency #5 was indicated as 29 752. However, this number was 45 817 voter for Sabunchu constituency #26 and 48 162 voter for Shabran-Siyazan constituency #54. Despite these facts, the CEC did not take any actions to change the boundaries of the election constituencies. The only known initiative of the CEC with regard to changing boundaries of election constituencies was the change of names and composition of territories of Khazar first constituency #13 and Khazar second constituency #14 on April 2, 2013.

### **III. AMENDMENTS AND ADDITIONS MADE TO THE ELECTION CODES AFTER THE RECOMMENDATIONS**

The Election Code was made three amendments and additions after presentation of the recommendations. The first amendments and additions were made on February 1, 2011, the second – on April 20, 2012, and the third, last one – on April 30, 2013. Here are the amendments and additions:

#### **First set of amendments and additions:**

- In the first sentence of Article 162.1 the words “The candidate not envisaged in Article 161 of the Code” has been replaced with the word “Candidate”
- The words “to candidates not envisaged in Article 161 of this Code” are removed from Article 162.2.
- The words “...envisaged in Article 161 of this Code” are removed from the first sentence and the words “...not envisaged in Article 161 of this Code” are removed from the second sentence of Article 162.6.
- The words “The candidate for presidency not envisaged in Article 194 of this Code” has been replaced with the words “candidate for presidency” in Article 195.1.
- The words “..envisaged in Article 194.1 of this Code” are removed from Article 195.2.
- The words “..envisaged in Article 194 of this Code” are removed from Article 195.6.
- Second sentence has been added to Article 25.1 in new edition. “If conduct of elections is not possible due to military operations during state of war, the Central Election Commission shall apply to the Constitutional Court of the Republic of Azerbaijan in accordance with Part I of Article 84 and Part IV of Article 101 of the Constitution”

#### **Second set of amendments and additions:**

- Figure “48” in Article 60.7 is replaced with figure “24”. “Relevant election commissions shall inform the mass media about registered candidates in a relevant constituency within 24 hours of registration”.
- Figure “48” in Article 68.6 is replaced with figure “24”. “The Central Election Commission shall submit information on registered referendum campaign groups to the mass media within 24 hours of registration”.
- In the third sentence of Article 112-1.10 the words “if 30 days left before the voting, within 2 days (but not later than the voting day)” are added after the words “within 3 days,” and forth sentence is added. “The expert that investigates the complaint must issue an opinion within the period established by Article 112.10. If additional investigation is needed, the relevant election commission can make a decision. Such a decision must be made within 2 days from the date of receipt of complaint (but not later than the voting day). The period for additional investigation must not be more than 3 days”

- In Article 112-1.13, figure “24” is replaced with figure “18” and the words “together with decision of the relevant election commission” are added after the words “not later”. “An opinion is announced immediately after it is made by the expert, or published (posted on website) not later than 18 hours after it is made and together with decision of the relevant election commission is delivered or sent to the applicant”
- In the first sentence of Article 112.11, the words “within 2 days (but not later than the voting day), if less than 30 days left before the voting day, and immediately on the voting day and after the voting day” are added after the words “within 3 days”. “Courts should consider complaints concerning decisions of election commissions within 3 days (if no lesser timeline is identified by this Code), within 2 days (but not later than the voting day), if less than 30 days left before the voting day, and immediately on the voting day and after the voting day”.
- In Article 171.2, figure “48” is replaced with figure “24”. “The Central Election Commission shall check protocols of Constituency Election Commissions, as well as documents attached to the protocols in accordance with this Code, at the latest 20 days after Election Day, and then submit them to the Constitutional Court within 24 hours”
- Figure “30” in the first sentence of Article 241 is replaced with figure “25”. “The Central Election Commission shall announce the results of municipal elections in the Republic of Azerbaijan at latest within 25 days of Election Day. This decision of the Central election Commission shall be final.”

#### **Third set of amendments and additions:**

- The voting days is not considered working day in the territory where election (referendum) is conducted. If the voting falls on a holiday considered non-working day by the Labor Code, the voting shall be rescheduled by the Central Election Commission to another working day.
- New Article 211.5 is added to the Code. “Term of office of municipalities elected by taking into consideration the requirements of Article 211.4 shall end on the first day of meeting of newly elected municipalities”.
- Article 243 of the Code is amended. Repeat elections shall be conducted if the number of citizens with voting right increases or decreases for 25 percent as a result of change of territories of municipalities based on the Law “On Municipal Territories and Lands”.

It becomes clear from the amendments and additions to the Election Code they were mainly of technical nature. The issued recommended by OSCE did not occur to be basis of the subjects of the amendments and addition. And the amendments and additions made based on certain recommended issues do not solve the existing problems. For example, amendments like reduction from 3 to 2 days of the decision-making on additional investigation (if less than 30 days left before election) in Article 112-1.10; reduction of the timeframe for publication of expert opinion and submission it to plaintiff from 24 hours to 18 hours in Article 112-1.13; reduction from 3 to 2 days of the court decision-making process on consideration of complaints on decisions of election commissions (if less than 30 days left before election) in Article 112.11, and immediate consideration of the complaints on the voting day and next day do not solve the problems indicate in OSCE Report on 2010 Parliamentary Elections and are not congruent with the Recommendations.

#### **IV. MAIN CONCLUSIONS**

Therefore, the above-stated can be summarized in the conclusions below:

- The Government did not come up with any initiative in terms of implementation of the OSCE Recommendations made after 2010 parliamentary elections. The Government's initiatives on improvement of the election legislation and practice was limited to technical issues;
- The situation with freedom of assemble, expression, media, association, which are important for conduct of free and fair elections, has been deteriorated. Inadequate toughening of sanctions for violation of rules for free assembly, bringing free media to its knees using different methods, setting criminal liability for slander and insult in Internet, suppressing opposition political parties and civil society made almost impossible to enjoy freedoms and rights established by the Constitution;
- The Government displayed disrespect towards its international commitments and calls of domestic and international community to conduct free and fair elections. There is no political will to implement the recommendations, as well as to conduct free and elections.
- Non-implementation of the recommendations, restriction of political rights and freedoms, toughening of the environment for operation of political parties and civil society organizations have exhausted competitive election opportunities in the country. The current situation jeopardizes free and fair conduct of 2013 Presidential elections and undermines their legitimacy.

