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**MAIN RECOMMENDATIONS FOR AMENDMENTS
TO THE DRAFT ELECTORAL CODE OF AZERBAIJAN**

OF

THE EUROPEAN COMMISSION
FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION, COUNCIL OF EUROPE)

Adopted by the Venice Commission
at its 54th plenary session
(Venice, 14-15 March 2003)

AND

THE OFFICE FOR DEMOCRATIC INSTITUTIONS
AND HUMAN RIGHTS (ODIHR) OF THE OSCE

Preliminary remarks

The Venice Commission and the OSCE/ODIHR adopted two joint assessments (CDL (2002) 131 & CDL-AD (2002) 035) on two different versions of the draft Election Code of Azerbaijan.¹ These two assessments were submitted to the authorities of Azerbaijan for their consideration. A number of recommendations have been implemented but further improvements are needed to ensure that the Election Code provides an adequate, consistent and comprehensive framework for democratic elections in line with international standard and Azeri legislation.

In the hope of providing further assistance in the drafting process, the Venice Commission and the OSCE/ODIHR prepared a list of fundamental recommendations for a meeting on the draft Election Code on 13-14 February in Strasbourg.

Following a further meeting with the Azeri drafters of the Code on 26-27 February 2003 the situation concerning the implementation of these fundamental recommendations can be summed up as follows:²

I.- Fundamental recommendations that are being implemented according to the information provided by the Presidential Administration

- Registration of candidates / Signatures:
 - the number of signatures that a candidate can submit to support his candidature is now unlimited;
 - instead of verifying a sample of signatures, the entirety of signatures will be checked until the number of valid signatures is reached;
 - during the registration process, candidates will have the chance to correct minor errors made in submission documents;
 - a voter will be able to sign a petition sheet for more than one candidate for parliamentary elections;
 - the list of registered candidates should be published.
- Transparency measures:
 - transparent ballot boxes will be reintroduced in the draft Code;
 - a provision will be introduced on the publication of summarization tables with detailed results per polling station at constituency and central levels within a short deadline.
- Other issues:
 - the deposit will be reimbursed if the candidate obtains at least 3% of valid votes;
 - all observers will be permitted to observe the entire pre-electoral meetings. If they are with too many, they will be chosen by lottery;
 - the Precinct Election Commission's Chairman must notify observers when commissioners visit voters with the mobile ballot box;

¹IFES kindly provided the full translation of the different drafts of the Code.

²Doc. CDL-AD(2002)035.

- each observer will be provided with one copy of protocols free of charge. Additional copies will be charged;
- election protocols should be transmitted to superior election commissions by the Chairman accompanied by two commissioners representing different political interests.

II.- Fundamental recommendations that remain to be implemented according to the information provided by the Presidential Administration³

- Election commissions:
 - the presence of judges in election commissions could be in contradiction with one constitutional provision. As international experts, we are not able to carry out such checks; it is the role of the Constitutional Court or of the Parliament. The Code of good practice in electoral matters provides recommendations about the organisation of elections by an impartial body⁴;
 - the composition of all election commissions should be revised in order to avoid the risk of undue and excessive influence by a single political interest;
 - the solution can only be found with a broad consensus. We encourage a political dialogue between the majority and opposition parties to obtain a consensual solution to this issue. And we support any proposals that support this consensus;
 - senior electoral commission personnel should be required to have appropriate levels of relevant experience and professional qualifications;
 - precinct election commissions should be formed earlier during the pre-electoral process;
 - transitory provisions after the final vote and the first execution of the Election Code. The transitory provisions on formation and functioning of the Central Election Commission should be added on the Code. Indeed it is important to have an efficient Central Election Commission in the pre-electoral process for the next elections.
- Inking of fingers: the introduction of transparent ballot boxes is welcomed, but the inking of fingers should also be reintroduced also added.
- Observers from NGOs receiving foreign funding: such organisations should also have the possibility to observe the electoral process, as well as all other observers.

³ On the basis of the Joint assessment on the revised draft Election Code, CDL-AD(2002)035, on 27 February 2003.

⁴ Code of good practice, CDL-AD(2002)023, Point II. 3.1.:

d. It should include:

- i. at least one member of the judiciary;*
- ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.*

It may include:

- iii. a representative of the Ministry of the Interior;*
- iv. representatives of national minorities.*

- Questions of transparency:
 - the Code should provide clear procedures for delivery to and receipt by the Central Election Commission and constituency election commissions of election protocols and other documents from lower level commissions;
 - the constituency election commissions should publish detailed preliminary results for each polling station before the detailed publication of final results;
 - it is also important to ensure periodic announcements of the turnout during election day.
- Simplification of the structure of the Code: much progress has been made on this matter, but the draft Code is still a cumbersome document. It should be simplified and shortened by removing repetitive material and provisions that add nothing or that could be transferred from the Special Part –where we can find repetitive provisions for each type of election– to the General Part.

III.- Other important points that have not been implemented

- Suffrage and voters' lists: the number of registered voters in each polling station should not exceed 1,500 voters.
- Registration of candidates / Signatures: cancellation of registration should be a sanction of last resort after a serious, repeated and/or intentional breach of the Code.
- Rules on transmission of certified copies of protocols free of charge to observers should be stipulated more clearly.
- Final results: the deadline on publication of final results should be shortened. However, final results should not be announced until all complaints have been adjudicated.
- Principle of proportionality: sanctions for violations of norms and the restriction on the freedom of expression should be proportionate. Several provisions were modified but again there are provisions establishing overtly severe sanctions.
- Claims and appeals: the Draft Election Code should clearly determine which entity is the most competent between the election commission and the court. This will avoid “forum shopping” a situation where a complaint could be lodged simultaneously with the superior election commission and with the courts and then using the ruling that suits his/her interest best.

IV.- Other points that have to be implemented

Finally, regarding the other issues, the Azeri authorities are invited to refer to the last joint assessment on the draft Election Code (CDL-AD (2002) 035) for other technical recommendations, which would have not been implemented from previous versions.

Conclusions

The Venice Commission and OSCE/ODIHR urge the authorities to implement these recommendations as a matter of priority, in particular to find a compromise solution for the formation of the election administration that could enjoy broad political consensus. They also invite the authorities not to disregard the other important recommendations contained in the two joint assessments.

The Venice Commission, and more widely the Council of Europe, together with OSCE/ODIHR is ready to provide further legal assistance for Azerbaijan, one of the member states of the Council of Europe, together with the other organisations and relevant forces.