



Strasbourg, 9 March 2004

CDL-EL(2004)001  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**in collaboration with**  
**THE CENTRAL ELECTION COMMISSION OF AZERBAIJAN**

**ELECTORAL TRAINING WORKSHOP**

**(Baku, 8-10 September 2003)**

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## **REPORT ON THE ELECTION CODE OF AZERBAIJAN**

by

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### **I. Introduction**

It is obvious to me that Aliev or his son will be reelected. Every shop window in Baku has his poster. One has his portrait with different aspects of the military as a background, another one has him holding up a child and two others have him with his son. The last two are large pictures posted in strategic places. Baku is clean and secure. Azerbaijan has many internationals working in gas and oil. Our sessions were at times loud in particular when parties or NGO's were present. They also became animated during the second session that took place with commission members and judges because of the interventions of a CEC member.

### **II. The Central Electoral Commission**

Central election commissions everywhere issue regulations or instructions to explain the election law so that authorities involved in the election process know how to apply it. It is well known that instructions cannot contradict the law and in practice CECs are very cautious when it comes to voting instructions (regulations). In this respect article 28.3 goes very far by setting up an « a priori » control of all decisions by the CEC: « The instructions or methodical guidelines adopted concerning the rules or implementation of this Code should be legally examined prior to being approved by a decision of the CEC. The opinion on the legal examination together with the draft shall be presented to the CEC members at least three days prior to the voting. » This control takes away the authority of the CEC and puts it in the hands of lawyers who are not named. We have a number of instructions from the CEC and it is clear that they are written in the same complicated ways as the law, which could mean that the same people who drafted the law write the instructions.

CEC Regulation #3/08 (21 June 2003) limits the time its members can speak during sessions. Those who submit a report have 10 minutes, 5 minutes for an additional report, 5 minutes for the discussion of issues (article 3.1) ... The chairperson can extend the period according to the suggestions of commissioners (article 3.2). The last point is not clear as to what « suggestions » means. Nevertheless, limiting the time that CEC members can use to speak is a good thing. TV and radio are present during sessions and members of CECs have a tendency to make speeches that go beyond the question with which they have to deal.

The CEC is composed of 18 members (article 24.1) that are elected by the Assembly (article 24.2). Six members are elected by the majority, six by the minority, six by independents and two by the majority and minority (article 24.3). Article 22.3.3 indicates that the members must not be party members while in article 22.5 "The body that names a commission member cannot dismiss him." This measure is debatable but it is aimed at making all commission members free of partisan pressure.

The term of the CEC is 5 years. Article 28.2 gives precise details of how the CEC votes. They are qualified votes that vary from 12 when there are 18 members present to 8 when there are 12 members present. The electoral code provides further detail regarding the functions of the CEC (articles 25.2-1 to 25.2.22). Twenty-two precise points are given in no logical order. A twenty-third point adds that the CEC is to “carry out other authorities in accordance with this code.” Article 25.3 states that “the CEC shall adopt and publish regulations and methodological instructions...” Articles 26.1, 26.2, 26.3 and 26.4 enumerate the duties of the CEC (5 to 10 points) for the preparations of all types of elections and referenda.

### III. Electoral commissions

The provisions concerning election commissions are found starting with article 19. The mandate of election commissions is five years (article 23.1). Constituency election commissions have nine members that are appointed by the Central Election Commission (article 30.2). The membership is nominated by the threes: three by the Central Election Commission by the majority party; the next three also by the CEC but from the minority party; and the remaining three from non-partisan members (article 30.3). As far as the latter are concerned article 30.3 states that they “who represent the non-partisan deputies in the Commission, can be agreed with the interested parties...” i.e. the majority and minority party (article 30.3).

The formation of the precinct election commissions is the same as the constituency election commissions except that it goes by twos instead of threes since they only have six members (articles 36.1 and 36.2). Additionally, candidates can be presented by voters (“voters’ initiative groups”). The precinct election commission is “formed by the relevant Constituency Election Commission.” (article 36.1)

### IV. National « observers »

Chapter 7 of the electoral code deals with the transparency of electoral commissions through the activity of observers (articles 40 – 42.5). (The question of international observers is thoroughly dealt with in regulation #4/29<sup>1</sup>.) The drafters of this regulation deal at the same time with what other laws call party delegates and national observers (#14/83<sup>2</sup>). This leads to observers being able to make statements to the polling station chairman. There is a wide scope of who can name national observers :

- a. Citizens (article 40.5)
- b. Parties
- c. NGO’s « engaged in the election sphere ». This is not a precise statement and can be interpreted in either a restrictive or liberal manner. It is of interest to note that there are three types of observers. This is most unusual.

According to the electoral code there are three types of organisations that can name observers:

- a. Organisations that will cover the whole country. They have the right to assign one observer to each electoral commission (paragraph 1.3 of instruction 07.15.03). Organisations apply 120 to 10 days prior to election (paragraph 1.5 of same

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<sup>1</sup> Instruction on rules for activity of international (foreign) observers in Presidential Elections of the Republic of Azerbaijan, 06/27/03.

<sup>2</sup> Instruction on working rules of observers assigned by the candidate for presidency, political parties, block of political parties and non-governmental organisations engaged in election sphere, 07/15/03.

instruction. The CEC decides within three days. These observers have the right to attend meetings of election commissions on election day. Appeal is lodged with a court of appeal (article 40.6).

- b. Organisations that can have special permits to observe commission meetings before election day. This right is specified on the badge. Every organisation has the right to have 10 of those observers.
- c. Organisations having observers present in only one constituency apply to the relevant Constituency Commission 5 days prior to election. Decision is handed down within 2 days and appeal to the CEC is possible (article 40.7).

As previously stated, regulations (instructions) are written in the same style as the law. The instruction enumerates 13 acts that the observer is prohibited from doing whereas he/she can do 16 other (instruction 4.29<sup>3</sup>). For example, there are three ways an observer can communicate. One of them, which mentions voters states that he/she cannot answer “questions of voters (excluding questions related to his/her status)”. This is ambiguous because observers have to ask questions, talk to people and a commission that is unhappy because of the presence of observers could easily find fault or find that the question asked was inappropriate.

Note that the candidates to the presidential election can have up to 50 agents (article 186.1) who conduct the campaign and have observers’ rights (article 72.3). Each registered candidate can assign a member with consultative vote to each commission.

## V. The Voters’ List

The voters’ list is kept by the CEC (article 45.1). It is a permanent list and is annually revised, which is a good point (article 45.2). Article 25.2-17 states that the CEC “compiles an integrated voters’ list together with relevant executive authorities and municipal bodies.” Article 46.12 gives the details of the work involved :

- a. By February 5: the second copy of the preliminary list is sent from the precinct level (municipalities ?) to the constituency commission (the first copy remains in the precinct electoral commission).
- b. By March 5: two copies are drafted for constituency level.
- c. By April 5 : the copies are sent to the CEC.
- d. By May 25 : if CEC finds discrepancies they are corrected at and approved at precinct and constituency level.

Between April 5 and May 25 there are exchanges for corrections between the three levels. The book “Elections in the mirror of informational technologies – 2002” published in 2002 stresses the transmission of election results from the constituencies that are equipped with computers but only briefly mentions electoral lists [“Preparation of the information on the elector base (set up in 2000) for 4,337,000 citizens”]. We questioned the head of the computerized system on his involvement with the voter register and he could not answer.

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<sup>3</sup> Instruction on rules for activity of international (foreign) observers in Presidential Elections of the Republic of Azerbaijan, 06/27/03.

The book deals briefly with the voter register<sup>4</sup> by a phrase that basically says that the list of voters is printed and sent to the district in order to be checked. It would appear that nothing similar to Georgia or Albania is in place so that the trustworthiness of the voters list must not be very great.

It is often heard that fraud can occur when results of polling stations are transmitted to the regional and national levels or that results can be altered at the Central Election Commission. Please note that the information centre of the CEC can receive information from 32 districts simultaneously. There is a computer link between Baku and the 100 constituencies. Fraud is not impossible at the highest level although messing around with results at the CEC should be unlikely because of the transparency at the top. If computers are used they can be checked and simulations prior to voting also make fraud unlikely. The weakest point in the chain of events leading to a fair election is the polling station. Nevertheless, if every political tendency is present fraud is not impossible but difficult. The most important point is transparency at that level.

We shall insist and underline that it is transparency and not the number of signatures, stamped ballots and complicated procedures that are most useful in making fraud unlikely.

The counting process is another key point where transparency and simplicity should be the golden rule. The electoral code of Azerbaijan has complicated the process to such an extent that not only fraud is likely but mistakes will occur and it is doubtful that many polling stations will be able to get all the correct figures without some kind of cheating. The IFES booklet and training is the only way to deal with this but can they reach a sufficient number of people ready to go through such complicated procedures after having worked a whole day in the polling station ?

## **VI. Constituency boundaries**

A boundary commission is set up by the CEC (article 29.6). The Deputy Chairman of the CEC is the boundary commission's Chairperson and the members are "specialists". The boundary commission is set up every 5 years (article 29.1) and the CEC approves the electoral constituencies formed by the boundaries commission also every 5 years within 30 days after the integrated (final) voters list is compiled (article 29.5).

Article 29.3 gives the tolerance of +5% of the average except for distant and difficult places where  $\pm 10\%$  is allowed. Article 29.4 mentions municipal boundaries. The boundary commission would seem to be appropriate as they will most probably also take geographic factors into account. They take into account registered voters but  $\pm 10\%$  margin in mountainous country is optimistic.

## **VII. Candidacy**

CEC instruction 5/38<sup>5</sup> point 3, provide the number of signatures required. A total of 45,000 signatures and between 50 to 60 from each constituency.

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<sup>4</sup> page 37.

<sup>5</sup> Comment on rules for completing signatures sheets, 06/30/03.

A deposit of 3% of the election threshold must be paid (article 58.5) but will be reimbursed if the candidate obtains 3% of expressed vote (for whichever election) (article 60.5). Prospective candidates can be present during the verification of signatures. The refusal is given within 24 hours after receipt of application (article 60.5) and an appeal to the Commission is possible within three days.

Article 71.1 deals with the respect candidates must have of each other. It enumerates three requirements or points but makes reference to article 2.6, which goes into great detail (18 requirements) as to the behaviour of everyone involved in elections.

Article 74.1 provides exhaustive information as to who has the right to campaign and how they should campaign through the media, meetings and “by other means not prohibited by law.” (article 74.2.4.)

Articles 191-1 and 191-2-1 deal with funding, maximum funding by parties, donations and total maximum that can be spent. The amount is given in relation to the minimum wage. State funding is also mentioned.

### **VIII. Appeals**

Article 114.4 provides for a two-pronged approach appeals system that is found in a number of countries by stating that “the relevant court or CEC can cancel decisions of the precinct or constituency election commissions on voting results or election results in the circumstances considered by this Code.” This approach requires very clear guidelines in order to know in which circumstances one chooses one or the other avenue of appeal. Again article 112.5 is too general and does not provide the necessary clarification: “The Court can cancel decisions (including decisions on the result of voting, election returns) of the relevant election commissions in the circumstances considered by this Code and other laws.” The person wanting to appeal will have to wade through the code, whereas there could be a very clear table divided into two parts. The first part would cover the type of cases and the institution, whether court of law or electoral commission, that has jurisdiction over them. The second would have the law courts and electoral commissions and which cases they cover. The information thus presented could be issued in the form of regulations.

### **IX. Counting**

IFES’ representative, Charles Lasham, took me out for lunch and showed me the training of trainers of lower commission members (about 15 future trainers). When I arrived at the session, I found the member in charge of international relations of the CEC who looked after us waiting. Charles Lasham and I had walked there, and on the way I asked him whether he thought the polling commission members could get through the protocols without cheating. He answered that they were training them to start by filling out a copy until all figures were correct and then to write on the official protocol. Will commission members go through the 18 requirements (articles 100.2.1 to 100.2.18) before they even start counting the votes for the candidates? I have doubts. The drafters of the law have complicated the procedure of counting the protocols by adding the counting of envelopes, a step that did not exist in the 2000 law.

How can anyone with the slightest knowledge of social behaviour have commissioners count envelopes after the vote. The counting of envelopes will not be given the same attention as the counting of ballots, increasing the chances of mistakes. IFES has prepared a booklet

(September 2003) for the elections and dedicates pages 19 to 28 to “Instructions for counting votes and completing the protocol on voting results”.

Articles 100.1 and 106.11 of the law deal with the protocols at polling station level, and we have to go to articles 201.2.1 and 2 to obtain full information for the presidential election. CEC regulations have to be published, and it would be useful to have them in simple language similar to that used by IFES. Additionally, all the details enumerated in a non-logical order do not give a simple practical way as to the set-up of the room at the time of counting and filling in the protocols.

Article 106.2 deals in part with the cases where there are more envelopes in the polling boxes than the total number of voters having voted. The decision is drastic: all the votes in the movable box are declared invalid, a measure that is quite understandable but the same rule is applied to the main ballot box, which is most unusual. The usual practice is to write in the difference on the protocol or, for example, take out of the box a random sample of number of ballots in excess. As the law stands, a difference of one or two ballots could mean that the vote in the polling station would be voided by a decision of the precinct electoral commission. The article clearly states that the vote would “be considered invalid by decision of the precinct election commission”. It would be advisable that a CEC regulation give power to the commission to admit a certain discrepancy, which would be written onto the protocol.



## **LEGAL STANDARDS AND NORMS ON COVERAGE OF ELECTIONS IN THE COUNCIL OF EUROPE MEMBER STATES**

**by**

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Allow me first to thank the Central Electoral Commission and the Council of Europe for the opportunity given to us to be here today for exchanges of knowledge, views and ideas. I am sure it will be an enriching experience for all.

The dominant view in Europe and in all democratic societies is that the media play an important role in society. Furthermore, there is a qualitative link between media and democracy. An indicator for qualifying the level of democracy in a society is the extent to which the media can function freely and independent of any pressures, constraints and limitations. The fundamental principle linked with the functioning of the media is freedom of expression, which in this specific case acquires special meaning and content.

The environment in which the media operate should also feature specific concepts, which form the substance of democracy. The society and the media system can enable the media fulfil their role only in a situation characterized by pluralism, transparency in ownership, freedom of political debate and other values. These form the necessary foundations and prerequisites for the media to be an agent promoting and enhancing democracy.

Governments are initially the agent responsible but also the guarantor of the maintenance of these principles vis-à-vis the media, and the general public. Governments should do all that is needed to ensure that the media roles and obligations be discharged also with special care for specific groups. All should enjoy their rights without discrimination of any kind.

The other side of the coin is the behaviour of the media themselves. Not only they should claim editorial independence and the guarantee of unhindered exercise of their work, they must also prove that they are truly free and fully independent in all respects. The media must also abide to certain rules and obligations, particularly to respect others' rights and ensure an equitable and fair treatment to citizens, groups of people and all those representing them.

From the above, it transpires that the main objective of any attempt at regulation is not to subject the media to control, as many may think. The core of the challenge is to guarantee the freedom of the media and freedom of expression. To this end governments are called to strike a balance in the exercise of these rights by the media and all the social and other actors to the benefit of democracy.

The considerations exposed in the previous sentences concern the functioning of the media in every day life. There are more to say, especially with regard to the way the media participate in or promote the political debate, as well as the treatment reserved to the political figures and those holding power.

In many cases, both journalists and the media are seen by many power holders as disturbing elements. Criticism is not always well received and measures are often taken by governments and others to reduce and limit it.

Europe, through the decisions and judgements of the European Court of Human Rights has established the rules that should govern any attempt to limit the freedom of expression and the relevant rights of the media. The Court has also ruled on other issues with regard to the relation between the media and the society. The Court said that the right of freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference; freedom of expression also applies “to information and ideas that offend, shock or disturb the state or any sector of the population”. On the issue of the relations of the media with those holding power or acting in the public sphere, the Court has ruled, among other, that the political and other public figures must tolerate harsher criticism than ordinary people.

If the above are important in periods of normal political and other activity, what about the role expected or assigned to the media during elections?

Further to the need to freedom of expression, another fundamental human right needs protection and respect for this vital democratic process; it is the right of every citizen to take part in the government of the country, personally or through elected representatives.

*The media activity may also influence the exercise of this right. They routinely report on the political and other activity, on the government, the parties and the politicians. In election time they also become a platform of exchange, by reporting on activities, on views and ideas, and by commenting on them. Other specific roles are attributed to them, when they are called to inform the voters about election matters or to educate them on the procedures and other aspects of this basic democratic function. They are moreover asked by law or regulations to offer direct or indirect access to election candidates in any of a number of forms; paid political advertising or “free airtime”, debates, interviews and other special programmes.*

The concurrence of the two fundamental rights and the various activities by the media during the elections period call for more attention and effort on behalf of governments, social actors and the media themselves. The ultimate goal is to serve to the maximum the democratic processes and enhance democracy.

International and European organisations have for many years tried to promote democracy by establishing rules and frameworks that could guarantee respect for its fundamental processes. Elections and the media are key issues of concern.

The Council of Europe has been a leader in this field in its effort to promote a common frame for a democratic Europe that fully respects human rights.

My present intervention is on legal norms and standards for the coverage of elections by the media in Europe. It will be based on the Recommendation 99(15) of the Committee of Ministers adopted in 1999.

The reference made to the legal norms and standards in the Council of Europe member States implies that there is a framework common to all member States or that they all have similar laws and practices. In fact this is not the case. In almost all cases there is a common perception of the principles that all should respect; law and practices though differ not only as

between the old and new members but also within the group of older members. In other countries there is limited statutory provision regulating media behaviour concerning elections and activities of the political parties and candidates during pre-electoral or normal time. In some countries there are no such statutory provisions whatever. In many countries legal terms such as “pre-electoral time” or “silence- or reflection-day” do not exist nor do any statutory provisions exist on these issues. Some countries claim that they have no need for regulation, as existing arrangements are in fact efficient and responsive to the needs of democracy. In other cases, existing provisions are not sufficient. Consequently complaints against the use and abuse of mass media particularly by those in power are not exceptional. (...)

At the Council of Europe it was felt that there was need for a common framework or some kind of regulatory measure to ensure that the media play a positive role in democratic procedures, particularly in elections. The question that arises is not just “WHY?” but rather “why this need emerged as an urgent issue only recently. The answer is relevant with that on the question: **Why is media regulation itself only about 20 years old?**”

My view is that there are two reasons. Firstly the radio and television landscape has changed dramatically over the last twenty years. A real explosion in numbers of new broadcasters and the volume of information mark this period of the 1980s and 90s. The present situation breaks with the traditional public service monopoly. Satellite communications and the Internet have added new dimensions to the flow of information. Among the consequences has been de-regulation, and existing legal frameworks proving inadequate to respond to new needs that emerged.

Also as a result of the new landscape, and for other reasons, we are witnessing a shift in political communication, at least in volume and intensity. We are moving from traditional forms, where the physical presence of the actors (politicians and the public) was the dominant feature, to a highly mediated one, where the broadcaster has also a voice of its own while being a platform for opinions and ideas of third parties. Radio and television are by far the sought after and effective places for politics.

The perception of a-power-to-influence, eventually held by the broadcasters, created the need, among others, for establishing rules and setting norms and standards of media behaviour at all times of the year, with special emphasis on their activity in election periods. The acknowledgment of the media potential for spreading information and ideas to the largest possible number of people led to the requirement that the media act as an “honest broker” in the service of democracy.

Simultaneous to the multiplication of channels in the media scene over the last 20 years were major changes on the international stage. These were precipitated by the collapse of the Soviet Union and the former communist countries. New needs and challenges emerged, all related to the course of these countries toward democracy. Democratisation of the media and establishing genuine electoral processes have been priority targets of international and regional organisations that provide assistance to these and other emerging democracies.

These aforementioned two factors, the expansion and the fragmentation of the media landscape and the emergence of fledgling democracies together created a need for more explicit frameworks for media behaviour. The different traditions and ways that countries experienced the passage to the new era explain also the variety and disparity of the ways each one chose for the regulation of the coverage of elections by the media.

How did we proceed at the experts group that prepared the recommendation?

When discussions started, it appeared that before defining the kind of tool we were seeking and its content we had to look into our perception of the very nature and the exact role of the media. At a certain stage of our work the wording of the first recital of the draft text was as follows:

“Recognising that the media contribute to the shaping of public opinion, and that their role is particularly important at the time of elections;”

This was the result of a compromise between an approach that wanted the media to be seen to “have an influence on public opinion” and a moderate approach suggesting that “they just shape public opinion”. Even this was considered less than satisfactory because of the use of the verb “recognising”. This can imply that the idea that followed is an established fact. That it is a reality that we all admit as such, while the phrase “the media contribute to the shaping of public opinion” differs in character. The latter may be interpreted as admitting or implying that there is a specific action by the media toward a defined end. Some might believe that in all cases there is an influence that goes in the direction wanted by those operating the media. The phrase that followed, “their role is particularly important at the time of elections” might also be perceived in the same way, as an undeniable fact and that the media are determining the outcome. In that case, this wording of the recital would have left out not only the people who are receivers of the message and the way each one reacts to the messages spread by the media. It would have omitted also the circumstances, the characteristics of the original source, the content of the message and many other parameters. We know that not all people, not all populations react the same way. Sometimes even the same person has different moods vis-à-vis the media and reacts differently to the same thing under different circumstances. In respect of elections, the same message may result in one person voting for the ruling party and another voting for the opposition. For example, when a politician is harshly attacking his opponents, he might be approved by some of his supporters “because the opponents are getting what they merit”. Other supporters may find the attack a very bad act that eventually leads them to change their minds and intentions of vote.

In our work at the experts group, we adopted a more general and flexible wording, universally accepted, whilst at the same time true, which is: “noting the important role of the media in modern societies, especially at the time of elections”. This represents what is generally admitted and needs no clarification, while at the same time not leaving room for misinterpretations. The media play a role, which can be in any direction.

One might argue that all the fuss was just a philosophical dispute, rather like the theological disputes over the gender of angels. However assuming or implying that our starting point was a recognised specific influence by media on public opinion might go in the same direction of a common view of the media as an omnipotent evil actor that the society needs to control. This was not the aim of the Council of Europe. It would also cause reactions: The media professionals would not like it that anybody (in this case the authorities) could seek to interfere with the fundamental right of free expression.

Once the way we perceived the media in the context of elections was clear, the focus shifted on the characteristics of the recommendation and its content. The discussion was about whether it should be a strong text with specific action and measures on paper or a flexible text that focuses on principles rather than recipes.

The answer was not very simple. We needed take into account several factors, such as whether all countries had the same needs; whether what is true, useful and effective in one country is for all others; whether the legal system and constitutional law of all member states allowed the adoption of specific clauses dictated in a certain way by the Council of Europe. On the other hand, some colleagues informed us that in some areas of this topic no legislation existed in their own country. Further they argued that this did not matter as things were functioning without problems. Why then, tell these states to adopt measures of which they had no need?

There is also a commonly accepted reality that the same measures are not expected to produce the same or even similar results in all countries. Given the differences in culture and tradition, reactions can be different.

There were two approaches to this issue among the experts. There were those that felt that their country needed more detailed provisions both as a guiding instrument and a safeguard against misinterpretations. Conversely there were those who believed that the inclusion of broad principles had the merit of acceptance by all and applicability to all. The latter further argued that too strong a detailed statement might generate negative reactions from media professionals.

The final text provides for the respect of fundamental principles. Simultaneously some extra details and guidance with reference to the purpose, the extent of action and the options available in order to attain the objectives set by the recommendation, were included in the explanatory memorandum.

It is useful to stress again here some important points, included in the preamble of the recommendation:

First, any regulatory measure or framework should respect the fundamental principle of freedom of expression. This right is protected under article 10 of the European Convention on Human Rights and any interference with or restriction of that right should strictly be based on three criteria that are set by international law and practice: The provisions relevant to any restriction should be clearly stipulated in law, they should serve a superior aim and the are needed in a democratic society.

The Council of Europe considers strengthening of freedom of expression as a way of consolidating democracy and democratic institutions. In line with this approach special importance is attached to the editorial independence particularly in election time. Also, on some issues, the merits of self-regulation are underlined and encouraged. It is acknowledged that in some cases and concerning certain issues it is best for media to meet requirements of quality and professional standards through measures they adopt and implement themselves. These measures take the form of codes of conduct and the like. In these cases, and once the authorities define the principles to be respected, the media professionals may choose the best means and ways to attain the goals set for the benefit of democracy.

A crucial question was also to define the purpose of the measures sought through the recommendation. How could it be used by member states? The general approach as to the way of perceiving the media's action in the first recital of the text meant that we did not consider their impact. We focus rather on their way of dealing with elections and covering the various related activities. What is requested is respect for principles: fairness, balance and impartiality.

What does this mean and why limit the requirements only to this treatment?

When a party or a candidate seeks the citizen's vote, their first requirement is to make known their existence and spread the message across. In this respect, under present conditions in modern societies, the role of the media as a vehicle for information is important. One may argue that in many cases the existence or the message of a party or candidate will not become widely known unless carried by the media.

Once this was achieved, the next question that arises is why fairness, balance and impartiality are particularly requested. Does this mean that the lack of one or another automatically confers advantage to a party or candidate at the expense of their opponents? Our answer is neither "yes", nor "no". In some such cases advantage may be conferred, in others the effect can be the opposite. The objective, though, is not to judge fairness and impartiality from the outcome of the media actions but to ensure this during the election campaign. It is the ultimate obligation in order for the election coverage to be characterised as fair and balanced.

Thus, suffice is to say that the three principles be respected. Governments of member states are in the obligation to define ways and specific actions to achieve this respect.

The margin of choice is wide. I quote the example of the allocation of airtime in the various broadcasts, be it in the news and current affairs programmes or in other cases. One of the options is to allocate equal time to all contenders of the elections. Whether they have 40% or 5% of the vote they may enjoy the same antenna time. Another formula is according to the principle of proportionality; the parties receive time proportional to their strength in votes. To a party having 40% in the last election there will be allocated 40% of the antenna time and a party of 5% will get only 5% of the time. Other methods also exist where a mixed formula is used. So equality in allocating airtime can be equal or proportional time. They are both accepted bases to achieve fairness of treatment of parties and candidates.

This consideration leads us to the next issue: Which media are concerned and which obligations should be imposed on them? Which programmes and activities are to be regulated and how?

The criteria retained for defining the different categories were the potential for influence as defined by the nature of a medium and the position of the government with regard to ownership in that medium.

Applying the first criterion-potential for influence- we concluded that all broadcasting media, whether public service broadcasters or commercial radio and TV stations are concerned. All should respect the principles of fairness, balance and impartiality.

A first question arises there? Are all obliged to deal with the electoral campaign?

In principle, a public broadcaster should at all times cover issues of public interest. In the case of elections, not only is obliged to report and educate the public on elections, it is also its duty to organise special programmes that will enable parties and candidates to present their messages and the public to be in a position to make an informed choice. This means that the citizen casts his or her vote based on his/her own judgement that was made after being fully informed about the candidates and their electoral platforms.

Private broadcasters may not be under the obligation to cover the elections if they so decide. This means that they should not touch in any way on election issues, directly or indirectly. This is usually true for thematic stations. In the case though that they deal with election in any way and for any reason they automatically fall under the obligation of fair and balanced coverage.

What about the print media, newspapers and magazines? They are largely different in nature and the way they can reach or even influence the public. The conditions laid down for their operation are also different from the broadcast media. One is free to buy a newspaper or not, while radio and TV are in every house, they can also be in our car and in public places. They are forcibly part of our family and sometimes professional environment. This is why print media are free to deal with electoral issues and actors as they wish, with one exception; if they are owned by the state they should fall under certain obligations. In the experts group we retain ownership instead to funding or control after long discussions. Our reasoning was that funding does not necessarily mean that the specific media are state or government dependant or controlled. There are many instances where print media in many countries receive public funds in the form of subsidies or in other ways, without this making them servants of the authorities. At the same time formally independent media may in reality be under the direct or indirect control of political or other forces. It was considered that media owned by the government should be seen as owned by the citizens in general and thus they have a special responsibility vis-à-vis the people and those considered as their representatives. This is why they should treat all parties or candidates fairly both in news reporting, commentaries, advertisements, etc.

The next issue is relevant to the kind of programmes that should be taken into account when seeking regulation. It is obvious that news and current affairs programmes come first, since they are more likely to attract the public's interest. Election coverage means first reporting on what's going on. It can take several forms, reporting, presenting a party or candidate's views, presenting their own words or activities etc. There will also be debates, interviews, and other forms of programmes.

All the above programmes should take place, and a code of conduct should be established from the start of the campaign. It is important to stress here that any form of coverage of elections or the organisation of programmes and invitation of participants should always be free of any payment or other consideration. It should always be stipulated in the law that paying in order to gain access to the media or any media asking for payment or other consideration for its coverage of any election activities should be punishable.

Only payment for political advertising, as provided by law, falls out of the above principle.

We come to the natural and crucial question: What is fairness, equality and balance in dealing with information and presenting views and comments?

There are not specific responses in the recommendation. I will try to present some concrete examples on the issue.

The principle of equal treatment should be applied with regard to events, activities and public interventions, which form directly or indirectly part of the electoral campaign.

The first element of equal treatment is the time of presence or speech in a programme of political personalities, such as party leaders, government ministers or other officials, members

of parliament and other representatives of parties. It is also the time dedicated to present the activities and other public interventions of the candidates, of the parties and of their representatives.

The time dedicated to the activities or public interventions of groups or personalities, under a partisan or not partisan capacity, should also be counted when they are providing support to or publicise specific parties or candidates.

Statements and activities by persons occupying public offices, when made under their official capacity, should not be considered as part of the electoral campaign. However, sometimes these statements and public interventions are publicising the results of work done or are exploited for electoral purposes or are used in support of an electoral platform. In all these cases the time dedicated to such activities is counted to the time allocated to the organiser of electoral campaign supported by the said statements or activities.

There are also other aspects of equal treatment. The electronic media should take care and ensure that when they invite to participate in or give access to electoral campaign organisers to a programme, this is done in conformity with the principle of equality; all should have access and no discrimination against or exclusion of any party or candidate or their representatives is allowed, whether from the whole spectrum of or from specific programmes.

The policy of addressing invitations and giving access to programmes should also ensure equal treatment of men and women.

The public activities of the parties should be covered with respect to the number, the type and importance /significance of the said activities or events and with the same attention for all parties, on the basis of equal treatment. This means that when a broadcaster chooses to cover a specific activity of one party or candidate it should do the same and with the same terms for the others. It cannot make a selection and give just equal time for different activities.

A crucial issue is that of comments and presentation/reproduction of the activities, events, statements and press releases of the electoral campaign organisers. The broadcasters should ensure that the comments and the excerpts presented are such as not to alter their substance.

More aspects should draw our attention, especially with programmes in the studio. Even the way the participating persons are seated should be studied in order not to cause discriminations.

If the time dedicated to parties and others is calculated as a means to judge fairness, how is this done? Is it relevant to single programmes, a day's schedule or something different? In fact equality and fairness should not be seen separately in terms of a single programme or item. It should be calculated in terms of coverage as a whole, over a period longer than a day, preferably over a week. The period should not be too short in a way that it deforms the whole picture, neither too long with the risk of not having the possibility for corrections if needed. And in any case, the final assessment should take into account the whole electoral period.

What about other programmes, such as films and popular shows that might attract wide interest and might have an influence on people's voting behaviour either through content or the persons involved? At the beginning there were suggestions that whatever is likely to have an impact on voting intentions should be avoided. Upon reflection this was felt to be too strong and restricting fundamental freedoms. Such an interpretation would be too wide and it



could leave room for considering almost all kinds of programmes as interfering with elections. The final text calls for special care with regard to these kinds of programmes. This means that media people and authorities should be aware of possible secondary effects and act accordingly.

Other areas that might need regulation are the availability of free airtime, paid political advertising and publication of opinion polls.

Free airtime is when a party or candidate is offered antenna time to communicate directly with the voters. Usually the party can use this time at its discretion.

There is no a universal practice as such to allocate free airtime to parties and candidates. In case this does occur it might be limited to public broadcasting services. The aim is to enable, especially small or new parties to communicate with the voters. The wording in the recommendation is indicative: It is very cautious and says, "Member States may examine the advisability of such provisions". One can notice the words "may" and the "advisability".

The same caution applies to political advertising, namely paid advertising. There is no rule as to whether political advertising should or should not be allowed. Where such paid advertising is allowed there are two important principles to be respected. Firstly, that all candidates and parties have the opportunity to access and secure advertising on equal terms and conditions and without discrimination. Secondly, that the public is aware of the fact that the broadcast is a paid political message where the source should be identified.

The question as to how any one country deals with the issues of allocating free airtime and political advertising is a complex one. While there is no general rule, at the same time there is a set of other questions to answer before a decision is taken. These include determining who is entitled to have access to free airtime, and how time is allocated. There is also the implied risk of abuse of this right by forces that undermine democracy. In countries where there are not many political parties the issue can be solved without much problem. It is not difficult to find a formula and accommodate all needs. What about countries where there are tens of parties? How can the media confer free airtime to all these parties without negative effects on their audience rates or their regular programming and abusing of the power to allocate time?

With regard to political advertising there are two main problems. These are equality of opportunities between big or rich parties and the others who are less empowered. The other issue is that of negative advertising. Both issues can be dealt with in several ways. Each country chooses whatever best suits the needs, tradition and culture of the country. No recipes exist.

The publication of opinion polls continues to trouble some political authorities while we are witnessing today a proliferation of surveys. Some of them carried on behalf of the media themselves. Practices vary, some countries prohibit the dissemination of opinion polls a couple or many days, even weeks before the elections, others have no provision and publication may take place while voters go to the ballots. After a warning that any restrictions should be in accordance with article 10, the recommendation set the minimum requirement for their publication: The public should be informed about the specific characteristics of the opinion poll, that is the technical parameters, the source and the client who commissioned it.

It is important to mention that a recent decision by the French Court de Cassation has decided that the prohibition of dissemination of opinion poll results for one week is violating article 10

of the European Convention of Human Rights. Similar decisions were issued by the Supreme Court of Canada and of other countries.

At the heart of my presentation is the question “what are the member States expected to do”?

The Council of Europe expects all its member States to examine ways of ensuring respect for the principles of fairness, balance and impartiality in the coverage of election campaigns by the media. They should consider the adoption of measures to implement these principles in their domestic law or practice where appropriate. The margin of freedom or discretion for member States to act is quite large but the principles and the objective are the same.

It is important though to stress here the following:

It is clear that the free expression of the will of the people in elections is only possible if a set of rights can be protected. Firstly there is the need to ensure freedom itself. This means that the general atmosphere should be felt as calling for participation in the electoral process at all stages and in all its aspects. Not only should any threat or intimidation be unthinkable but to the contrary all human rights should be protected. These rights are linked to freedom of expression, freedom to association and others. The relevant institutions and procedures guaranteeing protection of such rights should be present.

These prerequisite rights form a network and constitute the full web that serves as a protective shield; the citizen should be free to hold his or her own opinions, and also to express them. Freedom of expression also means that exchanges of views and ideas, as well as exchanges of information should be an activity for all without discrimination, fear, or external interference.

Any limitations or constraints should conform to the norms and standards set by international law and practice. Such limitations or constraints should also satisfy a triple test; they should be prescribed by law, follow a legitimate aim and be necessary in a democratic society.

Another aspect of the prerequisite rights arises from one of the media's roles. Freedom of expression acquires specific meaning and becomes even more significant when the media can function unhindered. This presupposes conditions of freedom in which they can fully exercise their role as public watchdog. There is more to that; the term media means that they are the mediators between the power holder and the people, between the various social and other groups, and between individuals as well. A mediator should always be fair. The general climate that the government and the political forces may create would greatly help the media to fulfil this role in the right direction.

I would like to finish with some words about the effectiveness of legal texts. As already said, in some countries no provisions are made in the law and no problems are reported. In other cases, detailed provisions give poor or negligible results. Tradition, culture, experience and other factors count for the outcome and one should not expect that everything will work perfectly once a text is adopted. This does not mean that a regulatory text is not needed. It is a starting point, an important one. Sustained efforts, good faith and democratic spirit are needed for any text to be effective and acquire universal value.

**AFTER THE VOTE:  
COUNTING THE VOTE AND MAKING THE RESULTS PUBLIC  
IN THE FORTHCOMING AZERBAIJAN ELECTION**

**by**

**Mr Richard BARRETT  
Bureau Legal Officer (Ireland)**

As is the case with our work today the count process happens at the end of a long day when all involved are getting a little restless. I would like to go through the counting process with you and if there are any problems or ambiguities we will try to clarify them.

This is the process which takes place in the period between the close of the poll and the stages of publication of results. But planning for this starts a lot earlier and the possibility of recounts and re election could extend the process at the other end.

The players in this process are clearly the CEC, the 124 Con EC's and the 5000 PECs', but also the candidates, agents and observers (and the media) who are the first critical audience and later the Constitutional Court who must recheck and approve all the results.

The people involved in the counting process are the temporary custodians of the electorate's will (which the Constitution describes as the 'source of state power') and carry a heavy responsibility to count and collate, promptly, smoothly, speedily and accurately. If anything goes wrong it can result in criminal and civil liability, and election complaints and appeals and prolong the task of the commissions. (e.g. Article 22.11.)

What laws are involved?

- The Constitution,
- European and international norms on free and open elections,
- The Election Code and the implementing decree,
- Regulations from the CEC and the recent Guidelines.

From the Constitution we learn that

- Articles 83 and 101 of the constitution set down the basic rule that deputies and the President are elected by majority vote in general, equal and direct elections, by way of free, individual and secret voting.
- For the counting process this means that we are dealing with a simple majority system, that the rules must be applied uniformly across the country and that votes of individuals should not be disclosed.
- Article 101 says that the President is elected by a majority of more than half the votes cast, by a second round if necessary between the leading two of the first round candidates.
- Article 86 says that the accuracy of results of elections is checked and approved by the Constitutional Court as specified in the law and Article 102 says that Court must make an announcement in a Presidential Election within 14 days of the poll.

## **I. Election Code.**

Election Commissions have under the Code the responsibility to determine the voting results. The CEC should ensure that counting and publishing is done in a uniform manner. Under Article 26 the CEC determines the results of presidential elections, issues verification to the successful candidate and publishes official results including the protocols of the PEC's. Under Article 32 the Con EC's determine the outcome of elections in their constituencies. Under Article 37 the PEC's determine the voting result of the election precincts and deliver the protocols to the Con EC's.

While the election system ( simple majority ) appears straight-forward, the election procedure is very complex. There are many paper checks which are designed to be protections but they can also be traps.

## **II. Transparency**

Article 2.5 means that the count must be public, and under Article 40 that is filled out by listing the participants, media and observers who can watch the counting. This is now further elaborated in the two instructions from the CEC which give the same rights and duties to national and international observers.

Observers can,

- Watch the determination of the returns,
- Watch the composition of the protocols,
- Watch the actual counting,
- Watch the re-counting if any,
- Watch the process of invalidating ballot papers, and
- Get one authorised copy of protocols without payment.

The instructions also have a list of things which observers cannot do.

Note that observers cannot be involved in the count themselves (Article 42) but they can insist on inserting their comments into the protocol. There should be no pens or pencils lying around on the counting table, and the protocol should be filled in by pen, not pencil.

It is good practice of course for the PEC's to count and record everything they get, but specifically under Article 99.6 they have to count the ballots they receive from the Con EC. The PEC should also keep a count on the number of ballots issued and on ever thing else which must go into the protocol.

Article 100 sets out the items to put into the protocol and while this appears to stop with the quantity of valid votes, Articles 201 and 202 specify that for Presidential elections the protocols give candidate details and the votes cast for each.

## **III. Counting**

It would be prudent to fill in as many boxes on the protocol as possible before opening the polling boxes.

The detailed rules for counting are in Article 106 ;

- Unused ballots have to be cancelled
- Number of voter signatures (must be treated carefully due to the threat to voter anonymity)
- Number of voter cards
- Number of mobile voters
- Start with mobile ballot boxes
- Count envelopes first as a check ; very important because of Article 106.2
- Open envelopes and count all valid votes first ; then by candidate.
- Put doubtful ones to one side and apply Article 106.3.

The decision on doubtful votes should be made by the PEC collectively, but by vote if necessary by members with decisive voting rights only. Should be done openly with candidates' agents and observers and the media watching. The fundamental test must be the voter's intention. If there is more than one ballot in the envelope (element of family voting?) the best approach would be to allow one ballot but only if all the ballots are identical. Note that under Article 167.3 a vote in parliamentary elections shall be considered invalid when more than one square is marked. While it does not say 'or none' as in the case of Presidential elections (Article 200.3) it must still be the case that blank ballots are invalid, but if a voter expressed a preference outside the box it could still be valid if clear.

Article 107.6 provides that the Con EC can order recount of a PEC's votes but it is done by the Con EC. Under Article 108.4 the CEC can order a recount by the Con EC.

A good measure of fairness in the voting and counting process is whether the number of votes cast equals the number of ballots in the box. However it does not always work out that way. But when it goes wrong you should understand why e.g. family voting or people bringing ballots away with them. If there is a large discrepancy which cannot be accounted for then you may have a fraud.

#### **IV. Publishing.**

Article 109 says that the CEC publish preliminary voting results within 5 days of election and all protocols within 45 days of election. The PEC protocols are published within 5 days. The Con EC protocols are published after 10 days. The CEC publish everything formally after 6 months.

Article 110 says that SIAS results are preliminary only and do not have legal effect. That does not sit too happily with para 10 of the new instruction from the CEC.

In accordance with Article 86 of the Constitution, the outcome of elections are checked by the Constitutional Court. For parliamentary elections within 20 days after the election the CEC sends the Con EC protocols to the Constitutional Court. They check within 10 days but can extend the period. The approval by the Court is final.

Under Article 203 within 14 days of the election the CEC sends results of Presidential election to the Constitutional Court for approval. That is a very tight time period when you consider that Article 102 of the Constitution obliges the Constitutional Court to announce the result of a Presidential election within 14 days of the voting. CEC protocol is signed after Constitutional Court approval and published within 24 hours.

## THE LEGAL DISPUTES ARISING FROM ELECTION MATTERS

by

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The right to vote and be elected “lies at the core of democratic government based on the consent of the people and in conformity with the principles of the [International Covenant on Civil and Political Rights.]” “Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced.” “There should be... access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.” So said the United Nations Human Rights Committee in its Twenty Fifth General Comment, immediately telling us that election litigation is very clearly an issue of human rights.

Therefore, to speak more on legal disputes arising from election matters, it is first useful to quickly review some of the rights involved.

Universally, the basic right is enshrined in the **International Covenant on Civil and Political Rights** at Article 25:

“Every citizen shall have the right and the opportunity ... without unreasonable restrictions:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) ....”

The specific European rule is found in the **European Convention on Human Rights and Fundamental Freedoms** at Article 3 of Protocol One: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

From these, and the rulings of the European Court of Human Rights, we can glean five principles underlying the “electoral heritage” of Europe. In once sentence, “Suffrage must be **universal, equal, free, secret, and direct** and elections must be held at regular intervals.”

These principles are found in the Election Code of Azerbaijan. But having principles is not sufficient; the state must also have conditions for implementing these principles. As the Venice Commission Guidelines on Elections state, “Democratic elections are not possible without respect for human rights, in particular **freedom of expression and the press, freedom of circulation inside the country, freedom of assembly and association** for political purposes, including the creation of political parties.”

Restrictions of these freedoms must (1) have a basis in law; (2) be in the public interest; and (3) comply with the principle of proportionality.

That is, such restrictions must be in compliance with the ECHR, the ICCPR, and here, the Constitution of Azerbaijan.

As the UN Human Rights Committee stated in the same General Comment I opened with, the full enjoyment of the right to vote “requires the full enjoyment and respect for the rights guaranteed in Articles 19, 21, and 22 of the Covenant.” That is, the right to hold opinion and freedom of expression, the right to peaceful assembly, and freedom of association.

These rights are generally mirrored – or strengthened – in the ECHR, which guarantees the **freedom of expression**, including the **holding and imparting** of opinions (Article 10); the right to **peaceful assembly** and **freedom of association** (Article 11), and **non-discrimination on the base of** “sex, race, colour, language, religion, **political or other opinion**, national or social origin.”

For such rights to be realized there must be an effective mechanism to challenge violations of those rights. By way of example: if you are guaranteed the right to vote under the Constitution, but cannot bring a case before an appropriate body for redress when you are denied the opportunity to register, do you effectively have a Constitutional right?

For the rights enshrined in the ECHR, this is made particularly clear in Article 13, “Everyone whose rights and freedoms as set forth in this Convention are violated **shall have an effective remedy** before a national authority.”

ICCPR Article 2(3) provides a similar right to effective remedy. It is in within the rule of law that protection of rights is found, and thus, it is imperative that there be an effective system for addressing legal disputes in electoral matters. But what should this system look like?

According to the Guidelines for Elections established by the Council of Europe Venice Commission, the appeal body for alleged electoral violations should be either an **electoral commission** or a **court**. In either scenario, a final appeal to a court must be possible.

Two examples from internationally supervised elections where court systems had effectively ceased functioning are 1996 Bosnia and Herzegovina and 2000 Kosovo Province. Thus, election commissions were seen as the only feasible option.

In post-Dayton Peace Agreement Bosnia and Herzegovina, elections were supervised by the OSCE, with the Dayton-mandated Provisional Election Commission serving as the election administration body. The PEC established an “Election Appeals Sub-Commission” composed of an international chair, three national judges, and three national legal counsel (representing the Federation, the Republic, and the Republika Srpska). Complaints could be directly lodged with the sub-commission, which had jurisdiction over all violations of the PEC “Rules and Regulations” promulgated pursuant to the Dayton Peace Agreement Annex III.

In Kosovo, the Central Election Commission was established by the UN Administration, and in turn established the Election Complaints and Appeals sub-Commission, composed of an international Chair and three national judges, including one national minority. This was expanded to four, with an additional minority (Serb) added in 2001.

So assuming you have either an election commission or a court, what else is necessary?

- a. Simple filing procedures - avoiding formalistic pitfalls for would-be applicants and related time delays. The procedures should not be a deterrent to the lodging of legitimate complaints.
- b. Clearly regulated appeals procedures. In particular, the powers and responsibilities of the various bodies should be clearly regulated by law, avoiding conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to “forum-shop”.
- c. The appeal body (court or election body) must have authority over inter alia: the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.
- d. The appeal body also needs to have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.

This implies that it must be technically possible to rerun an election by e.g. polling station. I worked in an election where this was not possible. Our election commission had recommended to a superior body that elections be rerun at a few specific polling stations due to irregularities, but it was physically impossible to isolate ballots from those stations. In subsequent elections this was remedied; however, this underlines the need for appropriate planning on the part of election “technocrats” in ensuring that if such decisions are made by relevant bodies, they can be implemented. Of course, such systems must still respect the secret nature of the ballot.

The system still needs to ensure that:

- a. All candidates and all voters registered in the constituency concerned must be entitled to appeal.
- b. Time-limits for lodging and deciding appeals are short - the Venice Commission recommends three to five days for each at first instance.
- c. The applicant’s due process rights to a hearing involving both parties are protected; and
- d. Where the appeal body is a higher electoral commission, it can *ex officio* to rectify or set aside decisions taken by lower electoral commissions.

The OSCE Office on Democratic Institutions and Human Rights (ODIHR) lists a similar set of general principals regarding election litigation. These bear noting:

- a. Every individual and political party has right to protection of the law and remedy for violations of political/election rights
- b. Every individual or political party whose candidature, party, or campaign rights are denied or restricted shall be entitled to address such grievance with a competent jurisdiction
- c. Redress should be provided in a prompt manner and within electoral timeframe
- d. An effective, impartial, independent judiciary (including the public prosecutor and electoral bodies) is a precondition for fair, effective, and impartial handling of election disputes;
- e. Decisions should be subject to appeal to judicial authority; and
- f. Jurisdiction of courts and electoral bodies must be clearly demarcated to prevent forum shopping on either side.



The issue of whether the judiciary is effective, impartial, and independent is beyond the scope of this session, but remains of utmost importance. I would suggest that those interested refer to the *Basic Principles on the Independence of the Judiciary*, adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by General Assembly Resolutions 40/32 and 40/146. Aside from that issue, to assess a system of election dispute/electoral litigation, we can look at four key elements here today – jurisdiction, timeliness, enforcement and prosecution.

**Jurisdiction** must be clearly delineated between the election commissions and the courts, and there must be a final appeal to courts. This prevents “forum-shopping” and thus assists in the overall functioning of the process.

**Timeliness** which means there must be guarantees of dispute resolution within the electoral timeframes. We want to avoid seeing delays in election outcomes, but we also want to have electoral challenges resolved before final certification. The potential for this type of problem received a high profile thanks to the 2000 Presidential Elections in the United States and the challenges raised regarding polling in parts of Florida.

**Enforcement**, whereby there must be proper and timely implementation of decisions. Generally speaking, this issue becomes more important the greater the role of the election commissions in election litigation, as implementation of court decisions by the executive should be “automatic”.

**Prosecution** of corruption of the electoral process should occur for offences outlined in the criminal code. This implies that such offences must exist within the criminal code.

With that in mind, let us quickly look at the Election Code of the Republic of Azerbaijan.

### **Jurisdiction**

Complaints can be filed with the relevant election commission, unless the alleged action/lack of action can cause criminal liability, in which case it is filed with the court or prosecutor’s office (Article 112.2). The complainant may appeal a decision of one election commission to the superior election commission, and from the CEC to the Court of Appeal. (Article 112.3). It falls upon the election commission to ensure that a complaint has not been concurrently filed with the courts. If criminal liability is possible, the case stays in the court.

### **Timeliness**

The Election Code gives the potential complainant 3 days from the action/decision or from the time the interested party is informed (Article 112.1). The election commission must return a decision within three days, or immediately if the complaints are received on election day or the day after. (Article 112.10)

If the courts have jurisdiction, they must consider the case within three days, and a complaint on the court decision can be made within 3 days. (Article 112.11)

So the timeliness criteria are, on paper, arguably well met.

### **Enforcement**

This is addressed under Article 116, as well as under the criminal code. However, Article 116 allows the election commissions to apply penalties only for violations by: a candidate, registered candidate or their authorized agents or those of a political party, block of parties, or campaign group. What of violations by, e.g. media, or other legal or juridical persons? Thus, enforcement is difficult to assess looking solely at the election code. Also, non-implementation of a court resolution by an election commission imposes criminal liability under the criminal code (Article 112.7)

Media failure to provide impartial information about the election campaign and candidates is one of the most frequent shortcomings during elections, and there can be a problem with enforcement of election commission decisions regarding such violations. This was apparent in Kosovo in 2000 where the CEC and its election complaints sub-commission had limited enforcement powers over the media, and the competent body was unable to take decisions effective within the election timeframe.

### **Prosecution**

As touched upon under “jurisdiction”, the election code refers to the criminal code and prosecutor in a number of places. Article 115.1 lists out a variety of persons who may be subjected to criminal, civil, and administrative liability in line with the Criminal Code, Civil Code, and Code of Administrative Offences.

So taking these various points, the true test will be whether or not at the upcoming elections the system works, i.e. alleged violations are heard and determined, and where necessary addressed in the system or as appropriate by way of criminal prosecution. All elections give rise to legal disputes – the question is whether or not the system is self-correcting, i.e. can a state’s election dispute resolution mechanisms address, redress, and rectify violations of the internationally guaranteed rights, constitutional rights, and procedural violations which, in some degree, occur worldwide.

Finally, what if, at the end of the day, the national election dispute mechanism does not function properly? Aside from international political pressure which may result from negative observer assessments or the like, on the legal side there are two basic international mechanisms that you in Azerbaijan should be aware of. Extremely briefly we have:

1. The European Court of Human Rights in Strasbourg:

To take an individual case to this court you must (a) allege a violation of the ECHR (e.g. **freedom of expression**; the right to **peaceful assembly**, **freedom of association**, **non-discrimination on the base of political or other opinion**); and (b) have exhausted your domestic remedies. This is, broadly speaking the strongest international mechanism insofar as Azerbaijan is concerned.

2. The UN Human Rights Committee:

The Committee monitors implementation of the ICCPR by States, responding to reports from the States and shadow reports from civil society, etc. The next report of Azerbaijan is due in 2005. The overall implementation of the ICCPR will be assessed at that time by the Committee.

Also, individuals subject to the jurisdiction of Azerbaijan can raise **individual complaints** to the Committee (ICCPR Optional Protocol One *in force since 27 February 2002*). To raise an individual complaint you must (a) allege a violation of the ICCPR (e.g. right to hold opinions,

freedom of expression, right to peaceful assembly, freedom of association) (b) have exhausted domestic remedies, and (c) the same matter cannot be under examination under another international procedure.

# THE LEGAL DISPUTES ARISING FROM ELECTION MATTERS

by

**Ms Teresa ROMER**  
**Judge of the Supreme Court of Poland**  
**Expert of the Directorate of Legal Affairs**  
**of the Council of Europe**

Example of Poland

## I. General Comments

### A. Elections Rules

The presidential, parliamentary and territorial elections in the Republic of Poland are fully democratic. The basic election rules are being obeyed in the course of those elections. Among those rules are:

1. the rule of universality – it means that every person who has Polish citizenship and has reached a certain age has the right to vote in the elections;
2. the rule of equality – this rule has two meanings:
  - i. firstly, it means that each person entitled to vote can vote only once: “*one man, one vote*”;
  - ii. secondly, it means that each vote has the same value.
2. the rule of directness – on one side it means that the person entitled to vote votes personally without participation of any other person; on the other side it means that the vote is given to a particular person who is (ascertained by the name) represented by name.
3. the rule of secrecy – it means that every elector has the right to keep secret for whom he has voted.

The Polish Constitution is the safeguard of these rules.

### B. Electors – Who can vote?

According to the Polish Constitution, every person who has Polish citizenship and is 18 years of age, or turns 18 on the day of the elections at the latest, is entitled to vote (article 62 of the Constitution).

### C. Organisation of the Elections

The elections committees run the elections.

The course of elections can be divided into 5 stages:

1. the announcement;
2. voting;
3. counting of the votes;
4. verification of validity of the results; and
5. publication of the official results.

As we are here to discuss the role of the courts in the matters arising from the issue of elections, I will now discuss the VERIFICATION OF VALIDITY OF THE RESULTS.

The necessary condition for the elections to be valid is that their course is conducted in accordance with the law. The Administration of Justice is wholly responsible for examining the legitimacy of the elections (article 101 and 129 of the Constitution). The procedure of this examination is divided into two stages:

1. at the first stage the court decides about the “election protests”, if any such protests were submitted;
2. then the court gives a ruling concerning the validity of the elections as such. In the case of the Presidential and Parliamentary election, this stage is obligatory.

#### D. General comments:

##### What is the “election protest”?

It is an application submitted to the court that seeks to show the particular transgression committed in the course of the elections and demands the invalidation of the part or the whole of the elections.

##### Who is entitled to proceed?

Each elector (whose name was placed on the list of the electors at the date of the elections) as well as the proxies of every election committee has the right to present an election protest.

Let us now look at the procedure of some particular kinds of elections:

## **II. The Presidential Elections**

Article 129 of the Constitution states that the Supreme Court affirms the validity of the presidential elections and that the electors have the right to present the election protest.

The 1990 Act on the Election of the President of the Republic of Poland deals with this matter in detail. Chapter 10 of this Act is entitled: The validity of the election of the President of the Republic of Poland.

According to articles 72-75, the electors, the election committees and the subjects who were requesting the candidates, are, not later than after 3 days from the publication of the elections results by the Governmental Election Committee, entitled to submit a protest to the Supreme Court if any disorder in the legal matters occurred or an election crime was committed, if such disorder or crimes had an influence on the result of the elections. The protest must be submitted in a written form and it has to consist of a demur and the proof on which the demur is based.

If an entitled subject submitted the protest and all the formal requirements are met, then the court (consisting of 3 judges examining the case) will give its opinion in a form of a decision. If an election crime was alleged in the protest, the General Prosecutor is immediately informed by the Supreme Court.

The court will decide whether the protest was justified and will assess if the crime against the elections or transgression of the regulations had an influence on the election results.

After all the election protests (if there were any) have been examined, the Supreme Court (the Administrative, Labour and Social Security Law Division of the Supreme Court) will pass judgment concerning the validity of the elections. The Court takes its decision in a form of a resolution within the 30 days after the Governmental Election Committee had published the election results.

In case of declaring the elections invalid new elections are called.

### **III. The Parliamentary Elections**

The procedure in case of the Parliamentary Elections is in most parts the same as the Presidential Elections procedure. The only difference is the time limits.

The Constitution in the article 101 states that the validity of the Parliamentary elections is confirmed by the Supreme Court.

The 2001 Act about the Elections to the Parliament of the Republic of Poland and to the Senate of the Republic of Poland deals with this problem in its articles (78-84).

The electors, the chairman or a proxy of a particular election committee have 7 days from the publication of the elections results by the Governmental Election Committee to submit the protest to the Supreme Court against the validity of the elections, validity of the elections in a certain district or the election of a certain deputy due to the commitment of an election crime or a transgression of law. The procedure is exactly the same as in the case of the presidential elections (as discussed above).

After examining the election protest the court passes judgment regarding the validity of the elections. The time limit is 90 days from the date of the elections (in case of presidential elections not later than 30 days after the Governmental Election Committee had published the election results). The effect of the judgment can be the invalidation of an election of a certain deputy or deputies (members of the lower as well as the higher house of the parliament).

In case of declaring the elections invalid new elections are called.

It should be mentioned once again that in case of the Presidential and the Parliamentary elections the Supreme Court decision concerning the validity of the elections is obligatory and takes place every time.

### **IV. Territorial Elections**

Within 14 days from the date of the elections an election protest can be submitted against the validity of the elections of a particular Council or the election of a deputy due to a crime against the elections, infringement of the Territorial Elections Act. The protest is to be submitted in writing to the district court (not to the Supreme Court). The court consisting of 3 judges examines the protest in off trial proceeding within 30 days from the date that is the time limit for submitting the protests. While deciding about the protests the court is declaring the validity or invalidity of the election of a deputy. If the court decides about the invalidity of the elections or the election of a particular deputy it also decides about repeated elections. The Commissioner and the proxy of election committee have a right for a plaint to the court of appeals within 7 days on the district court's decision. The court of appeals has 30 days to give its ruling. In the case of invalidation of the elections the elections are called again.

## **V. Referendum**

In the case of a referendum, the Supreme Court plays a significant role again. Each person, whose name at the date of the referendum was on the list of those who are entitled to take part in the referendum, as well as the chairman of the committee, has the right to submit the protest. The Governmental Election Committee should submit the protest within 7 days from the date of the publication of the referendum results. The court has 60 days to give its ruling.

If the decision of the Supreme Court does not influence the results, the Supreme Court will merely correct the result, but if it does influence the results, the court will decide to call a new referendum in a district or districts or will state which actions must be repeated.

## **VI. Elections and the courts**

1. According to the Polish Code of Civil Procedure, the protests connected with election proceedings belong to the civil cases in a very broad meaning.

2. Let us start with the first step of recourse to a court connected with the election.

*It can occur in the incipient stage before the election and is linked to the register of the electors. There exists in each local administration of a commune list of electors. Where a person believes that he/she is entitled to vote and finds out that he/she is not registered on the list of electors, that person has the right at first to make an application (a motion) to the community concerned. It is up to the chief officer of the community or the president of the municipal district to decide on such a claim within three days from the very moment of receiving the claim. If the decision is negative, the person has the right to file a complaint with the regional court. When dealing with such a claim, the court sitting as a branch of one judge acts according the special civil procedure (non-contradictor) rules. The court has to adjudicate within 3 days from the very moment the complaint was lodged with the court. Its decision is final, meaning that it cannot be appealed to the second instance court.*

Where somebody was deprived (according to the law) of the right to vote (active right to vote) and the municipal authorities were informed about it by the court or the Tribunal of State, such a person cannot be placed on the voters/electors list.

*Everybody and at any time could complain to the chief officer or president of the municipal district or to the mayor if he/she considers that in the register list of electors/voters contains wrong data or if the person is of the opinion that he/she should have the right to be placed on the voters' list. Such a complaint has to be decided within 3 days by a decision. Such a decision could be appealed to the relevant regional court. The decision of the court is final. There is no right of appeal against the court decisions of a captain of a ship or a consul.*

## **VII. The role of the judges in the election proceedings**

Starting from the top of the election commission structure, the State Electoral Commission (SEC) is made up of judges only. The role of this commission is the most important in the whole process of election. The State Electoral Commission consists of 9 judges: 3 from the Constitutional Court (appointed by the President of the Constitutional Court), 3 from the Supreme Court (appointed by the First President of the court), and 3 from the Highest Administrative Court (appointed by the President of this Court). They deal with all problems

connected with the elections. It is up to this commission to publish an official announcement in the Official Journal about the final result of each election (presidential, parliamentary, municipal and each referendum on the level of state). This commission takes the decision about all the financial questions (reports) given by electoral committees and decides about the registration of the given electoral group. Some of decisions of this commission may be appealed to the Supreme Court. The members of the SEC take part as the participant in legal proceedings before the Supreme Court.

The judges play the main role during the parliamentary, presidential elections as members of the higher electoral commissions (the district commission). The district commissions are composed only from judges appointed by the Minister of Justice after they have been appointed by the collegial body of the given court. A judge appointed to the commission cannot refuse taking part in it. According to the Law on Common Courts and to the Law on the Supreme Court, no one may refuse to take part in the election process where such is the decision of the Minister of Justice or where he/she is member of the appropriate Chamber of the Supreme Court.

During the municipal election, the judges are the presidents of the II instance commissions.

In the parliamentary election, the president of the provincial commission – a judge – is appointed for 4 years.

The provincial commissions are composed of judges only. It is up to them to check the results of the voting from the circuit commission, to prepare the final minutes and to send them to the SEC. And then the final decision about the validity of state referendums, parliamentary and presidential elections belongs to the Supreme Court.

The most common cases (claims) the courts deal with in connection to the election are the following.

The first instance for such claims is the district courts and the second instance is the court of appeal.

The most common claims during the electoral campaign are the individual or collective claims against the unfair electoral campaign of the opposite party or the relevant commission. Such claims are based mostly on the violation of the article 24 of the Civil Code, which proclaims the protection of personal rights. The court during the campaign has to decide in the case of such a claim within 48 hours from the moment the claim was lodged with the court. The court's decision in such a case is not final. Both sides have the right to bring an appeal against the first instance court decision to the court of appeal, which has to decide the appeal within 48 hours as well.

These cases are simply the civil cases adjudicated according to the “normal” civil proceedings. Only the limit of the time of adjudication is specified, as mentioned above.

The staff of the electoral campaign of the given committee has the right to bring a complaint against the candidates before the criminal court, if they have any substantive reason. Such an allegation has to be brought in the regional court. The politician may bring a complaint against the electoral staff for committing a crime against him/her. Such pending criminal cases do not have any special influence on the campaign until the legal validity of the verdict.



In the case of electoral crimes, the normal criminal procedure is applied. It is up to the public prosecutor to indict a person for committing such a crime. Today, more than two years after the parliamentary election, there are still criminal cases pending against a few members of the parliament. The accusation is about falsification of the signatures on the electoral list. The problem is that those being accused enjoy the immunity of members of the parliament. It is up to parliament to decide whether to lift the immunity of those under suspicion.

### **VIII. The assessment of the Republic of Azerbaijan legislation concerning elections**

In Poland, contrary to the Republic of Azerbaijan, as already mentioned, we do not have complex codification concerning elections. The regulations concerning elections can be found in various acts, such as for example: the Polish Constitution. The 1990 Act concerning the Election of the President of the Republic of Poland or the 2001 Act concerning the Elections to the Parliament of the Republic of Poland and to the Senate of the Republic of Poland.

The Republic of Azerbaijan has dealt with the election matters differently. In its system such complex codification does exist. It is called the Republic of Azerbaijan Election Code. It consists of nearly 300 articles and it deals with all types of elections: the Presidential, the Parliamentary and the municipal elections. It also regulates matters concerning the referendum. This code has been prepared with the help of the Venice Commission. It is an extraordinary, complex and very detailed Code. It regulates among other things general election rules, matters concerning the organisation of the elections, the financing of the elections, matters concerning the proposals of candidates, the course of elections, the verification of the validity of the elections, the appointment of the members of the Commissions, the access to the press during the elections campaign, the transparency during the preparations and the conduct of the elections.

It is such a detailed codification that it regulates matters concerning for example the physical aspects of the ballot box.

A separate chapter regulates each type of elections, each consisting of average 100 articles.

The role of courts and judges in the Azerbaijani system is comparatively limited. The matter concerning the validity of the elections as well as elections disputes are solved in a completely different way than in the Polish legal system. The Commission is the body that deals with these problems. Legal proceedings are rarely commenced.

I have taken part in the Election Training Workshops, and I must say that I was impressed by the high level of knowledge of the Election Code among the Azerbaijani lawyers. I, again, want to stress that the Election Code is a significant act, especially due to the very high level of minute ness complexity. I guess that due to this characteristic, it is also a unique piece of work on a word-wide scale.

## **ROLE OF THE MEDIA IN ELECTIONS**

**by**

**Mr Ashok AHIR**  
**Managing Editor, Politics, BBC Wales**

### **I. Importance**

In this election, in any election in a democratic country, the media is an integral part of the election campaign. It's an immensely powerful tool and one could argue that a powerful media is the sign of a healthy democracy.

Often the authorities see the media as being quite obtrusive, interfering. But, in an election campaign, the media has a duty to play its part and its power should be targeted towards the democratic process.

### **II. Role**

At the beginning of the 21st century the media has, by now, become the link between the electorate and the elected -- the government and the governed. It gives a voice to the people and politicians alike.

In many established democracies, including my own country, the UK, a big divide has grown between the politicians and the people. Society has developed, communities have evolved and a politician is often regarded as a distant figure by those he represents. 30 years ago, in Britain, certainly as in many other countries, political debate took place on the doorstep, in public meetings or at rallies. Now, however, the debate takes place on our television screens, radio airwaves and in our newspaper columns.

### **III. Guidelines**

But such power to inform and influence is at risk of being abused. A strong legal system should protect the media, and politicians alike, from such abuse. On a practical day to day level, however, the media should be able to protect itself. We in the BBC believe that there is no area of broadcasting where our commitment to impartiality is more closely scrutinised than in reporting election campaigns. And I believe this is true of all broadcasters across the democratic world. Given this, it is vital for all media to set some kind of guidelines for their election coverage - and that these guidelines are adhered to by its journalists. And there should be guidelines for any election from a municipal level or as in this instance to a Presidential election.

We in the BBC have our own guidelines, as do most of the world's leading broadcasters. The BBC's election guidelines are now published on the Internet and the public or the political parties can refer to those guidelines if they suspect the BBC has, in anyway, acted unfairly in its election reporting.

I am pleased to say in our most recent elections, last May, in which I was heavily involved, no one complained that we were in contravention of our own guidelines.

#### **IV. Code of Conduct**

Even in countries where individual media organisations do not set their own guidelines, the media industry often agrees on a common 'code of conduct' ahead of an election. (\*\* I've handed out an example of one such code of conduct produced by the Mexican media in 2000.)

Within that code the overriding commitment should be towards objectivity and truth. One of the other key commitments should be an obligation to inform the public and provide information relevant to the voters' needs. For example this would include telling the public how the voting and counting is being conducted, ensuring that they are fully aware of all the parties and the candidates standing and explaining their main policies.

It's also important within such a code for the media to collectively encourage free speech and to allow an open debate on the issues of the day.

For broadcasters this means allowing the public as well as the political candidates to debate openly on radio or television programmes – without of course allowing one particular party view to dominate. It should also allow, where possible, the ordinary electorate/voter to have access to the politicians to question them about their policies.

For the print media, this means printing a wide range of views in their letters pages. On a certain issue, health for example, even if their post-bag is overflowing with correspondence supporting one particular stance, the coverage on the letters page should be balanced.

But as we have already heard from my colleague Christophoros Christophorou, the print media are not governed by the same kinds of rules of balance as those of us who work in broadcasting.

#### **V. Legal Requirements**

As has been mentioned quite extensively in this seminar, there is more than self-regulation during election time. There are laws that govern elections and the media, like all stakeholders involved in the election campaign, must adhere to those laws. If any part of the media does broadcast or publish material that is inaccurate, incomplete or biased, then it is the job of the election authorities to ensure that corrections are made and balance is always achieved in reporting.

If required, legal action must be brought against any media organisation that breaks election law.

#### **VI. Major & Minor Parties**

All sections of the media must realise that each candidate or party has equal rights and should be treated as such. Therefore people representing those candidates or parties have to be treated in the same way. In all democracies there has to be a balance set between coverage of the main and minor parties.

It is up to the media to set its own level of coverage, dependent on such factors as number of elected representatives, showing in previous elections etc. But, the main parties should be defined in advance so that there is no dispute once the campaign gets underway. Minor parties

will complain, they always do and they are entitled to. But it is important that the media is able to defend itself when challenged. The definition should ideally be agreed with the election authorities.

How does this relate to the election taking place on 15<sup>th</sup> October you may ask? Well we are all aware that currently there are twelve named candidates. Not all of those will still be there on polling day and the media should be able to make relevant judgments as the campaign progresses.

But, I would guess that many of those judgments as to whether a candidate has the backing of a major or minor party.

## **VII. Commentating or Reporting**

But, no amount of guidelines or codes of conduct do should mean journalists stop trying to do their jobs.

Commentating on how the campaign is permissible during an election, but in order to do that, the reporter has to be sufficiently qualified and has to be able to say it in a fair and honest way. It's not good enough to say, "I don't think Candidate X will win because he has run a rubbish campaign", what you can say is the "candidate X's campaign appears to have failed to make an impact with the electorate, while Candidate Y has succeeded in extending his apparent lead in the race by appealing to a broader range of voters". But that judgment has to be a truthful one and not based on any kind of bias. It is all about language and during election campaigns all journalists should mind their language.

## **VIII. Election Officials**

An election is essentially a competition. But, it's more than just competition between political parties. It is traditionally a time of rivalry in the media, be it between broadcasters or newspapers. And just as politicians deserve fair treatment by the media, the media itself – and all sections of it, deserve fair treatment by those running the elections – you. This means not favouring one broadcaster or newspaper over its rivals. There should be equal access to the political process to all sections of the media. Remember they are the means through which you will be able to show that this election is being conducted in a free and fair manner.

## **IX. Campaign**

Throughout this campaign, you must allow journalists access to the electoral process and its participants. They must be able to report and investigate in a safe environment, without fear of intimidation, retribution or censorship.

Reporters must have access to you as election officials, access to sites, polling stations, counts etc. And whatever public information there is available, that information should be provided to all sections of the media.

## **X. What is the result of effective media coverage of an election campaign?**

As well as encouraging the public to take advantage of their right to vote, it increases transparency. And what transparency does is to deter abuse and deter fraud.

In India for example, the media is actively encouraged to cover all aspects of the election as a means of ensuring transparency. It is the world's largest democracy, but with a billion people in such a large country, there is a lot of opportunity for election fraud. That is why the Indian Election Commission provides the media with facilities to report on all parts of the electoral process and even issues special passes so journalists can enter polling stations to cover voting.

And this kind of access is now common in many other democratic countries around the world. And it is very good to see free access to the media clearly outlined in the Election Commission's advice to those organising the polling stations.

Through you, the media can increase public awareness of this election – the candidates, the issues and whatever policies the politicians may have to tackle those issues. Proper analysis of these provides the voters with the information they need to make an informed decision on polling day.

Equally important for you is that they can provide the factual information needed by the voters to actually take part in the election. With turnout falling in many democracies around the world, particularly in Britain and the US, it is vitally important that key details such as the times of voting, the locations, how people will physically vote and so forth, is passed on to the voters.

But, don't forget it is you who will be the people who will provide that information to the press in your districts.

The media also has specific requirements on Election Day itself and on the night (or day) that the votes are being counted.

## **XI. Election Day**

For your local TV stations and for the newspapers it is useful to allow them to film or photograph people going to vote. Either signing in, or when voters are going behind the curtain etc.

It is also useful if you are the chief election officer to explain to the media (on record) how the election is being conducted and to encourage the electorate to turn out to vote. You may want to make yourself available to radio, TV stations or newspapers – but remember your job is not to tell people which way to vote – simply to inform them of how they can vote.

## **XII. Election Night/Day**

When the votes are being counted, what the media needs is access to results as soon as they are in. This should be done as quickly and transparently as possible - your job to ensure that. Media's job is to report the results and the political reaction to them. In order to do that they need access to the counts where the votes are being counted – again this increases transparency – the media is a check here on behalf of the public.

The main work for most of you will be on Election Day itself, when you will have to assist the broadcast media in particular to be able to report from the counts.

### **XIII. What can be expected in the climate of broadcasting that we have in Azerbaijan today?**

The radio stations – not just state broadcasters – but all broadcasters operating in your constituency areas should be allowed equal access. I understand that the media with the major audiences or usually given a degree of special treatment but that should not diminish equally satisfactory handling of all other media.

For radio purposes there should be some way for reporters to get back information of the votes cast in any particular region to their stations.

It would be helpful if a number of telephone lines could be provided for use of the media at the counts.

For television purposes, if your constituency is likely to be one where cameras will be – you should provide a clear area so that the cameras can film the announcements of the votes cast.

It is usually helpful to have this on a platform.

It is also helpful if stations are likely to be “reporting live” from your counts that you provide platforms/spaces for reporters and cameras to set up. Preferably with a suitable backdrop to indicate where the count is taking place.

This may be an image of a local landmark or simply a sign with the constituency name.

And most importantly as I’ve already mentioned the media should be able to gain access to the counts as early as possible before polling day to make these kinds of arrangements.

Some election officials often provide journalists with information sheets outlining details such as the size of the constituency, number of voters, boundaries etc, estimated declaration times, results of previous elections. These can be immensely useful. Particularly to the broadcast media who may have a lot of airtime to fill before the results actually come in. I’ve also printed off a sample of one of these from the UK General Election in 1997.

### **XIV. Media Monitoring**

In many countries the Election Commission keep a very close eye on the conduct of the media during election periods. Take for example opinion polls – In France opinion polls cannot be published or broadcast on any media in the final week before polling day. But as we heard yesterday, that is currently being challenged in the courts. Here in Azerbaijan, I believe that period is three days, where as in the UK, opinion polls can be sometimes published on the eve of the election. But, if any media is in contravention of your own rules it is your job to act swiftly to put a stop to it.

In conclusion, all I want to say is that the most important people in this election are not you as election officials or we in the media, it is not even the candidates or political parties. The most important people are the voters and getting to the heart of their problems and their issues in this election is the real challenge for the media. But that’s a completely different talk. Thank you



## ELECTORAL TRAINING WORKSHOP

8 – 10 September 2003, Baku

### DRAFT PROGRAMME

#### FIRST DAY, 8 SEPTEMBER 2003

09 : 30 - 10 : 00      Opening of the seminar  
- *Introductory speech by a representative of the Government*  
- *Introductory speech by representatives of the Council of Europe*  
   *(Venice Commission and Directorate General of Human Rights)*

10 : 00 – 10 : 30      Summary of the programme (1st group)

<b>Group 1 :</b>	- <i>representatives and delegates of political parties and candidates</i> - <i>election observers</i> - <i>NGOs, media</i>
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10 : 30 – 11 : 00      Question /Answer Session

11 : 00 – 11 : 15      **Coffee break**

11 : 15 – 12 : 15      Workshop 1 : the election campaign  
- *General principles of the Electoral Code of Azerbaijan*  
- *Rights and duties of the candidates and voters during the election campaign*  
- *Media regulation during the election campaign*

<b>Speakers:</b>	Mr Bernard OWEN, Secretary General of the Centre of comparative studies of elections (France) Mr Christophoros CHRISTOPHOROU, Media and political analyst, Former Director of the Radio and Television Authority (Cyprus)
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12 : 15 – 13 : 00      Question/Answer Session

13 : 00 – 14 : 00      **Lunch break**

14 : 00 – 14 : 30      Workshop 2: polling day  
*Rights and responsibilities of the voters, the candidates and the members of the electoral commissions on polling day*

<b>Speaker :</b>	Mr Didier VINOLAS, Ministry of the interior (France)
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14 : 30 – 15 : 00      Question/Answer Session

15 : 00 – 15 : 30      Workshop 3 : polling day and the agents and observers  
*Rights and responsibilities of the representatives and delegates of the political parties and candidates and of the observers on polling day*

<b>Speaker:</b>	Mr Bernard OWEN, Secretary General of the Centre of comparative studies of elections (France)
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15 : 30 – 16 : 00      Question/Answer Session

16 : 00 – 16 : 15      **Coffee break**

16 : 15 – 16 : 45      Workshop 4: after the vote  
*Counting the votes and making the results public*

<b>Speaker:</b>	Mr Richard BARRETT, Bureau Legal Officer (Ireland)
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16 : 45 – 17 : 15      Question/Answer Session

17 : 15 – 17 : 45      Close of the first day

## **SECOND DAY, 9 SEPTEMBER 2003**

09 : 30 – 10 : 00      Workshop 5: The legal disputes arising from election matters

<b>Speakers:</b>	Mr Jeffrey. BUENGER, International Commission on Missing Persons in Skopje (FYROM) Mrs Teresa ROMER, Expert of the Directorate of Legal Affairs of the Council of Europe (Poland).
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10 : 00 – 10 : 30      Question/answer session

10 : 30 – 10 : 45      **Coffee break**

10 : 45 – 11 : 15      Questions/Answers on all the courses; closing remarks and summary of the practical exercises taking place on the next day



11 : 15 – 11 : 30      Opening remarks (2nd group)

<b>Group 2 :</b>	<i>- members of the central electoral commissions - members of lower electoral commissions - judges dealing with election matters</i>
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11 : 30 – 11 : 45      Summary of the programme

11 : 45 – 12 : 45      Workshop 1 : the election campaign  
*- General principles of the Electoral Code of Azerbaijan  
- Rights and duties of the candidates and voters during the election campaign  
- The role of the media in the election campaign*

<b>Speakers :</b>	Mr Bernard OWEN, Secretary General of the Centre of comparative studies of elections (France) Mr Ashok AHIR , Managing editor, politics, BBC Wales
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12 : 45 – 13 : 30      Question/Answer Session

13 : 30 – 14 : 30      **Lunch break**

14 : 30 – 15 : 00      Workshop 2: polling day  
*Rights and responsibilities of the voters, the candidates and the members of the electoral commissions on polling day*

<b>Speaker:</b>	Mr Didier VINOLAS, Ministry of the interior (France)
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15 : 00 – 15 : 30      Question/Answer Session

15 : 30 - 16 : 00      Workshop 3: polling day and the agents and observers  
*Rights and responsibilities of the representatives and the delegates of the political parties and candidates and of the observers on polling day*

<b>Speaker :</b>	Mr Bernard OWEN, Secretary General of the Centre of comparative studies of elections (France)
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16 : 00 – 16 : 30      Question/Answer Session

16 : 30 – 16 : 45      **Coffee break**

16 : 15 – 16 : 45      Workshop 4: After the vote  
*Counting the votes and making the results public*

<b>Speaker:</b>	Mr Richard BARRETT, Bureau Legal Officer (Ireland)
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16 : 45 – 17 : 15      Question/Answer Session

17 : 15 – 17 : 30      Close of the second day

**THIRD DAY, 10 SEPTEMBER 2003**

10 : 00 – 11 : 00      *Workshop 5 : The legal disputes arising from election matters*

<b>Speakers :</b>	Mr Jeffrey BUENGER, International Commission on Missing Persons in Skopje (FYROM) Mrs Teresa ROMER, Expert of the Directorate of Legal Affairs of the Council of Europe (Poland).
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11 : 00 – 11 : 45      Question/Answer Session

11 : 45 – 12 : 00      **Coffee break**

12 : 00 – 12 : 30      Question/Answer Session on all the courses; closing remarks relating to Group 2

12 : 30 – 13 : 00      Training for the practical exercises

13 : 00 – 14 : 15      **Lunch break**

14 : 15 – 14 : 45      Opening remarks

14 : 45 – 16 : 00      First practical exercise: election 🗳️<sup>6</sup>

16 : 00 – 16 : 45      Question/Answer Session 🗳️

16 : 45 – 17 : 00      **Coffee break**

17 : 00 – 17 : 30      Second practical exercise: counting the votes 🗳️

17 : 30 – 18 : 00      Question/Answer Session 🗳️

17 : 30 – 18 : 00      Closing remarks on the Election Training Seminar

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<sup>6</sup> 🗳️ means that we wish to videotape these exercises. A video cassette shall be produced and available in Strasbourg.