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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT FINAL OPINION

ON THE AMENDMENTS TO THE ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN ADOPTED BY THE MILLI MAJLIS IN JUNE 2005

by
the Venice Commission
and
the OSCE/ODIHR

on the basis of comments by

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I. *Introduction.*

1. On 1 March 2005 representatives of the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Venice Commission and the authorities of the Republic of Azerbaijan met in Strasbourg in order to discuss possible amendments to the Election Code. It was decided that the authorities of Azerbaijan would prepare a draft text and submit it for opinion to OSCE/ODIHR and the Venice Commission before the end of March. The Venice Commission received the draft on 25 April 2005 and transmitted it to OSCE/ODIHR and to its members Messrs G. Nolte and P. Paczolay. The OSCE/ODIHR consulted Mr. R. Maleev for comments.

2. On 31 May 2005 representatives of the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Venice Commission and the authorities of the Republic of Azerbaijan met again in Strasbourg in order to exchange their views on the proposed amendments to the Election Code and the preliminary comments prepared by Mrs G. Nolte, P. Paczolay and R. Maleev.

3. The Venice Commission endorsed the Interim opinion on the proposed amendments to the Election Code of the Republic of Azerbaijan (CDL-AD(2005)018) at its 63rd Plenary Session (Venice, 10 – 11 June 2005). The interim opinion was transmitted to the authorities of Azerbaijan immediately after the session.

4. On 26 June 2005 the Milli Majlis of the Republic of Azerbaijan adopted the amendments to the Election Code.

5. The adopted amendments to the Election Code of the Republic of Azerbaijan must be considered in the context of previous assessments of this Election Code by the Venice Commission and the OSCE/ODIHR. The four most recent and most important documents are the Joint Final Assessment of the Election Code of Azerbaijan of 1 September 2003 (CDL-AD(2003)015), the Final Report of the OSCE/ODIHR Election Observation Mission for the 2003 Presidential election (FR03), the Joint Recommendations of 1 June 2004 (CDL-AD(2004)016rev and JR04) and the Interim opinion on the proposed amendments to the Election Code of the Republic of Azerbaijan (CDL-AD(2005)018). These documents are interrelated. They contain important suggestions on how to improve the Election Code in order to provide the legal framework for elections conducted in line with international standards. This opinion reaffirms the above recommendations.

6. Unfortunately, the most important suggestions have not been implemented by the authorities of Azerbaijan in spite of the repeated recommendations from the Parliamentary Assembly and the Committee of Ministers of the Council of Europe.

7. The adopted amendments (referred to in the following text as "the law") reflect the recommendations of 2004 only to a limited degree, dealing mostly with technical and minor issues. Although some of the amendments are in line with international standards and a number of them even follow previous recommendations by the Venice Commission and OSCE/ODIHR, this cannot lead to the conclusion that the Election Code of Azerbaijan is satisfactory after the amendments of 26 June 2005. This will be made clear at the end of this opinion by a list of those previous recommendations from 2003 and 2004 which are still not sufficiently addressed or not reflected in the new law.

8. For the purpose of this opinion the following abbreviations will be used:

CEC – Central Election Commission
ConEC – Constituency Election Commission
PEC – Precinct Election Commission

9. The main recommendations as they appear in the document CDL-AD(2004)016rev of the Venice Commission and document JR04 of OSCE/ODIHR will be further referred to as "joint recommendations".

II. Comments on individual amendments

10. The original text of each amendment will appear in bold italic characters.

1. Amendments of the following context should be made:

1.1.29. results of voting – results of calculation of votes in a precinct election commission, during elections (referendum); results of calculation of votes in a constituency election commission, during referendum and Presidential elections;
1.1.30. results of elections (referendum) – results of elections to the Milli Majlis of the Republic of Azerbaijan and municipalities, as specified by the constituency election commission;
1.1.31. election (referendum) returns – determining a nominee that is elected as a Deputy to Milli Majlis, President of the Republic of Azerbaijan or a Councillor at elections, or defining the issue that is (not) adopted through referendum;
1.1.32. overall returns of elections – generalization of returns of the elections to the Milli Majlis or Municipal Elections that reflect names of the candidates and number of votes for them.

11. These definitions appear to be added only for the sake of terminology. If so, they would not be problematic.

2. The following should be added in Article 2.4: "Elections of Deputies of the Milli Majlis of the Republic of Azerbaijan and Elections of the President of the Republic of Azerbaijan cannot be held on the same day. Elections of Deputies of the Milli Majlis of the Republic of Azerbaijan and Municipal Elections cannot be held on the same day. Elections of the President of the Republic of Azerbaijan and Municipal Elections cannot be held on the same day."

12. It is legitimate to provide that different elections cannot be held on the same day.

3. In Article 19.8. the words "and on issues considered at that meeting" should be added after the words "on conduct of a meeting of the election commission"; the words "and list of the issues considered at that meeting, draft decisions and other documents related thereto" be added after the words "information about the time of the election commission's meeting"; the words "and list of the issues considered at that meeting, draft decisions and other documents related thereto" be added after "information about time of the meeting",

13. The additions are to be welcomed since they are aimed at better preparation of commissions meetings by timely informing the members about the agenda and delivering draft decisions to be discussed and other documents related thereto personally in writing or by means of electronic communication facilities.

4. The word "apparatus" should be replaced by "secretariat", in Article 19.17.

14. This seems to be a terminological modification. It is therefore legitimate.

5. The following should be added in Article 22.1: "Restrictions provided for with regard to kinship (except for immediate relatives) in this Article, shall not apply to members of precinct election commissions established in territories where the number of voters is less than 100 but more than 50, as specified in Article 36.7 of this Code)".

15. The amendment limits to immediate relatives the general kinship restrictions on the persons eligible to serve in election bodies, provided in Art. 22.1, for the case of special PECs for precincts with less than 100 and more than 50 voters, formed by open vote at general meetings of voters (Art. 36.7).

16. Such an exception should be applicable only in cases when other options are not possible. The Central Electoral Commission should establish a clear procedure for creating such precinct election commissions.

6. In the Article 22.10.1, the words "and issues to be discussed during such meetings, draft decisions regarding these issues and other documents." should be added after the word "meeting".

17. This amendment is line with amendment 3 - the right of election commission members to be timely informed not only about the next meeting, but also on the issues to be discussed, on the draft decisions, etc.

7. In the Article 22.11, the words "overall results" should be replaced by the words "returns (overall returns)".

18. This change is in line with amendment 1.

8. In Article 27.1 the words "Chairperson, Deputy Chairperson, Secretary and" should be added before the words "A member" and "the member".

19. According to the information provided by the authorities of Azerbaijan this provision is necessary for solving some pension-related issues. It appears that the translation of the amended provisions is unclear.

9. In Article 28.6, the words "and website" should be added after the word "outlet".

20. The new addition establishes an obligation for the CEC to support an internet site. This is a welcome codification of the existing situation.

10. The following should be given as Article 34.5: "Number of the permanent staff working for the secretariat of the Constituency Election Commission, their titles and salaries shall be determined by the Central Election Commission of the Republic of Azerbaijan."

21. This addition appears to be legitimate.

11. In the Articles 40.12 and 42.2.7, the words "(overall returns)" should be added after the word "returns" and "outcomes".

12. Article 41.3 should be added in the following edit: "The observation can start from the date the elections (referendum) are announced and shall finish the day when all disputes regarding elections (referendum) are considered by the relevant court and returns (overall returns) of elections (referendum) are officially published."

13. In the Article 44.5, the words "general results" should be replaced with the words "returns (overall returns)"; the word "(referendum)" should be added after the word "the elections".

22. The amendments in the three paragraphs above represent an attempt to meet the OSCE/ODIHR's and Venice Commission's joint recommendations that the Election Code guarantee the right for observers until all the electoral tasks are completed. However, while explicitly establishing that the observation can start from the date the elections are announced and finish the day when all disputes regarding elections (referendum) are considered by the courts and returns (general returns) are officially published, the amendments fail to specifically address the right of access of observers to electoral commissions after polling day. This appears necessary, given the fact that the right of observation before and during Election Day is specifically addressed. The Central Electoral Commission should therefore issue a clarification specifying that the general rules, in particular Article 40.12, apply equally to the time after Election Day, as confirmed by the authorities of Azerbaijan. This includes unrestricted access to the election commissions.

14. The following sentences should be added to the Article 46.1: "The voters list shall be posted on relevant website of the Central Election Commission in conformity with the rules established by the Central Election Commission. In this case, the voters' addresses must not be displayed."

23. The publication of the voters list (without addresses) on the internet is a welcome addition.

15. The word "should" in Article 48.1 to be changed to "should not".

24. Amendment 15 to Art. 48.1 requires the public display of copies of the Voters Lists without the voters' addresses**.** This amendment will make it practically impossible for political parties to check the accuracy of the Voters Lists.

16. The following sentence should be added in Article 60.2.3: "(this provision can be applied to the candidates nominated by political parties or blocks of political parties in the case if the given information is inaccurate due to the candidate's mistake)".

17. The words "at least 3% of votes" should be changed to "at least 3% of the valid votes" in Article 60.5.

25. In line with previous OSCE/ODIHR and Venice Commission recommendations,[1] the amendment to Art. 60.5 provides for the return of the registration deposit to candidates who have collected 3 per cent or more of the valid votes.

18. The word "constituency" should be changed to "relevant" in Article 73.2.

26. This amendment appears to be an editorial change.

19. The following sentence should be added prior to the word "The following" in the Article 74.1: "Election Campaign is held in accordance with the Article 47 of the Constitution of the Republic of Azerbaijan".

20. The following sentence should be added in Article 88.1: This prohibition should be implemented in accordance with Article 47 of the Constitution of the Azerbaijan Republic.

27. Amendment No 19 now refers to Art. 47 of the Constitution[2] in introducing the list of persons and groups entitled to conduct an electoral campaign in Art. 74.1. This formulation unfortunately does not fully address the joint recommendation to use the phrase "notwithstanding the right of freedom of expression."[3] There remains a need to clarify that the right of freedom of expression is universal, thus emphasizing that the list in Art. 74.1 is additional but not limiting. It is regrettable that the phrasing previously recommended by OSCE/ODIHR and the Venice Commission has not been adopted.

28. Reference to Article 47 of the Constitution is also made in the amendment No 20 to Art. 88.1, instead of including the recommended mention "subject to the right of freedom of expression"[4] before the list of limitations on the content of the election campaign material. It is all the more important as the limitations refer at the end to "insulting citizen's honour and dignity," that is so general. Unfortunately, the proposal to adopt the previously recommended phrasing has not been implemented.

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1 Joint Recommendations on the Electoral Law and the Electoral Administration in Azerbaijan, Venice Commission and OSCE/ODIHR, CDL-AD(2004)016rev, para 21.

2 Article 47. Freedom of thought and speech :

I. Everyone may enjoy freedom of thought and speech.

II. Nobody should be forced to promulgate his/her thoughts and convictions or to renounce his/her thoughts and convictions.

III. Propaganda provoking racial, national, religious and social discord and animosity is prohibited.

3 See joint recommendations, para 17 and OSCE/ODIHR document JA02, para 87.

4 See joint recommendations, para 18.

21. Articles 100.2.4 and 100.2.6 should be removed. Article 100.2.5 should be considered 100.2.4. Article 100.2.7 should be considered 100.2.5; Articles 100.2.8-100.2.19 should be considered 100.2.6-100.2.17 respectively.

29. The removal of Art. 100.2.4, 100.2.6 is adopted as recommended in CDL-AD(2004)016rev (JR04**)**, para 28 in order to shorten the list of items to be included in the results protocols.

30. The proposal to amend Art. 106.2 so as to provide for the obligation of PEC to announce and record in the result protocol the number of envelopes found in each box immediately after the count of the envelopes in the ballot box has been completed has not been considered by the authorities. The CEC instructions for the count should provide next for mixing the envelopes from all boxes before starting to open the envelopes one by one in order to determine the validity of the vote.

22. To add the following sentence in Article 104.6 after the words "upon receiving the ballot paper" and to Article 105.2 after the words "verify this with his/her signature": "The person who issues ballot paper to voter shall put a stamp indicating the voting date on the voter's card".

31. Amendment 22 intends to introduce a safeguard against possible misuse on election day of the voter cards, which are issued to voters to prove their inclusion in the Voter List (Art. 46.2). The amendment provides for the PEC member issuing the envelope and ballot paper(s) to the voter to stamp his/her voter's card with a special seal, which indicates the voting date. Such a measure could be meaningful only if the printing and distribution of the voter's cards is subject to strong control and accountability. As it now stands, the procedure is not an effective alternative to the reintroduction of the provision on inking voters' fingers as has been previously suggested by OSCE/ODIHR and the Venice Commission (Joint Final Assessment, CDL-AD(2003)015, para. 42).

23. To add the words "and observers" after the words "of two members" in Article 106.7.

32. The amendment positively reaffirms the right of the observers provided in Art. 42.2.11 to observe the transfer of the PEC protocols and other election material to the relevant ConEC by accompanying the Chairperson and the 2 PEC members in charge with the delivery.

24. The following sentence to be added to the end of Article 108.2: "The Central Election Commission of the Republic of Azerbaijan shall draw protocol on general outcomes of elections to the Milli Majlis of the Republic of Azerbaijan and to municipalities".

33. While the CEC does not compile protocols on the results of Municipal elections and elections to Milli Majlis, it is obliged by amendment 24 to Art. 108.2 to draw up protocols on the "general outcomes" of these elections. Such a measure is a positive step towards providing in consolidated form concise information on the "overall returns" of elections conducted at constituency level. According to 171.2, the deadline for issuing protocols is 20 days,.The length of this deadline ensures that all appeals can be settled, but it does not impair the obligation to

issue the protocols as soon as possible In addition, appropriate editing of the article is necessary in line with the newly introduced terminology in Art. 1.1.32.

25. To replace figure "5" with figure "2" in Article 109.1.

26. To replace words "2 days" with words "Immediately, but not later than 24 hours to the Central Election Commission"; to remove the words "at latest" and to add the words "submitted to mass media and" after the words "should be" in Article 109.3.

34. The OSCE/ODIHR and Venice Commission recommendation[5] to shorten to 24 hours the deadline for publication of preliminary results is partially implemented by amending Art. 109.1 with a provision obliging CEC to publish the unified voting results of the ConECs within 2 (instead of 5) days starting from the voting day. Analogously, the deadline for publication of the results per PS by ConECs in Art. 109.3 is shortened to 24 hours (instead of 2 days) after the polling day. The obligation for immediate publication (not necessarily waiting for the expiry of the 24 hour deadline) of the preliminary results of elections (voting) per PS in the constituencies is commendable.

27. Articles 112.2 and 112.3. to be given in the following edit:

112.2. The persons indicated in Article 112.1 of this Code may submit their complaints to the superior election commissions.

112.3. If complaints of the persons indicated in Article 112.1 are initially not considered by a superior election commission, consequently they can file complaints on the decision or the action (inaction) of the constituency election commission to the Central Election Commission, and on the decision or the action (inaction) of the Central Election Commission to the Court of Appeal.

35. The wording in Art. 112.3 "If complaints indicated in Art. 112.1 of this Code are initially not considered by a superior election commission" is unclear, as it does not specify where a complaint should be lodged first. The amendment establishes a single line for complaints and appeals of voters dissatisfied by an act of omission of a PEC: first to the ConEC, then to the CEC, and then to the Court of Appeal. This represents a very time consuming scheme of election dispute system, which is likely to deprive voters, candidates and other interested parties of an effective remedy. The OSCE/ODIHR and the Venice Commission recommendation to provide for "direct access to a court to ensure effective and prompt protection of electoral rights is not implemented."[6] The possibility of criminal complaints is not a proper alternative remedy, since it concerns only a minimum of violations of electoral law and since criminal procedure may not lead to the invalidation of wrong decisions.

36. The joint recommendations to amend Art. 112.1 by clarifying that the right to file a complaint is universal in relation to all decisions and by extending the three-day limit for lodging complaints are not addressed.

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5 See **JR04 or CDL-AD(2004)016rev**, para 29.

6 See Joint Final Assessment of the Electoral Code of the Republic of Azerbaijan of 1 September 2003, CDL-AD(2003)015 (**JFA03**) para 52-53.

28. To add the following sentences in Article 112.4:
"In any case, the Central Election Commission must make a grounded decision upon consideration of any complaint. If existence of an element of crime is assumed during the investigation of the complaint, the prosecuting body should be informed about it. The relevant prosecuting body must consider the complaint within 3 days".

37. The amendment represents considerable improvement, implementing to a large extent the relevant recommendation.[7] The CEC now informs a public prosecutor in cases of alleged criminal activity, which does not entail the full "transfer" of the complaint to the public prosecutor. Rather, the election commission should continue to be competent to inquire into the effect of the subject of the complaint on the election results while leaving the criminal prosecution to the public prosecutor.

38. Another element of the proposal, the establishment of a timeline for action to be taken by prosecutorial bodies, would seem to strengthen the process and is therefore welcome.

29. To add the words "each" before the word "complaint" in Article 112.10.

30. To replace the words "minimum salary" with the words "conventional financial unit" in Articles 128, 130, 156, 159, 191, 192, 225, 228.

39. The changes in paragraph 30 appear to be legitimate.

31. In Article 128.3, to replace the figures "5", "50", "100" with the figures "25", "250", "500" respectively.

32. In Article 130, to replace the figures "2", "1", "50" with the figures "10", "5", "250" respectively.

40. Amendment 31 and 32 provide for an update of the maximum limits for the referendum funds of different categories registered referendum campaign groups.

33. The following words to be added in Articles 139.2.1, 170.2.2., 204.1.1 and 240.2.1: "or when they are cancelled, under the condition that the number of registered voters in the election precincts exceeds ¼ of all voters registered in the constituency."

41. The previous provisions of the Electoral Code contained in these articles ordered the invalidation of the result of an election or Referendum by a ConEC or CEC in practice only if due to irregularities the election results in more than 40 per cent of the relevant precincts were declared invalid. These provisions have been the subject of previous recommendations. It appears that amendment 33 introduces an alternative condition for the invalidation of the result of an election at constituency or national level: if the number of registered voters in the precincts where the results were invalidated exceeds ¼ of the total number of voters registered in the relevant constituency or nationwide, respectively.

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[7] See joint recommendations, para 34.

42. If this interpretation is correct, the amendment provides for an essential redress of the previous situation. The results of an election are now considered valid if the results are invalidated due to irregularities in no more than 40 per cent of the precincts and the number of voters in those precincts does not exceed ¼ of the voters registered in the relevant constituency. However, the level of accepted irregularities, affecting the voting rights of 25 per cent of the eligible voters is still very high and does not meet international standards. It should be made clear that the appeal body *must* annul elections where irregularities may have affected the outcome (Article 114 of the Election Code only says that the Court *may a*nnul decisions).

34. In Article 156 to replace figures "15", "2", "5", "100" with the figures "75", "10", "25", "500" respectively.

43. The amendment provides for an adjustment of the calculation of the maximum limits for candidates' election fund, as well as for the special funds, funds of candidates and political parties, funds allocated by ConEC and voluntary donations to candidates' election funds in elections to the Milli Majlis..

35. In Article 159.1.1, to replace the figures "2", "500" with the figures "10", "2500" respectively.

36. In Article 159.1.2, to replace the figures "1", "250" with the figures "5", "1250" respectively.

37. In Article 159.1.3, to replace the figures "50" with the figures "250".

38. In Article 159.2.1, to replace the figures "2" with the figures "10".

39. In Article 159.2.2, to replace the figures "1" with the figures "5".

40. In Article 159.2.3, to replace the figures "50" with the figures "250".

44. These amendments adjust the ceiling for declaring contributions to election funds of candidates and political parties and on disposition of these funds.

41. In Articles 161 and 230, to replace the words "at least 3 percent of the votes of total number of voters" with the words "at least 3 percent of the votes considered valid".

45. The amendment implements the OSCE/ODIHR and Venice Commission recommendation to set the threshold necessary for releasing candidates in elections to Milli Majlis and to Municipal Councils from the obligation of paying the cost of free airtime and space at 3 per cent of the number of valid votes instead of 3 per cent of the number of voters.[8]

42. The words "200 thousands" with the words "1 million" in Article 191.1.

46. The amendment provides for an adjustment of the maximum limit for the election fund of a presidential candidate. This was not the subject of previous recommendations.

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[8] See joint recommendations para 20.

43. In article 192 to replace the figures "2", "500", "1", "250", "50" with the figures "10", "2500", "5", "1250", "250"respectively.

47. The amendment sets the requirements for securing the transparency in the usage of the election funds of Presidential candidates in line with the increase of the maximum limit for this fund in Article 191.

44. To replace the words "at least 5 percent of the votes of total number of voters" with the words "at least 3 percent of the votes considered valid" in Article 194.

48. The amendment provides for the previously recommended reduction of the threshold necessary for releasing presidential candidates from the obligatory payment of the costs of free airtime and space from 5 per cent of the number of voters to 3 per cent of the valid votes. This is in line with the analogous threshold provided for the candidates in elections to Milli Majlis and Municipal Councils (see paragraph 45 above).

45. In Article 203.1 to replace the figure "14" with the figure "10" in Article 203.1, to add the words "pursuant to Article 102 of the Constitution" after the word "approval".

50. The amendment sets a 10 day deadline (instead of the previous14 day deadline) for the CEC to deliver the results of the presidential election to the Constitutional Court. This removes the conflict between the former Art. 203.1 of the Election Code and Art.102 of the Constitution, thus following the joint recommendations of OSCE/ODIHR and the Venice Commission (CDL-AD(2004)016rev, JR04, para 31).

46. In Article 225.1.1, to replace the figures "2", "1500", "1", "500", "250", "150" with the figures "10", "7500", "5", "2500", "1250" and "750" respectively.

47. In Article 225.1.2, to replace the figures "1500", "1", "750", "500", "250", "100" with the figures "7500", "5", "3750", "2500", "1250" and "500" respectively.

48. To replace the figure "100" with the figure "500" in Article 225.1.4.

49. In Article 225.1.5, to replace the figures "2", "1500", "750", "500", "250", "150" with the figures "10", "7500", "3750", "2500", "1250" and "750" respectively.

50. In Article 225.2, to replace the figures "10", "7500", "5000", "2500", "1500", "1000" with the figures "50", "37500", "25000", "12500", "7500", "1250" and "5000" respectively.

51. In Article 225.5.1, to replace the figure "50" with the figure "250".

52. In Article 225.5.3, to replace the figures "150" and "5" with the figures "750" and "25" respectively.

53. In Article 225.6, to replace the figure "100" with the figure "500".

54. In Article 228.1.2, to replace the figure "500" with the figures "2500".

55. In Article 228.1.3, to replace the figure "50" with the figures "250".

56. In Article 228.2.1, to replace the figure "2" with the figures "10".

57. In Article 228.2.2, to replace the figure "1" with the figures "5".

58. In Article 228.2.3, to replace the figure "50" with the figures "250".

51. Amendments 46 – 53 represent an adjustment of the maximum limits for the election funds for local elections of the political parties, blocks of political parties and candidates for municipal councillors. Amendments 54 - 58 set the requirements for transparency in the usage of the election funds in municipal elections in line with the increase of maximum limit for this fund.

III. The Election Process as a Whole

52. The OSCE/ODIHR and the Venice Commission regret that a considerable number of the previous recommendations from 2003, 2004 and 2005 were not reflected in the amendments or were reflected only to a very limited extent.

53. The following crucial recommendations contained in the former Joint Final Assessment (CDL-AD(2003)015), in the Joint Recommendations (CDL-AD(2004)016rev (JR04)) and in the Interim opinion (CDL-AD(2005)018) on important issues are not addressed at all or are insufficiently addressed[9]:

1. Composition of Election Commissions (para 9-12 of the Joint Recommendations);
2. Signing petitions for presidential elections (para13);
3. Refusal of Candidates for presidential elections (para14-15);
4. Venue for election rallies (para16);
5. Right to campaign (para 17-18);
6. Financing provisions (para 19);
7. Observers (para 24-25);
8. De-registration procedures (para 26);
9. Preliminary Declarations (para 30);
10. Complaints and appeals (para 33).
11. Declaration of invalidity (para 36);
12. Referendum turnout (para 38).
13. Inking of fingers (CDL-AD(2003), para. 42)

54. In addition, amendment 15 (Article 48.1) eliminates a previous provision regarding the transparency of the compilation of the Voter Lists.

55. There are some additional issues of concern that are not subject to regulating provisions of the Code (at least in a direct way) which could compromise the organisation of democratic elections such as:

- restrictions on certain NGOs to act as observers (para 22 of the Joint Recommendations) and
- Intimidation of Election Staff (para 37 of the Joint recommendations)
- Vote of citizens who reside abroad

[9] The original numbers of the issues and recommendations from CDL-AD(2004)016rev (JR04) are kept.

56. Finally, the Electoral Code remains far too complex with unnecessary repetitions, especially in the provisions on the registration of candidates, campaign financing, lists of persons entitled to conduct pre-election campaign and limitations on the content of election campaign material.

IV. Conclusion

57. This opinion on the Law on Amendments to the Election Code shows that most of the important recommendations of OSCE/ODIHR and the Venice Commission were only partially implemented or not considered at all.

58. Along with mostly technical changes, only a limited number of substantial amendments have been adopted in response to the 2003 and 2004 joint recommendations and 2005 Interim opinion of OSCE/ODIHR and the Venice Commission. These include:

- improvement of the administrative practices related to the creation of normal conditions for the work of the election commissions (amendments 3 and 6);
- an expansion of the rights of observers to cover the post-election period, although the amendment does not fully address the recommendation (amendment 12);
- increase of the transparency of the process of up-dating of the Voters list by posting it on a specific CEC web site (amendment 14). However, this step is undermined by the elimination of the requirement to publicly display the Voters list with addresses of voters (amendment 15);
- return of the registration deposit to those candidates who receive at least 3 per cent of the valid votes (amendment 17);
- the removal of Articles 100.2.4 and 100.2.6 in order to shorten the list of items to be included in the results protocols (amendment 21).
- increase of the public confidence in the election process by timely announcement of preliminary results (amendments 25 and 26);
- expeditious investigation of election-related issues by the prosecution (amendment 28);
- reduction of the deposit paid by nominees who do not collect the 450 signatures necessary to register as a candidate;
- reduction of the threshold for releasing candidates in presidential elections from the obligation to pay the cost of free airtime and space to 3 percent of valid votes, and reformulation of the threshold calculation to 3 per cent of valid votes for all levels of election (amendments 41 and 44).
- reduction of the deadline for the CEC to deliver the results of the presidential election to the Constitutional Court to ten days, thereby eliminating a conflict between the Constitution and the Election Code (amendment 45).

59. The OSCE/ODIHR and the Venice Commission are of the opinion that, since the remaining recommendations of 2003, 2004 and 2005 have not been duly taken into consideration, the examined law does not fully meet OSCE commitments and Council of Europe standards for democratic elections and is insufficient to develop the necessary public confidence in the electoral legislation and practice in Azerbaijan.