



**REMARKS ON THE FIRST INTERIM REPORT OF THE
OSCE/ODIHR**

By William Racimora, Vice-CEO

Preamble

In recent years the European Strategic Intelligence and Security Center (ESISC) follows with great attention the political situation in the Republic of Azerbaijan. In many aspects, the present and the future of the country is of great interest for the political and economic actors of the Western countries.

The Republic of Azerbaijan is to become an increasingly important business partner because of its oil and natural gas, but also because it has demonstrated its ability to overcome peacefully the effects caused by the occupation of part of its national territory by the Republic of Armenia. It should be noted that the policy of appeasement, which of course does not indicate that the Republic of Azerbaijan has renounced to its sovereignty over Nagorno-Karabakh is an exception in the South Caucasus region, and even in the entire Caucasus region.

In autumn 2011, ESISC opened a permanent office in Baku and our team of experts conducted numerous field missions. Our next mission is scheduled for the beginning of October 2013 and we'll deploy an observation mission in the country during the presidential elections on October 9.

Our field surveys as well as our analysis of the data collected by our experts, whether favorable or not to the Republic of Azerbaijan, led us to conclude that the country was a model of "good governance" firmly committed to the path of a democratic inspired system similar to the European Union countries.

On September 09, 2013 ESISC issued a public report¹ about the current situation of the Republic of Azerbaijan. To prepare this document, among other sources, we studied very carefully the documents prepared by the OSCE/Office for Democratic Institutions and Human Rights (ODIHR) . We have already expressed our views² on the report of the Mission of the OSCE / ODIHR (needs assessment mission) in June 2013.

The OSCE / ODIHR has just released its first interim report on the preparations of the presidential elections to be held in Azerbaijan on October 9. We read very carefully the documents and here are some remarks. We should before note that the ESISC tried repeatedly to meet with representatives of the OSCE / ODIHR in Baku but our repeated requests remained unanswered so far.

The willingness of the Republic of Azerbaijan

In its first interim report, the OSCE / ODIHR indicates twice that its recommendations to the Azerbaijani authorities in 2010 during the previous elections have not been implemented, with the exception of reducing the complaint of adjudication period.

This allegation caught our attention. The Republic of Azerbaijan is one of 57 member states of the OSCE and its rejection of almost all the recommendations made by the experts of the organization would clearly be a proof of a lack of cooperation.

After verification, we found that the following recommendations were strictly and formally implemented:

1. Ensuring an inclusive candidate registration process.
2. Allowing for a campaign period where fundamental freedoms of peaceful assembly and expression are respected.
3. The Election Code should ensure that the final results protocol is compiled by the CEC and forwarded to the Constitutional Court for validations only after the expiry of the appeals deadlines and after all appeals are heard by the courts.
4. The CEC should review its current working practice and rules of procedure particularly with regard to the distributions of work with its administration, and ensure that all the CEC members receive information and material required for their work
5. In order to ensure the equality of the vote, the boundaries of electoral constituencies should be redrawn so that deviations in the number of registered voters are minimized and the current numerous cases of significant

¹ RACIMORA William, *The Republic of Azerbaijan : A model of good governance*, ESISC, September 09, 2013, <http://www.esisc.org/publications/analyses/the-republic-of-azerbaijan-a-model-of-good-governance>

² Ibid.

deviations in constituency sizes are avoided, as required by Articles 29.3.1 of the Election Code.

6. In order to enhance the performance of lower commissions, the CEC would need to adopt regulations in a timely manner and provide the necessary effective training to lower commissions
7. Provisions on the cancellation of candidacy could be reviewed, with a view to reduce the reasons for cancellation, as some of them are disproportionate.
8. Consideration could be given to amending Articles 77, 80 and 83 of the Election Code.
9. The right of domestic and international observers to effectively follow election-day procedures should.
10. The CEC should ensure that inking procedures, which constitute an important safeguard against multiple voting, are strictly and uniformly implemented by election commission
11. Effort could be undertaken to increase the respect for the secrecy of the vote.

We will address in our next point the recommendations of the OSCE / ODIHR concerning the very important issue of the freedom of the press and the access to the media.

We must, before addressing this question, remember that the OSCE / ODIHR already prepared a list of recommendations in the previous presidential election held in 2008. After a comprehensive review, we found that the following recommendations have already been implemented:

1. All instructions and regulations (approved) should be properly communicated to lower election commissions by the CEC, in order to ensure uniform application throughout the country.
2. For PECs, a particular emphasis should be put on understanding of and adherence to counting procedures and the completion of result protocols.
3. The agenda and the materials for CEC meetings should be distributed in a timely manner, as provided by Art. 19.8 Of the Election Code.
4. Although clear improvements have been made to the establishment of voter lists, further efforts should be undertaken to improve their accuracy.
5. The CEC could consider issuing an instruction which requires ConECs and PECs issuing de-registration voter cards to record the serial and batch numbers of such voters' IDs on the de-registration voter cards.
6. Although occurrences of undue interference of local Executive Committees in the election process were much reduced in this election, it is recommended that the authorities of the Republic of Azerbaijan, including the Presidential Administration and the CEC, continue to address remaining shortcomings in this respect.
7. The CEC, in cooperation with the National TV and Radio Council, should ensure respect for the media-related provisions of the Election Code during

the campaign, including equitable news coverage of elections contestants on State-owned or financed media.

8. If the existing system of experts groups at the CEC and ComEC level is to be maintained, these groups should be composed of external lawyers and other experts.
9. In case of disagreement with an opinion, other experts should have the right to submit a dissenting opinion, which should also be discussed by the CEC.
10. The division of responsibilities between the expert group and the media-working group at the CEC should be clarified.
11. Domestic non-partisan observation groups should be permitted to work in full freedom.
12. It could be ensured that wherever possible, the polling station premises selected by the relevant ConECs are suitable for the purpose, especially with regards to size, layout and accessibility.
13. If web cameras continue to be used in polling stations, their use should be regulated by the Election Code.
14. Further efforts to address the issue of family voting should be taken, as this practice undermines the secrecy and the integrity of the vote. To this end, a number of actions could be undertaken, including voter education campaigns and further training of election commissions.

This list of 25 recommendations from the OSCE / ODIHR implemented since 2008 by the authorities of the Republic of Azerbaijan is a clear demonstration of the willingness of the country to comply with the most demanding standards of the democratic electoral process.

The media environment in the Republic of Azerbaijan

In its first interim report, the OSCE / ODIHR questioned the independence of the press in the Republic of Azerbaijan. Its observing mission (EOM) that it is currently deploying in the country will deliver a qualitative and quantitative monitoring of six television stations and five newspapers to see if the various candidates for the presidential election have an equal access to the media. This monitoring began on 4 September and we look forward to know the result.

It could be interesting that the EOM presents its selection criteria of the 11 monitored media. As it should indeed take into account that the media, and especially the television, public and private. To recall, the media landscape has considerably widen in recent years due to the private channels licensed to broadcast across the country.

It is of course too early to comment on that in the absence of the findings from the observing mission.

Another issue raised in the first interim report of the OSCE / ODIHR is the anonymous contacts testifying that eight journalists were currently imprisoned for

crime of opinion. The identity of these 8 journalists is not disclosed by the OSCE / ODIHR. This desire for discretion is surprising knowing the positive media coverage when it comes to imprisoned journalists.

For our part, we could identify nine cases of journalists or activists (two of them are listed in the item number 3 of the following lists, the other seven cases are presented individually) who are currently in prison and / or under indictment. At first glance, it appears that the charges are for ordinary felonies and not for "crime of opinion."

1. **Hilal Mammadov** has been charged of illegal possession of 33,475 g of heroin, which had been found on his person and at his premises. He never denied the charges but said the drug was for "his personnel use".

Hilal Mammadov has been also charged of treason, as he had been involved in espionage activities of the secret services of the Islamic Republic of Iran. Moreover, in April and October 2006 he explicitly committed acts aimed at incitement of national hatred in mass media. In December 2012 his case was submitted to the Baku Court on Grave Crimes for examination. The judicial examination is still pending.

2. **Avaz Zeynalli**, editor-in-chief of "Khural" newspaper, has been found guilty of blackmailing several persons with publication of information which could harm their personal and business reputation. He has also been found guilty of receiving bribes in large amounts, tax evasion and non-compliance with court decisions.

3. **Tofiq Yagublu** and **Ilqar Mammadov** have been charged with organization of life-threatening violence against the police officers and an attempt to use mass unrest, deliberate destruction of private property and other unlawful acts, which took place in January 2013 in the town of Ismayilli, with the aim to create further tensions and break public order. Preliminary investigation of their case is pending.

4. **Faramaz Allahverdiyev** was sentenced to 4.6 years being convicted of call to riots, as well as to violation, and illegal border crossing under the decision of the court of the Nizami district of Baku on August 22, 2012.

In November of 2010, **F.Allahverdiyev** illegally crossed the borders of the Azerbaijani Republic without established documents outside of a border checkpoint from Nakhchevan Autonomic Republic to Turkey, and on the same way returned from Republic of Turkey to the Republic of Azerbaijan in October of 2011.

Moreover, through the internet, **F.Allahverdiyev** called to riots accompanied with violation of public order, setting on fire, disobedience to state authorities, and destruction of property.

5. On 26 September 2011, **Huseynov Fuad** was sentenced to six and a half years in prison by the Court of Ujar region on charges of hooliganism using arms or things used as arms after exposing illegal activities of public officials in the, in particular, involvement in drug trafficking and trafficking in persons.

The reason why **F.Huseynov** was sentenced is that he committed biased hooliganism and caused bodily harm to two people with pocket knife. **F.Huseynov** had previously served sentence five times on less heavy harm to health, roguery, hooliganism, undeliberate heavy or less heavy harm to health, disrespect to court, and other crimes.

6. **Aliyev Nijat** was convicted of illegal distribution of religious literature, religious items, incitement of national, racial, social or religious hostility, humiliation of national honor sale and distribution without appropriate authorization illegal purchase, possession, and transfer of drugs. Currently, criminal case on him is being reviewed by the court.

7. **Araz Guliyev** was sentenced to 8 years of prison for illegal possession, carrying, and transportation of fire arms, organization of actions causing public order, inciting religious animosity and hostility, insulting the national flag of the Azerbaijani Republic, and violence against a representative of the authority under the decision of Lankaran Court of Grave Crimes dated April 5, 2013. Currently, the cases of **A.Guliyev** and others are considered in the court of appeal.

8. On July 29, 2013, at about 22:00, **Sardar Aliyev (Alibayli)** quarrelled with N.Aliyev without serious reasons and caused bodily harm to him with stone, thus making hooliganism act. **Sardar Aliyev** was brought to responsibility as the accused on August 1 of 2013, and was arrested under the decision of the district court. Currently, criminal investigation on his case continues.

Laws and democracy in the Republic of Azerbaijan

In the item number 9 of its interim report, the OSCE / ODIHR questions, without being explicit, the recent amendments to the Criminal Code and the laws regarding information access and trade secrets. For the OSCE / ODIHR, these legislative changes could be a threat to freedom of expression.

After studying the offending texts, we reached a different conclusion.

The amendments to the Criminal Code and the Administrative Offences Code, made in 2012-2013, should not be viewed only in the context of increase in sanctions. The amendments have been introduced in order to eliminate some lacunas and discrepancies in the Codes, thus ensuring prevention of substantial breaches of rights and lawful interests of persons and providing further guaranties for safeguarding public order.

The amendments made it possible to apply administrative sanctions to persons breaching the rules for organizing and holding public demonstrations, instead of criminal sanctions, which provided for more severe fines and even imprisonment.

At the same time, the relevant Article of the Administrative Offences Code now differentiates between the responsibility of organizers of unauthorized demonstrations and those participating in such demonstrations. Furthermore, a new type of administrative sanctions, community service, was introduced into the Administrative Offences Code in order to lower the number of cases of application of administrative arrest.

The amendments have increased sanctions not only for organizers and participants of unauthorized demonstrations, but also for those who hinder the holding of lawful public meetings.

It should be noted that diverse and more severe sanctions are applied in many other democratic countries in order to prevent unlawful public meetings.

On 14 May 2013, the Parliament of the Republic of Azerbaijan adopted amendments to the Criminal Code of Azerbaijan. In particular, Articles 147 (Libel) and 148 (Insult) of the Criminal Code have been amended to include responsibility for actions committed “through a publicly displayed Internet information resource”.

The idea behind these amendments was to provide private individuals with legal protection against libel and insult in Internet resources. Latest statistical data indicate that more 65% of the Azerbaijani population uses Internet and the Government have adopted a number of measures aimed at regularization of social relations in the cyber space. These measures include, for example, establishment of e-Government, provision of e-services to individuals, and introduction of the criminal responsibility for cybercrime. Having regarded to the fact that criminal responsibility for defamation is envisaged in the legislation of almost all the Council of Europe Member-States, this measure does not appear to be extraordinary.

Amendments to the Laws on “Access to information”, “State registration and state registry of legal entities”, and “Commercial secret” dated June 12, 2012 are based on existing international practice in this field. Thus, the amendments were worked out taking into consideration the provisions of the Convention of the Council of Europe on address to official documents and Regulations of the European Union, European Parliament, Council of Europe, and European Commission, as well as legislations of a number of states.

A very “European” context

In the item number 3 of its first interim report, the OSCE / ODIHR seems to question the fact that the current President of the Republic, Mr. Ilham Aliyev can stand for a third term. As we noted in our previous report, the opportunity granted by the Constitution to the Chief Executive to repeatedly stand for election is entirely accepted by many Western democracies.

“In the case of the United Kingdom, for example, Prime Ministers Margaret Thatcher and Tony Blair both won three consecutive elections. In Germany, Chancellor Angela Merkel is currently candidate to her own succession for a third term in office, whereas former Chancellor Helmut Kohl stayed in power for 16 years. The numbers or the examples are indeed legion of political leaders exercising more than two consecutive terms.

The Venice Commission itself conceded it in a report prepared in 2009 at the request of the Council of Europe’s Committee on Political Affairs and Democracy:

“[t]he effects of the principles of limitation of mandates and incompatibility of political functions in a given country widely depends not only on their constitutional and legal dimension but mainly on the model of separation of powers in that country.”

Given this conclusion, the committee found inappropriate to submit a draft resolution to the Assembly on this matter, arguing that *“there are no best practices in the fields covered which would be applicable to all Council of Europe member.”*

Still in the same item of its first interim report, the OSCE / ODIHR also questioned *de facto* the parliamentary work of 42 independent Members of Parliament arguing that they are generally aligned with the positions of the majority party.

Such a position seems to be a value judgment rather than an objective analysis. Nothing allows the impartial observer to question *a priori* the legislative work of the independent MPs. To take seriously into account the views of the OSCE / ODIHR, it should demonstrate how the independent MPs automatically align with the positions of the political majority. In the absence of any proof, we can only regret a decision to arbitrarily question the integrity of more than a third of the country's Parliament.

A sensitive geopolitical context - An appropriate electoral process

One can not analyze the current campaign for the presidential election, which ends on October 9, regardless of the geopolitical context around the Republic of Azerbaijan.

The present Republic was born from the collapse of the former USSR. A large part of the national territory, Nagorno Karabakh is still occupied, in violation of international law by the Republic of Armenia. The country has faced tremendous issues generated by the million of displaced caused by the Armenian invasion. Despite these obstacles, the Republic of Azerbaijan has demonstrated its ability to resolutely enter the path of progress and social improvement. This constant progress and these remarkable improvements in the living conditions of the population largely explain the desire of the voters for political stability.

In this context, and taking into account the pressures exerted by neighboring powers, first and foremost the Russian Federation and the Islamic Republic of Iran, we must admit that the electoral law must be preserved as much as possible the country from foreign influences.

As a matter of fact, it is necessary to understand that the laws of the Republic of Azerbaijan must ensure that the President of the Republic does not have a second nationality and that he can prove that his residence is established for many years (10 years) in the country. The dismissal of the candidacy of Mr. Ibrahimbeyov by the Central Election Commission of the Republic of Azerbaijan, regularly mentioned by a part of the opposition as a case of democracy breach is a perfect illustration of this situation. Besides the case is fully documented and accessible seamlessly.

Moreover, it is true that the European standards ensure every citizen the legal right to exercise a political mandate, including heading the government, without an academic degree. The prerequisite of the electoral law of the Republic of Azerbaijan to require a university degree to the candidate can be criticized, as the OSCE / ODIHR did so, it remains however a purely rhetorical criticism. Furthermore, to underline the absence of female candidates is no more meaningful than questioning the French democracy for never having a female president.

Conclusion

Given the local, regional and international issues of the election of October 9, one can only hope that the next interim report of the OSCE / ODIHR will be more documented and above all will rely on clearly identified and therefore verifiable cases.

Likewise, the limit to the activities of some NGOs by the authorities of the Republic of Azerbaijan should be exemplified. To what extent and which NGOs are concerned in the first interim report of the OSCE / ODIHR? These details are essential to enable data verification. A report that does not give enough information to be verified can not claim to be a conclusive report.

The constant refutation by anonymous interlocutors of the good governance of the Republic of Azerbaijan and the absence of serious and credible arguments may contribute to threaten the outstanding political stability of a country located in a particularly unstable geopolitical area.