

STATEMENT

on results of the monitoring of the 26 September 2016 Referendum in Azerbaijan

I. Executive Summary

Election Monitoring and Democracy Studies Centre (EMDS) is a non-partisan, not for profit and non-governmental organization that aims to promote democratic elections and human rights, and to support civil society in Azerbaijan, .

Due to shortcomings in situation of democracy and political freedoms prior to and during the Referendum, including the voting day, the Referendum failed to meet election legislation and international commitments of the country with regards to democratic elections.

As a result of amendments to the NGO legislation, independent civil society is not able to operate freely in the country. Criminal investigation and large tax fines lingering over some foreign and domestic NGOs, along with restrictions of accessing the foreign funding prevented civil society organizations from meaningfully participating in the referendum and engaging in voter education and election monitoring. Political repressions intensified during the Referendum resulting in increased number of political prisoners.

The Referendum day was marred with violations including ballot-box stuffing, multiple voting, group voting (carousel) and voting of persons without registration, similar irregularities from the previous elections. EMDS observed that voter turnout was artificially raised in majority of polling stations through multiple voting and ballot-box stuffing. The official turnout do not correspond to real figures.

Following the opinion of the Constitutional Court of Azerbaijan on the Constitutional Act on amendments to the main law of the country, EMDS published its opinion about the proposed changes and preparations to the Referendum¹, and called for consulting with the European Commission for Democracy through Law of the Council of Europe (the Venice Commission).

EMDS believes that comprehensive assessment of 26 September 2016 Referendum requires consideration of all stages of the referendum including evaluation of awareness raising among public on proposed changes, political situation and conditions prior to the referendum, the election legislation, conduct of the referendum day and vote tabulation against the international commitments of the country.

EMDS notes with regret that there was no open public debate or adequate awareness raising campaign among public on proposed changes to the Constitution which are essential for expression of people's true will. Increased restrictions on freedoms of expression, assembly and association in the last few years, along with very short official campaigning period (22 days) and refusal to register opposition campaign groups contributed to the lack of vibrant debate during the referendum.

EMDS believes that the government should demonstrate political will to restore mutual confidence in relations between the state and public, should create competitive environment for all political opponents and should release all political prisoners. Moreover, as the Referendum fails to deliver adequate Constitutional reforms on separation of power and protection of human rights, the government should work together with the Venice Commission and civil society to address the issues in this field.

¹ For more information: <http://www.epde.org/en/newsreader/items/emds-opinion-on-the-proposed-amendments-to-the-constitution-of-azerbaijan-and-preparations-to-the-referendum.html>

II. Announcement of the Referendum and the Political Situation

On 18 July 2016, the Referendum Act was submitted by the President to the Constitutional Court for review which has confirmed the compliance of proposed amendments with the requirement of the Constitution on 25 July. Just a day after, with the presidential decree, Referendum was scheduled on 26 September the earliest day allowed by the legislation (Election or Referendum should be announced at least 60 days before the voting day).

The Referendum Act proposed by the government includes 40 amendments to 29 articles of the Constitution which will alter the political and legal system of the country. However, despite the gravity of proposed Constitutional changes, the Referendum Act has not been subject to parliamentary debates or public discussions. The government has failed to provide adequate justification to the proposed amendments while other political parties and civil society were denied opportunity to meaningfully contribute to the process. On the contrary, the proposal and scheduling of the referendum took place in a rushed manner barely complying with the timeline set by the law.

Although, the government has not consulted the opinion of the Venice Commission of the Council of Europe regarding the proposed amendments, the Parliamentary Assembly of the Council of Europe (PACE) requested the opinion of the Venice Commission on 5 September. In its preliminary opinion released on 20 September, the Venice Commission expressed concerns over strengthening the presidential powers, and restriction of human rights and freedoms. The opinion noted that "many proposed amendments would severely upset the balance of power by giving "unprecedented" powers to the President".²

The Referendum is taking place on the backdrop of ongoing repressions and systematic restrictions for civil society and political parties which casts serious doubts on freedom and fairness of the vote. The authorities continued with repressions against opposition and civil society seen in the last three years during the referendum systematically restricting freedoms of expression, assembly and associations. A number of activists were detained and arrested during the referendum on trumped up connection to the Gulenist movement which is accused in staging the 15 July coup attempt in Turkey. On 12 August, member of the NIDA citizen movement Elgiz Gahraman was arrested on drug charges and is accused of being member of the Gulenist movement. On 20 August, Faig Amirli, financial director of the opposition newspaper Azadliq and assistant to the opposition Popular Front party's leader, was arrested on charges of inciting religious hatred. The arrest followed by administrative obstacles resulted in suspension of print of the only independent newspaper just a month before the Referendum.

Furthermore, the authorities continued with political repressions closing down a TV channel and arresting a prominent opposition member following the announcement of the Referendum Act. On 18 July, National TV and Radio Council suspended the broadcast of the ANS TV and Radio for announcing an interview with Fathulla Gulen, Turkish religious cleric living in exile and accused of staging the coup attempt in Turkey. The Baku Court of Appeal revoked ANS's license on 29 July. On 21 September, the Supreme Court upheld the decision of the lower.

Despite the release of number of imprisoned civil society leaders earlier this year, around 100 political prisoners including journalists, bloggers, human rights activists and opposition members remain behind bars, while non-governmental organizations (NGOs) are not able to operate freely due to legal restrictions imposed by the changes to the law in 2014 and 2015. Azerbaijan has clamped down on civil society following the 2013 elections imprisoning number of civil society leaders and introducing amendments to the NGO legislation that blocked access to all foreign funding. International organizations and donors were forced to leave the country, while criminal investigation launched against many NGOs forced many to cease their work and even emigrate. These restrictions prevent civil society organizations from meaningfully participating in the referendum. As a result, unlike in 2002 and 2009 referendums, civil society organizations are not able to engage in voter education, protection of election rights and domestic election monitoring.

² For more information: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)010-e)

III. Referendum Campaign Groups and Campaigning

Azerbaijan's Election Code requires signatures of 40,000 voters residing in the territory of at least 60 election constituencies in order to register a referendum campaign group that can participate in campaigning. The CEC registers a campaign group after inspecting and validating the authenticity of provided signatures.

The CEC has registered only three pro-governmental campaign groups all of which are in favour of proposed changes:

- "New Azerbaijani Party" established by the ruling party;
- "Civil Society" established by Confederation of Trade Unions and group of pro-governmental NGOs;
- "Municipality" established by Municipal Councils.

Opposition Musavat party submitted 41,128 signatures in order to register the "Republic" campaign group, but was denied the registration by the CEC after some of signatures were deemed invalid. Musavat party stated that the decision was groundless and noted that its authorized representative was not informed about invalidity of signatures during their inspection.

Republican Alternative (REAL) movement led by currently imprisoned Ilgar Mammadov has started the signature collection process, but was forced to withdraw from the process after several of its members were detained and harassed. The movement announced suspension of signature collection process following the arrest of its executive secretary Natig Jafarli and administrative detention of two other members Toghrul Ismayilov and Elshan Gasimov. Police also confiscated the movement's flyers.

Another opposition force the National Council refused to participate in the referendum due to lack of competitive environment and violations of political freedoms, and called for boycotting the referendum.

Referendum campaign started 22 days before the voting day and featured only campaign in favour of proposed changes in state and private TVs. All three registered campaign groups refused to benefit from the free air time on the Public TV stipulated by the law.

Being under control of the government, TVs and radios did not offer any space for campaigning against the proposed changes. Only some opposition parties and civil society groups campaigned against proposed amendments via statements, articles and comments on some newspapers and social media.

Posters and other print materials produced by registered campaign groups were displayed on special spaces allocated by the CEC. However, some of the CEC's print materials interfered with campaigning in favour of taking part in the referendum. For example, the CEC published posters with "*Your vote is crucial*" calling citizens to participate in the referendum. Unlike other elections, Referendum requires the voter turnout to reach the 25% threshold and encouraging voters to participate in voting is interfering with campaigning.

During the campaign period, Musavat party organized one rally, and the National Council organized two rallies in a protests against the proposed amendments to the Constitution. While two rallies took place in a peaceful manner, the one held on 17 September by the National Council was followed by an incident between police and activists resulting in detention of some 40 rally participants including several journalists. 12 of detained activists were sentenced to up to 8 days of administrative detention, while the rest were released on the same day. Before the rally, 86 persons were detained or summoned to the police across the country 6 of who were sentenced to administrative detention.

IV. Voting and Vote Counting on the Referendum Day

Domestic and international observers

According to the CEC, 53,531 domestic and 117 international observers were registered to monitor the Referendum. The government has not formally invited the Office for Democratic Institutions and

Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE), but delegations from the PACE, European Peoples Party, Commonwealth of Independent States and Austrian Parliament monitored the Referendum day. However, international observers did not meet with all stakeholders and failed to provide assessment of situation of political freedoms prior to the voting day. Some of international observers, particularly members of the PACE delegation gave a positive assessment of the Referendum day before the closing of polling stations violating the requirements of international observation.

The CEC created necessary conditions for some pro-governmental NGOs to carry out "exit-polls" during the Referendum day. However, these organizations did not disclose sources of their funding and methodology raising serious questions about their impartiality.

Number of independent NGOs, including EMDS could not engage in voter education and comprehensive domestic election monitoring due to restrictions of freedom of assembly and ongoing crackdown on civil society.

Referendum day observation

EMDS carried out the assessment of the Referendum day based on information received from individual observers, journalists and bloggers.

Opening of polling stations

There was no serious problems noted during the opening with majority of polling stations ensuring conditions for secret vote. Some Precinct Election Commissions (PEC) failed to announce the number of ballots before the voting process started. Some PECs prevented observers from entering the polling stations and carrying out the monitoring of the voting day.

Voting process

The voting process was accompanied with violations occurred in previous elections which can be grouped as following:

- Multiple voting
- Ballot-box stuffing
- Bringing voters in groups (carousel)
- Voting without registration or signature
- Voting without checking for ink on finger
- Violation of secrecy of vote

Vote counting

A number of PECs failed to display copy of protocols in front of polling stations and did not provide observers with a copy of protocol.

Voter turnout

The official turnout was recorded at 69.7% by the CEC. Reports on mass occurrence of multiple voting, bringing voters in groups by local authorities, ballot-box stuffing, voting without registration or signature cast serious doubts on official figures.

Pressure on domestic observers

A number of independent observers faced pressure and harassment on the Referendum day preventing them from monitoring the voting process. Below are examples of such cases:

- Observers Lala Mahmudova and Asmar Huseynova were removed from the polling station no. 11 of the 89th Goychay-Aghdash Constituency by the members of the PEC members and were denied a copy of the protocol;
- Observer Anar Gadirli was prevented from entering the polling station no. 3 of the 90th Aghdash Constituency at 7:00 AM despite the requirement of the law stipulating that a polling station should be open from 6:50 AM;
- Observer Jamil Hajiyev was removed from the polling station no. 23 of the Nasimi First Constituency by police at the request of the chair of the PEC after protesting against the violation. He was subjected to physical harassment by police;
- Observers Mahir Aliyev and Nasiba Asgarova were removed from the polling station by the PEC members for filming the ballot-box stuffing incident at the polling station no. 4 of the 96th Goranboy-Naftalan Constituency.

V. Conclusions and Recommendations

Conclusions

- The amendments to the Constitution was put up for the Referendum without adequate justification, open debates at the parliament and public discussions, as well as without consulting the Venice Commission of the Council of Europe;
- Restrictive political situation prior to the Referendum was not conducive for the democratic and free vote, while political-civic activists continued to face harassment and arrests;
- Freedoms of expression, assembly and association necessary for democratic vote were not ensured during the Referendum, while political prisoners remained behind bars;
- Azerbaijani public was not properly informed about proposed changes to the Constitution during the campaign period;
- The Referendum day was marred by multiple voting, ballot-box stuffing and group voting, violations that has occurred in previous elections;
- Pressure and intimidation of voters and observers were recorded during all stages of the Referendum, including the voting day.

Recommendations

- Since the Referendum failed to deliver adequate Constitutional reforms with regards to separation of power and protection of human rights, the government should work together with the Venice Commission and civil society to properly address the issues in this field;
- The government should demonstrate political will to restore mutual confidence in relations between the state and public, should create competitive environment for all political opponents and should release all political prisoners;
- The election commissions should be formed based on political parity principle in order to ensure their independence of election commissions;
- The government should ensure freedoms of expression, assembly and association, and should stop harassment of political parties, NGOs and independent media.

**Baku, Azerbaijan,
27 September, 2016**