

Unfair elections as a result of human rights violations: the Parliamentary Assembly of the Council of Europe cannot sweep it away

To: Members of the Standing Committee of the Parliamentary Assembly of the Council of Europe
Members of the Election observation mission of the Parliamentary Assembly of the Council of Europe to Azerbaijan

20 November 2013

Dear members of the Parliamentary Assembly of the Council of Europe,

The presidential election took place on 9 October 2013 in the Republic of Azerbaijan. Ahead of the election, United Nations experts stated that they “observed since 2011 a worrying trend of legislation which has narrowed considerably the space in which civil society and defenders operate in Azerbaijan.”¹ Following the election, OSCE found that “the limitations placed on the fundamental freedoms of assembly, association, and expression, the lack of a level playing field, the allegations of intimidation all came in the lead up to an election day that our observers found to be seriously flawed.”²

We therefore call upon you to make sure that the report on PACE will be in line with expert observations from other regional and international mechanism, and call upon PACE members to express reservations towards the statement issued on 10 October 2013 by the PACE mission and to seriously question the report the mission will present at the Standing Committee and at the January 2014.

We indeed believe that observation missions of the Council of Europe should abide by European values, European law and commitments made by Council of Europe member States, following the Parliamentary Assembly of the Council of Europe’s own Guidelines on observation of elections³

The PACE observation mission to Azerbaijan however assesses that the election was free and fair, not taking into account the situation in the country ahead of the election.

¹ Joint press release by United Nations special rapporteurs on the rights to freedom of association and peaceful assembly, Maina Kiai, on the situation of human rights defenders, Margaret Sekaggya, and on freedom of opinion and expression, Frank La Rue, 4 October 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13829&LangID=E>.

² ODIHR press release of 9 October 2013, available at <http://www.osce.org/odihr/elections/106908>.

³ Guidelines of the Parliamentary Assembly of the Council of Europe on observation of elections, 17 December 2012, as complementary text to the Rules of Procedure of the Assembly.

“An election is not a one-off exercise”

As underlined in the PACE Guidelines (paragraph 6 and following of the Guidelines) “an election is not a one-off exercise, but rather a continuous process involving several stages, all of which need to be analysed in order to assess an election.”

We are alarmed about the fact that the election observation mission of the Parliamentary Assembly of the Council of Europe (PACE) has chosen to focus on that “around election day [the mission] observed a free, fair and transparent electoral process,” not taking into account the situation in the country ahead of the election.

For the electoral process to allow a free and fair election, PACE had recommended in January 2013 to Azerbaijan to introduce changes to the Electoral Code, in time for the 9 October 2013 Presidential election and in line with recommendations of the Venice Commission.⁴ This has however not been done.

Furthermore, unlike the PACE observation mission, the election observation mission of the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (ODIHR) noted that the electoral process had severe flaws, including violations of the rights to freedom of expression, association and peaceful assembly in connection with the election. It also reported shortcomings in regard to the election system and the legal framework, as PACE did in January 2013, the election administration and candidate and voter registration, as well as the overall campaign environment. Tofiq Yagublu, deputy head of Musavat Party, members of NIDA and most famously the presidential candidate Ilgar Mammadov were all victims of the crackdown ahead of the elections. Those are legitimate voices willing to participate in the public debate but blocked by various means, including arrests based on politically motivated charges.

As for many other countries, the OSCE findings are not built on a few days presence in Azerbaijan. OSCE organises a long-term election observation to understand a country’s situation, as well as realities faced by citizens willing to participate in the public debate and the electoral process, expressing their opinions.

Any PACE observation mission in any country is confronted with its own limitation given its short-term presence in the country. Hence, PACE underlines in its Guidelines that elections are a process and that the timeline of an election starts way ahead an election day and stops long after that day. The PACE observation mission in Azerbaijan did not abide by those principles in its assessment of the Presidential election on 9 October 2013.

“Full respect of Council of Europe values and standards”

As highlighted in its Guidelines, PACE election observation aims at ensuring one basic principle for any election it monitors: full respect of Council of Europe values and standards (paragraph 13 of the Guidelines).

In its own assessment, PACE considers that the Presidential election presented a few improvements, such as a “window of opportunity” for the opposition participation, “a more open electoral debate” and underlining the election was “far from being perfect, but a start.” The PACE observation mission does not document this assessment and lacks of explaining this kind of findings. This assessment is widely contradicted, both by assessments of the election by domestic independent election observers and ODIHR’s election observation mission. OSCE stated that the candidates were provided with insufficient access to the media, and a balanced and open exchange of views on political alternatives was lacking.

The Election Monitoring and Democracy Studies Centre (EMDS) noted with concerns that according to reports received on the Election Day, violation of law occurred in 91 percent of polling stations observed. These violations included intervening in the secrecy of voting, voting by one person on behalf of others, ballot stuffing, multiple voting, numerous cases of voting by persons whose name

⁴ PACE resolution 1917 (2013), “The honouring of obligations and commitments by Azerbaijan”, paragraph 18.1.1, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19451&Language=EN>.

were not on voters list, inaccurate reflection of results of election on the protocol, pressure against observers and voters, and intervention in the election process by unauthorized person⁵.

According to Institute for Reporters' Freedom and Safety, there were nine journalists in detention or prison on politically motivated charges in September 2013. In addition, there are two bloggers behind bars who are believed to have been targeted for expressing views critical of the authorities and two human rights defenders in prison on politically motivated charges in connection with freedom of expression⁶.

Furthermore, PACE had also considered in January 2013 that the electoral laws needed to be revised to be in full respect of Azerbaijan's commitments towards the Council of Europe. It is hence surprising that the PACE observation mission to Azerbaijan assess the respect of national law as positive, thereby proving elections were free and fair.

Following the PACE Guidelines, especially paragraph 13 of the Guidelines, any observation mission is to assess the full respect of Council of Europe values and standards in an electoral process. Partial respect of European standards is not enough to qualify an election as being free and fair. Furthermore, PACE election observation is not to assess the general political situation in a country but to assess the full respect of European values and standards of an election, which the mission of Azerbaijan fails to do.

Difference in assessment with OSCE observations should be explained

According to paragraph 15 of the PACE Guidelines, so far as possible, PACE election observation assessments should not differ from the one of OSCE/ODIHR. This implies that a difference between the assessments should be explained and argued.

On some key-elements, the PACE observation mission puts itself in full contradiction with the ODIHR findings:

	PACE	OSCE/ODHIR
<u>Human rights violations</u>	<p>Improvements are still desirable with regards to the electoral framework, notably concerning the respect of fundamental freedoms during the months before the election.</p> <p>Freedom of expression remains a serious concern.</p>	<p>The 9. October election was undermined by limitations on the freedoms of expression, assembly, and association that did not guarantee a level playing field for candidates.</p> <p>Legal amendments made in 2012 and 2013 [...] further limited the freedoms of expression and assembly and restricted the functioning of civil society.</p> <p>Article 106 of the Constitution and Article 323 of the Criminal Code prohibit insulting the honour and dignity of the president, presenting unjustifiable limitations on freedom of expression that is contrary to international standards.</p>

⁵ The sample includes 769 polling stations from all 125 election constituencies covering 15% of all polling stations in the country. <http://www.smdt.az/index.php/en/news--events/news>.

⁶ Institute for Reporters's Freedom and safety: Report Opinion No. 222 Implementation of Azerbaijan's commitments to the Council of Europe in the field of fundamental freedoms.

Electoral process

The opposition has had – although reduced – a window of opportunity for this election which must be developed for the future.

Improvements are still desirable with regards to the electoral framework, notably concerning the respect of fundamental freedoms during the months before the election.

We encourage the authorities to carefully consider previous and current recommendations from the international community.

Electoral campaign

We also appreciated a more open electoral debate, compared to past elections, although freedom of expression remains a serious concern

Four nominees were not registered by the CEC for failure to collect the requisite number of valid support signatures. The rejected nominees challenged the CEC expert

Group's criteria for disqualifying signatures, but none of the appeals to court were successful.

Restrictive candidate eligibility requirements, in particular to hold a university degree, is at odds with international standards.

Election was undermined by limitations on the freedoms of expression, assembly, and association.

Central Election Commission (CEC) efficiently administered the technical preparations for the election, respecting legal deadlines. BUT the formula in which all election commissions are structured gives pro-government forces a de facto decision-making majority in them.

The majority of previous OSCE/ODIHR recommendations remain unaddressed in the law.

Continued allegations of candidate and voter intimidation and a restrictive media environment marred the campaign

The CEC pre-approved 152 campaign venues for candidate rallies and authorities interpreted this list as exhaustive, thereby limiting citizens' freedom of assembly.

Candidates were provided with insufficient access to the media, and a balanced and open exchange of views on political alternatives was lacking.

Detentions, criminal prosecutions, testimony of physical attacks and other forms of pressure on journalists negatively impacted the media environment.

IEOM observers assessed the voting process negatively in 11 per cent of polling stations observed. IEOM observers reported clear indications of ballot box stuffing in 37 polling stations, bypassing critical measures to ensure accountability and deter potential fraud, and noted a number of other procedural violations.

<u>Election Day</u>	<p>Around Election Day we have observed a free, fair and transparent electoral process</p> <p>Electoral procedures on the eve and on Election Day have been carried out in a professional and peaceful way.</p>	<p>Significant problems were observed throughout all stages of election day processes.</p> <p>The counting was assessed in overwhelmingly negative terms, with 58% of observed polling stations assessed as bad or very bad, indicating serious problems. In 15 observed counts, IEOM observers reported manipulation of voter list entries, results or protocols, including cases of votes being reassigned to a different candidate.</p>
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Harassment of domestic election observation already began

Less than a month after the Presidential election, independent media outlets and human rights defenders are still facing unprecedented levels of repression and harassment and the number of prosecutions are on the increase⁷. Following the Presidential election, on 28 and 30 October 2013, two of the leaders of the Azerbaijani Election Monitoring and Democracy Studies Centre (EMDS) were called to Major Crimes Investigation Department of the Office of the Prosecutor General of the Republic of Azerbaijan for questioning. They were told that any organisation receiving large amount of grants from foreign sources were under scrutiny and hence they were brought in for questioning. They were asked questions about projects, donors and international affairs of the Election Monitoring Centre and EMDS. Investigators were particularly interested in the election observation work done in relation to the Presidential elections, in cooperation with International Cooperation of Volunteers Union.

On 31 October 2013, a search in EMDS's office was conducted. Samples of print materials, press releases, reports, along with programme and financial documents were confiscated, as well as two computers.

EMDS is an Azerbaijani non-governmental organisation founded on 1 December 2008, following the court decision to unregister the Election Monitoring Centre.⁸ EMDS is the main Azerbaijani independent and non-partisan organisation working on election-monitoring and the rights to participate in the conduct of to public life as enriched in Article 25 of the International Covenant on Civil and Political Rights. The organisation works in 11 regions of Azerbaijan: Baku, Gandja, Sumgayit, Shaki, Mingachevir, Goychay, Jalilabad, Sabirabad, Beylagan, Guba, and Nakhchivan.

We see the investigations started against EMDS as related to the organisation's activities and its conclusions in regard to the Presidential elections. Authorities in Azerbaijan have indeed tried to silence national independent election observers, including by closing the Election Monitoring Centre, as the Human Rights House Foundation reported to the United Nations Human Rights Council on 16 September 2013.⁹ We are particularly disturbed to notice that the investigators aim at gathering documentation in relation to activities carried out to observe and monitor the Presidential elections, as partner and member NGOs of the Human Rights House Network and the South Caucasus Network of Human Rights Defenders wrote to President Ilham Aliyev and Prosecutor General Zakir Bakir oglu Garalov in their letter of 12 November 2013.¹⁰

We therefore question the credibility of the assessment made by the PACE observation mission and call upon PACE members to express reserve towards the statement issued on 10 October

⁷ Institute for Reporters' Freedom and Safety Statement on 1. Nov. 2013, "Azerbaijan moves to post-election crackdown".

⁸ The decision to unregister the Election Monitoring Centre (EMC) has been deemed as a violation of the right to freedom of association by its founders who submitted an appeal to the European Court of Human Rights against the judgements of national courts. The founders of EMC are awaiting a decision on this case.

⁹ Statement made by the Human Rights House Foundation at the United Nations Human Rights Council on 16 September 2013 available at <http://humanrightshouse.org/Articles/19637.html>.

¹⁰ The joint NGO letter is available at <http://humanrightshouse.org/Articles/19744.html>.

2013 by the mission and to seriously question the report the mission will present at the Standing Committee and at the January 2014 plenary session.

The credibility of the knowledge gained by the PACE observation mission is even more weakened by statements congratulating the Azerbaijani authorities on the “sound technical preparations” made for the Presidential election. One can indeed not ignore that Azerbaijan’s technical preparation included the creation of a smartphone app by the Central Election Commission, which announced President Ilham Aliyev’s reelection... one day before the Presidential election day.¹¹

In its resolution 1917 (2013), PACE indeed stated that “not a single parliamentary or presidential election has fully met democratic standards [and that] and number of shortcomings and deficiencies in the electoral process, in particular with regard to the electoral code, the composition of the election commission, candidate registration, observers and the complaints and appeals procedure, must be addressed in time for the next elections”¹² Based on contradicted, weak and doubtful findings of the PACE observation mission, will PACE consider the 2013 Presidential election as the first free and fair election Azerbaijan has known?

Sincerely,

- Azerbaijan Human Rights House (on behalf of the following NGOs):
 - Azerbaijan Lawyers Association
 - Human Rights Centre
 - Legal Education Society
 - Media Rights Institute
 - Women's Association for Rational Development
- Election Monitoring and Democracy Studies Centre, Azerbaijan
- Human Rights Club, Azerbaijan
- Institute for Peace and Democracy, Azerbaijan
- Public Association for Assistance to Free Economy, Azerbaijan
- Public Union of Democracy and Human Rights Resource Centre, Azerbaijan
- Helsinki Foundation for Human Rights, Poland
- Open Society Foundation
- Human Rights House Foundation

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¹¹ See about the so-called “app gate” *inter alia* Max Fisher’s blog article on the *Washington Post* website, available at <http://www.washingtonpost.com/blogs/worldviews/wp/2013/10/09/oops-azerbaijan-released-election-results-before-voting-had-even-started>.

¹² PACE resolution 1917 (2013), “The honouring of obligations and commitments by Azerbaijan”, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19451&Language=EN>.