



Election Monitoring and Democracy Studies Centre

STATEMENT

on the scheduling of the early Presidential Election in Azerbaijan on 11 April 2018

Summary

The Election Monitoring and Democracy Studies Centre (EMDS) analysed the legal-political environment in connection with the scheduling of the early Presidential Election in Azerbaijan on 11 April 2018 and concluded that although the presidential decree on bringing the election to a earlier date is in line with the Constitution and the Election Code of the country, it is against the principles of democratic constitutionalism and periodicity of elections.

EMDS believes that the decree was adopted without providing reasonable justification and holding open public discussions in the parliament and therefore the decision complicated the preparation of electoral participants, in particular, the potential candidates, domestic and international observers for the elections. Furthermore, bestowing the power of declaring early election to a subject that has a direct interest in such election – the president – is against the rules of democratic governance. This allows the president to schedule the election to a more suitable time for him or her (for example, when the president has higher approval ratings or before the expected fall of ratings) granting the president an unfair advantage over his or her rivals which is at odds with the requirements of democratic governance.

EMDS notes with regret that the imprisonment of 140 people, including journalists, bloggers and opposition activists, on politically motivated charges, restrictions of freedom of expressions, particularly the blocking of websites of independent media outlets and widespread persecution of social media activists indicate the lack of democratic environment prior to the election. Furthermore, the crackdown on civil society launched following the 2013 Presidential Election continues and limits the opportunities for civil society to engage in voter education, protection of election rights and domestic election observation.

Based on the implementation status of the recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), opinions of the Venice Commission of the Council of Europe and the rulings of the European Court of Human Rights (ECtHR) regarding the previous elections, EMDS believes that the government failed to carry out sufficient measures to ensure the free expression of the public will, environment for fair political competition, freedoms of expression, assembly and association, as well as creating adequate conditions for the operation of political parties and civil society.

EMDS carried out various programmes focusing on protection of election rights, election monitoring and awareness raising about electoral processes during the municipal, parliamentary, presidential elections and referendums held in 2001-2013.

Legal basis for scheduling early Presidential Election

The President of Azerbaijan Ilham Aliyev signed a decree on 5 February 2018 bringing the date of the Presidential Election from October 2018 to a six month earlier date of 11 April. Although the decree was adopted in accordance with Article 101 of the Constitution and Article 179 of the Election Code, it violated the principles of democratic constitutionalism and periodicity of elections.

The President obtained a power to declare early election as a result of the Constitutional amendments adopted with the September 2016 Referendum which were criticised by the Venice Commission of the Council of Europe for not having clear rationale behind proposed amendments, not involving the Parliament in their discussions and lacking provisions specifying rules for the amendments to take into effect.¹

The decree was adopted without providing reasonable justification and holding open public discussions in the parliament and therefore the decision complicated the preparation of electoral participants, in particular, the potential candidates, domestic and international observers, for the Presidential Election. This also violated the requirements regarding the reasonable frequency and timeframe stipulated in the international documents² which Azerbaijan is party to.

The legislation of other Council of Europe member states specifies concrete circumstances for holding early elections (particularly, presidential elections) and lists conditions for declaring them. The first part of Article 101 of the Constitution of Azerbaijan, however, does not indicate any conditions or circumstances and grants the president with the power to declare early election without providing any justification or grounds. This provision of the Constitution is at odds with the good electoral practice of Council of Europe member states.

Furthermore, granting the power to declare an early election to a subject with a direct interest in the electoral process – the president – without any limitations or conditions is against the principles of democratic governance. This allows the president to schedule the election to a more suitable time for him or her (for example, when the president has higher approval ratings or before the expected fall of the ratings) granting the president an unfair advantage over his or her rivals which is at odds with the requirements of democratic governance.

In the context of the 2016 Constitutional amendments which bolstered the President's powers at the expense of the legislative and judiciary branches,³ granting discretionary power of declaring early presidential election allows for abuse of this power. Therefore although declaring early election by the president is legal in accordance with Azerbaijani legislation, it is not legitimate in the context of democratic constitutionalism.

Preparations for the early Presidential Election and the political environment

The authorities have not carried out any reforms with regards to creating suitable and democratic election environment in Azerbaijan according to the EMDS's assessment of

¹ The Opinion of the Venice Commission of the Council of Europe, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)029-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)029-e)

² Article 25b of the International Covenant of Civic and Political Rights, and the Protocol 3 of the European Convention of Human Rights

³ The Referendum Act on Amendments to the Constitution of Azerbaijan, available at (in Azerbaijani): <http://president.az/articles/20630>

implementation status of the election recommendations of the OSCE/ODIHR, opinions of the Venice Commission and the rulings of the ECtHR published six months ago.⁴

Furthermore, the Election Code adopted in 2003 does not allow for holding free and fair elections in Azerbaijan and holding the early Presidential Election without significant improvement of the law casts serious doubts over the electoral process. Therefore the recommendations of domestic and international organizations on the improvement of the Election Code, including the recommendation on the formation of election commissions on the basis of equal representation of political forces, impartial investigation of election complaints, registration of candidates and election campaigning. The unchanged composition of the Central Election Commission and other election commissions in the last 15 years despite the numerous rulings of the ECtHR recognizing the violation of election rights is another major factor negatively affecting the public trust in the electoral process.

The authorities should also simplify the complicated mechanisms for voter registration and should carry out the proper calculation of the number of voters. Unfortunately, despite being raised by EMDS since 2009, the inconsistency between the number of voters announced by the Central Election Commission and the number of citizens above-18 years old provided by the State Committee on Statistics is yet to be addressed.

Bringing the date of the election to an earlier date also creates obstacles for opposition candidates and for domestic and international election observation groups, and the short election timeframe does not allow for a proper voter education programme.

The parliament granted the government with unlimited power to block the access to websites in March 2017⁵ which gives the authorities discretionary power to restrict freedom of expression on the internet. The widespread persecution of social media activists and the calls of the Central Election Commission to control social media during the election are undue interference into freedom of expression. This is unacceptable in the context of democratic elections, and creates obstacles to voter education and learning voters' preferences during the election campaign period. Furthermore, the lack of independent TVs and radios along with the harassment of independent media and blocking the access to news websites critical of the authorities raise serious concerns regarding the guaranteeing democratic environment prior to the election.

More than 140 people, including opposition leaders, journalists, bloggers and social media activists, remain in prison for their critical positions towards the authorities and regularly dozens of people face persecution for expressing their views. Furthermore, in the last few years, the Parliament disproportionately toughened sanctions for organizing and participating in peaceful assemblies specifying up to 3-month of detention and hefty fines for the violation of rules of assembly.⁶

The crackdown on civil society and human rights organizations launched after the 2013 Presidential Election continues and the restrictive amendments to the legislation on freedom of association remain in place. The ongoing criminal investigation against domestic and international NGOs, tax fines and travel bans imposed on NGOs and their leaders, and obstacles to accessing foreign funding restrict the work of civil society during the election.

⁴ The Assessment Document by EMDS, available at: <http://smdtaz.org/wp-content/uploads/2017/09/EMDS-AR-100917.pdf>

⁵ Amendments to the law on "Information, informing and protection of information" of the Republic of Azerbaijan, available at (in Azerbaijani) <http://www.meclis.gov.az/?/az/legislation/view/3548>

⁶ Amendments to the Code of Administrative Offences, March 2016, available at (in Azerbaijani): <http://e-qanun.az/code/24>

The authorities did not carry out any reforms with regards to ensuring the free expression of people's will, improving the situation of freedoms of assembly, association and expression, establishing environment for a fair political competition, and creating adequate conditions for the operation of political parties and civil society prior to the early Presidential Election. Noting these shortcomings, opposition parties Musavat and Popular Front, which took part in previous presidential elections, along with Republican Alternative Movement chaired by political prisoner Ilgar Mammadov refused to participate in the election. As a result for the fourth time in the brief history of independent Azerbaijan, an atmosphere lacking alternatives is created prior to the presidential election.

Recommendations for holding the early Presidential Election:

The government of Azerbaijan should carry out following measures in order to ensure holding the 11 April 2018 early Presidential Election in a free and fair manner:

- Release persons considered as political prisoners by domestic and international human rights organizations and ensure the right of political parties to freedom of assembly, including holding protest rallies;
- Reverse the amendments made to the legislation on NGOs and grants in the last three years restricting the activities of domestic and international NGOs, and stop all persecution of civil society members;
- Ensure the openness and the public control over the activities of the Central Election Commission when it comes to providing signature collection forms to candidates and verification of collected signatures, preparation of voter lists and dislocation of polling stations, investigation of election complaints, and preparation of constituency election commission members;
- Restore the operation of foreign radios in the country, and stop blocking the access to independent and opposition websites;
- Provide opportunities for voters to receive complete and comprehensive information about the election and for political forces refusing to participate in the election to express their demands through the allocation of free airtime on public TV.